IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Apple Tree Life Sciences, Inc., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered) **Objection Deadline: January 20, 2026 at 4:00 p.m. (ET)** **Hearing Date: January 27, 2026 at 10:00 a.m. (ET)**

MOTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP FOR RELIEF FROM THE AUTOMATIC STAY

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the "**LPs**"), hereby move for an order granting relief from the automatic stay in the cases of debtors ATP Life Science Ventures, L.P. (the "**Fund**") and ATP III GP, Ltd. (the "**GP**"), to the extent necessary to permit the parties to proceed to trial in the case titled *In the Matter of ATP Life Science Ventures, L.P.*, Cause No FSD 151 of 2025 (JAJ) (the "**Cayman Trial**") before Hon. Justice Jalil Asif KC in the Grand Court of the Cayman Islands (the "**Cayman Court**"), as set forth in the proposed order attached as **Exhibit A**, and granting such other and further relief as may be just and proper. In support of the Motion, the LPs submit the *Declaration of Mark Phillips KC in Support of Motion of Rigmora Biotech Investor One LP and*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

Rigmora Biotech Investor Two LP for Relief from the Automatic Stay ("**Phillips Decl.**"), filed contemporaneously herewith.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the LPs consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.[2]

3. The bases for the relief requested herein are section 362(d) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Local Rule 4001-1.

PRELIMINARY STATEMENT

4. These cases were filed by the GP and the Fund (the "**Fund-Level Debtors**") mere weeks before a January 2026 trial in the Cayman Court. The Cayman Trial was set to resolve a June 2025 petition by the LPs—who have contributed roughly 98% of the Fund's capital—seeking

[2] Nothing in this motion shall constitute a waiver of any argument that the courts of the Cayman Islands have exclusive or concurrent jurisdiction to adjudicate the matters in the Cayman Islands proceedings, that this Court lacks jurisdiction to adjudicate those matters, that these bankruptcy cases should be dismissed as to the GP and the Fund, and that the Fund is not a proper debtor in this Court; nor shall the motion be construed as a submission to the jurisdiction of the Court; and all rights and remedies of the LPs are expressly reserved.

to replace the GP with court-appointed fiduciaries on the grounds (among others) that the LPs had lost all "trust and confidence" in the GP. The LPs seek relief from the automatic stay to allow the Cayman Trial to go forward to resolve fundamental questions of Cayman law and Fund governance.

5. That two-party trial in the Cayman Court was set to begin on January 12, 2026. It would have resolved the LPs' June 2025 petition alleging that under governing Cayman law, the GP must be replaced with court-appointed fiduciaries, who would be responsible for maximizing the value of the Fund's investments. The LPs alleged that they had justifiably lost all "trust and confidence" in the GP and that the "substratum" of the partnership had ceased to exist, meaning that it had "become impractical, if not actually impossible" for the Fund to carry on "in accordance with the reasonable expectations of its" partners under the current arrangement.[3] In those circumstances, under Cayman law, the GP should "step aside" and allow independent scrutiny. The Cayman Court warned in a November judgment that Cayman precedent does not countenance managers who "cling to office" over their investors' objection, because they appear to be motivated by self-interest at best, "or the desire to forestall independent investigation into suspect dealings at worst."[4] The Cayman Court remarked that there is "a real danger that the general partner is failing to heed" that precedent here.[5]

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[3] Ex. B, Cayman Amended Winding-Up Petition, Nov. 21, 2025 ("Amended Winding-Up Petition") ¶¶ 25–26, 66–67; Ex. C, *Re Belmont Asset Based Lending Ltd* [2010] CIGC J0121-2 at [13]; Phillips Decl. ¶ 98.

[4] Ex. E, *In Re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106 ("Cayman Judgment, Nov. 6, 2025") at [44]; Ex. D, *In Re One Thousand & One Voices Africa Fund I LP*, KY 2024 GC 62, 9 May 2024 at [46].

[5] Ex. E, Cayman Judgment, Nov. 6, 2025 ¶ 44.

6. Because this GP refused to heed that guidance and step aside, the LPs must resort to the Cayman Court to change the trustees and managers of the Fund assets (which as set out below are held on trust for the LPs). The Cayman Trial is what is known as a "winding-up proceeding," and it is the kind of litigation a limited partner in a Cayman Islands exempted limited partnership ("**ELP**") like the Fund may bring to unwind the partnership when, among other things, it is irretrievably broken. The Cayman Court considers whether the GP must, as a matter of law, be replaced and independent fiduciaries appointed to wind up the partnership in its current form. Contrary to what the GP has suggested, this does not necessarily mean that the Fund's portfolio companies will be liquidated or sold off in a fire sale; rather, it means that the Fund will have new, independent, trustworthy fiduciaries, subject to judicial oversight and charged with maximizing the value of the Fund. Ultimately, it is a determination of Fund governance, not fundamentally different in kind from the corporate governance determinations made in a shareholders' meeting. By filing for chapter 11, the GP is not just improperly "clinging to office" but misusing this Court's automatic stay to avoid the Cayman Court's scrutiny and the mechanism for oversight of Fund governance that the Cayman Trial would provide.

7. If relief is granted, the Cayman Court stands ready to resolve this governance dispute in a short trial of two days in February. Justice Asif has postponed the January trial dates in deference to this Court and its automatic stay, Ex. F, *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No. 4)* [2025] CIGC (FSD) 124 ("Cayman Judgment, Dec. 22, 2025") ¶¶ 9–10, but is holding time on his calendar for the February dates. Justice Asif is deeply familiar with both the law and the facts in this case, having held numerous hearings, taken evidence and issued interim judgments over the course of the last six months, and the Cayman Court has exclusive jurisdiction to determine certain of the Cayman law questions before it. Although Justice Asif has taken

parallel Delaware Chancery proceedings into account throughout that case and adjourned the trial due to these chapter 11 cases, he has fairly asked that the stay be lifted to allow his own trial to proceed. Justice Asif observed that he, too, has a role to play, and that it "seems to me that it would be of real utility for the Delaware judge . . . to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made." *Id.* ¶ 19.

8. This Court should grant that request and modify the stay to allow the Cayman Trial to promptly proceed. The three factors that this Court has weighed when deciding whether to grant relief from the automatic stay all heavily favor relief: (i) there will be no "great prejudice" to the estate or the Debtor from continuation of a suit in another court; (ii) the hardship to the party seeking relief far outweighs any hardship to the debtor, and (iii) the LPs are likely to succeed on the merits in the underlying suit. And, because a foreign winding-up proceeding is involved, comity also weighs in favor of relief.

9. ***First***, lifting the stay will not cause any "great prejudice" to the Fund-Level Debtors: they are "debtors" in name only, with no funded debt and negligible operating debts balanced by over $100 million in cash on hand and billions of dollars in non-cash assets held in trust for the Fund's LPs. They do not and cannot make any credible allegation of financial distress. They claimed that they feared the LPs would not pay the nearly $100 million judgment for capital calls that the GP had issued minutes before filing its complaint in the Court of Chancery, but a quick look at the timeline shows how implausible that allegation is. The Court of Chancery issued its post-trial opinion on Friday, December 5. On Monday, December 8, the LPs reached out to the GP, via counsel, and proposed to pay within ten days of the Court's final order. The very next day, Tuesday, December 9, without seeking swifter payment and with no credible reason to doubt

payment would come, the GP and the Fund filed these chapter 11 cases. The LPs have now paid the judgment in full in cash, on December 22, 2025, five days before it was due.

10. That is, the GP filed for bankruptcy days after obtaining a nearly $100 million judgment, which has been paid, in full and in cash, and added to the more than $2.3 billion that the LPs had already invested in the Fund, which the GP claims is now worth more than twice that amount. The present bankruptcy cases have not been brought because of concerns about financial distress. They have been brought because, despite making an order requiring the LPs to pay almost $100 million to the Fund, Chancellor McCormick refused to make the orders that the GP ***really*** wanted—orders that would have enabled the GP to use the Fund's capital in accordance with its own whims and without regard to the LPs' budget approval rights under the limited partnership agreement that governs the Fund (the "**LPA**").

11. In all, the LPs have contributed approximately 98% of the capital of the Fund and on any view, their investment is now worth billions of dollars. That means that for the Fund-Level Debtors, these cases have nothing to do with financial distress or managing liabilities, and everything to do with the GP's desire to maintain control over investments that the GP ***holds on trust for the benefit of the LPs,*** whose capital funded those investments. The GP is right to fear that the Cayman Trial almost certainly will result in its replacement as the trustee and manager of those assets, but that is the legally-mandated and appropriate result (not to mention being consistent with the GP's fiduciary duties to the Fund's investors), and as such cannot be a source of "prejudice." Nor is there any prejudice from the mere act of proceeding to trial; the parties have completed one trial on an expedited schedule already, in the Court of Chancery, and were on the verge of another when the GP balked. There is no possible suggestion that the Cayman Court is not a fair or adequate forum. A two-day hearing in the Cayman Islands in February is no hardship,

and it should not be a problem for the GP to address the critical issue of who is legally authorized to manage billions of dollars of biotech investments.

12. The issues for trial in the Cayman Court are straightforward. The Cayman Court would decide whether the Fund should be wound up, how it should be wound up (voluntarily or under an order for compulsory winding-up), and by whom it should be wound up (the GP or independent officers of the Cayman Court, for which role the LPs have proposed two professionals from Alvarez & Marsal). Among other things, the Cayman Court would determine whether, as a matter of Cayman law, the bankruptcy petition filed by the GP on December 9, 2025 constituted the first step in a ***voluntary*** winding-up of the Fund under Cayman law. If so, the GP does not presently have authority as a matter of applicable non-bankruptcy law to proceed with the Fund's chapter 11 case, and any post-petition disposition of the Fund's assets and alteration of the LPs' interests will be subject to subsequent invalidation by the Cayman Court. The Cayman Court also would determine whether, as a result of the Court of Chancery judgment and compounded by the GP's assertions in these chapter 11 cases and its admitted purpose to use those cases to displace the LPs, the Fund should be subject to ***compulsory*** winding up either on the basis that the Fund's "substratum" is gone as a matter of Cayman law—meaning that it is no longer practical for the Fund to carry on its investment business in accordance with the reasonable expectations of its partners—or on the basis that the GP's failure to comply with its obligation to carry out a voluntary winding-up requires a compulsory winding-up instead. No matter the outcome, the result in the Cayman Court would clarify whether the GP or some other party (such as an appointee of the Cayman Court) has authority to speak for the Fund in these cases and whether the GP's actions in these chapter 11 cases are, as a matter of Cayman law, void or subject to invalidation.

13. It is in this Court's interest, and the interests of all parties to these cases, for the Cayman Trial to proceed promptly and provide much needed clarity over the Fund's status and the GP's role with respect to the Fund. Until the Cayman Trial is completed, any counterparty transacting with a Debtor in these cases does so on notice that the GP's actions regarding the Fund may be void as a matter of Cayman law—regardless of the outcome of these bankruptcy cases—and that the judge overseeing the pending Cayman Trial has expressed serious doubts as to the legality of the GP's proposed course of conduct. It would be inefficient, unnecessarily expensive, and ultimately damaging to the Fund for these chapter 11 cases to proceed under that cloud. There is no "great prejudice" from lifting the stay and moving ahead with the Cayman Trial here.

14. ***Second***, and conversely, maintaining the stay would cause continuing substantial hardship for the LPs. Even on the GP's case, the LPs have invested nearly $2.4 billion in cash in the Fund at this point, and according to the GP, their investment is worth at least twice that amount now. The Fund-Level Debtors are not just solvent, but hold highly valuable assets—which are being managed by a fiduciary in which the sole substantial investors have utterly lost confidence, which has explicitly stated that it is attempting to remove them as limited partners, and which cannot possibly be acting in their interest. The LPs have been attempting since June 2025 to put their investment in the hands of a competent, trustworthy trustee through the process that Cayman law and the LPA establish for that purpose. If the GP had not filed for chapter 11 and sought to use the automatic stay to interrupt the Cayman process, the Cayman Trial would have gone forward next week and, in all likelihood, the GP would have been promptly removed and replaced. Instead, the GP is using chapter 11 to shield itself not from creditors—like an honest debtor seeking to reorganize—but rather from the scrutiny of the Cayman Court and the investors to whom it owes fiduciary duties. As a result, the LPs' assets have been thrown into an unnecessary bankruptcy by

a GP that lacks legal authority to act as a matter of governing Cayman law and that is completely disregarding its fiduciary duties and attempting to use these chapter 11 proceedings offensively to "replace" the LPs—the very beneficiaries of the trust for which the GP serves as trustee. Dkt. 18, First Day Decl. of Dr. Seth L. Harrison ¶ 17. The LPs are the real economic parties in interest, and maintaining the stay is harmful to them.

15. The GP's continued use of LP and Fund resources for its own ends, when it should be removed and replaced, is another form of ongoing hardship to the LPs. The GP has used the LPs' funds to bankroll its litigation in three courts so far—the Delaware Court of Chancery, the Cayman Court, and this Court—all while fighting to avoid its own legally mandated removal and maintain control over the LPs' assets. In the meantime, the LPs remain at the mercy of a self-dealing manager, deprived of a fiduciary they can trust, and watching the value of their investment be jeopardized by an unnecessary bankruptcy case, all while the GP continues to act (and spend) from a position it is not entitled to hold. When this Court focuses on the equities, and on preserving the value of the Fund-Level Debtors and the underlying biotech portfolio, it should have serious concerns about the GP's conduct here and the harm that it will continue to cause if its role in Fund governance is not promptly addressed by the proper proceeding in the Cayman Court.

16. ***Third***, the LPs easily satisfy the minimal showing of likelihood of success on the merits required to lift the stay. The GP does not have a viable defense to the LPs' claims in the Cayman proceeding. Even before the chapter 11 filings it was clear the GP should step aside, under governing Cayman precedent that Justice Asif himself referenced in November. But now, the Delaware Chancery decision, together with the GP's tactics in these chapter 11 cases, confirm unequivocally that there has been a loss of substratum, *i.e.*, that it is not practical for the Fund to continue as originally contemplated by the parties in the LPA, warranting a compulsory winding-

up order. Further, the filing of the GP's chapter 11 case necessitates voluntary dissolution of the Fund under Cayman law and the LPA.

17. ***Finally***, the interests of comity dictate that this Court and the Cayman Court should work cooperatively toward an orderly disposition, respecting each other's jurisdiction, with the goal of reducing both legal uncertainty and litigation costs. Maintaining the automatic stay—one purpose of which is to avoid duplicative litigation and waste of a debtor's resources—to prevent a sister court on the eve of trial from promptly resolving essential questions that are squarely within its jurisdiction and expertise and that directly impact the conduct of the Fund's bankruptcy case, would be deeply at odds with both general principles of international comity and bankruptcy-specific comity principles of deference to proceedings pending in the debtor's place of organization.

18. In short, in this highly unorthodox bankruptcy, all the equities strongly favor relief from the stay to permit the Cayman Trial to go forward. Granting relief from the automatic stay to permit a short, immediate, long-scheduled trial on core questions of Fund governance to proceed under Cayman law in the Cayman Court is wholly appropriate. The automatic stay is meant to be a shield against wasteful litigation, not a sword to be wielded to defeat the legal rights of creditors and owners—or to provoke yet more litigation. Nor is the automatic stay appropriately a tool for forum shopping, whereby a debtor may litigate in a bankruptcy court of its choosing the same or similar issues that were already pending before another tribunal and were on the verge of trial at the time the bankruptcy case was filed. While this Court may have its own issues to address regarding the GP as the chapter 11 cases progress, the first and most efficient step is to modify the stay to allow the Cayman Court to take up and resolve the issues that are ripe for trial before it. Whether and how to wind up a solvent Cayman ELP when a GP and its LPs have reached a

governance impasse was squarely before the Cayman Court, is governed by Cayman law, and can and should be resolved there without delay.

19. For all of these reasons, as further detailed below, relief from the automatic stay should be granted.

FACTUAL BACKGROUND

I. The Fund

20. The Fund, which is a Cayman ELP, was established on October 29, 2012, following discussions between Dr. Dmitry Rybolovlev and Dr. Seth Harrison about forming a vehicle to invest in biotechnology companies. Ex. G, Chancery Pre-Trial Order, Sept. 5, 2025 ("Pre-Trial Order") ¶¶ 14, 22–23. Dr. Harrison owns and controls the GP, which is a Cayman company, while the Rybolovlev family trust indirectly owns and controls the two LPs, which are managed by an entity known as Rigmora Holdings Limited ("**Rigmora Holdings**"). *Id.* ¶¶ 13, 15–20. Besides the two LPs, the Fund's only other limited partners are Dr. Harrison and his family trust, who hold only small stakes in some pools of assets, as well as certain present or former employees of the Fund's GP-controlled subsidiary Apple Tree Life Sciences, Inc. ("**ATLS**") who have not contributed capital to the Fund and only have a contingent right to earn carried interest payments. Dkt. 18, First-Day Decl. of Dr. Seth L. Harrison ¶ 25. The Fund is in effect a fund of one, as roughly 98% of the capital invested into the Fund was contributed by the two LPs. Ex. H, Chancery Post-Trial Op., Dec. 5, 2025 ("Post-Trial Op.") at 5.

21. The Fund currently holds approximately 15 portfolio companies, including Braeburn, a highly valuable company with a commercial product called Brixadi, which is a treatment for opioid dependence. Despite some early success driven in large part by the Braeburn investment, over the past six years the Fund has significantly underperformed its peers, as it invested hundreds of millions of dollars of capital contributed by the LPs into early-stage companies that have failed

to achieve significant development milestones. Ex. I, Chancery Trial Tr., Oct. 16–17, 2025 ("Trial Tr.") at 202:22–203:13 (Prof. Ilya Strebulaev); *id.* at 437:18–438:20 (Dr. Ilonna Rimm). The GP has caused six of these non-performing portfolio companies to file chapter 11 petitions in this Court. Dkt. 15, Mot. for Joint Administration at 3; Voluntary Petition for Bankruptcy of Evercrisp Biosciences, Inc., No. 26-10000, Dkt. 1; Voluntary Petition for Bankruptcy of Nine Square Therapeutics, Inc., No. 26-10001, Dkt. 1.

22. The Fund's assets are managed by the GP on trust for the benefit of the Fund's limited partners, to which it owes fiduciary duties. *See generally* Phillips Decl. ¶¶ 24(b), 26–27, 57–81. The structure, management, and operation of the Fund are controlled by the terms of the LPA, which is governed by the law of the Cayman Islands and is expressly subject to the Cayman Islands' Exempted Limited Partnership Act ("**ELP Act**"). *See* Ex. J, LPA ¶ 18(g)(i). The LPA has been amended 22 times.

23. A Cayman Islands ELP is a unique entity. An ELP has no legal personality separate from its partners. *See, e.g.*, Ex. K, *Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56 at [48] (under Cayman Islands law, "an ELP is not a separate legal person and the property and rights of an ELP are held on trust 'as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement', such that limited partners have a proprietary interest in the partnership assets"); Ex. L, *Kuwait Ports Authority v Williams* [2024] UKPC 32 at [35] (the "important distinctions between ELPs and companies" include that an "ELP has no separate legal personality"); Ex. E, Cayman Judgment, Nov. 6, 2025 ¶¶ 32–34 ("[A]n exempted limited partnership does not have any separate legal personality from the limited partners and the general partner."); *see generally* Phillips Decl. ¶¶ 24(a), 26–27, 31–56.

24. The general partner of an ELP holds all of the ELP assets as a trustee for the limited partners. *See generally* Phillips Decl. ¶¶ 24(b), 26–27, 57–81. Section 16(1) of the ELP Act provides that the assets are held on statutory trust as follows:

> ***Any rights or property of every description of the exempted limited partnership***, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership ***shall be held or deemed to be held by the general partner*** and if more than one then by the general partners jointly, ***upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement***.

Ex. M, ELP Act § 16(1) (emphasis added). Recent controlling Cayman Islands case law interpreting this provision confirms that the sole beneficiary of this statutory trust is ***the limited partners collectively***. Specifically, the Court of Appeal of the Cayman Islands held in *Kuwait Ports Authority v Port Link GP Ltd* [2023 (1) CILR 50]:

> ELPA s.16(1) . . . in substance . . . provides that the assets of an ELP are held by the general partner on ***a statutory trust for the limited partners***. . . . [B]ecause an ELP has no separate legal personality ***the only sensible construction of the words in ELPA section 16(1) is that the GP of an ELP holds its assets on trust for all the limited partners***.

Ex. O*, Kuwait Ports Authority v Port Link GP Ltd*, [2023 (1) CILR 50] at [54], [56] (emphasis added). Under the ELP structure, the GP owes its fiduciary duties to the limited partners alone and may not manage Fund assets in its own self-interest. Phillips Decl. ¶¶ 78, 80–81; Ex. N, Expert Report of Michael Bloch KC ¶ 31 (citing Ex. O, *Kuwait Ports Authority v Port Link GP Ltd*, [2023] 1 CILR 50 at [35]).

25. The GP cannot credibly dispute these fundamental points. The GP's Cayman law expert testified that "an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right," and that "[an ELP's] general partner holds its

rights and property . . . on trust ***for each of the partners***." Ex. N, Expert Report of Michael Bloch KC ¶ 30 (emphasis added) (quoting Ex. O, *Kuwait Ports Authority v Port Link GP Ltd*, [2023 (1) CILR 50] at [25], [54]). And in the Cayman Court, the GP's counsel stressed that the Fund does not have separate legal personality and that the GP holds the Fund assets on trust. Ex. Q, Cayman Hr'g Tr., Oct. 31, 2025 at 4:16:39 ("[L]imited partnerships have no separate legal personality. And that's a key distinction, obviously, from corporate vehicles in relation to winding up petitions".)

II. The Cayman Trial

26. The Cayman Trial, which was originally scheduled to begin on January 12, 2026, is a trial of the LPs' June 6, 2025 petition to wind up the Fund. The petition was based on "continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP." Ex. P, Cayman Winding-Up Petition ("Winding-Up Petition") ¶ 3. The petition sought a compulsory winding-up on three grounds: (1) that the Rigmora LPs had justifiably lost trust and confidence in the GP's ability to manage the Fund's assets, (2) that the "substratum" of the partnership had ceased to exist, which means that "it has become impractical, if not actually impossible," for the Fund "to carry on its investment business in accordance with the reasonable expectations of its" partners, Ex. C, *Re Belmont Asset Based Lending Ltd* [2010] CIGC J0121-2 at [13]; Phillips Decl. ¶ 98, and (3) that a proper and independent investigation into the Fund's affairs by court-appointed fiduciaries was necessary. Ex. P, Winding-Up Petition ¶¶ 25–26, 66–67; Ex. R, Petitioners' Cayman Skeleton Argument, Dec. 16, 2025 ("Cayman Skeleton") ¶ 23. On November 21, 2025, the LPs amended the winding-up petition to include substantial additional evidence supporting these three grounds for winding up the Fund. Ex. B, Amended Winding-Up Petition.

27. The petition was motivated by the LPs' loss of confidence in the GP, their fiduciary. It did not—and does not—suggest that the Fund was insolvent, financially troubled, or in need of

financial reorganization (and in fact, it is not). Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 13; Ex. E, Cayman Judgment, Nov. 6, 2025 ¶¶ 44–45. The petition and trial in the Cayman Court—like the GP's last-second attempt to avoid it by filing chapter 11 in this Court—is about governance and control of highly valuable assets that the GP holds on trust for the benefit of the LPs, not financial distress.

28. After previously trying and failing to avoid facing the Cayman proceedings,[6] the GP ultimately joined the LPs in asking the Cayman Court to set a trial for January 2026. Ex. S, Cayman Hr'g Tr., Aug. 1, 2025, at 62:1–64:7. The parties proceeded to actively litigate through key phases of the Cayman proceedings, including numerous hearings and the submission of thousands of pages of legal argument and witness evidence. Dkt. 4, Faulkner Decl. ¶ 60. The GP's managing partner Dr. Harrison alone has submitted eleven affidavits and a witness statement in the Cayman proceedings, totaling over 400 pages. In the process, the LPs and GP have incurred significant time and cost. Dkt. 4, Faulkner Decl. ¶ 87. Because the GP is (improperly) paying its expenses from the Fund—approximately 98% of whose capital has been contributed by the LPs—the LPs have effectively been funding the GP's litigation expenses as well as their own. Although the GP's sole legitimate role is as a fiduciary to the Fund's limited partners, the GP has refused to step aside and has instead incurred tens of millions of dollars of improper expenses in an effort to remain in control of the LPs' assets despite the LPs' loss of confidence in the GP's ability to properly manage those assets.

[6] For example, on June 26, 2025, the GP filed an application in the Cayman Court to stay the Cayman proceedings. After fully briefing the application and requesting a hearing, the GP withdrew its stay applications on August 1, 2025 in the middle of the requested hearing before the Cayman Court on the applications. Ex. S, Cayman Hr'g Tr., Aug. 1, 2025, at 60:6–14, 64:17–27 (statement by counsel withdrawing stay applications); Dkt. 4, Faulkner Decl. ¶ 72.

29. Contrary to the GP's unsupported assertions to this Court, Dkt. 55, Hr'g Tr., Dec. 15, 2025, at 17:10–17, an order by the Cayman Court to wind up the Fund would not imply the winding-up or fire sale of the Fund's portfolio companies. Dkt. 4, Faulkner Decl. ¶ 41; Phillips Decl. ¶ 27(k). If the Cayman Court appoints joint official liquidators ("**JOLs**") for the Fund, the JOLs will serve as fiduciaries who would owe duties to maximize the value of the Fund for the benefit of the limited partners—and who, unlike the GP, could be trusted to perform those duties faithfully. Dkt. 4, Faulkner Decl. ¶¶ 38, 42; Phillips Decl. ¶¶ 136–43. In that role, the JOLs will be charged with examining the Fund's assets, including its ownership interests in the portfolio companies, and determining how best to preserve their value within the construct of the LPA, including for example seeking funding as appropriate, continuing operations, conducting orderly asset sales. Dkt. 4, Faulkner Decl. ¶¶ 14, 39–42; *see also* Phillips Decl. ¶¶ 131, 136–43. The LPs have proposed to the Cayman Court two experienced and respected professionals from the New York-headquartered global consulting and restructuring firm Alvarez & Marsal to serve as JOLs—not, as the GP suggested to this Court, local Cayman Islands liquidators lacking experience with U.S. companies or familiarity with chapter 11. Ex. B, Amended Winding-Up Petition ¶ 69.

III. The Delaware Court of Chancery Litigation

30. On May 30, 2025, the GP filed suit against the LPs in the Court of Chancery of Delaware asserting an entitlement to drastic and sweeping relief, including asserting that the LPs were "defaulting" partners such that the GP could seize up to half their economic interest in the Fund, that the LPs had waived their contractual rights to approve or disapprove investments in and budgets for portfolio companies, and that the LPs could be compelled to contribute more than $2.85 billion to the Fund—over $400 million more than the $2.425 billion stated in their Subscription Agreements. Ex. H, Post Tr. Op., at 36–37, 44 n.257, 46, 79. The GP later amended

its pleadings to seek specific performance of over $100 million in capital calls it had issued only minutes before filing its complaint. *See* Ex. G, Pre-Trial Order ¶ 74(d).

31. The Delaware Chancery case proceeded in parallel with the Cayman winding-up proceeding. The GP repeatedly took the position that the Delaware Chancery case should be resolved quickly, on an expedited basis, so that the Cayman Court could take account of the Delaware Court of Chancery's findings before the Cayman Trial then scheduled for January 2026. Ex. T, ATP Opp. to Motion to Stay ¶ 31 ("Instead, this Court could helpfully address Delaware law disputes and provide appropriate and significant guidance for the Cayman court when deciding whether to wind up the Fund."); *see also* Ex. U, ATP Reply ISO Motion to Expedite at 2 ("Indeed, the Cayman winding up petition actually supports expedition because expedition here is the only mechanism to preserve the Fund before the Cayman courts hear Rigmora's improper gambit to remove ATP.").

32. Trial in the Delaware Chancery action was held on October 16 and 17, 2025. At closing arguments after trial on November 21, the GP urged the Court of Chancery to issue its decision by December 5, again claiming that the GP needed a quick decision so that the result could be included in the GP's pre-trial witness statements due in the Cayman Court in advance of the January 2026 Cayman Trial. Ex. V, Chancery Post-Trial Arg. Tr., Nov. 21, 2025, at 110:11–19. The Delaware Court of Chancery issued its decision on December 5, noting that it "worked hard to issue this decision promptly" at the GP's request. Ex. H, Post-Trial Op. at 1 & n.1.

33. Apart from ordering payment of most (but not all) of the disputed capital calls, the Delaware Court of Chancery's December 5 post-trial decision soundly rejected the GP's claims. The Court of Chancery held that the LPs retain their contractual rights to approve and disapprove budgets for funding portfolio companies, that the LPs may exercise those rights in their absolute

discretion, that the LPs were correct in asserting that their capital contribution obligations were limited to the $2.425 billion reflected in their Subscription Agreements (and not the more than $2.85 billion claimed by the GP), and that the GP's request for a declaration that it had not willfully breached its duties by filing the Chancery lawsuit should be deferred to the Cayman Court. *See id.* at 1.[7] Based on the Delaware Court of Chancery's determination that the LPs had already contributed $2.3 billion to the Fund, *id.* at 56, following the LPs' satisfaction of the $97 million judgment on December 22, 2025, the LPs' remaining commitment to the Fund is at most $28 million.[8] That amount represents barely one percent of the LPs' overall commitment. Put simply, the GP was wrong about its assumptions that it could somehow call more capital than the Subscription Agreements provided and that it did not have to manage the Fund within its commitments, as the LPs had been warning for years.

IV. The Chapter 11 Filings

34. The GP never gave any warning—not to the Delaware Court of Chancery, the Cayman Court, or even the LPs to whom it owes fiduciary duties—that it intended to seek chapter 11 relief for itself or the Fund. Dkt. 4, Faulkner Decl. ¶ 85; Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 5. On Friday, December 5, the Court of Chancery issued its decision; and on Monday, December 8, the LPs sent the GP a proposed final order calling for payment of $97 million within 10 days of entry of the order, a schedule the GP accepted (and the LPs ultimately paid the Delaware Chancery

[7] By this time, the GP was no longer pursuing its claim for a declaration that the LPs were "Defaulting Partners" or that the GP was permitted to seize up to half of their economic interest in the Fund.

[8] The Court of Chancery ordered the LPs to pay the remaining capital calls only because it found that the LPs' "double counted" certain past contributions (an interpretation that is contrary to the plain words of the LPA, and which the LPs intend to contest on appeal to the Delaware Supreme Court). Ex. H, Post-Trial Op. at 55–56.

judgment five days earlier than the order ultimately required, on December 22, 2025). *See* Ex. W, Email from Daniel Kaprow, Dec. 8, 2025 and attachment; Ex. X, Email from Andrew Berdon, Dec. 10, 2025; Ex. FF, Chancery Court Order, Dec. 11, 2025 at 2; Chancery Court Rule 6(a)(1)(B) ("When the period is stated in days or a longer unit of time . . . [e]xclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days."); Ex. Y, Email from Andrew Berdon, Dec. 22, 2025. Yet on Tuesday, December 9, out of the blue, and on the verge of the final conference before the long-planned Cayman trial, the GP filed chapter 11 petitions for itself and the Fund, as well as ATLS, a wholly owned subsidiary of the Fund that is responsible for paying certain Fund expenses. The Cayman Court described the chapter 11 petitions as "wholly contradictory" to the representations that the GP's Cayman counsel had made to the Cayman Court on December 8 seeking to expedite certain matters to enable the January trial to take place. Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 5. As the GP's filings in this Court make clear, the primary purpose of the GP's filings was to trigger the automatic stay to stop the Cayman Trial, *see* Ex. Z, Correspondence to Cayman Court, Dec. 10, 2025, and to hold the Fund, and the LPs' interests, hostage in this process while it seeks replacement investors.[9]

[9] The GP has openly admitted that it seeks to use chapter 11 not to seek protection from creditors but to replace the 98% limited partners in the Fund and subvert their contractual and property rights. Dr. Harrison stated in his First Day Declaration that one of the reasons for filing chapter 11 is to "potentially bring in new investors to replace the defaulting limited partners," even though the limited partners did not default and instead paid the judgment early. Dkt. 18, ¶ 17. The Debtors then admitted, the day after payment was received leaving them with well over $100 million in cash on hand, that they still "intend to propose a plan of reorganization that . . . removes Rigmora," Dkt. 89 ¶ 9, and have sought this Court's permission to make payments to portfolio companies outside of the LPA's formal structure, including for portfolio companies without approved budgets, *id.* ¶¶ 6–7 (requesting debt financing for Aulos, Nereid, and Nine Square).

V. The LPs' Motion to Dismiss the Chapter 11 Cases

35. On December 12, 2025, the LPs moved to dismiss the chapter 11 cases for the Fund-Level Debtors and ATLS, and for immediate relief from the automatic stay to allow the pretrial conference to go forward in the Cayman Islands as planned on December 17, 2025. Dkt. 3. As the LPs argued (among other things) in the motion to dismiss, the GP filed these cases in bad faith and not for a proper bankruptcy purpose; in any event, the Fund-Level Debtors' cases should be dismissed on grounds of abstention in favor of the Cayman Trial; and the Fund, as a statutory trust lacking separate legal personality, is not an eligible debtor under the Bankruptcy Code. *Id.* ¶¶ 4, 61.

36. The LPs also filed a motion to shorten time on their motion to dismiss. Dkt. 5. In a conference on December 15, 2025, this Court denied the motion to shorten time but granted relief from the automatic stay to allow the parties to proceed with the pretrial conference scheduled to take place on December 17, 2025, before Justice Asif in the Cayman Court. Dkt. 55, Hr'g Tr., Dec. 15, 2025, at 31:18–19. The Court indicated that the LPs could make a further motion for relief from the automatic stay if they wished, *id.* at 32:19–33:15, and the LPs do so now.

VI. The Cayman Islands Pretrial Conference

37. As authorized by this Court at the December 15 conference, counsel for the parties appeared for the pretrial conference (known as a "Pre-Trial Review" or "**PTR**" in Cayman practice) scheduled in the Cayman Court on December 17 and filed the required "Skeleton Arguments" outlining their intended submissions the day before. Ex. R, Cayman Skeleton. The LPs informed Justice Asif of the Delaware Chancery decision, the proceedings in this Court, and the automatic stay. The LPs made clear that they intended to comply with the U.S. automatic stay, as modified by this Court at the December 15 conference, and that any further proceedings before

Judge Asif could occur only if this Court granted further stay relief. Ex. R, Cayman Skeleton ¶¶ 9, 12–13; Ex. AA, Cayman PTR Tr., Dec. 17, 2025, at 8:18–9:3.

38. The LPs then explained that, in the event the automatic stay is lifted to permit the trial before the Cayman Court to proceed, the Cayman Court could conduct the trial on a streamlined basis in two days rather than the originally-scheduled five. Ex. R, Cayman Skeleton ¶¶ 44–46; Ex. AA, Cayman PTR Tr., Dec. 17, 2025, at 5:12–24, 34:10–19. Among other things, the LPs noted that the Delaware Chancery decision—which demonstrated that the GP had failed to manage the Fund's portfolio to the available capital and had essentially exhausted the Fund's capital commitments—meant that the Fund's substratum had been lost, which would warrant a compulsory winding-up order following trial. Ex. R, Cayman Skeleton ¶¶ 12.2, 23–28. The LPs also explained that (if permitted to proceed) they expected to show that Dr. Harrison had conceded that the Fund cannot carry on in accordance with the reasonable expectations of its partners (the definition of a loss of substratum) by asserting in his First Day Declaration in this Court his intent to "restructur[e] the Partnership's capital structure" and "bring in new investors to replace the defaulting limited partners." *Id.* ¶ 26; Ex. AA, Cayman PTR Tr., Dec. 17, 2025 at 19:16–20:18. Thus, the factual developments in the first part of December 2025 narrowed the scope of the issues that will need to be presented at trial.

39. As the LPs' Cayman law expert Mark Phillips KC explains, if the Cayman Court were to issue a compulsory winding-up order following a two-day trial, that order would also appoint JOLs to carry out the winding-up and displace the GP. Phillips Decl. ¶¶ 24(h), 100, 174–77. Pursuant to Section 99 of the Companies Act, the winding-up order would also automatically render void any disposition of the Fund's assets, any alteration to the LPs' interests in the ELP,

and the addition of any new LPs dating back to June 6, 2025, barring a contrary order by the Cayman Court. Phillips Decl. ¶¶ 24(i), 105–10, 116-27, 166.

40. The LPs explained to the Cayman Court that, in the event the automatic stay is lifted, their "preferred approach would be for a compulsory winding up order to be made." Ex. R, Cayman Skeleton ¶ 34. Nonetheless, the LPs also noted that the GP's chapter 11 petition is also—as a matter of binding Cayman law—the first step in a voluntary winding-up of the Fund, providing another basis for the Cayman Court to grant the LPs' petition. Ex. R, Cayman Skeleton ¶¶ 12.1, 30–32; *see also* Ex. AA, Cayman PTR Tr., Dec. 17, 2025 at 30:9–32:5, 35:1–36:18; *see also* Phillips Decl. ¶¶ 91–92, 147–53. Although appointment of independent JOLs is not automatic in a voluntary winding-up, the LPs noted that the Cayman Court had previously appointed JOLs for a voluntary winding-up where "the overwhelming majority of the limited partners of [the] exempted partnership seek the appointment of a voluntary liquidator because they have lost confidence in the incumbent," as the LPs would do here. Ex. R, Cayman Skeleton ¶ 35 (citing Ex. D, *In Re One Thousand & One Voices Africa Fund I LP*, KY 2024 GC 62, 9 May 2024 at [25]); *see also* Cayman Skeleton ¶ 12.3; Ex. AA, Cayman PTR Tr., Dec. 17, 2025 at 1:10–3:20, 31:10–33:4.

41. Given this Court's view that the automatic stay would not be modified in time for the parties to proceed with the originally scheduled Cayman trial date, and in light of the likelihood that the trial could be much shorter because it would no longer be necessary to reach certain issues in light of the Court of Chancery's ruling and the GP's recent actions, the LPs asked Justice Asif to consider his availability for a later, shorter trial limited to specific issues,[10] all subject to this

[10] Specifically, Ex. R, Cayman Skeleton ¶¶ 12.1–12.3 ("[W]hether, as a consequence of the Chapter 11 Bankruptcy Proceedings, the Partnership has entered voluntary liquidation pursuant to paragraph 10(b) of the LPA; whether, as a consequence of the Chapter 11

Court's granting further relief from the automatic stay. Ex. AA, Cayman PTR Tr., Dec. 17, 2025 at 8:18–19:3; 27:7–22; 33:5–11; 38:9–13.

42. Justice Asif agreed with the parties that, in light of the automatic stay, "the trial cannot proceed on 12 January," when it was originally scheduled. Ex. F, Cayman Judgment, Dec. 22, 2025, ¶ 9. Justice Asif also agreed with the LPs that he would be able to deal with the remaining issues in short order if this Court grants relief from the automatic stay, concluding that "two days should be sufficient for the Court to determine the [issues specified by the LPs], which are largely matters of law and construction of the limited partnership agreement." *Id.* ¶ 16.

43. Justice Asif also emphasized the need for him to resolve those issues right away:

> My own view is that an orderly separation of the GP from the LPs needs to occur sooner rather than later to avoid the continuation of these obviously corrosive disputes between the parties on each side. It does not seem to me to be productive or a beneficial use of the parties' time and resources for this dispute to drag on for any longer than absolutely necessary. The only people who are profiting from this dispute at the moment are the lawyers on each side.

Id. at ¶ 13. Accordingly, the Cayman Court tentatively scheduled trial for the week of February 2, 2026, subject to continuance to a later date depending on a ruling from this Court on the question of the automatic stay. *Id.* ¶ 14. This trial was scheduled by reference to the GP's confirmation of the dates on which it and its legal team would be available, which were communicated to the Cayman Court through a joint communication that the GP's Cayman attorneys expressly approved and asked the LPs' Cayman attorneys to send to the Cayman Court. Justice Asif did not set a procedural timetable because of the automatic stay. *Id.*

Bankruptcy Proceedings and the Delaware Judgment, the Court should make an order for compulsory winding up of the Partnership on the basis that the Partnership's substratum has gone; or in the alternative, whether the Court should make an order appointing independent liquidators to conduct the voluntary winding up in lieu of the GP.").

44. The Cayman Court also emphasized the importance of coordination between the Cayman Trial and these chapter 11 cases, and that he believed that a ruling from him would be useful in that regard:

> It does seem to me that, at the very least, it would be of real utility for the Delaware judge to authorise the preparation of amended pleadings on both sides in order to re-state what are the issues that the Grand Court will need to determine in due course. It also seems to me that it ***would be of real utility for the Delaware judge, as soon as possible, to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made.*** A decision on those points is likely to be of real benefit to the parties and also to the Delaware court if the Chapter 11 proceedings are not dismissed and continue.
>
> For what it is worth, I will conclude by saying that I generally take the view that the conduct of the winding up of a Cayman exempted limited partnership, and by whom that winding up ought to be carried out, are more appropriately questions for the Grand Court to determine supported by Chapter 15 recognition in due course, rather than by Chapter 11 proceedings. It is for the Delaware judge to take whatever view of that indication that she wishes to take.

Id. ¶¶ 19–20 (emphasis added).

45. Like this Court, *see* Local Rule 9029-2, the Grand Court of the Cayman Islands has adopted the Judicial Insolvency Network's *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* and *Modalities of Court-to-Court Communication*, and can be expected to work cooperatively with this Court should the cases proceed in both forums. Phillips Decl. ¶¶ 185–190.

ARGUMENT

The Court Should Grant Relief from the Automatic Stay to Allow the Parties to Proceed with the Cayman Trial.

46. The LPs readily meet the legal standard for the requested narrow modification of the automatic stay. Section 362(d) of the Bankruptcy Code provides that "[o]n request of a party in

interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay . . . for cause, including the lack of adequate protection of an interest in property of such party in interest." Bankruptcy Code § 362(d). The Third Circuit has observed that "Section 362(d)(1) does not define 'cause,' leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case." *In re Wilson*, 116 F.3d 87, 90 (3d Cir. 1997).

47. This Court uses a "three prong balancing test" to determine whether there is "cause" to grant relief from the stay to permit a civil suit against a debtor to proceed outside the bankruptcy court. *In re Scarborough-St. James Corp.*, 535 B.R. 60, 67 (Bankr. D. Del. 2016). The Court considers:

> (i) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit;
>
> (ii) Whether the hardship to the non-bankruptcy party by maintenance of the stay considerably outweighs the hardship to the debtor; and
>
> (iii) Whether the [non-bankruptcy party] has a probability of prevailing on the merits.

Id. at 68 (citing *In re Rexene Prods. Co*., 141 B.R. 574, 576 (Bankr. D. Del. 1992)); *see also In re F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 548 (Bankr. D. Del. 2016).

48. The Court also considers the "general policies underlying the automatic stay." *Scarborough-St. James*, 535 B.R. at 68. Those policies focus on protecting the debtors from distress while they seek to reorganize:

> The purpose of the automatic stay is to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor. The stay is not meant, however, to be used by a debtor to pursue its creditors, as more litigation is hardly consistent with the concept of a breathing

> spell for the debtor. Instead, ***the stay is a shield, not a sword*** that should help the debtor deal with his bankruptcy for the benefit of himself and his creditors.

Id. at 67 (citation omitted, emphasis added).

49. Where foreign proceedings are involved, bankruptcy courts consider comity as well. *See In re Soundview Elite Ltd.*, 503 B.R. 571, 584 (Bankr. S.D.N.Y.), *appeal dismissed*, 512 B.R. 155 (S.D.N.Y. 2014), *aff'd*, 597 F. App'x 663 (2d Cir. 2015); *see also In re Northshore Mainland Servs., Inc.,* 537 B.R. 192, 207–208 (Bankr. D. Del. 2015) (abstaining from adjudicating, and dismissing, chapter 11 cases in the interest of economy, predictability, and comity); *In re Cenargo Int'l, PLC*, 294 B.R. 571, 597, 606–607 (S.D.N.Y. 2003) (discussing having lifted the automatic stay in deference to a UK bankruptcy proceeding and the "special role of comity" in transnational bankruptcies).

50. Each factor overwhelmingly supports relief from the stay.

A. Allowing the Cayman Trial to Go Forward Will Benefit, and Not Prejudice, the Debtors and Their Estates as Well as the LPs and This Court.

51. Allowing the trial to proceed in the Cayman Court will not cause any "great prejudice." The GP may rightly fear the Cayman Court will remove the GP from its role, but it is not "prejudice" to have to submit to the legally mandated processes for determining governance and control of the Fund. As Justice Asif of the Cayman Court observed, it is "likely to be of real benefit" for this Court to have a determination of the relevant Cayman law issues before this Court proceeds further. Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 19. Prompt resolution of the Cayman Trial will benefit the Debtors, the Court, and all parties in interest because it resolves crucial questions antecedent to the questions arising in the Fund's bankruptcy case and avoids the likelihood that any actions taken by the GP on behalf of the Fund in this Court will be void as a

matter of Cayman law. It does not threaten any delay, undue expense or other prejudice to the Debtor or its estate, and in fact avoids substantial waste of time and money.

52. Under fundamental principles of bankruptcy law, corporate governance mechanisms dictated by applicable non-bankruptcy law apply throughout the chapter 11 case and are not blocked by the automatic stay. *See, e.g.*, *In re Marvel Ent. Grp., Inc.*, 209 B.R. 832, 838 (D. Del. 1997) (shareholder vote to replace board of directors did not violate automatic stay); *see also, e.g.*, *In re Indianapolis Downs LLC*, 486 B.R. 286, 302 (Bankr. D. Del. 2013) ("It is axiomatic that the commencement of a Chapter 11 case does not suspend or displace non-bankruptcy law and contractual rights regarding corporate governance."). The only reason that relief from the automatic stay is even necessary here is that the LPs need the help of the Cayman Court to compel the GP to do what it ought to do as a matter of its fiduciary duties under the LPA and Cayman law. *See, e.g.*, *In re Korean W. Presbyterian Church of L.A.*, 618 B.R. 282, 291 (Bankr. C.D. Cal. 2020) (modifying automatic stay to allow litigation of corporate governance issue in state court). To the extent that the automatic stay applies to the Cayman Trial because the GP (a Debtor) is a defendant, *see* Bankruptcy Code § 362(a)(1), the underlying bankruptcy policy of respecting corporate governance arrangements supports lifting the stay in order for that proceeding to go forward.

53. The Cayman Trial is effectively a request by the LPs—the Fund's owners—for a change in the Fund's governance. Under U.S. bankruptcy law, the automatic stay does not prevent owners from taking steps to replace its directors or management. *See, e.g.*, *Marvel*, 209 B.R. at 838. The only distinction between the *Marvel* case and the situation here is that the proper mechanism for the LPs to have their say as to management of the Fund comes in the form of a judicial winding-up proceeding rather than a shareholder vote. Here, both the ELP Act and the LPA, which incorporates the ELP Act, give the LPs the right to apply for a compulsory winding-

up of the Fund on just and equitable grounds, including a loss of substratum, under Cayman law. Ex. M, ELP Act § 36(3)(g) ("on application by a partner," the Cayman court may order winding up "as may be just and equitable"); Ex. J, LPA ¶ 10(b)(iii) ("The Partnership shall be wound up and dissolved . . . upon the entry of a decree of judicial dissolution of the Partnership pursuant to the ELP Law"), ¶ 18(g)(i) ("the parties expressly agree . . . that the ELP Law as now adopted or as may be hereafter amended shall govern this Agreement"). And both the ELP Act and the LPA recognize the need for a voluntary winding-up where the Fund's GP files a chapter 11 petition. Ex. M, ELP Act § 36(7); Ex. J, LPA ¶¶ 10(b)(i), 11(a), 11(f); Phillips Decl. ¶¶ 91–92, 147–53. It is therefore in everyone's interest that there be clarity as to who speaks for the Fund and whether, under the Cayman law that governs the Fund, the Fund has already entered a winding-up as a result of the GP's bankruptcy filing and, if not, whether the Cayman Court will ultimately hold that it should be terminated. That clarity can only be achieved through a modification of the automatic stay to allow the Cayman proceeding to resolve the parties' dispute over corporate governance.

54. Indeed, a fundamental premise of chapter 11 is that the party seeking bankruptcy protection has the legal authority to do so and to act throughout the chapter 11 cases on behalf of the debtor. *See In re FKF Madison Park Grp. Owner LLC*, 2011 WL 350306, at *3 (Bankr. D. Del. Jan. 31, 2011) ("A party cannot subject an entity to bankruptcy without authority."); *In re 3P Hightstown LLC*, 631 B.R. 205, 210 (Bankr. D.N.J. 2021) ("It is well-settled that applicable state law determines whether a bankruptcy filing was authorized."). The GP filed these cases on the eve of a trial to determine the critical question of who has legal authority to act for the Fund and whether the partnership (i.e. the Fund) can continue or must be wound up. Those questions are indisputably governed by Cayman law. Ex. J, LPA ¶ 18(g)(i); *see also, e.g.*, *Fannin v. UMTH Land Dev. L.P*, 2016 WL 7042078, at *2 (D. Del. Dec. 2, 2016) (internal affairs doctrine, by which

the place of organization governs internal affairs, applies not only to corporations but also to "limited liability companies, business trusts, partnerships and limited partnerships") (internal quotation marks omitted). Further, the Cayman Court has exclusive jurisdiction to conduct winding-up proceedings under the ELP Act. Ex. M, ELP Act § 2 (defining "court" as "the Grand Court"); *id.* § 36(3)(g) ("[O]n application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable."); Ex. BB, Cayman Amended Defence to Winding-Up Petition ¶ 67B(c) (GP's filing acknowledging "the Cayman Court's winding up jurisdiction").

55. It is properly for the Cayman Court to determine who is in charge of the management of the Fund under Cayman law, which in turn will inform who represents the Fund in this Court as debtor in possession. *See, e.g.*, *In re Korean W. Presbyterian Church*, 618 B.R. at 290–91 (modifying automatic stay to allow state court to determine which faction had exclusive right to control debtor). If the Cayman Court appoints JOLs, then that decision will set the stage for a motion for this Court to recognize the JOLs. In the unlikely event the GP somehow prevails in persuading the Cayman Court to leave it in charge of the Fund, then the Cayman Court's ruling will remove that cloud over the effectiveness of this Court's ultimate decisions on any plan of reorganization and other core bankruptcy administration matters. For the sake of all participants in these cases, and especially the Fund and the portfolio companies, it is important for these determinations concerning the Fund's management and status to be made promptly by the Cayman Court.

56. Unless the open question of whether the GP can act for the Fund is promptly resolved, any disposition of Fund assets, alterations to the LPs' interests in the Fund, or admissions of additional investors, such as the GP is proposing, will be void as a matter of Cayman law regardless

of whether they are approved by this Court. If the Cayman Court rules for the LPs and issues a compulsory winding-up order on the basis that the Fund's substratum has gone, any transactions involving the Fund after June 6, 2025, when the winding-up proceeding had commenced, are void as a matter of Cayman statute. *See supra* ¶ 39; Ex. CC, Companies Act § 99. Section 99 of the Companies Act, which applies by virtue of section 36(3) of the ELP Act, provides:

> When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void.

Ex. CC, Companies Act § 99. The ELP Act further provides that "where a winding up order has been made," the winding up is retroactive, and is deemed to have commenced upon "the presentation of the petition for winding up," Ex. M, ELP Act § 36(10)(e). In this case, that was June 6, 2025. Putting these pieces together, if the Cayman Court enters a compulsory winding-up order, Cayman law deems any transactions by the Fund after June 6, 2025 to be void unless specifically approved by the Cayman Court. Phillips Decl. ¶¶ 24(i), 105–10, 116–27, 166.

57. Similarly, as a matter of Cayman law, if the Fund has already entered a voluntary winding-up, then the GP currently has no authority to act on behalf of the Fund except to wind it up in accordance with Cayman law and the LPA. *See generally* Phillips Decl. ¶¶ 24(f), 147–50, 168–73.[11] As a consequence, as a matter of Cayman law and the terms of the LPA, the GP's

[11] That is because, under Cayman law, once a general partner has filed for bankruptcy, its role is limited: it may act only to wind up an ELP in accordance with Cayman law and contract. Phillips Decl. ¶¶ 24(c)–(f), 139, 147–53, 168–73. Section 140 of the Companies Act (which applies to a voluntary winding-up by virtue of section 36(3) of the ELP Act) "dictates how the ELP's (i.e. limited partners') assets are to be applied by the GP" in that situation, Phillips Decl. ¶ 152, namely first applied "in satisfaction of [the ELP's] liabilities" and then distributed to its members according to their rights and interests. Ex. CC, Companies Act § 140(1). Paragraph 11(b) of the LPA in turn requires the "General Partner or the liquidators, as applicable," to distribute among the Partners either "in cash or in kind" "the assets remaining after satisfaction of liabilities" to creditors. Ex. J, LPA ¶ 11(b).

refusal to wind up the Fund in accordance with those provisions and its attempts to restructure the Fund and oust the LPs in this Court are beyond the scope of its powers to act for the Fund. Phillips Decl. ¶¶ 152, 168–73. As such, these *ultra vires* acts may be invalidated by the Cayman court. *Id.* ¶ 102.

58. For these reasons, moving forward with the chapter 11 cases of the Fund-Level Debtors without clarification of corporate governance under Cayman law creates the serious risk of competing and inconsistent results between the U.S. and Cayman courts. If, hypothetically, this chapter 11 case were to result in a plan of reorganization that set forth a disposition of the Fund assets that the GP holds in trust for the LPs, any such result could be invalid as a matter of Cayman law and assets could be clawed back by the Cayman courts. In such a circumstance, any actions that the GP undertook on behalf of the Fund in the interim—including any plan of reorganization that this Court might approve—would either be subject to rereview by the Cayman Court or automatically void with retroactive effect absent subsequent validation by the Cayman Court.

59. Under the circumstances, therefore, gaining clarity as to the Fund's corporate governance and the GP's rights and obligations under Cayman law is, effectively, a gating item to moving forward with the Fund-Level Debtors' chapter 11 cases. The parties' competing claims as to who has the right to speak for the Fund as debtor in possession under section 1107 of the Bankruptcy Code (if the Fund is even permitted to be a debtor at all) would otherwise cast a cloud over the effectiveness of any relief that this Court may give. This uncertainty also impairs the ability of the Fund or its portfolio companies to attract new investment, as any investors will

necessarily be aware of this risk.[12] Allowing the Cayman Trial to go forward at this time would remove that cloud.

60. Because the GP is seeking relief in this Court that is directly contrary to Cayman law, the risk that the Cayman Court will ultimately refuse to validate or will hold void the GP's efforts to reorganize the Fund is particularly high. The GP has asserted several times now that it will ultimately seek to oust, replace, or dilute the interests of the LPs in the Fund, Dkt. 18, First Day Decl. of Dr. Seth L. Harrison ¶ 17 (stating that one of the reasons for filing chapter 11 is to "potentially bring in new investors to replace the defaulting limited partners"); Dkt. 89 Mot. for Interim and Final Funding ¶ 9 (explaining that "the Debtors intend to propose a plan of reorganization that . . . removes Rigmora"), even though the LPs contributed approximately 98% of the capital and the GP may not add new limited partners without the LPs' consent. And Justice Asif has already noted that, "at first blush," Dr. Harrison's "proposal for capital restructuring and the introduction of new investors" appear "to be outside the proper scope of the GP's powers." Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 21.

61. The LPs intend to vigorously oppose any efforts by the GP to misappropriate the LPs' interests in the Fund. This Court—and, if they were acting for proper reasons, the Fund-Level Debtors—should welcome the clarity the Cayman ruling can provide before it invests its own, the Debtors' and the LPs' time and resources in a process that may otherwise be futile.[13]

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[12] The GP has made much of the so-called "Russian effect," claiming that it cannot attract new investors because the LPs have a connection with an investor of Russian heritage, but the GP entirely ignores the fact that new investors may be—and ought to be—concerned about the GP's legal power to transact, not to mention Dr. Harrison's apparent willingness to try to oust existing investors entirely, litigate against them, and use their funds in violation of the GP's fiduciary duties.

[13] It is for this reason that the LPs have asserted—and continue to assert—that the chapter 11 cases for the Fund-Level Debtors should be dismissed in their entirety. At their core, these solvent-debtor cases are fundamentally about a corporate governance dispute under Cayman

B. Prompt Resolution of the Cayman Proceeding Will Not Cause Delay, Undue Expense or Other Prejudice to the Debtors or Their Estates.

62. The first factor identified in *Scarborough-St. James*—lack of great prejudice to the Fund-Level Debtors or their estate—supports lifting the stay not only because of the benefit of having a resolution of the GP's authority as discussed above, but also because the Cayman Trial will not result in undue delay or dissipation of assets. Quite the opposite; the Cayman Trial will allow for efficient resolution of a gating issue and will avoid the risk of inconsistent results in this international dispute.

63. Importantly, the Fund is solvent and not in any financial distress, having more than $100 million in cash on hand against less than $500,000 in identified creditors' claims. Because the movant LPs are far and away the holders of the largest economic stake in the Fund-Level Debtors' chapter 11 cases, there can be no legitimate concern about incurring expenses that will harm the stakeholders' interests. The Cayman Trial does not involve a claim for damages, and it will not add to the liabilities of any estate in these chapter 11 cases. The trial is being conducted by experienced counsel, who are deeply involved and who can and should be able to coordinate effectively with Debtors' U.S. restructuring counsel, as the Cayman Court has encouraged them

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law, and while the LPs and their counsel have great respect for this Court, it is not best positioned to resolve these questions. The Court should abstain in favor of another jurisdiction where, as here, moving forward with a chapter 11 plan would essentially be futile because any result would be subject to invalidation by a court in the Debtor's home country. *See, e.g.*, *In re Spanish Cay Co.*, 161 B.R. 715, 725–26 (Bankr. S.D. Fla. 1993) (abstaining in favor of Bahamian court where "[t]he potential for a successful Chapter 11 reorganization in this case is questionable, at best, since certain orders of this Court may be given no effect in the Bahamas" and "it most likely would be futile to maintain a Chapter 11 case in the United States"); *Northshore Mainland Servs.*, 537 B.R. at 198, 207–208 (abstaining in favor of Bahamian insolvency proceedings where Bahamian Supreme Court refused to recognize U.S chapter 11 proceedings); *In re Compañía de Alimentos Fargo, S.A.*, 376 B.R. 427, 440 (Bankr. S.D.N.Y. 2007) (abstaining in favor of Argentine proceedings in circumstances where it was "unlikely that the Argentine court will simply accept the chapter 11 plan as the Argentine plan, and approve it").

to do. In fact, the GP's U.S. counsel has been heavily involved in the Cayman proceeding from the outset, including by providing affidavit evidence in those proceedings. The trial will be short, and the Cayman Court stands ready to conduct it and to issue a prompt decision.

64. As this Court held in *Scarborough-St. James*, "no prejudice to the Debtor . . . would result from permitting the resolution of issues to proceed" in another court, where that court "is in a position to make [the] determination" of relevant issues and "has familiarity with the parties and the facts of the case as evidenced by the previous orders it has entered." 535 B.R. at 68; *see also, e.g.*, *In re Abeinsa Holding, Inc.*, 2016 WL 5867039, at *4 (Bankr. D. Del. Oct. 6, 2016) ("[T]he Oregon District Court is best positioned to take up the matter and, due to [the Oregon judge's] familiarity with the dispute and concurrent jurisdiction over the aspects involving PGE and the Sureties, render a final decision on all related matters."); *In re All Am. Props., Inc.*, 2010 WL 1541694, at *3 (Bankr. M.D. Pa. Apr. 15, 2010) ("Having addressed other issues related to the Franchise Agreement, the District Court is in a better position than this Court to promptly resolve this matter. Therefore, Debtor will not be prejudiced by continuation of the litigation in the District Court, which has mastered the facts and law. . . .").

65. The Cayman proceeding is far advanced. It was weeks away from trial (including holiday weeks) when these cases were filed. Discovery is closed, with massive amounts of evidence already presented. No additional discovery is needed or anticipated. At this point, the two-day trial will be focused on legal arguments regarding uncontested facts. Both parties are certainly able to ready themselves for the streamlined trial in February on more limited issues than those that they were previously prepared to try in January. *See, e.g.*, *F-Squared*, 546 B.R. at 548 (granting relief from stay where class action "was primed for a ruling on a motion to dismiss"); *see also In re SCO Grp.*, 395 B.R. 852, 857 (Bankr. D. Del. 2007) (considering "whether the

parties are ready for trial in the other proceeding" in weighing whether to lift stay), *Collier on Bankruptcy* ¶ 362.07[3][a] (relief may be granted "to permit litigation to be concluded in another forum, particularly if the . . . suit . . . is ready for trial"); *cf. In re Cont'l Airlines, Inc.*, 152 B.R. 420, 424–25 (D. Del. 1993) (increase in litigation expenses did not justify denial of relief from stay). Because the parties have already expended significant efforts in the Cayman case, no prejudice to the Debtor would result from permitting the long-planned trial to proceed. *Scarborough-St. James*, 535 B.R. at 68 (lifting stay to allow litigation over termination of lease to proceed in Michigan state court). Indeed, "[t]he longer the trial is delayed, the more burdensome it is to both parties to ready themselves again." *SCO Grp.*, 395 B.R. at 858.

66. The other purposes of the stay identified by this Court in *Scarborough-St. James*—avoiding giving a preference to certain creditors and avoiding interference with an "orderly liquidation or rehabilitation"—are not implicated here. The Fund is undisputedly solvent, so there is no danger that any Fund creditors will go unpaid, and the Fund's assets are held in trust almost entirely for the very LPs who are seeking the requested relief.[14] And, as discussed above, allowing

[14] Although the LPs are seeking relief from the automatic stay because the GP is a defendant in the Cayman action, the LPs' view is that the requested relief does not implicate property of any of the Fund-Level Debtors' estates. Under Cayman law, the GP holds the Fund's assets on trust for the Fund's limited partners. *See supra* ¶¶ 22–25. As such, by operation of section 541 of the Bankruptcy Code and applicable case law, it is the view of the LPs that the Fund's assets are not part of any Debtor's estate. *See* Bankruptcy Code § 541(b)(1) ("Property of the estate does not include . . . any power that the debtor may exercise solely for the benefit of an entity other than the debtor."); *id.* § 541(d) ("Property in which the debtor holds . . . only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title . . . but not to the extent of any equitable interest in such property that the debtor does not hold."); *In re SemCrude, L.P.*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) ("[F]unds in the Defendants' possession held for third parties, such as the funds held in resulting trust . . . , are not part of the Defendants' bankruptcy estates") (citing *Begier v. IRS*, 496 U.S. 53 (1990)). While this issue need not be decided in connection with the instant motion, it is likely to become relevant to the extent the Fund-Level Debtors' chapter 11 cases move forward, and the LPs reserve all rights accordingly.

the Cayman Trial to proceed would promote rather than hinder the goal of an orderly disposition of assets.

C. The Stay Will Cause Hardship to the LPs That Outweighs Any Alleged Hardship to the Debtors.

67. The second factor identified in *Scarborough-St. James*—hardship to the moving party outweighing any hardship to the Debtor—also strongly supports lifting the stay. The hardship to the LPs of continuing these chapter 11 cases under the management of a conflicted fiduciary would be immense. As a matter of law, the GP is a fiduciary for the Fund's limited partners, required to act solely in their interest. Phillips Decl. ¶¶ 74, 81 ("[I]n light of its role as trustee, . . . 'the general partner of an ELP owes fiduciary duties to all the ELP's limited partners.' . . . the GP owes a fiduciary duty to the limited partners to act solely in the interests of the limited partners, subject to the terms of the ELP agreement.") (internal citations omitted). But in practice, this GP has openly stated its intent to use these chapter 11 proceedings to ***displace*** the very LPs to which it owes absolute, one-way fiduciary duties—including duties of loyalty and care—under Cayman law.[15] This GP had lost the trust and confidence of the Fund's LPs long before filing these solvent chapter 11 cases without warning or consent. That was the basis for the June 2025 winding-up petition that the Cayman Court set for trial in January 2026. If it had not filed chapter 11, the GP was on track to be replaced in its role as fiduciary by independent court-appointed JOLs, who would be

[15] While the GP's rationale for ignoring its fiduciary duties has yet to become fully clear, it may be that the GP is seeking to benefit certain underperforming portfolio companies at the expense of their shareholder, the Fund, and the LPs who have exercised their contractual budgetary authority to decline future equity funding after the companies have failed to meet operational milestones. The LPs do not argue that, to the extent the portfolio companies themselves have limited resources or are insolvent, they may be in need of reorganization. The LPs are willing to discuss appropriate steps with respect to these underperforming entities in due course. But that is not the subject of this motion, which seeks clarity as to the governance of the Fund itself.

answerable to the Cayman Court and responsible for actually acting in the best interests of all of the Fund's limited partners. Phillips Decl. ¶¶ 24(h), 100, 128–43. Continuing these cases at the direction of a GP that only kept its place by filing a solvent chapter 11 case to control billions of dollars of assets it holds in trust for the LPs is, in addition to being a blatant breach of trust, an expensive waste of the Fund's cash position and a distraction from seeking the orderly winding-up of the Fund's affairs.

68. Bankruptcy courts have recognized that, where a case was close to trial as of the date of the bankruptcy filing, failure to grant relief from the automatic stay works hardship to the non-debtor party—particularly where, as here, the parties have expended substantial resources in preparing for the trial. *See Abeinsa Holding*, 2016 WL 5867039, at *4; *SCO Grp.*, 395 B.R. at 858–59; *see also In re Cooke*, 2007 WL 2102687, at *2–3 (Bankr. D. Del. July 13, 2007). This prejudice is especially acute where, as here, there are obvious reasons to be concerned that the bankruptcy filing is an effort at forum shopping by the Debtor. *Scarborough-St. James*, 535 B.R. at 70 (lifting stay where the "Debtor is not shying away from litigation; rather, Debtor seeks to litigate only issues of its choosing and in its preferred forum").

69. The GP filed bankruptcy petitions for itself and the Fund—after securing a nearly $100 million Delaware Chancery judgment that the LPs had confirmed would be paid within 10 days—on the eve of the final pretrial conference in the Cayman Court. They did so without even consulting or informing their Cayman counsel. Ex. AA, Cayman PTR Tr., Dec. 17, 2025, at 24:1–6; Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 5. By all indications, the GP's primary reason for filing these solvent chapter 11 cases for itself and the Fund was to stop the Cayman Court from deciding the Cayman Trial, to try to take the LPs' assets, and to try to replace the LPs as limited partners of the Fund. Ex. DD, GP Letter to Chancery Court, Dec. 11, 2025 ("[A] 'liquidation' is

exactly what [the GP] and its debtor affiliates are trying to avoid by commencing chapter 11 cases."); Dkt. 18, First Day Decl. of Dr. Seth L. Harrison ¶¶ 12 (describing how a "Cayman Islands winding up would be catastrophic for all stakeholders" and "[a]gainst this background [of Cayman proceedings], the Debtors felt compelled to commence these Chapter 11 Cases and seek the protection of the Court"), 17 ("The Debtors now seek the Bankruptcy Court's protection to preserve their valuable PortCos, [and] potentially bring in new investors to replace the defaulting limited partners").

70. The continued delay of the Cayman Trial is also causing ongoing hardship in the form of lost governance rights. Under the LPA—the Fund's governance document—the LPs have a right to seek a winding-up of the Fund under Cayman law if certain conditions have been met. Phillips Decl. ¶¶ 147–50; *see also* Ex. J, LPA ¶ 10(b)(i) (calling for winding-up upon the occurrence of an event under former section 15(5), now 36(7), of the ELP Act), *id.* ¶ 11(a) ("Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner."); *cf., e.g.*, *Marvel*, 209 B.R. at 838; *Indianapolis Downs*, 486 B.R. at 302. That governance right can only be vindicated by allowing the Cayman Trial to proceed. Justice Asif has already recognized the urgency of making this determination promptly, noting that "***an orderly separation of the GP from the LPs needs to occur sooner rather than later to avoid the continuation of these obviously corrosive disputes between the parties on each side***." Ex. F, Cayman Judgment, Dec. 22, 2025, ¶ 13 (emphasis added). Delaying that necessary and legally-mandated separation is itself a hardship and the LPs' interest in vindicating their interests in the Cayman court far outweighs any interest of the Debtors in enforcing the automatic stay.

71. The LPs, as owners of virtually all of the Fund's assets and therefore the core economic parties in interest in the Fund-Level Debtors' solvent chapter 11 cases, have an interest

in maximizing the Fund's value. That interest is under attack by the GP in these cases. Even though the GP's only proper role in the Fund is as a fiduciary for the Fund's limited partners, *see* Phillips Decl. ¶¶ 74–76, and the GP should be acting to maximize the Fund's value in accordance with the LPA, this GP appears to have other goals in mind. The LPs are deeply concerned about, among other things, the GP's proposal for the Fund to provide debt financing to both debtor and non-debtor portfolio companies regardless of whether they have an approved budget as required by the LPA, as well as the GP's clearly stated intent to bring in new financing at the Fund level and use that financing to dilute the LPs' ownership interests. Dkt. 81, Hr'g Tr., Dec. 17, 2025, at 18:10–13 ("We're going to be looking for debtor-in-possession financing, short term, and then a bridge to exit for some other investor who wants to come in and work with these portfolio companies."); Dkt. 89, Mot. for Interim and Final Funding ¶ 9 ("[U]ltimately the Debtors intend to propose a plan of reorganization to restructure the Partnership Debtor and the Portfolio Companies that provides the Portfolio Companies access to ongoing capital and removes Rigmora from interfering with the Portfolio Companies that are in pre-clinical and clinical stages").

72. While the LPs firmly believe that the GP's stated strategy violates both the provisions and the principles of the Bankruptcy Code, it will take time, effort, and massive expense to litigate such issues in these chapter 11 cases. These concerns can be much more efficiently and appropriately resolved by granting relief from the stay to allow the Cayman Court to address the parties' underlying governance dispute, thus clarifying who speaks for the Fund and what the nature of the GP's duties to the LP investors are under Cayman law.

D. The LPs Have Demonstrated a Sufficient Likelihood of Success on the Merits in the Cayman Proceeding.

73. As for the last factor this Court identified in *Scarborough-St. James*, 535 B.R. at 68, the LPs are likely to prevail on the merits in the Cayman proceeding. Even a "slight showing of

possible success" in the Cayman proceeding would support this factor. *F-Squared*, 546 B.R. at 549 (internal quotation marks omitted); *see also Cont'l Airlines*, 152 B.R. at 426; *SCO Grp.*, 395 B.R. at 859; *In re ABC Learning Centres Ltd.*, 445 B.R. 318, 338–39 (Bankr. D. Del. 2010). Here, the likelihood is overwhelmingly in the LPs' favor.

74. As set forth in the accompanying declaration of Mark Phillips KC, the LPs' argument for a compulsory winding up of the Fund because its substratum is gone—*i.e.*, it cannot carry out its business in accordance with its partners' reasonable expectations—is strong. Phillips Decl. ¶¶ 161–62; *see also* Ex. R, Cayman Skeleton ¶¶ 12.2, 23–28; Ex. AA, Cayman PTR Tr., Dec. 17, 2025, at 1–3, 15–21, 30–31. That argument is based in substantial part on the Chancery Court's post-trial opinion holding that the GP had unknowingly exhausted the capital commitments to the Fund and is further confirmed by Dr. Harrison's assertion in his First Day Declaration that the Debtors seek a "restructuring of the Partnership's capital structure," including bringing in "new investors to replace" purportedly "defaulting limited partners." Dkt. 18 at 17.[16] Ousting the LPs and implementing a new capital structure while dismissing the LPs' fundamental rights under the LPA as "prepetition contractual limitations [that] do not bind the Debtors now," Dkt. 89, Mot. for Interim and Final Funding ¶ 30 n.3, very obviously demonstrates that the GP cannot carry out its business in accordance with its partners' reasonable expectations.

75. The GP's assertions would be shocking in any context, given that the LPs have funded approximately 98% of the Fund's investments, with billions of dollars over 13-plus years, and that the supposed "default" refers to nonpayment of capital calls issued eight minutes before the Delaware Chancery complaint was filed and paid five days before they were due under the Court

[16] Of course, the LPs did not default, and instead paid the Chancery Court judgment in full five days ahead of the deadline on December 22, 2025. Ex. Y, Email from Andrew Berdon dated December 22, 2025.

of Chancery's judgment. It is particularly shocking given that the GP is the LPs' fiduciary. The LPs' Cayman law expert Mark Phillips KC explains that the LPs may directly rely upon the GP's own statements about its intended capital restructuring and replacement of the LPs in making the LPs' arguments to the Cayman Court under the loss of substratum test. Phillips Decl. ¶¶ 161–162.

76. The LPs' case that the Fund is already in dissolution as a matter of Cayman law as a result of the GP's bankruptcy filing is equally strong. Phillips Decl. ¶¶ 24(c)–(f), 147–153; *see also* Ex. R, Cayman Skeleton ¶¶ 12.1, 30–32; Ex. AA, Cayman PTR Tr., Dec. 17, 2025, at 1–3, 27–30, 35–36. Under the plain terms of the ELP Act, the GP's voluntary filing of its own bankruptcy is an "event of withdrawal," which triggers the automatic dissolution of the Fund under the terms of the ELP Act and the LPA. Ex. M, ELP Act § 36(7); Ex, J, LPA ¶ 10(b)(i) (calling for winding-up upon the occurrence of an event under former section 15(5), now 36(7), of the ELP Act); *id.* ¶ 11(a) ("Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner."). As a result, the GP's only remaining power under Cayman law is to carry out the winding up of the Fund under the LPA and Cayman law, not to take any other actions in these chapter 11 cases or otherwise to act as management of the Fund. Phillips Decl. ¶¶ 168–73. The LPs pointed this out immediately upon the Fund's filing of its chapter 11 case. Dkt. 3 ¶¶ 62–64.

77. Importantly, the Cayman Court has already expressed the "preliminary view" that the GP's actions in this case are "outside the proper scope of the GP's powers based on the limited partnership agreement which is binding upon the GP, and also having regard to applicable Cayman law on what a GP's obligations are in the context of a winding-up of a Cayman exempted limited partnership." Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 21. Indeed, as Phillips explains, the GP's failure to carry out a winding-up in accordance with the LPA and Cayman law itself provides a

ground for entry of a compulsory winding-up order, because the GP is not properly carrying out its duties. Phillips Decl. ¶ 160. These are ultimately issues to be decided by the Cayman Court, but the LPs have a strong case on all of them, supporting relief from the automatic stay to allow the Cayman proceeding to go forward.

78. The strength of the LPs' winding-up petition is reflected in the GP's own attempts to prevent that trial from going forward. Any general partner worthy of its limited partners' confidence should welcome judicial scrutiny rather than seek to sidestep the process entirely, or should step aside when asked. As the Cayman Court stated in *In Re One Thousand & One Voices Africa Fund I LP*, KY 2024 GC 62, 9 May 2024 (attached as Ex. D):

> The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors. . . . [T]he distinct impression is created that the determination to cling to office is motivated by self-interest at best, or the desire to forestall independent investigation into suspect dealings at worst.

Id. at [46]. Justice Asif remarked in November, before these chapter 11 filings, that the GP's conduct suggested "there is a real danger that the General Partner is failing to heed the words" of *One Thousand and One Voices*. Ex. E, Cayman Judgment, Nov. 6, 2025 ¶ 44. The GP's choice to fight multi-jurisdictional litigation at the LPs' expense over the course of almost a year with the very LPs to whom it owes fiduciary duties—and who have contributed approximately 98% of the capital to an extremely valuable fund that does not have any intrinsic financial distress according to the GP—is perhaps the strongest indication that the Fund cannot be carried on in accordance with its original purpose, the GP cannot regain the confidence of its investors, and the Fund should be wound up in accordance with the LPA and its governing law.

E. Principles of International Comity Support Lifting the Automatic Stay.

79. In assessing relief from the stay in the chapter 11 cases of transnational businesses like the Fund-Level Debtors, U.S. bankruptcy courts can and do consider and respect the contributions that courts in other jurisdictions may make to resolving open issues, including by recognizing the need to cooperate across jurisdictions and, in some cases, to modify the stay to allow non-U.S. proceedings to move forward. For transnational chapter 11 cases, it is essential—and protective of the orderly administration of the estate—for courts in each jurisdiction to acknowledge and work in cooperation with their sister courts in other jurisdictions. This case presents a paradigmatic example of the need for that kind of deference and comity. U.S. courts have recognized the importance of foreign courts' interests in being the ones to wind up their own domestic business entities. *See Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985); *Northshore Mainland Servs.*, 537 B.R. at 207; *In re Spanish Cay Co.*, 161 B.R. 715, 724 (Bankr. S.D. Fla. 1993) (granting relief from automatic stay to allow party to institute winding-up proceedings in Bahamas); *see also In re Compañía de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007) (collecting authorities regarding deference to foreign courts).

80. The need for comity is pronounced here, where the Cayman courts have recognized that they have exclusive jurisdiction to consider a proceeding to wind up a Cayman Islands ELP such as the Fund, Ex. EE, *Family Mart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holdings Corporation* [2023] UKPC 33 at 80; Ex. M, ELP Act § 36(3) (incorporating exclusive jurisdiction provision from § 92 of Cayman Companies Act), and where the Fund-Level Debtors have no financial distress that legitimately necessitates the use of chapter 11.

81. Indeed, Justice Asif explicitly said that "I generally take the view that the conduct of the winding up of a Cayman exempted limited partnership, and by whom that winding up ought to be carried out, are more appropriately questions for the Grand Court to determine." Ex. F, Cayman

Judgment, Dec. 22, 2025 ¶ 20. Having made this point, Justice Asif showed a great deal of deference to the U.S. courts. He pushed his long-scheduled trial date so as not to force the parties to choose between complying with his order and the automatic stay. *Id.* ¶ 14. He instructed the parties not to do any work on preparing for the Cayman Trial until a hearing on this motion for the same reason. *Id.* ¶ 18. And he explicitly indicated that he was mindful of and intended to respect this Court's order partially lifting the stay. *Id.* ¶ 9–10, 19.

82. In return, Justice Asif asked only for the same courtesy and consideration. He explained that "two days should be sufficient" for him to hold his trial and expressed confidence that "with goodwill and cooperation on both sides it ought to be feasible to have" that hearing. *Id.* ¶ 26. He also shared his view that holding the hearing would benefit all parties. As he put it:

> It does seem to me that, at the very least, it would be of real utility for the Delaware judge to authorise the preparation of amended pleadings on both sides in order to re-state what are the issues that the Grand Court will need to determine in due course. It also seems to me that it would be of real utility for the Delaware judge, as soon as possible, to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made. A decision on those points is likely to be of real benefit to the parties and also to the Delaware court if the Chapter 11 proceedings are not dismissed and continue.

Id. ¶ 19. Before concluding, Justice Asif expressed concern that the GP's proposal in Delaware "for capital restructuring and the introduction of new investors" would be "outside the proper scope of the GP's powers" under the LPA and "applicable Cayman law on what a GP's obligations are in the context of a winding-up of a Cayman exempted limited partnership." *Id.* ¶ 21. Despite sharing these views, Justice Asif indicated that he would "not make an order at this stage imposing any procedural timeline for the preparation of amended pleadings" out of deference to the automatic stay. *Id.* ¶ 18.

83. There is no reason not to extend Justice Asif the requested comity. This case does not implicate any of the grounds that might justify denial of comity, such as lack of due process or unequal treatment of creditors in the foreign court. *See Vertiv, Inc. v. Wayne Burt PTE, Ltd.*, 92 F.4th 169, 180–81 (3d Cir. 2024).

84. *In re Soundview Elite Ltd.*, which both parties have cited, is instructive. In that case, a Cayman court appointed liquidators for an insolvent Cayman company, and the liquidators proceeded to administer the company without regard to the automatic stay triggered by the company's chapter 11 filing. 503 B.R. at 584, 586–88. The Bankruptcy Court found that these actions violated the automatic stay but granted retroactive relief from the automatic stay in order to validate the liquidators' actions. *Id.* at 589. In particular, the Bankruptcy Court noted that sections 97 and 99 of the Companies Act created a possibility of conflicting stays, *id.* at 590, and emphasized the importance of working cooperatively with the Cayman Court to achieve an orderly result:

> It's my desire, as a U.S. bankruptcy judge, to render comity to Cayman needs and concerns to the extent I can, and I'm confident that the Cayman Court, now that it knows my needs and concerns, would do the same for me. That's especially so since we share common goals—maximizing value for stakeholders in the cases on our watch; ensuring the faithful performance of corporate responsibilities in those cases (and appointing independent fiduciaries when necessary); and, to the extent applicable, recognizing regulatory needs and concerns. . . . Ultimately, the best course is for a comity driven approach under which each court cedes any applicable primacy to the other, by relief from the stay, which each nation authorizes its judges to grant.

Id. at 592.[17]

[17] The Bankruptcy Court in *Soundview* denied dismissal on grounds of bad faith for reasons the LPs believe are inapplicable here. This will be addressed in separate briefing on the LPs' pending motion to dismiss. The Bankruptcy Court further ordered the appointment of a

85. The same principle of comity that the court applied to lift the stay in *Soundview* also applies here. Justice Asif has clearly indicated his intention to respect this Court's jurisdiction. Ex. F, Cayman Judgment, Dec. 22, 2025 ¶ 9. This Court should likewise allow the Cayman Court to proceed with the proposed two-day trial as requested by Justice Asif. Relief from the stay to allow the Cayman Court to decide the relevant issues of Cayman law is all the more important given Justice Asif's concern that the GP's restructuring proposal appears to be "outside the proper scope" of the GP's powers, *id.* ¶ 21, an issue with which the Cayman Court is most familiar and which it is prepared to decide promptly.

CONCLUSION

WHEREFORE, the LPs respectfully request the Court (a) enter an order, substantially in the form attached hereto as **Exhibit A**, granting relief from the automatic stay as requested herein, and grant such other and further relief as is just and proper.

chapter 11 trustee because of the need for investigation of management actions. The LPs reserve the right to seek similar relief here if they consider it necessary or appropriate.

Dated: January 6, 2026
Wilmington, Delaware

Respectfully Submitted,

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Apple Tree Life Sciences, Inc., *et. al*.,[1] Debtors.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered) **Objection Deadline: Jan. 20, 2026 at 4:00 p.m. (ET)** **Hearing Date: Jan. 27, 2026 at 10:00 a.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on January 6, 2026, Rigmora Biotech Investor One LP by its general partner Unicorn Biotech Ventures One Ltd and Rigmora Biotech Investor Two LP by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the "**LPs**") filed the *Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 **on or before January 20, 2026 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the District of Delaware, at the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

Court, 824 North Market Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801 on **January 27, 2026 at 10:00 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: January 6, 2026
Wilmington, Delaware

Respectfully Submitted,

RICHARDS, LAYTON & FINGER, P.A.

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Apple Tree Life Sciences, Inc., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered)

ORDER GRANTING MOTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP FOR RELIEF FROM THE AUTOMATIC STAY

Upon the motion (the "**Motion**")[2] of Rigmora Biotech Investor One LP by its general partner Unicorn Biotech Ventures One Ltd and Rigmora Biotech Investor Two LP by its general partner Unicorn Biotech Ventures Two Ltd (the "**LPs**") for entry of an order granting relief from the automatic stay in the Chapter 11 cases of debtors ATP Life Science Ventures, L.P. (the "**Fund**") and ATP III GP, Ltd. (the "**GP**") under section 362(d) of the Bankruptcy Code, to the extent necessary to permit the parties to conduct a trial and receive a judgment and order in the case titled *In the Matter of ATP Life Science Ventures, L.P.*, Cause No FSD 151 of 2025 (JAJ); and this Court having reviewed the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing, if any, having been held to consider the relief requested in the Motion (the "**Hearing**"); and upon the record of the Hearing, if any; and after due deliberation; and this Court having determined that there is good and sufficient cause for the relief granted herein,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The automatic stay in the Chapter 11 cases of debtors ATP Life Science Ventures, L.P. and ATP III GP, Ltd. imposed by section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to permit the parties to conduct a trial in the case titled *In the Matter of ATP Life Science Ventures, L.P.*, Cause No FSD 151 of 2025 (JAJ) and to take all steps necessary to prepare for and conduct the trial, including the filing of amended pleadings, and receive a judgment and order following the trial.

3. The relief from the automatic stay shall be effective immediately upon entry of this Order and the 14-day stay provided in Bankruptcy Rule 4001(a)(3) shall not apply.

4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

EXHIBIT AA

OPUS 2

In the Matter of ATP Life Science Ventures, L.P.

Day 1PTR1

December 17, 2025

Opus 2 - Official Court Reporters

Phone: 0203 008 6619
Email: transcripts@opus2.com
Website: https://www.opus2.com

Wednesday, 17 December 2025

(3.03 pm GMT)

JUSTICE ASIF KC: Good morning.

MR SCOTT: My Lord, good morning.

I appear, as before, with Mr Faulkner for the plaintiffs and petitioners, the Rigmora LPs; my learned friends Mr Ayres and Ms White for the defendant, the GP.

Submissions by MR SCOTT

As your Lordship knows, this is the PTR ahead of the January trial in these proceedings. We were last before your Lordship at the end of November, when your Lordship dismissed the mediation and privilege summons brought by the GP.

JUSTICE ASIF KC: Yes.

MR SCOTT: There have since been two very significant developments in Delaware. The Delaware judgment came out on Friday, 5 December, and there followed, on Tuesday, the 9th, commencement by the GP of Chapter 11 proceedings against itself and against the Partnership and against ATLS. There has since been a flurry of activity in Delaware. Subject to your Lordship, what I want to do this morning is address the court on three topics. The first is the Delaware judgment and its significance for your Lordship's purposes, and its

principal significance is that, as a result of the Delaware judgment, the substratum of the Partnership is now gone, and it is gone because the Chancellor accepted our case as to what our total contingent subscriptions are and accepted our case that we have an unfettered discretion over budget approval. And the upshot of that is that once we have complied with the Delaware judgment, as we will do in the coming days, and paid those of May capital calls which the Chancellor has required us to pay, there will be just US$29 million left in undrawn contingent subscriptions left to call and we will have an unfettered discretion over budget approvals in respect of any future calls for that sum.

So the Partnership has no future in the form that was envisaged by the parties under the LPA. As I say, its substratum has gone and so it needs to be wound up. My Lord, that will be the first topic.

The second will be the Chapter 11 proceedings. As your Lordship will have seen from our skeleton, we stayed(?) and are moving in Delaware to have them dismissed on the basis that they are a bad faith filing, an attempt to avoid the consequences of the Delaware judgment, a device by which to kill the January trial in your Lordship's court that the GP agreed should take place, and a device pursued in circumstances where

the Partnership is not facing financial distress in the slightest, its stated assets being multiple orders of magnitude greater than the paltry debts mentioned in the petitions.

My Lord, the Delaware Bankruptcy Court will rule in due course on the motion to dismiss. What I want to focus on is the implications, again for your Lordship's purposes, of the commencement of the Chapter 11 proceedings having regard to the relevant provisions of the Limited Partnership Agreement, the LPA, and the associated provisions of the ELP Act, because, regardless of whether the Chapter 11 filings were done in good faith or bad faith, regardless of that, the contractually agreed and statutory consequences of their commencement in respect of the GP is that the Partnership shall now be wound up under the supervision of this court. So the issue that now confronts your Lordship in these proceedings is not whether the Partnership should be wound up, but rather how and by whom.

My Lord, that brings me to the third topic that I wish to address, the question of how your Lordship should manage these proceedings in the light of these recent developments in Delaware.

JUSTICE ASIF KC: Mr Scott, before we go much further, can

I just make sure that the message has got back to everyone that we absolutely must be finished by 2 o'clock? If we have to sit over lunch, we can do that, but I've read everyone's skeletons, I've read the Delaware judgment, I've read the transcript of the hearing before the bankruptcy judge in Delaware, so I've got a pretty good picture of the current lie of the land in Delaware, and so I would hope that this morning —— and also I'm also very conscious of what the parties are allowed to argue in front of me as permitted by the bankruptcy judge in Delaware and what they're not currently allowed to argue in front of me, so I would hope that that might speed up matters today somewhat.

MR SCOTT: I'm grateful, my Lord. That indication had indeed come to us. I would not expect to be much more than an hour on my feet.

JUSTICE ASIF KC: Right, okay.

MR SCOTT: My Lord, I should also say at this point, there is, I understand, a further hearing in Delaware, I think scheduled for 3.30 today.

JUSTICE ASIF KC: Yes, I did see that.

MR SCOTT: And it would be helpful, if possible, if your Lordship were able to indicate at the end of submissions this morning what your Lordship's view is on

the lie of the land and the way forward so that that can be communicated ——

JUSTICE ASIF KC: Communicated.

MR SCOTT: —— (overspeaking) —— in Delaware ——

JUSTICE ASIF KC: No, that's understandable, Mr Scott, and I'm happy to do that —— well, assuming we've reached a position where I'm able to.

MR SCOTT: I'm grateful, my Lord.

JUSTICE ASIF KC: I will provide whatever assistance to the judge in Delaware that I can.

MR SCOTT: I'm grateful.

My Lord, just to complete the overview on the third topic, how your Lordship should take forward these proceedings, what we invite your Lordship to do is to direct a two—day hearing, ideally in the week commencing 19 January. We understand that week had been reserved in your Lordship's diary for judgment writing following the trial. And the purpose of that two—day hearing would be to determine the contractual and statutory consequences of the recent development in Delaware as a matter of Cayman law, and they are the paragraph 10(b) issues, as we have termed them, identified in our skeleton at paragraph 12. Perhaps can I just ask your Lordship to take that up.

JUSTICE ASIF KC: Yes, I've got that.

MR SCOTT: Your Lordship sees at 12.1, 12.2 and 12.3 the paragraph 10(b) issues. They are all issues of Cayman law. They are discrete issues capable of determination without a need to resolve any factual issues, because they're issues that —— they're simply the legal consequences of what has happened in Delaware.

We say that a determination from your Lordship on those issues would be helpful to the parties in the context of these Cayman proceedings because, if we are right about them, they will in practice dispose of the case. A determination from your Lordship is also likely to be very helpful in the context of the Chapter 11 proceedings in Delaware, because it would provide to the Delaware Bankruptcy Court and to third parties an authoritative statement of the Cayman law consequences of what has happened and that can then be factored into whatever decisions need to be taken by the bankruptcy judge in the US proceedings, and it will obviate, for example, the need for the US bankruptcy judge to hear Cayman law expert evidence on these issues, because there could be no one more expert than a judge of this court pronouncing on the issues as they arise in this particular case.

JUSTICE ASIF KC: Can I just understand, how does this fit in with your intended application in terms of whether to

strike out the —— or to dismiss the Chapter 11 proceedings? Are you saying that whatever I say about the position of the ELP and the paragraph 10(b) issues needs to be determined before that application is made, or is it not?

MR SCOTT: So that application has been made.

JUSTICE ASIF KC: Yes, it's been made, but I know it's not been heard?

MR SCOTT: It hasn't been heard yet. The parties, as I understand it, are in a process of agreeing a schedule to brief and then have that motion served ——

JUSTICE ASIF KC: Yes. And the Delaware judge has indicated pretty plainly that she's not going to make a decision on that in time for the trial here ——

MR SCOTT: No, indeed.

JUSTICE ASIF KC: —— the intended trial here to go ahead.

MR SCOTT: Indeed. And the way we see this working is that your Lordship's determination on the paragraph 10(b) issues will be relevant for the purpose of disposing of the motion to dismiss. They will also be relevant more broadly.

JUSTICE ASIF KC: But how are you going —— in that case, how are you going to be able to run that before you've got a decision from the Delaware judge permitting you to do that, given the automatic stay under Chapter 11?

MR SCOTT: My Lord, because what we intend to do, and to do before the end of this week, is to make a motion to vary the moratorium ——

JUSTICE ASIF KC: All right.

MR SCOTT: —— to permit us to have the paragraph 10(b) issues determined.

JUSTICE ASIF KC: Right.

MR SCOTT: If —— my Lord, I understand the position in Delaware so far as the rules are concerned to be that, having made that motion, the hearing can come on, if it can be accommodated, within 14 days thereafter. That takes us to the very early part of January, and we would hope that the Delaware bankruptcy judge would hear us on the motion to vary the moratorium in very early January to enable us to come back before your Lordship later in the month to argue out the point. So that's the schedule that we have in mind.

All I'm asking today is that your Lordship reserves the slot in the court's diary and we work towards it. But, of course, if the judge in Delaware cannot accommodate the motion to vary, or is not prepared to grant motion to vary, then we will need to come back and deal with the consequences of that, because, as I hope we made plain in the skeleton, and let me make it plain again orally, we intend to comply with the moratorium,

and nothing that I'm saying to your Lordship today should be misrepresented or weaponised in Delaware as any suggestion to the contrary.

JUSTICE ASIF KC: No, that's fine. I just -- I was just trying to work out how the chronology would be likely -- allay(?) in my own head how the chronology would be likely to work out.

MR SCOTT: That's the chronology as we see things.

JUSTICE ASIF KC: Right.

For what it's worth, the week commencing 19 January is -- looks to me to be possible, but it does depend on quite a lot of good will from the judge in Delaware being able to accommodate your motion in time, and also because, presumably, everyone is going to say that unless and until the Delaware judge has granted your relief, no one can properly start spending on all the money preparing for the paragraph 10(b) arguments.

What I can say at this stage is, if the 19th -- if the week of 19 January is not feasible, then, subject to 26 January being a bank holiday, I could do later in that week. I could do the week of the 2nd. But then I can't do anything until 2 March.

MR SCOTT: Just so I have that clear, my Lord.

JUSTICE ASIF KC: Yes. The week of the 26th, the 26th is a public holiday. I have something on the 27th, but

I could do 28, 29 or 30 January.

The week of the 2nd, I've got a short hearing on Tuesday morning, but apart from that, that week is currently clear. And then I could not to anything, because of trials, until 2 March.

MR SCOTT: That's a very helpful indication, my Lord. Could I just turn my back for one moment?

(Pause)

So, my Lord, with that --

JUSTICE ASIF KC: And can I also just say, again, with a view to trying to assist the parties, it seems to me it's preferable that I at least allocate some time at this stage so that there is a space set aside in my calendar, which fills up, as everyone knows, fairly quickly, because if we don't do it now and simply wait until the judge in Delaware has ruled, that builds in at least three or four weeks of unnecessary delay in the resolution of the matters you want to have determined.

MR SCOTT: Indeed. And the concern is, on our side of the court at least, before you know it, those issues aren't getting determined until the spring.

JUSTICE ASIF KC: Yes.

MR SCOTT: And we do say they really are issues of fundamental importance. I mean, in some ways they're

gating(?) issues in the case.

JUSTICE ASIF KC: And the other thing, in my view, is this. If it turns out that the Delaware judge says, no, you can't do any of this, then it's much easier to release the time than it is to try and work in the other direction.

MR SCOTT: Well, we respectfully agree, my Lord.

My Lord, with that introduction, can I deal with my first topic, which is the Delaware judgment and its implications.

JUSTICE ASIF KC: Yes.

MR SCOTT: If I can ask your Lordship please to take up our skeleton, paragraph 16.

JUSTICE ASIF KC: Yes. I thought it was very interesting how both sides managed to portray the judgment as a resounding victory.

MR SCOTT: Well --

JUSTICE ASIF KC: I mean, that's par for the course.

MR SCOTT: Indeed. My Lord, without meaning to be flippant, it's an odd victory won by the GP that results in a Chapter 11 filing just a couple of days later, but there we are.

My Lord, what I want to do is just invite your Lordship's attention to the contrast between what the GP was asking for in May and what it achieved in

the Delaware judgment. Can I ask your Lordship to re-read the subparagraphs of paragraph 16, which summarise the GP's ask back in May.

(Pause)

JUSTICE ASIF KC: Yes, I've read that.

MR SCOTT: And if your Lordship would then please read paragraph 17, we set out there what we say the effect of seeking this relief was.

JUSTICE ASIF KC: Yes, I've read that.

MR SCOTT: I'm grateful.

And as your Lordship knows from the submissions I made at the August hearing in this matter, our position consistently has been that there was never any basis in the LPA for this suite of relief, and what the Delaware complaint as issued was was an account in effect to restructure the Partnership through orders for declaratory relief and supposed specific performance, specific performance of the obligations which didn't exist under the LPA but which the GP invited the Delaware Court to impose.

My Lord, the absence of any contractual basis for that relief is illustrated by two things. The first is that the GP had abandoned a good deal of it by the time the Delaware trial took place, with more still abandoned come closing arguments.

The second is the fact that the Delaware Chancellor has found, in her judgment following the trial, that the GP's case in the most part has failed. It failed in particular as regards the level of total contingent subscriptions, and it failed in particular as regards the attempt to strip us of budget approval rights.

If your Lordship will then go, please, to paragraph 18 in our skeleton.

JUSTICE ASIF KC: Yes.

MR SCOTT: Your Lordship sees that by the time the music stopped, so to speak, and we got to the end of the trial in Delaware, there were five claims left in play, which we identify in paragraph 18. First, the claim for a declaration that we had breached the LPA or our common law duties by refusing to consider budgets in good faith and had waived our rights to do so in the future. That claim failed and the declaration sought was refused. And importantly, the claim failed because the alleged duty relied upon, derived from Braganza, was held by the Delaware judge not to exist in the context of this partnership, and that chimes with an observation that your Lordship made at the August hearing, that the application of Braganza in the context of an ELP did not appear to reflect Cayman law, as it does not.

My Lord, second, there was a claim from the GP for

specific performance requiring payment of the disputed capital calls made in May. Now, this succeeded to the extent of US$96 million or so of those calls and we intend to pay them as soon as the GP supplies us with the account details required under the Chancellor's post−judgment order, which includes protective measures to hold the payment in a segregated account to the order of the US Bankruptcy Court.

My Lord, third, the GP had sought a declaration that its filing of the Delaware complaint was not done in bad faith and was consistent with its fiduciary duties and the terms of the LPA. The Chancellor declined to make that declaration, or to deal with the issue in her judgment, and that is because, as she said in her judgment, it was an issue more appropriate for determination by your Lordship.

My Lord, fourth, the GP had sought a declaration that the default provisions in the LPA had not been amended. That declaration bore no resemblance to the relief initially sought in the Delaware complaint, whereby, if granted, the GP would have been entitled to apply a default charge across all of our interests in the Partnership. That request was abandoned come the trial. The declaration that was sought in its place was pointless, because we had never disputed that

the default provisions had not been amended, and the Chancellor duly refused to grant that pointless declaration.

My Lord, fifth and finally, the GP had pursued a claim for costs, but the Chancellor dismissed this too, finding that the claim had been waived in the course of arguments.

My Lord, the summary I've just given you is set out in a bit more detail in paragraph 19 with references to the Delaware judgment, but I'm not proposing, in the light of your Lordship's indication, to take that up at this stage. But we do say that there is a stark contrast between what the GP sought to achieve by its filing in May and what it has achieved. The GP had claimed that the Partnership had $550 million of capital commitments remaining, had more than $214 million of unfunded approved budgets and that we had lost our rights to approve further budgets. And one can readily see that, if that reflected the true position under the LPA, this Partnership would have a future. But it does not reflect the true position under the LPA, as the Chancellor has found, because following the Delaware judgment, the GP has at most $29 million in capital commitments left to call from us(?), and in circumstances where we are free to reject further

budgets, as it is our right to do and as we are inclined to do given that we have no trust and confidence in Dr Harrison and the GP.

My Lord, we respectfully submit that, in those circumstances, the Partnership substratum is simply gone and there is no serious argument to the contrary. That's not an issue that turns upon the facts about whether the loss of trust and confidence is justified. It doesn't depend on any of that. It just depends on the financial implications of the Delaware judgment. So what we would envisage as regards determination of that issue in January really are submissions to your Lordship on the substratum case law and then the application of the principles from those cases to the undisputed financial landscape that results from the Delaware judgment.

My Lord, can I make one thing clear at this point, and it's important that this not be misrepresented in Delaware or weaponised there. In saying what we do about the loss of substratum of the Partnership, we are not saying −− we are not saying that the Partnership is financially distressed. Plainly it is not: it has billions of dollars in assets, it has piles of cash. There is no suggestion that the Partnership is unable to meet its liabilities as they fall due, nor any

suggestion of any risk that such difficulties may arise at the Partnership level, whether imminently or otherwise. The point is not that the Partnership is in financial distress. The point is that Dr Harrison has so managed the Partnership capital that the purpose for which it was formed can no longer be carried out. It is impossible or impracticable, the language used by the case law, to continue where the Partnership has just 29 million in remaining available capital, a sum that would soon be burned through by the ATLS fee that Dr Harrison causes to be charged.

Now, he must have recognised that that would be the position if we were correct in our contentions on total contingent subscription amounts and our unfettered right under the LPA to give or refuse budget approvals, and that is no doubt why he caused the GP to put its case so high in the Delaware complaint as issued in May and to persist in the fantasy that we had agreed to contribute hundreds of millions more in capital than we ever did, because once the true contractual position is ascertained, as it now has been, it was obvious and it is obvious that the Partnership cannot continue its business within the contractually agreed framework of the LPA.

And, my Lord, the attempt by the GP to achieve

a restructuring through the Delaware complaint having died with the Delaware judgment, what happened is the pivot just a few days later to Chapter 11 as the means by which to achieve the restructuring. And the commencement of those Chapter 11 proceedings effectively concedes that the substratum of the Partnership has gone, because if the Partnership could continue for the purpose for which it was formed, there would be no basis to seek restructuring under Chapter 11.

Importantly, the GP is not —— is not seeking Chapter 11 relief to deal with any insolvency at the Partnership level, because there is none, and my Lord, that is apparent from the Chapter 11 filings themselves. I don't know if your Lordship has had the opportunity to look at those.

JUSTICE ASIF KC: I didn't look at those, no.

MR SCOTT: Perhaps I should just show them to your Lordship. They're in the hearing bundle and they're in broadly similar terms. If your Lordship would just give me a moment to find an example. If we take one in the case of the Partnership, it's at tab 14. Your Lordship sees that it's expressed to be a "Voluntary Petition". It certainly wasn't voluntary from our perspective.

And if your Lordship turns to page 336 in

the bundle, your Lordship sees the estimated assets of the Partnership are put at between $1 billion and $10 billion and the estimated liabilities are put at between $100,000 and $500,000. Well, if that's financial distress, I suspect many of us in the world would wish to be financially distressed. That's the basis upon which this restructuring relief is being sought.

My Lord, whatever the relief that will ultimately be sought in Delaware if the Chapter 11 proceedings are not struck out, it will be a form of reorganisation that attempts to vary the terms upon which the Rigmora LPs have agreed to participate in the Partnership and to do so without our consent, and again, that illustrates that the substratum of the Partnership is gone.

My Lord, another illustration, if you would go, please, to tab 24 in the hearing bundle at page 621, and this is a declaration of Dr Harrison that was filed earlier this week in the Chapter 11 proceedings. Can I ask your Lordship, please, to read paragraphs 16 and 17.

(Pause)

As your Lordship sees, Dr Harrison there admits that one of his aims in pursuing the Chapter 11 proceedings is to effect "a restructuring of the Partnership's

capital structure" and to "bring in new investors to replace the defaulting limited partners". Well, we're not defaulting partners and the suggestion otherwise is difficult to reconcile with the injunction that your Lordship made earlier this year and continued in August. That prevents the GP from treating us as defaulting partners on the basis of those disputed capital calls. As I have said, we intend to comply with them as soon as the GP provides us with the relevant account details.

But, my Lord, the fact that Dr Harrison is taking this stance in the Chapter 11 proceedings, whatever the rights and wrongs of it, further illustrates that the substratum of this Partnership is gone, because on his own evidence, his own evidence, he's seeking a restructuring of the Partnership's capital structure and admission of new investors, all without our consent or without any right to do it under the LPAs. My Lord, it is, with respect, impossible to see how Dr Harrison thinks he can get away with that, given there is a petition on foot in your Lordship's court and given the provisions of Section 99 of the Companies Act, under which, in the event that a winding—up order is made, any alteration in the status of the Partnership's members would be void absent a validation order from

your Lordship, and there is no suggestion from the GP that it intends to seek one of those, as it has not during the life of these proceedings on a single occasion.

Now, my Lord, these are among the points that we say illustrate the abusive nature of the Chapter 11 proceedings, and the Delaware Court will rule on that in due course. I'm obviously not asking your Lordship to rule upon it. The key point for your Lordship's purposes is that the commencement of the Chapter 11 proceedings in the circumstances of this case concedes that the substratum of the Partnership has now gone and that would be a sufficient basis for the court to wind up the Partnership on just and equitable grounds and to do so summarily.

My Lord, that brings me to my second topic, which is the contractual and statutory consequences of the Chapter 11 proceedings themselves.

My Lord, before I address that, just a brief word, if I may, on the circumstances in which the Chapter 11 bankruptcy proceedings were brought. They are nothing short of extraordinary. Your Lordship will recall that back in August, when the GP abandoned its stay application, it agreed to a trial of these Cayman proceedings in January. It joined with us in asking

your Lordship to make available court time to have the dispute resolved because it was in the interests of all the parties that it be resolved at the January trial. The GP did not indicate at that stage that it might seek Chapter 11 protection, nor was that suggested to your Lordship at the October mention, the October CMC, the recent hearings on mediation and privilege summonses, and that's more than a week of court time during which the GP kept this under wraps. Nor was it ever suggested to the Chancellor in Delaware. Nor had the possibility ever been suggested in the correspondence that passed between the parties. The Chapter 11 proceedings were entirely unheralded. The first we heard of them was in a casual email from Mr Berdon(?) of Quinn Emanuel, the individual who had filed misleading evidence before your Lordship at the last hearing, for which my learned friend Mr Ayres rightly apologised. Now, we learned from him in the course of email exchanges on 9 December about settling the post−trial order in Delaware. Mr Berdon said, "Well, the GP has filed Chapter 11 proceedings". And that was remarkable and remarkable in circumstances where the GP had repeatedly represented to us that it was not seeking to imperil the January trial.

If your Lordship will just go, please, to tab 6 in

the hearing bundle, your Lordship should have there an email from Walkers to the court on Monday of this week, 8 December −− I'm so sorry −−

JUSTICE ASIF KC: Last week.

MR SCOTT: −− Monday last week.

JUSTICE ASIF KC: Yes.

MR SCOTT: I'm so sorry, I've lost a week! Monday last week:

"Dear Ms Wood,

"Thank you for your email.

"We write to confirm that we are instructed to appeal the Judge's decision on the Privilege Summonses."

Well, no surprise that those instructions were given. But then this:

"In order to progress our client's appeal promptly and so as not to imperil the January trial fixture, we would be grateful if the reasoned judgment could be handed down as soon as reasonably practicable."

JUSTICE ASIF KC: Yes, I spent most of the next day working on the draft judgment because I also had the request from the Court of Appeal to finalise it as soon as possible.

MR SCOTT: And the GP didn't trouble to tell your Lordship that at the same time that your Lordship was working away on the judgment, the GP and Quinn Emanuel were

working away on these petitions. And your Lordship may wish to ask Mr Ayres, when he gets on his feet, when Walkers first knew that this was underway, because it's very difficult to see how an email can have been sent properly in those terms if Walkers knew that Chapter 11 filings were going to be made.

My Lord, likewise, if you turn the tab, please, to tab 7, we've got a letter here from Walkers on 9 December, the very same day that the filings were made. It's dealing with the appeal in relation to the privilege summonses, and your Lordship sees, at paragraph 3, Walkers say this:

"... for the avoidance of doubt, we reject any suggestion in Your Letter that our client's appeal is in any way unmeritorious or a tactical attempt to delay the trial."

Or could multiply these communications. Take, for example, the communication to the Court of Appeal demanding that it convene a special sitting in an attempt to preserve the January trial.

Your Lordship will recall from prior hearings in this case the concerns that we have repeatedly expressed about the GP's wrecking strategy in relation to your Lordship's jurisdiction and the repeated attempts made to forestall this court's examination of the GP's

conduct and the application of its winding up jurisdiction to this Cayman ELP. Your Lordship will recall the failed stay applications, the one abandoned by Ms Prevezer in August and the one informally made by Mr Ayres when he came on the scene at the October mention. Your Lordship will recall the charade at the October CMC when the GP turned up without any proposals for directions to trial other than that we kick everything off for a two-day CMC to be listed who knows when. Your Lordship will recall the failed mediation summonses, the failed privilege summonses, the manoeuvrings in Delaware by which we were forced to withdraw our PL application. And, my Lord, the unheralded Chapter 11 proceedings coming hot on the heels of the disaster that the Delaware judgment was for the GP is all of a piece with the wrecking strategy that Dr Harrison has evidently settled upon in relation to proceedings in your Lordship's court.

Your Lordship sees that strategy in some ways reach the denouement shortly following the Chapter 11 proceedings, because if your Lordship will go next to tab 9 in the hearing bundle, does your Lordship have the -- an email from Ms Moseley of Walkers on the 10th?

JUSTICE ASIF KC: Yes.

MR SCOTT: And your Lordship will no doubt have read this,

I suspect, as it came in. Walkers asserting that the effect of what had happened in Delaware was to automatically stay these Cayman proceedings, such that the PTR and the January trial had to be vacated. Now, that is quite wrong as a matter of Cayman law, as we explain in our skeleton, because it's a decision for your Lordship how to conduct these proceedings, and I'll return to that in due course.

But when we declined to acquiesce to the GP's suggestion that the PTR should simply come out of the diary, declined because we said we wished to update your Lordship on these important developments, we received a truly remarkable letter from Quinn Emanuel. And if your Lordship will please turn that up, it's tab 10 --

JUSTICE ASIF KC: Yes, I've read that.

MR SCOTT: You've read the letter? I'm grateful. And your Lordship will no doubt have formed his own view on the appropriateness of a US law firm writing personally to a Cayman attorney, threatening him with severe consequences in the event of any knowing violation of the automatic stay. And my Lord, we would invite you to note the contrast between the aggressive tone that Quinn Emanuel took in this letter to Mr Farmer with the position that they adopted before the judge in

Delaware on Monday.

JUSTICE ASIF KC: Yes, I've read the transcript as well.

MR SCOTT: Your Lordship will note that the Quinn Emanuel counsel on that occasion did not draw to the Delaware judge's attention the letter that Quinn had sent just a few days prior.

As your Lordship knows, we filed the motions to strike out the Delaware bankruptcy proceedings on 12 December -- that was on Friday. Ancillary to that, we moved to shorten the timetables for the GP to respond and that led to the scheduling hearing on Monday, and your Lordship has indicated that you've read the transcript so I don't need to go back over that. Your Lordship will have seen that the Delaware bankruptcy judge was content for the PTR to go ahead and that is why we are before your Lordship today.

I've already addressed your Lordship on what we see as the next steps in Delaware, a motion to vary the stay this week, a request to the Delaware judge, if she can accommodate it, for a ruling in early January that will then clear the field for a determination by your Lordship of the paragraph 10(b) issues.

So let me turn then to those paragraph 10(b) issues, and I've already addressed your Lordship on the substratum aspect of it. I want to turn next to

the contractual and statutory consequences of the commencement of the Chapter 11 proceedings, because in the GP's desperate attempt to avoid your Lordship's jurisdiction, it seems to have overlooked the statutory and contractual consequences, because this latest front in the wrecking strategy is in fact a form of kamikaze. If I can ask your Lordship please to take up the authorities bundle at tab 3.

JUSTICE ASIF KC: Yes.

MR SCOTT: (Inaudible) -- the ELP Act. If I just invite your Lordship's attention to section 36(1):

"An [ELP] shall ..."

Shall:

"... be voluntarily wound up in accordance with the provisions of the partnership agreement --

"(a) at the time or upon the occurrence of any event specified in the partnership agreement ..."

And if your Lordship will then move ahead, please, to page 10, your Lordship sees that:

"The winding up of an exempted limited partnership shall be deemed to commence upon the earlier to occur ... of the following ..."

And then (d):

"The occurrence of an event provided by the partnership agreement upon which the [ELP] is to be

wound up ..."

If your Lordship will then take up the hearing bundle, please, at tab 5, and if your Lordship will go, please, to page 55 —— that's a bad reference. It should be page 56. At the foot of the page, you should have paragraph 10(b). And (a) having provided that:

"The Partnership shall continue in perpetuity, unless it is sooner dissolved as provided in Paragraph 10(b) or by operation of law."

10(b) says this:

"The Partnership shall be wound up ..."

"Shall be wound up":

"... and dissolved (i) upon any event in respect of the General Partner specified in Section 15(5) of the ELP Law ..."

This LPA defines the ELP law as the 2012 revision as amended from time to time. And the events to which section 15(5) of the 2012 revision referred are now found in section 36(7) of the Act. And if your Lordship would please go to section 36(7), your Lordship sees the relevant events there set out, and at (b), one such event is "the commencement of liquidation, bankruptcy or dissolution proceedings", and there can be no doubt, we respectfully ——

JUSTICE ASIF KC: Well, it's in relation to the sole or last

remaining qualified General Partner, so it's specific to the gentleman.

MR SCOTT: Indeed, yes. And the point I was —— the follow—on point is that, where the General Partner has commenced Chapter 11 bankruptcy proceedings against itself, that is plainly an event of withdrawal within the meaning of this section and that brings about the termination provision in 10(b) of the LPA.

The effect of these provisions, the contract and the statute under which the Partnership was created and to which it owes its sole existence, the effect is that a voluntary winding up is deemed to have commenced upon 9 December with the commencement of the Chapter 11 proceedings in respect of the GP. So that is why I say the question is no longer whether the Partnership should be wound up, the parties have agreed that it shall, with the statutory revision (?) that it shall, in the events which have occurred, namely the Chapter 11 proceedings in respect of the GP. And so the question now is how and by whom the winding up should be conducted.

Now, our preference is for a compulsory winding up order to be made.

JUSTICE ASIF KC: Can I just ask one question, Mr Scott?

MR SCOTT: Of course.

JUSTICE ASIF KC: So if that is right, then doesn't it have

the result that Section 99 only applies from 9 December onwards, so you each say you may want or you may have reason to want to try to persuade me to wind up on the existing petition?

MR SCOTT: Well, that was the first reason why our preference is that there be a compulsory winding—up order on the petition, to preserve the operation of Section 99. So that's the first reason and it's an important reason.

There is a further reason, that we apprehend —— and I don't put it any higher than that —— but we apprehend that it may be easier for court—appointed liquidators in a compulsory liquidation to obtain Chapter 15 recognition in the States and it would be for voluntary liquidation.

So that's our preference, my Lord, and that's where the substratum point comes in, because if we are right on the substratum point, the consequence would be a winding—up order on the just and equitable basis in the existing petition.

But, my Lord, an alternative approach to the preference I've just set out would be for the court to exercise its power to remove the GP as liquidating agent in the voluntary liquidation that is presently on foot and replace it with court appointees. My Lord,

the Cayman Court of Appeal has confirmed that there is jurisdiction to do just that. That's the One Thousand & One Voices case to which we refer at paragraph 35 of our skeleton and which your Lordship has at tab 8 of the authorities bundle, page 152.

JUSTICE ASIF KC: I also read that yesterday.

MR SCOTT: I'm grateful.

And we say this would be a clear case for exercising that jurisdiction where we have the majority interest in the winding up, and our preference is that it be done by court appointees rather than the GP. I don't know if your Lordship has had the opportunity to remind himself of what Justice Kawaley said on that issue at first instance in One Thousand & One Voices.

JUSTICE ASIF KC: You mean the paragraph at the end?

MR SCOTT: Indeed.

JUSTICE ASIF KC: Yes.

MR SCOTT: I am grateful. About the importance of giving due weight, save for exceptional circumstances ——

JUSTICE ASIF KC: To the parties with the economic interest.

MR SCOTT: Indeed, yes.

And again, it seems to us that that's an issue your Lordship properly can and should grapple with at the January hearing we seek and an issue that won't involve having to investigate whether trust and

confidence has justifiably gone, it will simply involve taking due account of our interests as the majority in having the winding up conducted by court appointees, rather than a GP who we don't trust.

I turn finally to the question how the court should proceed. And as I said earlier, we have every intention of complying with and respecting the automatic stay, which is why we have applied to have it lifted and why we will be making a further application this week to vary it to permit the termination of the paragraph 10(b) issues in January. What I'm addressing your Lordship on, as I am bound to do as an attorney of this court, is your Lordship's powers and the principles that govern them, and it's a matter for your Lordship how to proceed in the light of the Chapter 11 proceedings. We address the principles in our skeleton at 36 to 40.

JUSTICE ASIF KC: Yes.

MR SCOTT: The Chapter 11 stay is not a part of Cayman law. If it is to have effect in this jurisdiction, it would be as a result of a decision by your Lordship to exercise his own power to stay the proceedings. And in the usual way, your Lordship would do that where the interests of justice so require, where to do so would further the overriding objective, and recognising that while the court properly can and does give

assistance to foreign courts conducting insolvency proceedings, the court cannot override local substantive law and local public policies. And as a matter of Cayman substantive law and public policy, it is ordinarily important to hold commercial parties to their bargains to protect the property rights that accrue to them under such bargains and to supervise the winding up of legal persons who owe their sole existence to Cayman law, as does this Partnership.

My Lord, we do say, applying those principles, the most appropriate course would be for your Lordship to direct the two-day hearing we seek to determine the paragraph 10(b) issues. As I said, they are discrete issues of Cayman law and they can be determined without the need to resolve any contentious issues of fact and where the resolution will, or at least may, provide a short answer to what should happen to this Partnership from the perspective of Cayman law under which it exists.

If we are right that the Delaware judgment means the substratum of the Partnership has gone or if we are right that the contractually agreed and statutory consequences of Chapter 11 are that we are in winding up now already, there will be no need for your Lordship to determine the various other issues in these proceedings.

My Lord, there is a further practical significance about these issues, because if we are right on the paragraph 10(b) point, then the Partnership has already entered voluntary winding up, and that being so, the GP is contractually obliged "to carry out the winding up of the affairs of the Partnership pursuant to the LPA". That is expressly set out in paragraph 11(a) of the LPA. And the provision continues to explain that the GP is required to do two things, first, cause the Partnership to satisfy its liabilities and obligations to creditors, and then, second, to distribute the net assets remaining to the Partners. Those are the purposes for which the GP can act now that voluntary winding up is in train and they are the powers that the GP can exercise.

JUSTICE ASIF KC: So are you saying that pursuant -- a restructuring is outside the scope of the powers?

MR SCOTT: Yes.

JUSTICE ASIF KC: Right.

MR SCOTT: And that's among the reasons why we say it would be valuable to the Delaware bankruptcy judge to have your Lordship's views on that question, because if your Lordship agrees with us that pursuit of the restructuring is outside the GP's powers under the LPA, or at least an improper exercise of such powers

that the GP has, that's another matter that the Delaware judge may wish to bear in mind in determining how to proceed with the Chapter 11. But we do say it's in the interests not just of the parties, but the Delaware court, and indeed all stakeholders in relation to these Chapter 11 proceedings, to have clarity on the position under Cayman law that results under this LPA and the ELP.

My Lord, we also say that would further the interests of justice and it would further the overriding objective. It would avoid junking in its entirety the January fixture that we have and the work that the parties have been doing in preparation for it. And the course we propose would not offend against the Chapter 11 stay because, as I have said, we intend to move in Delaware to have the stay lifted to the extent necessary to permit determination of the paragraph 10(b) issues.

My Lord, can I finish on this with a brief word about the GP's position today. As I understand the GP's skeleton, its position is that your Lordship should simply vacate the January trial and give the parties liberty to apply if the Chapter 11 stay is lifted. That's paragraph 8 of their skeleton. That will achieve the long-standing wrecking strategy that the GP has been

pursuing. The only reason given for it in the GP's skeleton is the suggestion that "the most appropriate way to recognise the effect of the worldwide stay imposed by the US Bankruptcy Proceedings" is to vacate the trial. Your Lordship has my submission that the question is not one of recognition, at least not at this stage. There's no appointee or approved restructuring in the Chapter 11 proceedings yet and there may never be one. All there is at this stage is the institution of proceedings. That does not result in an automatic stay under Cayman law. The question is instead a matter for your Lordship's discretionary decision taking account of all the circumstances. And we do say the appropriate and the fair and just exercise of discretion is the one that we propose, whereby we try to do something useful in January that will assist all concerned in relation to progressing the orderly winding up of this Partnership.

If your Lordship will just give me one moment.

(Pause).

My Lord, if I can just come back to the helpful indication that your Lordship gave about dates in January and February. What we would propose is that we will contact the court tomorrow, after we have had the scheduling conference in Delaware.

JUSTICE ASIF KC: That's fine, Mr Scott.

MR SCOTT: But what I can say, my Lord, and this is the attempt to be helpful, and I hope there will be a similar attempt on the other side, but what I can say is that from our perspective, our Cayman team can do all of the dates that your Lordship has indicated. I think I can do most of them.

JUSTICE ASIF KC: That's fine.

MR SCOTT: And if Mr Ayres would be good enough to indicate his side's availability, and if your Lordship is persuaded to make these two days available, we can all work together to get something in that fits both here and with the schedule in Delaware.

Unless I can assist your Lordship further, and I'm sorry I've slightly overrun.

JUSTICE ASIF KC: No, that's fine, Mr Scott.

The only —— I'm not suggesting this to anyone, the parties will take their own counsel as to the course they want to pursue, but I'm certainly conscious that judges in the Grand Court have, in the past, made anti—suit injunctions to prevent proceeding with liquidations or Chapter 11 in the States where the companies are Cayman incorporated companies. So I'm alive to the fact that just because the GP has commenced Chapter 11 proceedings is not necessarily the end of

the matter.

MR SCOTT: Well, I hope that has been heard on the other side of the court. Obviously it's not an application ——

JUSTICE ASIF KC: No.

MR SCOTT: —— I am making to your Lordship, or can, but your Lordship is quite right to identify the court's own powers to protect its jurisdiction from these sorts of vexatious and oppressive attacks.

JUSTICE ASIF KC: Yes. Thank you, Mr Scott.

Yes, Mr Ayres.

Submissions by MR AYRES

MR AYRES: My Lord, I'm going to be in my submissions much shorter than my learned friend, and part of the reason for that is because I am going to be cautious about what I say in light of the fact there is Chapter 11 bankruptcy proceedings, including the fact that although the judge, Judge Silverstein, gave permission for this PTR to take place, that was not a permission, as far as we were concerned, where any party, myself included, or the opponents, could simply trespass on the merits, describe in detail the positions that they wish to put forward and effectively advance the merits. So, my Lord, I am not going to respond in detail to a lot of what my learned friend said and your Lordship should not take that as an acceptance that he has.

My Lord, just one point of information in relation to a document my learned friend took you to. If your Lordship can go —— I think he took you to page 632, which is part of the declaration of Dr Harrison in relation to the application for Chapter 11 reorganisation, and ——

JUSTICE ASIF KC: It's actually 621, I think.

MR AYRES: Yes, and if your Lordship goes down in that document to the top of page 633 and reads paragraphs 46 and 47, you'll see, my Lord, in paragraph 47, it's set out there that:

"the Partnership owes more than $221 million in unfunded commitments to certain of the PortCos."

So, my Lord, that's obviously a fact that ——

JUSTICE ASIF KC: Well, isn't that reflected in the (inaudible)?

MR AYRES: No, no. No, but it's an additional fact that's being put before the court at the same time.

So, my Lord, in terms of what I want to say, as I said, I'm going to be narrow and cautious in what I say. Your Lordship's seen and read the transcript of what happened in front of Judge Silverstein on Monday, and of course there are —— or at that stage on Monday there were two applications which were being made to the Delaware Bankruptcy Court. First of all was

the motion to dismiss the whole bankruptcy, and secondly, as my learned friend alluded to, I call it "the expedition motion", but I think in Delaware speak it's called "the motion to shorten time".

JUSTICE ASIF KC: Yes.

MR AYRES: And in terms of dealing with the motion to shorten time, that was dismissed. And I know your Lordship's looked at it, but I just want to make sure your Lordship's got the right page —— I know you have —— just to remind you of the relevant section where this is dealt with, 766 of the hearing bundle, in the transcript, which is in tab 25. She makes her ruling at line 13:

"... I'm not going to shorten ... time ..."

And then over the page, your Lordship will see, between lines 3 and 16, the judge talks about her own scheduling issues and, of course, the fact that she'd had a case settle which would allow her to effectively deal with the application quicker than the parties had hoped. But, my Lord, she makes that comment effectively in —— cognisant of you, and she says:

"... I'm quite aware of setting aside scheduling time, I'm quite aware of preparing for matters that don't go forward, and I don't like to disrupt ... other judge's schedule[s] ..."

So your Lordship should be aware, and, you know, this is in the context of obviously this multi—jurisdictional case, that the Delaware Court is expressly cognisant of the fact that it is either disrupting or potentially disrupting something that is happening in this court, so ——

JUSTICE ASIF KC: Well, Mr Ayres, from my point of view, the January trial is clearly not going ahead, both because of the consequences of the Delaware trial and also because of the Chapter 11 process, the current existence of the Chapter 11, whether it continues beyond the motion to dismiss or not, is irrelevant for that purpose.

I raised the question of my availability later than 19 January because I am slightly concerned that it's a pretty optimistic timetable, bearing in mind what Judge Silverstein said about her own availability, to expect everyone to be ready for 19 January. But, as I've indicated, as it happens, I do have availability in early February, and in the following —— the week of 26 January, subject to the Bank Holiday, and the week of 2 February, which seemed to me to be a more realistic timeframe to work with without requiring the judge in Delaware to disrupt her own schedule.

MR AYRES: So, my Lord, we are officers of the court and we

will cooperate with the question of giving our available dates. I can say personally, myself, I am free on the 19th because I was going to have to be anyway. But my Lord, being officers of the court and co—operating with our opponents and with you as to our available dates, I should make it clear we are not consenting to anything, we are not accepting that any of this should be going ahead, and in fact quite the opposite. So, my Lord, I think that needs to be made clear.

Just back on the page, my Lord, if you've got —— I know your Lordship wants to get me on to the topic of ——

JUSTICE ASIF KC: No, no.

MR AYRES: —— where we go and how this works, but I just want to just finish off that Judge Silverstein made it very clear in lines 14 to 16 that she is going to grant the relief —— the relief from the stay for this ——

JUSTICE ASIF KC: Sorry, is this on 766 or 767?

MR AYRES: This is 767, lines 14 to 16 —— the whole passage from 3 to 16 is appropriate. But she's very clear that:

"... not any further than that at this point in time."

So ——

JUSTICE ASIF KC: Well, I think, really my understanding of what she says in the transcript —— and tell me if I'm

wrong —— is —— if you think that I'm wrong —— is that she is content for the parties and the court, the Grand Court, to deal with, if I can describe it like this, practicalities, but not substantive matters.

MR AYRES: Well, my Lord, partly correct, but there's a narrower —— what she is content —— as I understand it objectively, she is content for the parties to come before your Lordship to discuss the vacation of the January trial, and that's it. And my opponents, I'm afraid to say, have overstepped the mark in terms of the Delaware Bankruptcy Court, and obviously ——

JUSTICE ASIF KC: Well, she'll decide whether she thinks ——

MR AYRES: She'll decide that. But obviously my learned friend, he made an hour's worth of submissions and on two occasions he said, "This should not be weaponised or misrepresented". Now, of course it won't be misrepresented, but he has said what he's said on instructions from his client and he has been, in my submission, highly incautious in relation to his submissions to this court and how they will be treated in a different court. But, my Lord, that's not really a matter for me, that is a matter for the Delaware Court.

But, my Lord, I want to come back to the real topic, and I don't really have a great deal to say in relation

to this, or certainly more than a few more minutes' worth of submissions, but question is: what is workable? My opponents will say, well, of course he's saying it's unworkable, why wouldn't he, because that's part of the wrecking strategy that they always suggest that we are guilty of. But, my Lord, I am going to make some submissions in relation to how this is actually going to, in practical terms, work.

So there's already a motion to dismiss which needs to be determined at some stage when Judge Silverstein can do so. We are told that there is also going to be a new motion issued in Delaware, which is a motion to vary the stay, and as I understand it, we've been told that we'll see that on 19 December. And as my learned friend alluded to, if they can persuade the Delaware Court to hear that in two weeks or as promptly as possible, we're going to have —— and this is of course conjecture —— a determination of that motion to vary in early January. Now, first of all, we simply just don't know at this stage whether that can happen. You have heard anything from my learned friend to the effect that they have got some promises or some assurances or even some less than assurances from the Delaware Court that that may happen. So that's got to happen.

If the variation is granted, my Lord, then we can't deal with all these new points that my learned friend has addressed you on today, including the one he mentioned at the very end of his submissions in an unstructured away and without either some form of originating process which is new or the amendment of the existing petition, or both. And, my Lord, we haven't seen a draft of any of these amendments or new originating process, but what we have been provided with in the skeleton argument, at paragraph 12, is what's called the "paragraph 10(b) issues". My learned friend was good enough to suggest that they call them the 10(b) issues, because I certainly wouldn't call them 10(b) issues, because the only one that really is a 10(b) issue is the first one, 12.1.

Now, I would accept, subject to everything I've said earlier on, that 12.1 is a reasonably neat and tidy question, it's slightly more than a point of law, but it involves the question of whether or not the references to liquidation, bankruptcy or dissolution proceedings include Chapter 11. And, my Lord, because I'm not going to trespass on the merits, I'm not going to say anything more about that, but you shouldn't take my non—trespass as acceptance.

But, my Lord, the second and third issues which are

described as paragraph 10(b) issues, they're either completely new issues or they are the reheating of the existing dispute in a different context. And as far as 12.2 is concerned, that is a request for a compulsory winding—up order, in other words the same sort of order that is on the basis of the current petition, using the fact that or the suggestion that the Partnership substratum has now gone, based upon recent events, including, as it says there, a consequence of the Chapter 11 bankruptcy proceedings in the Delaware judgment. Well, my Lord, obviously your Lordship can do what you like, but the reality of that is that that is going to need amendment of the existing proceedings in order to be fair to the GP, no matter how rotten my learned friends think the GP actually is.

And as far as 12.3 is concerned, that is not a two—day determination, because that is a determination of the question, notwithstanding what my learned friend says about One Thousand & One Voices, as to whether or not it is in fact the case that independent liquidators should be appointed in place of the GP as liquidating agent. Now, my Lord, one might make submissions about the question of the economic interest, but of course in One Thousand & One Voices, there was a considerable amount of misconduct of the GP in that case during

the course of the liquidation, which also supported the decision that was made in that case. So it is not a complete "slam dunk" that the Rigmora LPs are going to be able to say One Thousand & One Voices, therefore that is a completely easy application.

My submission is the reason that it's not a two—day application, 12.3, is that we are going to be considering the impact of the Delaware judgment, the question of whether findings in the Delaware judgment are binding upon you, and the question of whether or not the GP is as rotten and guilty of misconduct as the Rigmora LPs say, and that's simply a reheating of the whole dispute. So it's completely unworkable that we can have a two—day hearing. So, my Lord, we say it can't be fairly tried procedurally, either with a run up of two weeks in early January to the 19th or in any of the dates that your Lordship said in —— I think I should have a look at the dates.

JUSTICE ASIF KC: February.

MR AYRES: So, my Lord, in terms of, I think, the 27th, the week of that, I think I'm personally —— I'm personally free, I think. Yes, so —— no, sorry, tell a lie, I'm not free that week, but I am free in the week of 2 February. I can do those dates. I am also free on 2 March.

So, my Lord, I don't want to suggest in any shape or form that I personally have availability issues. There may be Walkers issues, but we'll come back to that, and obviously client issues, which we'll communicate with Campbells about tomorrow. But, my Lord, it's simply not workable to have that.

If your Lordship wants to set aside time for the purposes of making sure that isn't taken up by other cases, then, my Lord, I've got nothing to say about that, that's a matter for you, and something you're perfectly entitled to do. But the idea that this can happen quickly, in January, is, we say, for the birds, because there are too many hurdles, too much uncertainty and too many contingencies in place.

And so, my Lord, as I said, I'm going to be much shorter than my learned friend. I'm not going to trespass on the merits. I'm not going to argue against what my learned friend said in relation to many of his points, not because I agree with them, because I do not want it to be said that we are acquiescing in a hearing which is effectively turning into a merits hearing, and that is completely contrary to the Chapter 11 bankruptcy stay.

My Lord, unless I can assist further, those are my submissions.

JUSTICE ASIF KC: Thank you.

Reply submissions by MR SCOTT

MR SCOTT: I hope your Lordship knows that none of my submissions invited your Lordship to determine any point on the merits. What I did was to identify to your Lordship the issues as we see them arising out of two undisputed facts: one, the Delaware judgment; and two, the Chapter 11 proceedings. I understand Mr Ayres' instructions will no doubt be to attempt to lay the ground for some argument in Delaware that we have breached the moratorium, but we have not.

What we would invite your Lordship to note is, despite all the attempts to put roadblocks in the way of determination of the issues I've identified —— and I'll come back to those roadblocks in a moment —— there was no suggestion from Mr Ayres that the GP has a substantive answer to them.

My Lord, before I deal with the paragraph 10(b) issues, can I just correct or at least give our perspective on the point from Dr Harrison's declaration that your Lordship was taken to. If we can go back to it, please, it's tab 24, 633. Your Lordship was shown 46:

"In addition to the unsecured obligations owed by the Partnership, ATP and ATLS ..."

If your Lordship just pauses there. Those are the entities which filed on 9 December, and I'll show your Lordship one of the filings. What then had happened by the time of Dr Harrison's petition is that some of the portfolio companies had filed as well, and they are "the Filing Portfolio Companies", and it is they who are said to "owe more than $5.4 million to dozens of creditors", as your Lordship would see from the petitions from the portfolio companies that are in the hearing bundle.

I should, while we have this open, invite your Lordship's attention to 47, the suggestion that:

"the Partnership owes more than $221 million in unfunded commitments to certain of the PortCos."

That is wrong. The Partnership does not owe anything. It does not have any legal commitment or liability whatsoever to those PortCos. What Dr Harrison means there is that he would wish to use that money if it were available to him, which it is not, as a result of the Delaware judgment.

My Lord, while we have the hearing bundle open, if we could just please go again to the transcript of the conference earlier in the week, and if I can ask your Lordship please to take up page 766.

JUSTICE ASIF KC: Yes.

MR SCOTT: Lines 18 and 19 are, with respected, crystal clear:

"I will grant relief from stay for the pretrial conference to go forward in the Caymans on Wednesday."

If your Lordship would just re—read it —— I know your Lordship has read it already —— from line 18 down to line 2 over the page. Nothing in what I have said to your Lordship today is remotely inconsistent with that.

So far as concerns the paragraph 10(b) issues, we're not remotely precious about labelling, we could call them "the issues" if that would be more palatable, but what they are in effect are preliminary issues. What we're asking your Lordship to do is direct their determination. In the usual way, your Lordship will give such directions as you think appropriate for the determination of those issues. So if your Lordship takes the view that there ought to be either amendments or the issuance of some originating process, your Lordship has ample power to direct that. Your Lordship might take the view that the issues can amply be addressed in skeleton arguments. That's certainly our view.

My Lord, so far as the issues themselves and whether it makes sense to direct their determination, I understood Mr Ayres to accept that, subject to his

overarching position of being unable to assist your Lordship today, that paragraph 12.1 is an issue that makes sense to determine. I think he called it a "neat and tidy" issue. We respectfully agree with that.

On paragraphs 12.2 and 12.3, they were objected to as raising either new issues or rehashing the existing issues on the case, and what underlies all of that is the, with respect, false premise that the determination of those issues depends on your Lordship reaching a view about the GP's misconduct, and it does not. What it depends upon is your Lordship reaching a determination based upon the two undisputed facts identified in the Delaware judgment and the Chapter 11 bankruptcy proceeding and then applying to those undisputed facts principles of Cayman law.

And, my Lord, as for the suggestion that this cannot be dealt with in a two-day hearing, can I just ask your Lordship please to take up tab 7 of the authorities bundle.

JUSTICE ASIF KC: Yes.

MR SCOTT: This is Justice Kawaley's decision in One Thousand & One Voices. Your Lordship will see that it was heard on a single day, 11 April '24, and -- on the papers, and the decision followed on 2 May.

If I could just invite your Lordship's attention to paragraph 20, could I ask your Lordship please to read 20 down to 26, which summarise the principles that apply in this context.

(Pause)

JUSTICE ASIF KC: Yes, I've read that.

MR SCOTT: So we do say, with respect, this issue is well capable of being dealt with within the context of the two-day hearing that we suggest, once it is recognised that this is not an issue that will require your Lordship to form a view as to the allegations of misconduct against the GP. And as I say, we're very much in your Lordship's hands as to what, if any, additional directions are necessary to bring the matter forward in an orderly way. If your Lordship wants us to amend, of course we'll do that, subject to lifting the stay to the extent necessary to achieve that.

My Lord, unless I can assist the court further, those are our submissions.

I am reminded that it will assist the Delaware Court, from our perspective, to have your Lordship's ruling on these issues, if it were possible, in time for the hearing at 3.30 today.

JUSTICE ASIF KC: Just remind me, is Delaware currently on the same time zone as the Cayman Islands or -- yes --

MR SCOTT: I see everyone to my right nodding.

JUSTICE ASIF KC: So I've got about four hours. That's fine. I'm just going to rise for about 10/15 minutes maximum and then I will come back and tell you what I'm going to do.

(4.31 pm GMT)

(A short break)

(4.53 pm GMT)

JUSTICE ASIF KC: This matter --

MR AYRES: Before your Lordship's starts. It's probably in everyone's interests that the microphones are muted.

JUSTICE ASIF KC: Thank you, Mr Ayres.

Judgment (excised for approval)

That will need to be tidied up, because my sentences fell to pieces in a few areas, but I hope that gives a sufficient indication, first of all, of my reasons, and hopefully some useful input for the judge in Delaware this afternoon.

MR SCOTT: I'm very grateful, my Lord.

I've been asked to ask your Lordship if the court's audio recording could be shared with Opus 2.

JUSTICE ASIF KC: Yes, of course.

MR SCOTT: I think that means shared right now, so that we can ensure that corrections are properly made.

JUSTICE ASIF KC: Yes. As soon as I rise, I will ask

Ms Wood to make that available. Can you make sure that someone gives me, to give to her, or emails her with an email address for Opus 2 so that she can communicate as quickly as possible.

MR SCOTT: I'm grateful, my Lord.

I think, in the usual way, and in accordance with our duty as counsel, it falls to us to draft an order --

JUSTICE ASIF KC: Yes, please.

MR SCOTT: -- to reflect your Lordship's ruling.

JUSTICE ASIF KC: Yes. I think the only actual order is that the trial needs to be vacated.

MR SCOTT: And the direction of preliminary issues.

JUSTICE ASIF KC: Yes, I suppose that's right. Yes, yes.

MR SCOTT: And we would also ask your Lordship to reserve the costs of today.

JUSTICE ASIF KC: That's fine. I'm happy to do that.

MR SCOTT: I'm happy to put a (inaudible) hand to do the first draft of the order.

JUSTICE ASIF KC: For what it's worth, again, it doesn't seem to me that there can be any sensible argument that that is outside the scope of what the judge in Delaware ordered was permissible in the context of what she said in the transcript at page 766 of the hearing bundle, where she said she'll:

"... grant relief from stay for the pretrial

conference to go forward in the Caymans on Wednesday. I don't know, it hasn't really been described to me what would be —— what substantively would go forward, what dates will be established by the court, or what's really left for the judge to decide ... "

Et cetera. As I indicated to you in the course of argument, I read that as indicating that she was content for this court and for the parties to deal with the procedural consequences of the Chapter 11 filing, and it seems to me it's absolutely plain that that must include drawing up an order after the hearing today in order to reflect what I have ordered.

MR SCOTT: Very grateful for that indication.

MR AYRES: Well, the only thing I would say is we have no difficulty with the fact that the court needs to make an order, that seems to be obvious, that if counsel weren't helpful, your Lordship would do it.

My Lord, just in relation to the question of whether you're going to make any further directions beyond vacation of the trial, my Lord, I'd urge some caution in relation to that, because there may be some incongruence with what you said in the judgment. You've made it clear that you've accepted the submission that there will need to be amendments to the pleadings. The reality is the formulation of preliminary issue can only

sensibly happen once ——

JUSTICE ASIF KC: (Overspeaking — inaudible).

MR SCOTT: —— once this is filed. So I would ask your Lordship not to ——

JUSTICE ASIF KC: Yes.

Mr Scott, I did hesitate, because —— when you were asking about that, because I wasn't entirely sure. I think it's right that until the pleadings have been amended it's probably better to hold back on the wording of the order for the preliminary issues. I mean, it seems to me it's plain from what's said in paragraph 12 of the skeleton that everyone knows what the issues are intended to be.

MR SCOTT: Indeed. And equally plain that your Lordship has just ruled that there will be a trial of those issues.

JUSTICE ASIF KC: Yes.

MR SCOTT: I'm very happy to defer formalising that in an order until we have been permitted to go through the process of pleading.

JUSTICE ASIF KC: I think —— I think, just ——

MR SCOTT: But I don't want anyone to be suggesting this afternoon in Delaware ——

JUSTICE ASIF KC: That I haven't said.

MR SCOTT: —— that it hasn't happened, because it has happened.

JUSTICE ASIF KC: Exactly. No, I think, bearing in mind the sensibilities —— everyone is concerned about trespassing on the Delaware court —— I'm happy to —— not to include form —— not to include that in a form of this order at this stage, but I have given a very clear indication that that is what I intend to happen, and absent something happening in Delaware to derail that, that is what I consider should happen.

MR SCOTT: So the order will in that case provide for the January hearing to be ——

JUSTICE ASIF KC: Vacated.

MR SCOTT: —— vacated and the two—day hearing to be fixed in the week commencing the 2nd?

JUSTICE ASIF KC: Exactly. And costs reserved.

MR SCOTT: I'm very grateful. We'll turn that around and hopefully get that to you very shortly.

JUSTICE ASIF KC: All right. Thank you all very much.

(5.15 pm GMT

(The hearing concluded)

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EXHIBIT B

ND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 151 OF 2025 (JAJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

AMENDED WINDING UP PETITION

To the Grand Court

The humble petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP ("**RBI One**")) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP ("**RBI Two**")) shows that:

A. Introduction

1. This is the amended petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of RBI One) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of RBI Two) (together, the "**Petitioners**"), each with its registered office at 3076 Sir Francis Drake's Highway, PO Box 3463, Road Town, Tortola, British Virgin Islands.

2. The Petitioners present this Petition against (i) ATP Life Science Ventures, L.P. (formerly named Apple Tree Partners IV, L.P.) (the "**Partnership**") and (ii) ATP III GP, Ltd. (the "**GP**") in its capacity as the general partner of the Partnership, for the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Act (2025 Revision) (the "**ELP Act**") and Section 92(e) of the Companies Act (2025 Revision) (the "**Companies Act**"), and/or in the alternative pursuant to section 35 of the Partnership Act (2025 Revision).

This **WINDING UP PETITION** was presented by Campbells LLP, Attorneys for the Petitioners, whose address for service is that of its Attorneys at Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 (ref: PDK/JFI/19135-44991).

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#3377166v2

3. The Petition is presented because, as described in detail below, there has been continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP. The GP is a Cayman Islands exempted company with registration number 252582 and its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

4. As a result of the GP's mismanagement and lack of probity, there is a justifiable loss of trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole. In particular:

   a. The GP has issued capital call notices on 30 May 2025 and 1 June 2025 (the "**Disputed Capital Calls**") in violation of the LPA seeking to compel the contribution of over USD 100 million in additional capital in excess of maximum subscription commitments ~~and~~ in breach of the terms of the LPA, and in breach of its fiduciary duties to act in the interests of the Partnership as a whole.

   b. The GP ~~has~~ launched proceedings in Delaware (the "**Delaware Proceedings**") seeking to compel the Petitioners to provide vast sums of further funding to the Partnership, in breach of the express provisions of the LPA (defined in paragraph 16 below) whilst simultaneously seeking to apply a penal default charge in order to confiscate 50% of the Petitioners' interest in the Partnership, in order to take control of the Partnership and billions of dollars of the Petitioners' assets.

   b1. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

   b2. The GP has misappropriated and dissipated Partnership assets.

   b3. The GP has made improper denials regarding the breakdown in the relationship between it and the Petitioners.

   b.4 The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list

of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

c. The GP has also improperly charged its expenses to the portfolio companies and failed to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

d. The GP also has a conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as it has been acting in the interests of the portfolio companies and / or in its own interests and / or for the improper purpose of placing pressure on the Petitioners ~~by exposing the Partnership to open-ended, binding commitments thereto and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA.

5. In all the circumstances, the substratum of the Partnership has also been lost, and there is a need for independent investigation into the Partnership's affairs.

B. The Partnership

6. The Partnership is a Cayman Islands exempted limited partnership established pursuant to the ELP Act and registered on 29 October 2012. The registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

7. The Partnership was formed following discussions between Dr Seth Harrison ("**Dr Harrison**") and Dr Dmitry Rybolovlev ("**Dr Rybolovlev**") concerning the formation of a vehicle to make investments in the life science industry using capital provided from entities owned by the Rybolovlev family trust (the "**Trust**"). Dr Rybolovlev is a highly successful businessman of Cypriot nationality and settlor of the Trust.

8. Upon the Partnership's formation, its limited partners were Blue Horizon Enterprise Ltd ("**Blue Horizon"**) Ezbon International Ltd ("**Ezbon**") and Dr Harrison. Blue Horizon and Ezbon are special purpose vehicles ultimately owned and controlled by the Trust.

9. The GP is part of a life sciences venture capital firm called Apple Tree Partners ("**ATP**"), which operates out of the United States. Dr Harrison is the founder and managing director of ATP. ATP has no meaningful business interests or capital under management other than that belonging to the Partnership. Apple Tree Life Sciences, Inc. ("**ATLS**") serves as a management company for the Partnership and an annual fee is paid to it in connection with certain Partnership expenses. ATLS is a wholly-owned subsidiary of the Partnership.

10. The Petitioners are limited partners of the Partnership. Unicorn Biotech Ventures One Limited and Unicorn Biotech Ventures Two Limited are the sole general partners of RBI One and RBI Two, respectively. The sole limited partner of both RBI One and RBI Two is Rigmora Holdings Ltd ("**Rigmora Holdings**"). Rigmora Holdings is a holding company for the Trust and also acts as an advisor to the trustees of the Trust.

11. As of June 2025, the contingent subscriptions of the Petitioners total US$2.425 billion (US$1,188,250,000.00 for RBI One and US$1,236,750,000.00 for RBI Two), and the total capital contributions of the Petitioners are in excess of US$2.6 billion, which represents c. 9~~9~~8% of all capital contributions made to the Partnership.

12. The Petitioners became limited partners of the Partnership as of 30 June 2024 by respectively taking over the limited partner positions of the two former limited partners, Blue Horizon and Ezbon.

13. ~~The Petitioners are the only limited partners of the Partnership not affiliated with the GP.~~ The other limited partners are Dr Harrison and Les Pommes LLC ("**Les Pommes**") and 12 former or present employees of ATLS. Les Pommes is a discretionary family trust for Dr Harrison's daughters. ~~Ms Anna Batarina (an employee of ATP) is a carry holder and ultimately has an economic interest in the Partnership. The GP has claimed that various other employees of ATP are also limited partners of the Partnership. However, none of those persons are parties to the LPA (as defined below) and none of those individuals have ever contributed any capital to the Partnership. The Petitioners do not accept that they are in fact legitimate limited partners.~~

14. The Partnership has been built almost exclusively using capital belonging to the Petitioners. As of June 2025, c. 9~~8~~% of the US$2.7 billion invested into the Partnership was capital contributed by the Petitioners. The remaining US$53.8m of capital has been contributed by Dr Harrison and Les Pommes, funded substantially by way of a loan from Ezbon.[1] No other limited partner has contributed any capital to the Partnership.

15. The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related companies and business projects.

Structure of the Partnership

16. The limited partners of the Partnership, and the GP are parties to a limited partnership agreement ("**LPA**"), the initial version of which was dated 29 October 2012. The LPA was restated on 1 November 2012 and has been amended a further 22 times since then: on 1 January 2014, 15 August 2014, 1 September 2014, 1 April 2015, 11 May 2015, 31 December 2015, 31 May 2017, 9 August 2017, 22 December 2017, 1 July 2018, 26 October 2018, 1 December 2018, 4 February 2019, 17 April 2019, 10 July 2019, 1 February 2020, 9 September 2020, 5 November 2020, 27 November 2020, 21 June 2021, 5 December 2022 and 20 December 2024. Each of the amendments has been undertaken by way of a separate amendment agreement (each referred to herein as "Amendment X" where X represents the number of the amendment following the execution of the 1 November 2012 restated LPA).

17. Upon incorporation, the Partnership had a conventional fund structure consisting of a single set of assets and liabilities participated in by all limited partners. However, by way of subsequent amendments starting with Amendment 13 (executed on 4 February 2019) the structure of the Partnership was changed to consist of separate investment "pools" each of which "*to the maximum extent possible*" consisted of its own set of assets and liabilities.

18. Prior to the transfer of the limited partner interests in June 2024, Blue Horizon and Ezbon together were the "Subject Limited Partner" under the LPA and the holder of the majority of

[1] The capital contributed to the Partnership by Dr Harrison was mostly made up of US$52.6m in capital that he had borrowed from Ezbon of which US$24.8 was repaid in cash (out of capital distributed by the Partnership to the GP), and the remaining US$27.8m was repaid by transferring part of his limited partner interests in the Partnership to Ezbon (as recorded in Paragraph 6(c) of Amendment No. 14 of the LPA).

"Preferred Units" in the Partnership. Following the transfer of the limited partner interests, the Petitioners became the "Subject Limited Partner" and the holder of the majority of "Preferred Units" in the Partnership for the purposes of the LPA.

19. The LPA (as amended) provides, materially:

    a. Paragraph 5(a)(i) provides that each limited partner shall contribute to the Partnership an amount equal to but not in excess of the total amount of its "Contingent Subscription" specified in the "List of Partners". The amount of each limited partner's Contingent Subscription is in turn determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**") (Clause 1(e)).

    b. Paragraph 5(a)(ii) provides that the GP may only call capital for the purposes specified therein unless otherwise approved by holders of a majority of the Preferred Units in writing. In particular, Paragraph 5(a)(ii)(E) provides that the GP may only "*invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units*".

    c. Paragraph 5(a)(ii) also provides, materially: *"… in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities.*"

    d. Schedule C to the LPA (as amended by Amendment 2) provides, materially: "[t]*he General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter* […] *This financial report will cover all entities within the*

Partnership structure, and will include Project income and expenses and operating costs along with at least the following:

- *Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter* […] *then ended and including explanations of major variances to budget* […]
- *Detailed budget by major Project by quarter* […] *for the next twelve months* […]
- *Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow*.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets".

e. Paragraph 20 (e)(ii) provides that the GP "*shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the 'ATLS Fee'). Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year … The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee*".

f. Amendment 9, section 11 provides: "*ATLS shall pay the following expenses of the Partnership from the ATLS Fee: (i) except as set forth in Section 12, below, all compensation and benefits for employees (except to the extent paid from the Management Fee), (ii) all facilities and related overhead expenses, including rent, utilities, charges assessed by the lessor, property and general liability insurance, and communications, including phone and internet, (iii) office supplies and equipment, information technology support and software, (iv) publications, dues and charitable contributions, (v) public relations, marketing and advertising expenses, (vi) travel and*

(vii) capital expenditures, including for furniture, fixtures, computers and other equipment, in each case, except as expressly provided in the following sentence."

20. The Petitioners are the holders of a majority of the "Preferred Units". The GP is therefore required to obtain the Petitioners' approval for any budget for investments in "Projects".

21. The Petitioners' total contingent subscriptions for the purposes of Paragraph 5(a) of the LPA is US$2.425 billion (the "**Contingent Subscriptions**"). In particular:

    a. Pursuant to a subscription agreement between Ezbon and the Partnership dated 1 November 2012, Ezbon agreed that the amount of its contingent subscriptions would be US$726,750,000 (the "**Ezbon Subscription Agreement**").

    b. Pursuant to a subscription agreement between Blue Horizon and the Partnership dated 1 November 2012, Blue Horizon agreed that the amount of its contingent subscriptions would be US$698,250,000 (the "**Blue Horizon Subscription Agreement**").

    c. On 20 September 2020:

        i. Ezbon executed an amendment to the Ezbon Subscription Agreement which increased its contingent subscription by US$510,000,000 to US$1,236,750,000; and

        ii. Blue Horizon executed any amendment to the Blue Horizon Subscription Agreement which increased its contingent subscription by US$490,000,000 to US$1,188,250,000,

        (the "**Subscription Amendments**").

    d. Other than the subscription agreements identified above (the "**Subscription Agreements**") no other subscription agreements have been entered into by Ezbon, Blue Horizon or the Petitioners.

22. The Subscription Amendments were executed in the context of an amendment to the LPA executed on or around 9 September 2020 ("**Amendment 17**").

    a. Amendment 17 increased the number of "pools" from 2 to 3 (referred to in Amendment 17 as "Pool A", "Pool B" and "Pool C" by inserting paragraph 20(a) into the LPA).

    b. Paragraph 20(a) of the LPA envisaged that the Subject Limited Partners would have total contingent subscriptions in excess of those committed to under the Ezbon and Blue Horizon Subscription Agreements.

    c. The Subscription Amendments were entered into shortly after Amendment 17 was executed to increase the Subject Limited Partners total contingent subscriptions in the manner contemplated by Paragraph 20(a) of the LPA.

23. By or on around 14 December 2023, the entirety of the Contingent Subscriptions had been paid out pursuant to capital calls made by the GP under Paragraph 5(a)(ii) of the LPA. Since then, neither the Petitioners (nor their predecessors) have been obliged to contribute further capital to the Partnership under Paragraph 5(a) of the LPA.

24. Further capital contributions totalling US$242 million have since been made by the Petitioners (or their predecessors), without any obligation to do so. As noted above, to date the total capital contributed by the Petitioners to the Partnership is in excess of US$2.6 billion, comprising approximately 9~~98~~% of all capital contributions made to the Partnership.

C. Ground 1: Justifiable and irretrievable loss of trust and confidence

25. The Petitioners have justifiably and irretrievably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

26. The GP has seriously mismanaged the Partnership, acted in a manner calculated to prejudice the Petitioners and demonstrated a lack of probity in the conduct of its affairs by:

    a. Improperly (and in breach of duty) issuing ~~capital calls on 30 May 2025~~ the Disputed Capital Calls totalling over US$100 million ~~(the "**May 2025 Capital Calls**")~~. The ~~May 2025~~ Disputed Capital Calls were not made for proper purposes. They were made for

improper purposes of placing commercial pressure on the Petitioners: (a) in circumstances where they are not obliged to make further capital contributions; and (b) in the context of a break-down of the relationship between the Petitioners. Further, the ~~May 2025~~ Disputed Capital Calls were not made bona fide in the best interests of the Partnership as a whole (principally, the Petitioners) but were instead made in the interests of the GP and / or Dr Harrison and / or the portfolio companies. The Petitioners have brought separate proceedings in the Grand Court of the Cayman Islands by way of writ dated 2 June 2025 to establish (amongst other things) that they are not obliged to pay the ~~May 2025~~ Disputed Capital Calls (the "**Writ Proceedings**").

b. Issuing the Delaware Proceedings ~~(defined in paragraph 39(b) below)~~, and making numerous unfounded and untruthful allegations therein, in order to take control of the Partnership;

c. Improperly seeking to impose a penal default charge on the Petitioners. In the Delaware Proceedings the GP alleged~~s~~ that it was ~~it is~~ entitled to take 50% of the Petitioners' interest in the Partnership (the GP estimates the Partnership to be worth approximately US$4 billion) and to reallocate those assets to the other ~~limited partners~~ holders of "preferred units" (i.e. to Dr Harrison and his family trust, Les Pommes). In other words, Dr Harrison, acting via the GP, ~~has~~ commenced proceedings in Delaware in which he sought ~~seeks~~ to take billions of dollars of assets from the Petitioners and transfer those assets to himself (in circumstances where he has contributed minimal capital into the Partnership and where the clear wording of the LPA does not entitle him to take such action, see paragraphs 40-41 below).

d. Seeking to compel the Petitioners to make further contributions to the portfolio companies and has sought to make accelerated capital calls and unbudgeted capital calls without complying with its obligations under the LPA. By issuing the Delaware Proceedings the GP is acting in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and is clearly acting out of self-interest, and has not exercised its powers for a proper purpose.

d1. Knowingly misleading the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

d2. Misappropriating and dissipating Partnership assets.

d3. Making improper denials regarding the breakdown in the relationship between it and the Petitioners.

d4. Failing to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

e. Improperly charging its expenses to the portfolio companies held by the Partnership.

f. Failing to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

g. Failing to act in the best interests of the limited partners as a ~~whole by exposing the Partnership to open-ended, binding commitments to the portfolio companies and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA. In this regard, the GP's decision making (through Dr Harrison (as the controlling mind and will of the GP, and a director of many of the portfolio companies owned by the Partnership)) is infected by a conflict of interest.

Background to loss of trust and confidence

27. As set out above, the Partnership was formed following discussions between Dr Harrison and Dr Rybolovlev to make investments in the life science industry using capital provided from entities owned by the Trust. It was agreed at the outset that the limited partners would have a substantial degree of oversight as to how capital is invested, by their ability to review and elect whether to approve budgets for investments required to be presented by the GP. As also set out above, the GP is part of ATP, which has no meaningful business interests or capital

under management other than that belonging to the Partnership and which was founded and is managed by Dr Harrison.

28. From around 2021, the GP started to improperly charge the employee costs of ATP investment professionals to the Partnership's portfolio companies (see paragraphs 53 to 56 below).

29. In September 2023, following a series of disagreements between the limited partners and the GP, the Petitioners' predecessors, Ezbon and Blue Horizon, made a request to the GP pursuant to their rights under the LPA for the distribution of assets in the "Pool Braeburn" investment pool. The "Pool Braeburn" investment pool is funded solely by capital contributed by the Subject Limited Partner. Upon the formation of "Pool Braeburn" (pursuant to Amendment 20 of the LPA), the Subject Limited Partner was granted a right (under paragraph 21(d) of the LPA) to require the Partnership to distribute the assets within that pool on demand. The Subject Limited Partner subsequently demanded the distribution of assets in Pool Braeburn.

30. The GP improperly refused to comply with this request. In doing so, the GP asserted that it was entitled and bound to retain the Braeburn assets within the Partnership to ensure Ezbon and Blue Horizon would continue contributing capital to the Partnership. That was not a proper basis for the GP to refuse to comply with the distribution request. The GP also claimed that compliance with the distribution request would impact the GP's ability to obtain third party funding, which would in turn impact the financial position of the Partnership. As a consequence of the GP's threats that the financial position of the Partnership would be affected, Ezbon and Blue Horizon agreed not to pursue the distribution request.

31. In July 2024, the Petitioners made another request to the GP under the LPA for the distribution of assets in Pool Braeburn. The GP failed to comply, and the Petitioners issued proceedings in the Grand Court of the Cayman Islands seeking a declaration that the GP must distribute the Braeburn assets in accordance with the distribution request (the "**Braeburn Proceedings**").

32. In those proceedings, the GP claimed that it was unable to distribute the Braeburn assets to the Petitioners including because Braeburn Inc, one of the major assets within Pool Braeburn (and of the Partnership as a whole), had an "internal policy" prohibiting the transfer of ownership of the company from the Partnership to the Petitioners. The GP contended that the "internal policies" of Braeburn Inc included whatever the Braeburn Inc board considered was in Braeburn Inc's best interests to occur. That was not a proper basis for refusing to comply with the distribution request. The GP also contended that such a transfer would also

trigger an event of default under a loan agreement between Braeburn Inc and a third party, which would have a significant knock-on negative impact on the Partnership. At the relevant time, the Partnership was the sole shareholder and Dr Harrison was the chairman of the board of directors of Braeburn Inc. He exercised significant influence over the other directors and members of senior management. It is therefore inconceivable to think that Dr Harrison would not have been involved in implementing the aforesaid arrangements.

33. The parties entered into a settlement agreement in respect of the Braeburn Proceedings on 20 December 2024 (the "**Settlement Agreement**"), which provided, amongst other things, that the GP would use commercially reasonable efforts to remove or mitigate any contractual blocks or economic costs that may inhibit the distribution of the Braeburn assets to the Petitioners. Clause 5.1 of the Settlement Agreement:

    a. required the parties to bear their own legal costs and disbursements in respect of the proceedings and the Settlement Agreement, (notwithstanding any provision of the LPA which may provide otherwise); and

    b. expressly provided that the GP would not charge the Partnership or the portfolio companies for its legal costs and disbursements incurred in relation to the proceedings and the Settlement Agreement.

34. However, the relationship between the GP and the Petitioners has since continued to deteriorate substantially to a state of complete breakdown and there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership.

35. The catalyst for this loss of trust and confidence was the GP's behaviour in regards to seven (7) early-stage portfolio companies: (1) Deep Apple Therapeutics, Inc~~,~~ ("**Deep Apple**"), (2) Apertor Pharmaceuticals, Inc., (3) Evercrisp Biosciences, Inc., (4) Marlinspike Therapeutics, Inc~~,~~ ("**Marlinspike**"), (5) Red Queen Therapeutics, Inc., (6) Aethon Therapeutics, Inc. and (7) Initial Therapeutics, Inc. ("**Initial**") (the "**Early-Stage Companies**").

36. Dr Harrison is a director of each of the Early-Stage Companies. The GP has insisted on continuing to invest the Partnership's capital into the Early-Stage Companies even though the Petitioners consider them to be hopeless investments. The GP has also failed to adhere to the

milestones in the agreed budgets for the Early-Stage Companies and is seeking to call capital for these companies in breach of the LPA. Further and in addition, by virtue of the relief he seeks in the Delaware Proceedings, he is seeking capital on an accelerated basis in breach of the LPA.

37. The Petitioners maintain that they are not obliged to fund the Early-Stage Companies:

    a. First, the Partnership's limited partners' capital commitments are determined by the terms of the LPA, such that they are not required to make capital commitments to the Partnership which exceed their Contingent Subscription amount as set out in the Subscription Agreements (see paragraph 21 above). The Contingent Subscription amount is set out in the applicable Subscription Agreement(s). The Petitioners' total Contingent Subscription is US$2.425 billion, and they cannot be *required* to fund above that commitment. The GP's position is that the limited partners' capital commitments to the Partnership can be and have been increased above the Contingent Subscription amount through Amendments 17, 18 and 20 to the LPA. That is wrong. None of those amendment increased the Contingent Subscription amounts.

    b. Second, and in any event, under Paragraph 5(a)(ii) of the LPA, the GP may only invest in projects approved by the Petitioners "*in accordance with a budget therefor approved*" by the Petitioners. The budgets approved by the Petitioners provide for investments to be made into the Early-Stage Companies in certain specified amounts, subject to meeting certain specified milestones. The milestones under those respective budgets have not been met and no further capital commitment has been approved, in writing, by the Petitioners. The GP is also now seeking to call capital on an accelerated basis contrary to what is provided for in the budgets. The GP is not permitted to call for further capital absent written approval by the Petitioners, which the Petitioners have not provided. The GP's position is that the Petitioners have waived or forfeited their right to approve budgets and that, in any event, the GP is entitled to continue calling for capital irrespective of whether the milestones in an agreed budget have been complied with and regardless of whether it is calling capital on an accelerated basis to the budgets. There has however been no such waiver or forfeit and there is no such entitlement on the part of the GP.

38. The ongoing disagreement between the parties regarding budgeting issues resulted in Mr Yuri Bogdanov (CIO of Rigmora Holdings) emailing the GP on 15 May 2025. In that email, the Petitioners reiterated their position that they were not obliged to fund the Early-Stage Companies and that it was not in the best interests of the Partnership for further funding to be allocated to the Early-Stage Companies. In the same email, the Petitioners asked the GP to clarify its position, stating "*if you disagree with the above and consider that [the Petitioners are] obliged to contribute further capital to the Early-Stage Companies then please respond with a detailed explanation of your position. [The Petitioners] of course intend to comply with the requirements of the LPA and will be cooperative if you can demonstrate the LPA allows you to call further capital in regards to the Early-Stage Companies*" (the "**15 May Email**"). The GP did not respond to the 15 May Email, has refused to provide the requested information on the new budgets, and has accelerated capital calls when compared to forecasts sent shortly before issuing the said capital calls.

39. Rather than seek to consensually resolve the issues concerning the Early-Stage Companies and other budget issues that were being discussed between the parties, on 30 May 2025:

    a. The GP issued the ~~May 2025~~ Disputed Capital Calls purportedly requiring the limited partners to contribute US$109,960,926.00 million of capital to the Partnership by 13 June 2025 (save for a capital call made in respect of Replicate which is due on 17 June 2025); and

    b. The GP peremptorily issued a complaint against the Petitioners in the Delaware Court of Chancery seeking specific performance and equitable and declaratory relief in respect of the GP's and the limited partners' rights and obligations in respect of the Partnership (the "**Delaware Complaint**" and the "**Delaware Proceedings**"). The GP did not refer to the ~~May 2025~~ Disputed Capital Calls in the Delaware Proceedings.

40. In the Delaware Proceedings, the GP alleges that the 15 May Email amounts to an anticipatory breach of the LPA and/or a repudiation of "*the [Petitioners'] obligation to respond to capital calls*", the GP ~~seeks~~ had also sought specific performance to compel the limited partners to contribute up to US$545 million to the Partnership, whilst simultaneously contending that by reason of the 15 May Email the GP was entitled to apply a default charge to confiscate 50% of the limited partners' interest in the Partnership (the **"Default Charge"**), block their voting powers and remove their budget approval rights. The GP had also sought ~~seeks~~ to avoid

complying with the contractual default process which includes provisions enabling the Petitioners to remedy any such default (i.e. by payment) on the basis that it would be "*futile*" to do so (see paragraph 171 of the Delaware Complaint). In other words, the GP ~~seeks~~ had sought an order whereby the Petitioners must provide the Partnership with further capital of up to US$545 million (which it is alleged is the Petitioners' total unfunded capital commitment) ~~and nevertheless maintains~~ whilst maintaining that it can also issue a default charge against the Petitioners and confiscate billions of dollars of the Petitioners' assets even if they provide the capital sought.

41. As set out further below the Delaware Complaint and the ~~May 2025~~ Disputed Capital Calls ~~are~~ had evidently been designed to enable the GP to compel the Petitioners to contribute vast sums of further funding to the portfolio companies whilst engineering a default in order to impose a default charge to confiscate 50% of the Petitioners' interests in the Partnership (in the approximate sum of US$2 billion), which would fall to be redistributed to the ~~remaining limited partners~~ other holders of "preferred units" (i.e., Dr Harrison and his family trust) thereby allowing Dr Harrison to take control of the Partnership, notwithstanding the fact that he has contributed less than c. ~~12~~% of the Partnership's capital. The GP's intentions were laid bare in paragraph 192 of the Delaware Complaint, which states that the GP seeks an order preventing the Petitioners from "*interfering with [the GP] in the exercise of its discretion over the Fund once [the Petitioners are] deemed to be a Defaulting Partner*".

42. No GP acting reasonably and in good faith in the interests of Partnership would have commenced these proceedings in these circumstances.

43. Moreover, there was no proper basis for the GP's purported position. The 15 May Email is self-evidently not an anticipatory or repudiatory breach given that it said in terms that the Petitioners will comply with the terms of the LPA if the GP explains why it is entitled to call for further capital under the LPA. ~~For the avoidance of any doubt, the Petitioners do not accept that~~ In addition, the LPA does not entitle~~s~~ the GP to confiscate assets as alleged. The LPA is clear that the default charge enables the GP to reduce the number of preferred units and investor common units of a defaulting partner. Apart from Pool ATP IV, assets are not distributed by reference to the number of units held by a Limited Partner and are instead distributed in accordance with the specific distribution provisions for each pool as set out in the LPA.

43A The issuing of the Delaware Proceedings and the Disputed Capital Calls were the culmination of a long-term and highly choreographed strategy designed to place illegitimate pressure on the Petitioners to contribute further capital to the Partnership and to manufacture a situation where the GP could default the Petitioners (the "**Default Strategy**"). The existence of the Default Strategy falls to be inferred from the following matters:

a. The fact that the GP had instructed its US attorneys, Quinn Emanuel Urquhart & Sullivan ("**Quinn Emanuel**") to start work on a complaint against the Petitioners in Delaware by August 2024 (at the latest), many months before the 15 May Email had been sent.

b. The timing and size of the Disputed Capital Calls, which were not issued for proper purposes or *intra vires* under the LPA but were deliberately inflated and made for the improper purposes alleged at paragraphs [44A]-[44D] below.

c. The fact that in the Delaware Proceedings, the GP had improperly claimed to be entitled immediately to impose a Default Charge on the Petitioners without any need to serve a Default Notice on the Petitioners as required by paragraph 5(a) (see paragraph [40] above).

d. The fact that in the Delaware Proceedings, the GP had wrongly claimed that by imposing a Default Charge on the Petitioners it was entitled to strip the Petitioners of 50% of their economic interests in the Partnership and reallocate those interests to other partners (i.e. primarily to Dr Harrison and his family trust (see paragraph [43] above).

e. The fact that on 29 April 2025, the GP provided a funding plan to the Petitioners in which the GP proposed to reallocate funding away from the Early-Stage Companies (the "**April Funding Plan**"), only to withdraw that proposal when the Petitioners indicated that they were agreeable to it. In particular:

    i. At a meeting on 9 May 2025 attended by principals of the GP and the Petitioners, and during a call attended by principals and lawyers of the GP and the Petitioners on 13 May 2025, the Petitioners indicated that they were agreeable to the proposed reallocation of budgets, consistent with their

position that no further capital should be provided to the Early-Stage Companies as their future prospects were weak.

ii. However, during the call on 13 May 2025 Dr Harrison withdrew the reallocation proposal (despite considering it to be in the best interests of the Partnership).

iii. It is to be inferred from the forgoing that the GP made the reallocation proposal in the expectation that the Petitioners would not agree to it, and use their refusal as a basis for commencing proceedings against them in Delaware.

f. The fact that, since at the commencement of the Delaware Proceedings at the latest (and the Petitioners infer from before that date), the GP has (without notice to the Petitioners) approached at least 26 potential investors with a view to selling Partnership assets (portfolio companies) to them and / or transferring some or all of those assets (portfolio companies) to a new fund or funds managed by the GP. As recently as 4 October 2025, the GP (without notice to the Petitioners) sent a "Portfolio Lift-out Opportunity" presentation to at least 9 such entities (the "**October Presentation**"), offering an opportunity to "*take over a restructured, mature, stage-diversified portfolio biotech portfolio*".

43B. It is further inferred from the forgoing that the 15 May Email was used by the GP in bad faith as a pretext for implementing the Default Strategy.

43C. On 5 September 2025, shortly before the trial of the Delaware Proceedings was due to commence, the GP amended the relief sought in those proceedings. Following those amendments, the GP:

g. Abandoned its claim to be entitled to relief based solely on the 15 May Email.

h. Abandoned its claim for specific performance requiring the Petitioners s to contribute US$588.5m to the Partnership.

i. Abandoned its claim seeking an order permitting it to impose a Default Charge against all of the Petitioners' interests in the Partnership.

j. Sought a declaration that the Petitioners had breached the LPA by refusing to pay the Disputed Capital Calls.

k. Sought a declaration that the Petitioners had breached their obligations under the LPA to fund and approve budgets sufficient to qualify as a "Defaulting Partner".

l. Sought specific performance of the Petitioners alleged obligations to fund capital calls for the Early-Stage companies.

(the "**Amended Relief**")

43D. The Petitioners will rely on the fact that the GP had sought, and then abandoned, the extreme and unjustified relief originally pleaded in the Delaware Proceedings as demonstrating that the GP had improperly, and in breach of its fiduciary obligations, commenced the Delaware Proceedings to exert illegitimate pressure on them.

43E. Further, in seeking the Amended Relief in the Delaware Proceedings, the GP has acted in breach of the terms of an injunction issued by the Grand Court on 20 June 2025 and continued at a return date hearing on 1 August 2025 (the "**Writ Injunction**"). In those circumstances, any judgment obtained in favour of the GP in the Delaware Proceedings is not entitled to recognition in the Cayman Islands as being contrary to public policy. In particular:

a. By seeking a declaration that by reason of non-payment of the Disputed Capital Calls the Petitioners have breached their obligations under the LPA "*sufficient to qualify as a defaulting partner*" the GP is in breach of paragraph 1(a) of the Writ Injunction, which restrains it from "*taking any steps to designate, deem or treat [the Petitioners] as a "Defaulting Partner"…arising out of or in relation to the…non-payment of the [Disputed Capital Calls]".*

b. By seeking an order for specific performance of the alleged obligation to fund the Disputed Capital Calls, the GP is in breach of paragraphs 1(a) and / or (b) of the Writ Injunction. In particular, under paragraph 5(c)(iv) of the LPA the GP is only permitted to commence a lawsuit to collect an unpaid capital contribution upon a limited partner becoming a "Defaulting Partner". In commencing proceedings in Delaware seeking specific performance of the Petitioners' alleged obligation to fund the Disputed Capital

Calls, the GP is therefore either: (a) treating or taking steps to treat the Petitioners as a Defaulting Partner in relation to the non-payment of the Disputed Capital Calls or (b) acting in breach of paragraph 5(c)(iv) of the LPA.

c. By seeking an order which deems the Petitioners to have waived their rights to approve budgets, the GP is in breach of paragraph 1(a) of the Writ Injunction in that it is taking a step to designate, deem or treat the Petitioners as a Defaulting Partner by claiming that they have lost their rights to approve budgets under paragraph 18(f) of the LPA on the basis that they have not satisfied the Disputed Capital Calls.

Mismanagement / prejudicial conduct / lack of probity in the conduct of the Partnership's affairs

44. The GP has mismanaged the Partnership, acted prejudicially to the interests of the limited partners and demonstrated a serious lack of probity in the conduct of the Partnership's affairs, as detailed below.

Improper issuing of the Disputed Capital Calls

44A. In determining whether, and in what amount, to exercise its powers to call capital under the LPA, the GP is required to (a) act in good faith and in the interests of the Partnership; and (b) exercise its powers for proper purposes.

44B. In circumstances where the Petitioners have contributed approximately 98% of the capital invested into the Partnership and are the principal economic owners of the Partnership, the GP is required to have regard to the interests of the Petitioners when discharging its duty to act in good faith to act in the interests of the Partnership.

44C. The Disputed Capital Calls were made by the GP in breach of its fiduciary duties to (a) act in good faith and in the interests of the Partnership and (b) exercise its powers for proper purposes. In particular:

a. The Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made by the GP principally in the interests of Dr Harrison and / or Les Pommes for the improper purposes of enabling the GP to impose a Default Charge on the Petitioners which, on the GP's case, would enable it to redistribute 50% of the their

economic interests in the Partnership to the other holders of "preferred units" (principally, Mr Harrison and Les Pommes).

b. Further or in the alternative, the Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made for the improper purpose of placing commercial pressure on the Petitioners to contribute further capital to the Partnership in the context of an ongoing dispute with the GP over the extent of their obligation to do so.

c. Further or in the alternative, the Disputed Capital Calls in respect of the Portfolio Companies were not made for the proper purposes of meeting any genuine or immediate funding need on the part of the Portfolio Companies in the amounts sought under the Disputed Capital Calls.

d. Further or in the alternative, the GP did not genuinely believe that it was in the best interests of the Partnership to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

44D. The breaches pleaded in paragraph [44C] above are evident from the following matters:

a. The fact that the GP is conflicted in its decision making in relation to the funding of the Portfolio Companies and the issuing of the Disputed Capital Calls by reason of: (a) the enormous economic benefits which Dr Harrison claims to be entitled to by imposing a Default Charge on the Petitioners; (b) Dr Harrison being the sole director of the GP and a director of each of the Portfolio Companies; and (c) Dr Harrison having carried interest entitlements in the investment pools containing the Early Stage Companies in circumstances where Dr Harrison has not contributed any capital to those pools.

b. The fact that the Disputed Capital Calls were all made on the same day and were issued by the GP without the GP first responding to the Petitioners' request, made in the 15 May Email, for the GP to provide an explanation of the basis on which the GP considered that they were obliged to contribute further capital to the Early-Stage Companies.

c. The size of the Disputed Capital Calls (in excess of US$101m), being far in excess of the amounts that the GP represented would be required:

   i. In the April Funding Plan provided to the Petitioners by the GP on 29 April 2025. The April Funding Plan stated that US$16.7m of funding was required in respect of the portfolio companies in Q2 2025.

   ii. In a spreadsheet which Dr Harrison (on behalf of the GP) circulated to Daniel Finkelman, Joseph Yanchik, and William Engels on 15 May 2025 (the "**15 May Spreadsheet**"). The 15 May Spreadsheet indicated that capital calls totalling US$19.5m would be made in respect of the portfolio companies.

   iii. In the October Presentation, which represented that a sum of US$50m would be sufficient to meet the funding needs of five Early-Stage Companies (Nereid Therapeutics Incorporated ("**Nereid**"), Marlinspike, Initial, Apertor Pharmaceuticals ("**Apertor**") and Nine Square Incorporated ("**Nine Square**") over a period of 36 months.

d. The fact that the Disputed Capital Calls were made in the context of a break-down of the relationship between the Petitioners and the GP and an ongoing dispute between the Petitioners and the GP over the extent of their Contingent Subscriptions into the Partnership.

e. The fact that the Disputed Capital Calls were the culmination of a long-term and highly choreographed Default Strategy against the Petitioners.

f. The fact that the Disputed Capital Calls were made by the GP minutes before the commencement of the Delaware Proceedings.

g. The fact that the Disputed Capital Calls included a capital call of US$7.5m in respect of Apertor in circumstances where:

   i. At the time of the capital call, Dr Harrison knew that that the Partnership was holding a capital contribution of US$1.6m made by the Petitioners in respect of Apertor on 21 May 2025.

ii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in emails dated 1 May 2025, 27 May 2025 and 30 May 2025 that Apertor was going to be wound up.

iii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in an email dated 30 May 2025 that US$850,000 was required to wind up Apertor.

iv. Apertor has in fact received the funds that were required to complete an orderly shutdown.

v. In the premises, when making the Disputed Capital Call in respect of Apertor, the GP knew that Apertor did not have any genuine commercial need for US$7.5m.

h. The fact that the Disputed Capital Calls included a capital call of US$9m in respect of Deep Apple in circumstances where:

i. At the time of that capital call, Dr Harrison had been informed by Dr Liras in an email dated 20 May 2025 that: a deal for third party funding was imminent; once that funding was received, Deep Apple had no need for additional funds and Deep Apple had sufficient funding to see it through to August 2025.

ii. Deep Apple announced a concluded funding deal with a third party called Novo Nordisk on 11 June 2025 pursuant to which it was eligible to receive up to US$812 million in payments, including an upfront payment of US$32.5 million.

iii. The GP has not withdrawn the Disputed Capital Call in respect of Deep Apple.

iv. In the premises, it is to be inferred that the GP's decision to make the Disputed Capital Call in respect of Deep Apple was not based on a genuine or good faith assessment of the funding requirements of Deep Apple.

i. The fact that the Disputed Capital Calls included US$47.8m in respect of the Early-Stage companies in circumstances where:

i. On 4 April 2025, Dr Harrison sent an email to Ms Anna Batarina (an employee of ATP at that time) stating that the reallocation of capital away from the Early-Stage Companies "*is the right business decision for the portfolio in ANY financing context*".

ii. The GP had proposed to reallocate capital away from the Early-Stage Companies in the April Funding Plan.

iii. In the premises, it is to be inferred the GP did not genuinely believe that it was in the best interests of the Partnership to continue to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

The Delaware Proceedings

45. As set out above, rather than seeking to reach a consensual solution with the Petitioners, the GP issued the Delaware Proceedings in an improper attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership.

46. In the Delaware Complaint, the GP has made a number of extremely serious allegations that the Petitioners are concertedly acting to undermine the position of the ~~Early-Stage Companies~~ portfolio companies to enable them to gain personal control over those companies (or some of them), outside of the Partnership. By way of example, the Delaware Complaint states:

a. "*…the Defendants' [have engaged in] premeditated financial destruction of* [REDACTED] *Delaware portfolio companies*" (paragraph 1);

b. "[the Defendants have] *arbitrarily and irrationally refusing to approve new budgets for* [REDACTED] *portfolio companies* [REDACTED]*, but whose initial funding has run out*" (paragraph 1);

c. "*The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve* [REDACTED] *of the financing needed to fund their respective missions*." (paragraph 6);

d. "*The Family Office LP's stated goal is to drive* [REDACTED] *portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on* [REDACTED] *companies (if any) that they choose…The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments…*" (paragraph 7);

e. "*Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for* [REDACTED] *companies and negotiate new budgets for* [REDACTED] *companies.*" (paragraph 12);

f. "*These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund*." (paragraph 69);

g. "*…the Family Office LP has capriciously withheld budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing*…" (paragraph 77);

h. "*…the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy* [the Partnership]." (paragraph 121); and

i. "*The* [Partnership] *has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies*." (paragraph 150).

47. These allegations made by the GP in the Delaware Complaint are untruthful and wholly unfounded. The Petitioners have paid out the entirety of their Contingent Subscription so they are not obliged to contribute further capital. Further and in the alternative, the Petitioners, as the holders of the majority of the Preferred Units, are entitled to refuse to invest more of their capital into particular projects if the relevant budgets and associated milestones have not

been adhered to. In respect of certain of the Early-Stage Companies, the ~~May 2025~~ Disputed Capital Calls are not in accordance with the approved budgets. The Early-Stage Companies have to date failed to meet any, or sufficient, milestones specified in the investment memoranda attached to the approved budgets and the Petitioners have formed the view that the relevant portfolio companies are not viable investments. It would plainly be illogical and irrational for the Petitioners, as the limited partners of the Partnership with a c. 9~~8~~% stake in the Partnership's assets, to deliberately seek to "starve" otherwise viable portfolio companies, which have to date been funded exclusively by their capital contributions. Insofar as new budgets are concerned, the Petitioners have sought further information from the GP in order to assess the financial performance and merits of the proposed budgets but the GP has refused to provide the information sought.

48. The GP's pursuit of the Default Strategy and / or the Delaware Proceedings and the unfounded, incendiary and wholly inappropriate allegations made therein evidence the GP's serious lack of probity and demonstrate its improper management of the affairs of the Partnership. Those matters give rise to a justifiable loss of trust and confidence in the management of the GP by the Petitioners.

49. The Delaware Proceedings had ~~have~~ also evidently been brought for an improper purpose (including as part of the Default Strategy), to enable the GP to compel the Petitioners to contribute up to US$545 million of further funding to the Partnership in complete disregard of the provisions of the LPA, such funding being substantially in excess of the Petitioners' Contingent Subscriptions, including US$331.3 million for which the GP has not presented any budget to the Petitioners for approval (let alone obtained such approval) (~~see paragraph 51 below~~). The GP had also simultaneously ~~seeks~~ sought to engineer a default in order to impose a default charge on the Petitioners to confiscate 50% of their interests in the Partnership and thereby take control of the Partnership and billions of dollars of the Petitioners' assets, which would fall to be redistributed to Dr Harrison and his family. The GP also wishes to remove the Petitioners' right to approve new budgets so as to obtain control without the need for the Petitioners' approval of such budgets.

49A As pleaded in paragraph 43C above, the GP amended the relief sought in the Delaware Proceedings shortly before the trial of those proceedings was due to commence. However, the Petitioners will say that:

a. the relief originally pleaded in the Delaware Proceedings was wholly unjustified;

b. the relief originally pleaded in the Delaware Proceedings was included for improper purposes of exerting economic pressure on the Petitioners; and

c. the fact that it had been sought by the GP evidences the GP's serious lack of probity, its improper management of the affairs of the Partnership and gives rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

49B Further, the GP's conduct in the Delaware Proceedings has given rise to a justifiable loss of trust and confidence. In particular:

d. On 17 September 2025, the Petitioners issued a summons for the appointment of joint provisional liquidators over the Partnership (the "**JPL Summons**").

e. On 19 September 2025, the GP filed an emergency motion in Delaware seeking an anti-suit injunction preventing the Petitioners from pursuing the JPL Summons pending the outcome of the Delaware Proceedings (the "**Anti-Suit Injunction Motion**").

f. The Anti-Suit Injunction Motion was brought and pursued by the GP in breach of paragraph 18(g)(vi) of the LPA and / or in a manner that was vexatious and oppressive to the Petitioners and / or an unconscionable interference with the Cayman's Court's exclusive winding up jurisdiction. In support of these allegations, the Petitioners rely on the facts and maters set out at sub paragraphs (g)-(k) below.

g. Pursuant to paragraph 18(g)(vi) of the LPA, the GP contractually agreed to submit to the jurisdiction of the Cayman Court in respect of (among other matters) the JPL Summons. In breach of that contractual agreement, the GP sought by its Anti-Suit Motion to prevent the Petitioners from pursuing the JPLS summons. As a result of that breach and the other vexatious, oppressive and unconscionable conduct particularised at sub-paragraphs (h)-(k) below, it was not possible to move the JPL Summons at the hearing fixed for that purpose by the Cayman Court.

h. The GP moved the Anti-Suit Injunction Motion at a hearing before the Delaware Court on 19 September 2025 (the "**September Hearing**") at which it misrepresented to the

Delaware Court the effect of the PL Summons, and the Petitioners; conduct in connection with it, giving rise to a justifiable lack of trust and confidence. In particular:

i. The GP represented in a brief presented to the Delaware Court that in a letter sent to Walkers by Campbells on the 17 September 2025, the Petitioners had stated that "*unless ATP agrees by 10 am on September 19, to certain undertakings, it will seek emergency and expedited ex parte appointment of PLs from the Cayman Court*". Campbells' letter said no such thing. Instead, it requested for the GP to give certain undertakings pending an *inter partes* hearing of the PL Summons (which the letter proposed should occur on 31 October 2025), failing which the Petitioners "*will be forced to seek urgent relief without further notice to protect our clients' position until the PL Application is resolved*".

ii. The GP represented in a brief presented to the Delaware Court that the PL Summons was a "*frontal attack on this [Delaware] Court's jurisdiction and an attempt to circumvent this Court's orders expediting this action and denying Rigmora's Motion to Stay in favour of the later filed Cayman Proceedings that Rigmora previously lost*". That was untrue. The appointment of JPLs would not have interfered with the Delaware's Court's jurisdiction in any way.

iii. The GP represented in a brief presented to the Delaware Court that a PL under Cayman law is similar to a bankruptcy trustee under U.S. law "*Except here, the trustee would be hand-selected by Rigmora, which has a demonstrated purpose of starving the portfolio Companies*". That submission was false, in particular because it failed to acknowledge that a provisional liquidator is an officer of the Cayman Court, obliged to act independently in the best interests of the Partnership.,

iv. The GP represented in a brief presented to the Delaware Court that "*Rigmora appears to view a trial in Delaware as an unacceptable risk, and is attempting to mitigate that risk by displacing ATP as the Fund's general partner before trial as soon as possible*". That was false. The PL Summons: did not seek any orders removing ATP as the Fund's general partner and sought to appoint

provisional liquidators with a limited mandate which *did not include* taking over the conduct of the Delaware Proceedings.

v. The GP represented during submissions at the September Hearing that the JPL Summons would "*deprive this Court of the opportunity to fully adjudicate and remediate the breaches of contract that we have been litigating in this court since May*". That was untrue. The appointment of PLs would not have deprived the Delaware Court with the opportunity to fully adjudicate the issues before it.

vi. The GP represented during submissions at the September Hearing that if provisional liquidators were appointed in circumstances where the Delaware Court order the Rigmora LPs to fund US$215m of approved budgets, the PLs "*could send [the $215m] right back to Rigmora, instead of where it is supposed to go, which is in furtherance of the Fund's objectives*". That submission misrepresented the independence of provisional liquidators, and their obligation to act in the interests of the Partnership.

i. At a hearing in the Cayman Islands on 3 October 2025, the Cayman Court directed that the PL Summons be heard on 3-4 November 2025. On 13 October 2025 the GP signed a consent order agreeing that the PL Summons should be listed for a hearing on 3-4 November 2025.

j. Three days later (on 16 and 17 October 2025) the GP informed the Delaware Court of its intention to further pursue the Anti-Suit Injunction (which had been adjourned at the September Hearing) which it did by reply brief dated 19 October 2025. As an alternative, the GP suggested at the end of the trial of the Delaware Proceedings that the Delaware Court produce a judgment on the Delaware Proceedings in advance of 3–4 November 2025, or shortly thereafter, despite the Delaware Judge's indication of the difficulties she would have in producing a coherent judgment within that compressed period.

k. In the circumstances, faced with the risk of the Anti-Suit Injunction sought by the GP or the issuance as its request of a judgment on the Delaware Proceedings on a timescale so compressed as to prejudice the Delaware Court in fairly disposing of those proceedings and/or the Petitioners' in having fair opportunity to present its

case in those proceedings, the Petitioners had no realistic option but to seek to leave withdraw the JPL Summons.

Wilful and persistent breaches of the LPA

~~50. In the Delaware Complaint, the GP seeks specific performance to compel the limited partners to immediately fund prior approved but unfunded budgets in response to capital calls as and when they are received (see paragraph 14 of the Delaware Complaint). This amounts to an accelerated capital call, but the GP has wholly failed to comply with the requirements in clause 5(a)(ii) of the LPA (see paragraph 19(c) above) by providing any written assurances and/or diligenced presentation that the relevant project(s) will be completed within the aggregate amount budgeted therefor, and instead seeks to compel the Petitioners to meet accelerated capital calls in the absence of these assurances, by court order.~~

~~51. The GP also seeks specific performance to compel the Petitioners to provide further funding of up to US$331.3 million (see paragraph 164 of the Delaware Complaint). No budgets have been provided by the GP or approved by the Petitioners in respect of any such funding (which the GP accepts - see paragraph 5 of the Delaware Complaint). Indeed, the GP has not provided any information to the Petitioners about the intended use of the further funding, merely asserting in the Delaware Complaint that its use is "*including for those companies specifically named in Amendment No. 22 – Ascidian, Aulos, Nine Square, Nereid and Replicate*". This falls far short of the formal budget proposals which are required to be presented to the Petitioners for approval under the LPA, which budgets serve the further purpose of enabling the Petitioners to ensure that their capital is being applied in a proper manner.~~

52. In the Delaware Proceedings, the GP has sought ~~seeks~~ to circumvent the express provisions of the LPA in the Delaware Proceedings, to compel the Petitioners to provide vast sums of further funding, without specifying what those funds are to be used for and denying the Petitioners any oversight over how their funds are applied, contending that the Petitioners have "waived" or "forfeited" their right to approve budgets. The GP's attempts to obtain funding to be applied entirely at its own discretion without any oversight by the Petitioners demonstrates a serious lack of probity and mismanagement and has caused the Petitioners to lose trust and confidence in the GP's ability to manage the Partnership.

The GP has knowingly misled the Petitioners into contributing capital to the Partnership

52A. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

52B. The GP issued a capital call notice dated 15 January 2025 of US$1.6m in respect of Marlinspike (the "**Marlinspike January Call**"). By making the Marlinspike January Call, the GP represented that that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52C. The Petitioners paid the Marlinspike January Call by agreeing that the US$1.6m could be reallocated to Marlinspike from funds the Petitioners paid in respect of a 16 January 2025 capital call for Nine Square. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike January Call other than for the purposes of meeting Marlinspike's funding requirements.

52D. On 3 February 2025, the GP issued a capital call notice of US$400,000 in respect of Marlinspike (the "**Marlinspike February Call**", together with the Marlinspike January Call the "**Marlinspike Calls**"). By making the Marlinspike February Call, the GP represented that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52E. On 13 February 2025 the Petitioners arranged for payment of the Marlinspike February Call, which the GP had received by the next day. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike February Call other than for the purposes of meeting Marlinspike's funding requirements.

52F. In fact, contrary to the representations made by the GP and unknown to the Petitioners and in breach of the LPA, the GP did not intend to use and did not use the proceeds from the Marlinspike Calls to meet Marlinspike's funding requirements.

52G. Instead, the GP procured that the proceeds from the Marlinspike Calls were transferred to another portfolio company Nereid. In particular:

a. On 27 March 2025, Mr Finkelman on behalf of the GP sent an email to Willam Engels (CFO at ATP) and Jonathan Ravski (Accounting Manager at ATP) instructing them to wire US$1m of the proceeds from the Marlinspike Calls to Marlinspike "*but let them know that it is going right out the door to Nereid*".

b. On 27 March 2025, Mr Ravski emailed the accounting department at Marlinspike explaining that "*We have wired $1m under the Series A Agreement. Please note that these funds are to be used as a loan to Nereid as per discussions that took place*".

c. On 27 March 2025, the operator of Marlinspike's accounting mailbox responded saying "*this is the first we're hearing of this*".

d. On 28 March 2025, Marlinspike transferred US$1m as a loan to Nereid ("**Nereid Loan**").

52H. As at the date of the Marlinspike Calls and Nereid Loan, no approved budget was in place in respect of Nereid. In those circumstances, the GP was not permitted to call capital for Nereid from the Petitioners under paragraph 5(a)(ii) of the LPA. Paragraph 19(b) above is repeated.

52I. In the premises:

a. The representations referred to at paragraphs 52B and 52D above were knowingly false, in that the GP did not intend to use the proceeds from the Marlinspike Calls to meet the funding requirements of Marlinspike. Instead, the GP intended to use the proceeds (or a substantial portion thereof) to meet the funding requirements of Nereid (thereby circumventing the LPA's requirement that capital can only be called for a portfolio company in accordance with an approved budget).

b. The Petitioners were misled into contributing capital to the Partnership by the knowingly false representations of the GP.

c. Further, the GP breached the terms of the LPA by procuring for the proceeds of the Marlinspike Calls to be used other than for the purposes of meeting Marlinspike's funding requirements.

d. The GP's conduct has given rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

Misappropriations / dissipations of assets

52J. Between 31 July 2025 and 8 August 2025 the Partnership received three payments totalling US$62,776,352.48 (the "**Q3 2025 Receipts**"). In particular:

a. A payment of US$20,035,952.54 on 31 July 2025.

b. A payment of US$41,736,871.3 on 1 August 2025.

c. A payment of US$13,528.64 on 8 August 2025.

52K. Between 4 August 2025 and 27 August 2025, the GP caused US$39,306,044 of the Q3 2025 Receipts to be paid away from the Partnership (the "**Q3 2025 Payments**"). In particular:

a. On 4 August 2025, US$20 million was transferred to the client account of the GP's US attorneys at Quinn Emanuel.

b. On 4 August 2025, US$8,906,044 was paid directly to ATLS in respect of alleged management fees.

c. Between 11 August 2025 and 27 August 2025 US$10.4m was paid to (or on account of) various portfolio companies.

52L. The GP did not disclose the existence of the Q3 2025 Receipts or the Q3 2025 Payments to the Petitioners. The Petitioners only became aware of their existence in September 2025 in correspondence prompted by answers given during the deposition of the GP's witnesses in the Delaware Proceedings.

52M. The Q3 2025 Receipts included a sum of US$41,736,871.3 received from Braeburn on 1 August 2025 (the "**Braeburn Prepayment**"). The circumstances in which the Braeburn Prepayment came to be received by the Partnership evidences the GP's serious lack of probity and gives

rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. The Braeburn Prepayment represented an early repayment of sums owed to the Partnership under certain convertible loan notes issued by Braeburn between October 2020 and August 2023 (the "**Braeburn Notes**").

b. The Braeburn Notes were not due to be repaid until March 2029 and earned the Partnership interest at 8% per annum.

c. Despite this, the GP approached Braeburn on dates unknown to offer a 10% discount on the principal owed under the Braeburn Notes in return for early repayment.

d. The Braeburn Prepayment was not in the best interests of the Partnership since it has resulted in the Partnership forgoing both capital and interest on the Braeburn Notes.

e. In procuring the Partnership to offer and accept the Braeburn Prepayment, the GP acted in breach of its fiduciary duties to act *bona fides* in the best interests of Partnership. It is to be inferred (including from the Q3 2025 Payments) that the Braeburn Prepayment was improperly procured by the GP at least in part for the purposes of funding its illegitimate litigation campaign against the Petitioners.

52N. Further, in making the Q3 2025 Payments, the GP has demonstrated a serious lack of probity and has improperly managed the affairs of the Partnership so as to give rise to a justifiable loss and confidence in the GP's management of the Partnership. In particular:

a. The Braeburn Notes were assets held in Pool Braeburn (being "debt securities" of Braeburn owned by the Partnership within the meaning of paragraph 21(a) of the LPA). As such, the GP was required to distribute the proceeds of the Braeburn Prepayment to the Petitioners in accordance with Paragraph 21(d) of the LPA. The Braeburn Prepayment was not available to be applied by the GP for any other purpose. Despite this, the GP improperly and in breach of the LPA funded the Q3 2025 Payments from the proceeds of the Braeburn Prepayment.

b. The GP's entitlement to deal with the remainder of the Q3 2025 Receipts is governed by paragraph 8(c) of the LPA (as amended pursuant to Amended 4 dated 1 April 2015). Paragraph 8(c) of the LPA provides that:

"The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership and Intermediary expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with Budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior consent of the holders of a majority of the Preferred Units."

c. Under paragraph 8(c) of the LPA, the GP was only permitted to apply the Q3 2025 Receipts towards investments in projects in a manner "*consistent with the applicable budgets"* or with the prior consent of the Petitioners as the holders of a majority of the Preferred Units.

d. In breach of the LPA, the GP used the Q3 2025 Receipts to make payments to portfolio companies where no approved budget exists and without the prior consent of the Petitioners. Those payments were improper, ought not to have been made and have dissipated the Partnership's assets. In particular:

i. On 11 August 2025, the GP transferred US$2 million from the Q3 2025 Receipts to the portfolio company Aethon Therapeutics ("**Aethon**"). The approved budget in place in respect of Aethon incorporates funding milestones that have not been met. As such, the payment to Aethon was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Aethon is conditional upon funding milestones being

met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Aethon pending the resolution of that dispute.

ii. On 14 August 2025, the GP transferred US$150,000 from the Q3 2025 Receipts to the portfolio company Nine Square and US$250,000 from the Q3 2025 Receipts to the portfolio company Nereid. There were no approved budgets in respect of Nine Square or Nereid and the Petitioners did not consent to those payments.

iii. On 21 August 2025, the GP transferred US$1.5 million from the Q3 2025 Receipts to the portfolio company Replicate Biosciences ("**Replicate**"). Under paragraph 26 of the LPA, the Petitioners' approval of a budget in respect of Replicate was expressly contingent upon "*at least $300 million being realised (including through deemed distributions) by [the Petitioners] on a sale or financing of its interest in ATP LLC*" (the "**Realisation Condition**"). The Realisation Condition has not been met. Accordingly, the payment to Replicate was not "in accordance with" an applicable budget within the meaning of paragraph 8(c) of the LPA, and the Petitioners did not consent to that payment.

iv. On 22 August 2025, the GP transferred US$100,000 from the Q3 2025 Receipts to the law firm Wilson Sonsini Goodrich & Rosati ("**Wilson Sonsini**") on account of Marlinspike, in discharge of legal fees owed by Marlinspike. The approved budget in place in respect of Marlinspike incorporates funding milestones that have not been met. As such, the payment to Marlinspike was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Marlinspike is conditional upon funding milestones being met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Marlinspike pending the resolution of that dispute.

e. The GP has also acted with a serious lack of probity in continuing to seek to compel the Petitioners to pay the full amount of the Disputed Capital Calls following payment of the Q3 2025 Receipts to the portfolio companies (including, in addition to those

identified above, a payment of US$6m from the Q3 2025 Receipts to Ascidian on 11 August 2025 (being the full amount of the Disputed Capital Call in respect of Ascidian).

f. On 4 August 2025, the GP transferred US$20 million from the Partnership's bank accounts to Quinn Emanuel's client account in the US as a "reserve" to be available to discharge legal fees owed to Quinn Emanuel and Walkers. In causing that payment to be made, the GP has acted with a serious lack of probity in that: (a) legal costs incurred by the GP in connection with the proceedings in Delaware and the Cayman Islands are not properly incurred on behalf of the Partnership; (b) alternatively, the sum of $20 million is not a reasonable amount to incur on behalf of the Partnership in connection with the ongoing disputes; and (c) in any event, the GP ought to have retained that sum in the Partnership's own bank accounts and there was no proper justification for the GP to have caused it to be transferred away from the Partnership pending the outcome of the Petition.

52O. Further, the GP's failure to disclose the existence of the Q3 2025 Receipts and failure to seek validation orders under s.99 of the ELP Act evidences the GP's serious lack of probity and gives rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. At the hearing of the return date for the Writ Injunction on 1 August 2025, the GP sought to vary the Writ Injunction in reliance upon the Third Affirmation of Dr Harrison dated 21 July 2025 ("**Harrison 3**").

b. In Harrison 3:

i. Dr Harrison asserted (at [125]) that: "*the Injunction Order would instead bring an immediate and ongoing halt to the Partnership's funding of the portfolio companies for the entire period the injunction Order remains in place*".

ii. Dr Harisson asserted, in support of the GP's application for fortification of the Petitioners' undertaking in damages, that "*Ascidian is presently being starved of the requisite funding to achieve [its] goals as a result of the Family Office's refusal to meet capital calls (including the 30 May Capital Calls) and approve budgets*".

c. By the time of the return date in respect of the Writ Injunction on 1 August 2025:

i. the GP and Dr Harrison knew that the Partnership had just received (or was about to receive) circ.US$62m;

ii. the GP and Dr Harrison intended to use those recently received (or imminently to be received) funds for the purposes of providing funding to the portfolio companies; and

iii. without prejudice to the generality of (ii) above, the GP and Dr Harrison intended to pay US$6m of those funds to Ascidian (being the full amount of the Disputed Capital Call in respect of that company).

d. By reason of the matters referred to in paragraph [52O(c)] above, the evidence referred to in paragraph [52O(b)] above was inaccurate and misleading to the knowledge of the GP and Dr Harrison.

e. In the premises, the GP demonstrated a serious lack of probity, giving rise to a justifiable loss of trust and confidence, by: (a) failing to correct the inaccurate and misleading evidence placed before the Court on 1 August 2025 and (b) continuing to rely on that evidence to seek a variation of the Writ Injunction on 1 August 2025.

Improper denials

52P. The GP has denied that the relationship between the GP and the Petitioners has deteriorated substantially and denied that there has been a breakdown of trust and confidence between it and the Petitioners, including:

a. At paragraph 47 of its Defence to the Petition.

b. At paragraph 75(e) of its Defence to the Petition.

c. At [18(c)(xi)] of a skeleton argument filed on behalf of the GP for the hearing of the return date of the Writ Injunction, which claimed that: "*The Family Office commenced the present hostilities on 15 May 2025 by repudiating its funding commitments to the Partnership*".

d. At the hearing of the return date of the Writ Injunction on 1 August 2025, when the GP's leading counsel submitted to the Court that: (i) in May 2025 the GP was "*in good faith, still operating under the assumption that the relationship was working well*" and (ii) that any breakdown in the relationship between the parties "*stems from my learned friend's clients' actions in May this year when it decided unilaterally not to pay the capital calls or approve budgets*".

52Q. Those denials and statements were untrue and improperly made. The GP has been exploring ways to commence litigation against the Petitioners and manufacture a situation where it can default the Petitioners for many months. Paragraph 43A above is repeated. In those circumstances:

a. The GP has been aware of a serious deterioration in the relationship between it and the Petitioners for months before May 2025. The GP did not and does not honestly believe otherwise.

b. In May 2025, the GP was not operating under the assumption that the relationship between it and the Petitioners was working well. The GP did not and does not honestly believe otherwise.

c. The GP knew that the breakdown in the relationship between the parties did not stem from the Petitioners' failure to pay the Disputed Capital Calls. The GP did not and does not honestly believe otherwise.

52R. The GP's improper denials of the existence and extent of deterioration of the relationship between it and the Petitioners, evidence the GP's serious lack of probity, demonstrate its improper management of the affairs of the Partnership and has given rise to a justifiable loss of trust and confidence in its ability to manage the Partnership.

Failure to maintain records in the manner of a reasonably competent general partner

52S. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a list of partners and register of partners, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. Under paragraph 16(b) of the LPA, the GP is required "*at all times*" to maintain a list containing the names, addresses and subscriptions of the limited partners of the Partnership (the "**List of Partners**").

b. Under section 29(1) of the ELP Act, the GP is required to maintain "*a register of limited partners which shall contain the name and address of each partner of the exempted limited partnership, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner*" (the "**Register of Partners**"). Under section 29(6) of the ELP Act it is a criminal offence for a general partner to fail to comply with its obligation to maintain a Register of Partners.

c. In breach of paragraph 16(b), the GP has failed to maintain a List of Partners.

d. In breach of section 29(1) of the ELP Act, the GP has failed to maintain a Register of Partners.

52T. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a consistent position as regards the extent of the Petitioners' Contingent Subscriptions, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. A reasonably competent general partner is required to maintain accurate internal records of the extent of each limited partner's Contingent Subscriptions and undrawn Contingent Subscriptions.

b. Following the agreement of Amendment 20 in June 2021, the GP has presented 10 different figures to explain the extent of the Petitioners' Contingent Subscriptions in respect of the Partnership, ranging from US$2.5bn to US$2.946bn. It is to be inferred that the GP has failed to maintain any, or any accurate or satisfactory, records of the Petitioners' Contingent Subscriptions in respect of the Partnership.

c. Since May 2025 the GP has presented 13 different explanations of the size of the Petitioners' undrawn Contingent Subscriptions ranging from US$494,119,277 to US$590,736,444. It is to be inferred that the GP has failed to maintain any, or any accurate

or satisfactory, records of the Petitioners' undrawn Contingent Subscriptions in respect of the Partnership.

Recharging costs to the portfolio companies

53. Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17), ATLS receives an annual fee (the "**ATLS Fee**") payable during the term of the Partnership which is funded by capital contributions of limited partners holding preferred units. The ATLS Fee is required to be applied towards certain expenses of the Partnership incurred in managing the Partnership, including compensation and benefits for employees, and facilities and related overhead expenses (Section 11 of Amendment 9). Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20), the GP is required to prepare a yearly budget for the ATLS Fee which is presented to the "Subject Limited Partner" (i.e. the Petitioners) no later than 1 December on the previous year. The Petitioners then have sole authority to either approve or reject the ATLS Fee budget. In the event a budget for the ATLS Fee is not approved in a calendar year, the approved budget for such year will be the most recently approved budget (subject to some exceptions in relation to extraordinary, non-recurring expenses).

54. However, since 2021, the GP has improperly charged the employee costs of ATP investment professionals to the Partnership's portfolio companies, which costs ought to be covered by the ATLS Fee approved by the Petitioners. In particular:

    a. The Partnership's consolidated financial statements for the years ended 2023 and 2024 show that the Partnership's expenses exceeded the capital calls paid by the limited partners. To fund the gap between Partnership's expenses and capital calls paid (principally by the Petitioners), the GP received investment income, comprising: (i) interest income; and (ii) service revenue from affiliated entities.

    b. The Petitioners understand that the revenue in (ii) above comprises support service costs illegitimately charged to portfolio companies in breach of the LPA.[2]

[2] "Service revenue from affiliated entities" is described in the notes to the Partnership's consolidated financial statements as "*ATLS, ATLS (UK), and ATPR provide administrative, technical and strategic consulting services to other entities within the Partnership group and the Partnership's portfolio companies. Revenue from services provided to the entities within the consolidated group are eliminated upon consolidation. Services*

c. Dr Harrison confirmed by email dated 8 December 2023 that "*ATP employees [are] filling critical roles at certain Portfolio Companies*" and "*those Portfolio Companies* [are] *reimbursing ATP for a portion of the employment costs incurred for those employees*". Dr Harrison also provided the Petitioners with a report from Price Waterhouse and Cooper dated 17 March 2023 (the "**PwC Report**") which confirmed that ATLS had entered into a services arrangement with the portfolio companies for the purposes of charging the portfolio companies costs associated with the provision of management and scientific research and advisory services.[3]

d. Further, the proposed, unapproved ATLS Fee budgets prepared by the GP for 2021 through 2025 included a credit for "*Investment Professionals – Portfolio Reimbursement*".

e. In December 2023, the Petitioners raised with Dr Harrison that the proposed ATLS Fee budgets for 2024 purported to assign costs which ought properly to be covered by the ATLS Fee, in breach of the LPA. Dr Harrison responded, stating that he disagreed but provided no reasons. The budget for the 2024 ATLS Fee was not agreed.

f. The GP's charging of ATP employee costs to the Partnership's portfolio companies is a breach of Paragraph 20(e)(ii) of the LPA (as amended by Amendments 10 and 17) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17). Further or in the alternative, the GP's recharging of expenses to the Partnership's portfolio companies is a breach of Paragraph 8 of the LPA (as amended), as it deprives the Petitioners of income they would have received via the distribution mechanisms in the LPA.

55. The Petitioners are also concerned that the GP has been inappropriately incurring travel expenses for investment professionals which appear to be exorbitant. In particular, the ATLS Fee Budgets for 2024 and 2025 respectively budget for travel for investment professionals at US$690,000 for 2024 and US$625,000 for 2025.

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provided may include internal costs, such as employee expenses and certain overhead expenses, and external costs incurred from third party providers."

[3] For the avoidance of doubt, the PwC Report was a transfer pricing study, which estimated an arm's length range of returns applicable to the provision of certain support services by ATLS to the Partnership's portfolio companies. The PwC Report did not concern whether the assignment of such costs to the Partnership's portfolio companies was permissible under terms of the LPA.

56. The GP's recharging of expenses to the Partnership's portfolio companies, and charging exorbitant travel expenses, demonstrates a serious lack of probity and mismanagement. The charging of expenses to the portfolio companies also gives rise to a serious conflict of interest (see further below), which has resulted in the Petitioners' loss of trust and confidence in the GP.

Failure to provide information

57. The GP has failed or refused to provide the Petitioners with information about the operation of the Partnership that would otherwise enable the Petitioners to assess the financial position of the clinical stage companies in order to determine whether new budgets ought to be approved, and to determine whether those managing the Partnership are acting in accordance with their duties. In particular:

    a. The GP refused to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Aulos Bioscience Inc. and Ascidian Therapeutics Inc.

    b. The GP refused or failed to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Replicate, which is developing self-replicating RNA immunotherapies. The GP is not entitled to call for capital in respect of Replicate because it has not complied with the various conditions that must be met before capital can be called under the current budget. Paragraph 26 of the LPA (introduced by Amendment 22) provides that any budget approved by the Petitioners for Replicate after the execution of Amendment 22 will be contingent upon certain realisations being achieved (through deemed distributions) by the Petitioners on a sale or financing of its interest in the entity formerly known as ATP Life Science Sub LLC , now known as BBN Life Science Sub LLC, (the "**Royalty Refinancing**"). Such realisations have not been realised (including through deemed distributions) by the Petitioners. Despite this, the GP now contends and seeks an order from the Delaware Court confirming that the Petitioners have waived or forfeited their right to approve budgets (see paragraphs 23, 163 and 191 of the Delaware Complaint), in a further and altogether more ambitious attempt to deny the Petitioners access to information about the financial position of the portfolio companies. Separately, the GP contends

that Paragraph 26 of the LPA (as amended by Amendment 22) required the Petitioners to pursue Royalty Financing in short order (see paragraph 122 of the Delaware Complaint).

c. The GP refused or failed to provide supporting information or an explanation as to why the capital call notice issued on 7 February 2025 in respect of uncalled Partnership expenses for the second half of 2024 was reduced from the previous call (and it falls to be inferred that the reduction was because the GP's legal expenses had been improperly charged to the Partnership – see further paragraph 65 below).

d. The GP has also failed to provide any further information about legal expenses charged to the Partnership in 2024 (see further paragraph 65 below).

e. The GP has failed to respond to requests for information regarding the purportedly binding nature of obligations purportedly owed by limited partners in their personal capacity to third parties, and of obligations owed by the Partnership to the portfolio companies (see further paragraph 63 below). The GP has also failed to provide copies of documentation evidencing such obligations, including the investment management agreements entered into between the Partnership and the portfolio companies.

f. The GP has failed or refused to respond to requests for information about the basis on which it contends that the limited partners are required to continue to fund the portfolio companies, notwithstanding those companies' failure to hit milestones or adhere to business plans set out in the agreed budgets. Rather than provide this information, the GP instead seeks to rely on the Petitioners' requests as an anticipatory breach of the LPA in the Delaware Complaint (see paragraph 170 of the Delaware Complaint).

58. The Petitioners have at all material times been entitled to information which enables them to determine whether the GP is acting in accordance with its duties and obligations, including the books, records, accounts and assets of the Partnership (see Clause 16(b)-(c) of the LPA, and section 22 of the ELP Act). The Petitioners are also entitled to receive (and the GP is obliged to provide) financial reports at least every calendar quarter in respect of all entities within the Partnership structure, which must include individual project income, expenses and operating costs, and must show actual versus budgeted results for the relevant period and

explain any major variances to the budget (see Schedule C to the LPA). The GP has not only denied the Petitioners their rights to this information but seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings. Even the limited information provided by the GP to the Petitioners confirms that the GP has committed serious breaches of duty which has resulted in the Petitioners' loss of trust and confidence in the GP.

Conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership

59. The GP has a conflict of interest and/or has breached its fiduciary duties to act in good faith in the interests of the Partnership.

~~*Improperly issuing capital calls*~~

~~*60.* The GP's issuance of capital calls of over US$100 million on 30 May 2025 to be paid by 13 June 2025/17 June 2025 (i.e. the May 2025 Capital Calls - which are not referenced in the Delaware Proceedings) amounts to a further breach of the GP's duty to act in good faith in the interests of the Partnership. The May 2025 Capital Calls were not issued for proper purposes or *intra vires* under the LPA, as it is evident from the timing of the capital calls, coinciding with the issue of the Delaware Complaint, that the capital calls are part of the GP's litigation strategy to apply improper pressure to the Petitioners through threats of default and/or its broader strategy to take control of the Partnership. The scale and nature of the May 2025 Capital Calls is also inconsistent with the funding scenario prepared by the GP on 30 April 2025 in which the GP proposed to cut the budgets for the Early-Stage Companies so as to commit only $1 million to one Early-Stage Company (Red Queen) as part of an orderly winding down of those companies. It can be inferred that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying significant capital given the terms of that funding proposal. Notwithstanding, the GP has called $47.8 million in capital for Early-Stage Companies pursuant to the May 2025 Capital Calls.~~

~~*Attempt to compel the limited partners to provide further funding to the portfolio companies*~~

~~61. As set out above, the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio~~

~~companies and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership. In particular, the GP seeks in the Delaware Complaint, amongst other things, "*a declaratory judgment that [the Petitioners are] currently in material breach of [their] contractual duties under the LPA and [have] waived [their] right to approve budgets*" (paragraph 163) or alternatively, specific performance requiring the Petitioners to fund capital calls in excess of the level of their Contingent Subscription and compelling the Petitioners to consider further budgets (paragraph 164). The GP also seeks a declaratory judgment that the Petitioners are in breach of their funding and budget approval obligations, and an order that the GP is entitled to impose a default charge against the Petitioners' interests in the Partnership or the investment pools to which its purported default relates (paragraphs 188-190).~~

62. The Petitioners' continued funding of ~~portfolio companies~~ the Early Stage Companies is in the interests of those companies, the GP and its employees, and ATP (not in the interests of the Partnership~~'s~~). The portfolio companies are co-founded and managed by executives from the GP, including by Dr Harrison himself, (see paragraph 32 of the Delaware Complaint) who would remain employed thereby, and the GP would be able to continue charging the portfolio companies for expenses which ought to be covered by the ATLS Fee. ATP, of which Dr Harrison is founder and Managing Director, is also wholly dependent on the continued funding of the Partnership (and ATP's continued involvement therein) as ATP has no meaningful business interests or capital under management other than that belonging to the Partnership, which has been almost entirely contributed by the Petitioners. Further, Dr Harrison is a director of each of the portfolio companies and owes fiduciary duties to them. It is in the interests of the portfolio companies (many of which are said, by the GP, to be in a state of financial distress) to obtain as much funding from the Partnership as possible but it is not necessarily in the interests of the Partnership to continue to provide such funding. The GP has a demonstrable conflict of interest, as a result of which the Petitioners have lost trust and confidence in its ability to manage the Partnership.

62A. Further, the GP has: (a) denied that it is subject to any conflict of interest (including at [76] of its Defence to the Petition); (b) failed to take any steps to manage that conflict, including when considering whether and in what amount to call capital from the Petitioners in May 2025; and (b) refused to accept the Petitioners' proposal on 3 July 2025 for the appointment of an independent conflict director. Those denials and failures have given rise to a further justifiable loss of trust and confidence in the GP's ability to manage the Partnership.

Exposure of the Partnership to binding and open-ended funding commitments to loss-making portfolio companies

63. The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the Delaware Complaint says as follows:

a. The Complaint refers at paragraph 85 to a letter sent by Dr Harrison to the Petitioners on 29 November 2022 in which he stated that: "*a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages*"; and

b. The Complaint states at paragraph 143:

> "*The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it,* ***because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) obligations for ATP to purchase additional shares at the request of the company board. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones.*** *For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company* [REDACTED] *on December 6, 2021 included (a) an initial* [REDACTED] *investment by ATP and (b) an obligation for ATP to purchase up to* [REDACTED] *in additional shares at the request of the* [REDACTED] *board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as* [REDACTED] *in* [REDACTED]. *To date, ATP has invested* [REDACTED] *in* [REDACTED], *which is short of ATP's total potential obligation to the company under the agreement.* ***Should the additional funding obligations become due, then the Family Office LP's refusal to meet a*** [REDACTED] ***capital call would cause ATP to breach its agreement with the portfolio company.***" (emphasis added)

64. As set out above, the continued funding of the portfolio companies is in the interests of the portfolio companies, the GP (and ATP), not the Partnership and the limited partners. The GP has also failed to provide information to the Petitioners about the Partnership's purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners' requests that it do so (see paragraph 57 above). The GP's apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims and is a fetter of the Petitioners' discretion to approve budgets, and the GP's

~~subsequent lack of probity has justifiably caused the Petitioner to lose trust and confidence in the GP.~~

Charging personal legal expenses to the Partnership

65. The ~~petitioners are also concerned that the~~ GP's personal legal expenses have been improperly charged to the Partnership and ATLS (as a wholly-owned subsidiary of the Partnership), ~~which also comprises a~~ in breach of the Settlement Agreement and LPA. This falls to be inferred from the following matters:

    a. The expense report exhibited to the GP's December 2024 capital call notice dated 12 December 2024 included a line item for "Legal Expenses for Partnership". Mr Bogdanov queried these expenses in an email to Dr Harrison dated 23 December 2024, saying "[o]*ne item, '**Legal Expenses for Partnership**,' stands out as significantly higher compared to previous years (USD 1.9 million versus USD 0.56 million in H2 2023)*".

    b. On 20 December 2024, Patrik Blochlinger, the Chief Legal Officer of Rigmora Holdings, emailed Daniel Finkelman (the General Counsel of Apple Tree Partners) to request details of the legal expenses, stating that he believed the GP's legal expenses of the Braeburn Proceedings had erroneously been charged to the Partnership.

    c. Mr Finkelman responded on 23 December 2024, stating that the invoices had been reviewed, and that the GP had discovered that one invoice in the amount of US$30,692.50 was inadvertently paid by the Partnership when it should have been allocated to the GP. Mr Finkelman noted that this had been corrected and a revised capital call for fund expenses was issued. Mr Finkelman noted, however, that the GP wished to discuss with the Petitioners the "*allocation*" of various expenses incurred by the GP in relation to the Braeburn Proceedings.

    d. Several further requests were made for and on behalf of the Petitioners for an explanation as to the Partnership's significantly higher legal expenses in 2024, together with supporting invoices and narratives from the relevant law firms.

e. Dr Harrison confirmed on 29 December 2024 that the GP would review the relevant expenses. However, the GP has refused to provide the Petitioners with underlying invoices and narratives on grounds of privilege. The GP agreed to reduce some legal expenses. Nevertheless, the Petitioners consider the legal expenses to be excessive. It falls to be inferred that the invoices and narratives concern legal expenses incurred by the GP in relation to the Braeburn Proceedings, which expenses cannot be charged to the Partnership. The GP's lack of probity and conflict of interest has resulted in the Petitioners' loss of trust and confidence in the GP.

f. The expense report exhibited to one of the GP's ~~May 2025~~ Disputed Capital Calls indicates that "Legal Expenses for Partnership" for January – May 2025 are US$7.86 million. These legal expenses are significantly higher than in prior periods and the Petitioners infer that the GP has sought to include legal costs in connection with the Delaware Proceedings and/or any other anticipated litigation costs in connection with the dispute between the GP and the Petitioners.

65A. Further, the GP caused legal invoices for Quinn Emanuel, Wachtell, Lipton, Rosen & Katz ("**WLRK**"), Walkers, Maples Group and Ms Sue Prevezer KC relating to the Braeburn Proceedings to be paid in breach of: (i) clause 5.1 of the Settlement Agreement, which required the GP to pay its legal costs in relation to the Braeburn Proceedings and the Settlement Agreement using its own money and not to use money belonging to the Partnership (including money held by subsidiaries of the Partnership); and/or (ii) Paragraph 20(e)(ii) of the LPA, which only permits ATLS to spend money in accordance with approved or deemed approved budgets for the ATLS Fee:

Quinn Emanuel

a. Legal invoices totalling c. $800,000 were issued by Quinn Emanuel between September 2024 and April 2025 in respect of a matter called "*Delaware Factual Investigation and Potential Claims*". The Partnership's general ledgers for 2024 and 2025 reveal these invoices were paid out of the Partnership's assets. The (unredacted) narratives for these invoices further reveal that time was spent on work in connection with the Braeburn Proceedings.

b. A further four invoices totalling c. $472,000 were issued by Quinn Emanuel between September to December 2024 in connection with a matter called "*Cayman Litigation*". The invoices contained the following description: "*For professional services through* [date] *in connection with assisting Cayman counsel in the defense of an action brought by the Limited Partners of ATPLSV seeking a court order requiring the distribution of the assets of Braeburn*" (i.e. the Braeburn Proceedings). The 2024 general ledger for ATLS reveal that all four invoices were paid for by ATLS.

WLRK

c. Six invoices were issued by WLRK between December 2024 – May 2025. Five of these invoices (totalling $1.356m) were charged to the Partnership, whilst one invoice (totalling $400,000) was charged to ATLS. Fee narratives have not been disclosed for WLRK's work during the aforementioned period, but as WLRK was heavily involved in negotiating the Settlement Agreement in late 2024 it is inferred that this work was in connection with the Braeburn Proceedings and the Settlement Agreement.

Walkers

d. In November and December 2024, Walkers issued two invoices for work performed in respect of a matter called *"Advice Regarding Potential Claims by ATP Against Rigmora".* The November 2024 invoice (totalling $28,929.24) was paid by the Partnership, whilst the December 2024 invoice (totalling $34,612.68) was paid by ATLS.

e. Between November 2024 to January 2025, Walkers issued three invoices (totalling $750,121.25) in connection with a matter called "*Claim by Rigmora Funds Against ATP*". It falls to be inferred that this matter related to Walkers' representation of the GP in the Braeburn Proceedings. The (unredacted) narratives for these invoices reveal that time was spent on tasks related to the Braeburn Proceedings and the Settlement Agreement. All three invoices were paid by ATLS.

Maples

f. In September and October 2024, Maples (the GP's former Cayman attorneys in the Braeburn Proceedings) issued two invoices in connection with a matter titled "*Dispute with Unicorn Biotech Ventures One Ltd and Dispute with Unicorn Biotech Ventures Two Ltd*". The invoices were paid by ATLS and totalled $426,169.96.

Sue Prevezer KC

g. In October 2024, Sue Prevezer KC issued one invoice (totalling £54,611) for work performed in September 2024. The fee narratives are redacted for privilege, but the invoice was issued in connection with work on "*ATP III GP LTD*" and was paid by ATLS.

h. In November 2024, Sue Prevezer KC issued three invoices (totaling £205,812.18) in connection with work on *"FSD 236 OF 2024: UNICORN V ATP CAYMAN PROCEEDINGS"* (i.e. the Braeburn Proceedings). These invoices were paid by ATLS.

D. Ground 2: Loss of substratum

66. Given the GP's stated intention to pursue an investment strategy which involves the continued funding of the portfolio companies against the wishes and to the detriment of the Petitioners and without complying with the express provisions of the LPA to obtain limited partners' approval for budgets for investments, and the GP's evident intention to confiscate 50% of the Petitioners' interests in the Partnership and take control thereof, the substratum of the Partnership has been lost. The Partnership is no longer being run in accordance with the reasonable expectations of the limited partners or in accordance with the LPA.

E. Ground 3: Need for an independent investigation into the Partnership's affairs

67. For all of the reasons set out in Ground 1, there is evidently a need for a proper, independent investigation into the Partnership's affairs.

Conclusion

68. For the reasons set out above, it is respectfully submitted that it is just and equitable that the Partnership be wound up.

Nomination of Joint Official Liquidators

69. The Petitioners nominate **Mr Alexander Lawson** and **Mr Barry Lynch** of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands for appointment as joint official liquidators of the Partnership.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The Partnership be wound up pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act, and/or pursuant to section 35 of the Partnership Act (2025 Revision).

2. Mr Alexander Lawson and Mr Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Joint Official Liquidators of the Partnership (the "**JOLs**") with such powers as the Court deems necessary for the orderly winding up of the Partnership.

3. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP shall vest in the JOLs without the requirement for further formalities and shall be held by the JOLs in accordance with the law.

4. The JOLs' powers are exercisable to the exclusion of the GP and the GP shall forthwith have no authority or power to act in relation to the Partnership or its property or affairs other than at the direction of and/or with the written consent of the JOLs.

5. The JOLs shall have leave to apply under section 36(3)(g) of the ELP Act for further orders and directions.

6. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.

7. Such further or other relief as this Honourable Court deems fit.

Dated this 6th day of June 2025

Amended 20 November 2025

Campbells LLP

_____

Campbells LLP
Attorneys-at-Law for the Petitioners

NOTE: This Amended Petition is intended to be served on the Partnership and the GP at Walkers (Cayman) LLP, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands. ~~Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1 1104, Cayman Islands.~~

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 12 January 2026 at 10.00 am/pm.

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

EXHIBIT BB

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 151 OF 2025 (JAJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

AMENDED DEFENCE TO THE PETITIONERS' AMENDED WINDING UP PETITION

A. INTRODUCTION

1. This is the Amended Defence to the Amended Winding Up Petition dated 6 June 2025 (the "**Petition**") presented by the Petitioners, Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP) (together, the "**Petitioners**") against (i) ATP Life Science Ventures, L.P. (the "**Partnership**") and (ii) ATP III GP, Ltd. in its capacity as the general partner of the Partnership (the "**GP**").

1A. Nothing in this Amended Defence constitutes, is intended to or should be understood as a waiver of privilege.

2. ~~For the avoidance of doubt~~ As confirmed by the judgment of Asif J following the CMC hearing on 31 October 2025 ([2025] CIGC (FSD) 106), ~~the correct Respondent to~~ the Petition is a proceeding against the Partnership~~,~~ acting by the GP pursuant to section 33(1) of the Exempted Limited Partnership Act. Consequently, in this Amended Defence the GP pleads to the Petition in its capacity as the general partner acting for and on behalf of the Partnership, and references to the "GP" should be read accordingly. Any admissions in this Defence are made by the GP in its capacity as the general partner acting for and on behalf of the Partnership. It is denied that the GP is a proper party to the Petition in its individual capacity, and any allegations in the Petition that may be made against the GP personally are denied.

3. At the outset, many allegations and the basis on which the Petition has been issued against the Partnership are fabricated, and are denied in their entirety. Whilst the Petition seeks to portray the Partnership as a failed business venture in which the Partnership has invested in numerous loss-making ventures such that the Petitioners' investments are inherently at risk and unlikely to yield any returns, this is simply incorrect.

4. Rather, the Partnership has been hugely successful and its existing investments have resulted in exceptional returns to the Partnership, and its limited partners as a whole, including the Petitioners:

(a) The limited partners have invested total capital of approximately US$2.3 billion with the Partnership.

(b) The total value of the Partnership (current net asset value plus prior distributions) was last valued by third-party providers on 31 December 2024 at US$6.2 billion.

(c) Distributions have been made to the limited partners in total amounts of circa US$2.3 billion, of which circa US$2.1 billion has been paid to the Family Office (as defined below).

5. Despite the Partnership's extraordinary successes, it is apparent that the Petitioners no longer wish to continue to fund the Partnership. However, the Petitioners are contractually bound to meet their funding obligations to the Partnership, pursuant to the terms of the Limited Partnership Agreement concerning the Partnership, as amended (the "**LPA**"), and the Petitioners are currently in breach of those funding obligations. In particular, the Petitioners have failed to meet capital calls issued on 30 May and 1 June 2025 in the overall sum of US$107 million (the "**Capital Calls**"), which were issued in respect of budgets that the Petitioners had previously approved. The Petitioners have asserted, incorrectly, that they are not required to meet the Capital Calls, and that they have fulfilled their overall capital commitment to the Partnership and are not required to contribute any further capital. The Partnership and its portfolio companies have already suffered as a result of the Petitioners' failure to pay the Capital Calls and their unwillingness to provide any further funding to the Partnership, and numerous employees have lost their jobs as a result. The issue of the Petition is an attempt by the Petitioners to avoid the consequences that they may otherwise suffer, pursuant to the terms of the LPA, as a result of breaching their funding obligations to the Partnership.

6. On 30 May 2025, the GP acting on behalf of the Partnership issued legal proceedings against the Petitioners before the Court of Chancery of the State of Delaware, United States, with claim number C.A. No. 2025-0607-KSJM (the "**Delaware Proceedings**"). In the Delaware Proceedings, the GP seeks orders

compelling the Petitioners to fulfil their funding obligations to the Partnership pursuant to the LPA.

7. Following the issue of the Delaware Proceedings:

   (a) On 2 June 2025, only one business day after the Delaware Proceedings were filed, the Petitioners issued legal proceedings against the GP (in its capacity as general partner of the Partnership) with this Honourable Court in terms of a Writ of Summons dated 2 June 2025, with Cause No.: FSD 146 of 2025 (JAJ) (the "**Writ**").

   (b) Just four days later, on 6 June 2025, the Petitioners filed the Petition.

8. As the Plaintiffs have admitted in the Delaware Proceedings and elsewhere, the Delaware Proceedings, the Petition, and the Writ concern the same or substantially the same issues. In particular, the proceedings in each case relate to the Petitioners' liability to contribute further capital to the Partnership, and the GP's ability to issue capital calls on behalf of the Partnership and the Petitioners' liability to meet those capital calls. The relief sought by the Petitioners in the Writ substantially overlap with the Delaware Proceedings, and the Petitioners unsuccessfully sought to have the Delaware Proceedings stayed in favour of the Writ and the Petition.

9. It is averred that the Petitioners filed the Writ and the Petition as retaliatory measures in response to the Delaware Proceedings, and in an attempt to circumvent and undermine the Delaware Proceedings. In particular, by issuing the Petition the Petitioners seek: (1) to avoid their obligations to commit further capital to the Partnership pursuant to the terms of the LPA; and (2) to have the underlying factual disputes determined in the Cayman Islands, rather than in the Delaware Proceedings, in breach of their obligations under paragraph 18(g)(vi) of the LPA in which the parties agreed that the Courts of Delaware or the Cayman Islands would

have jurisdiction to hear disputes arising out the LPA and waived any claim that proceedings brought in such jurisdictions are brought in an inconvenient forum or that the venue is improper.

10. Prior to the issue of the Petition, the Petitioners had not asserted any breakdown of trust and confidence. The fact that the Petitioners have now raised this allegation in an apparent attempt to wind up the Partnership is simply a strategy to avoid their capital obligations under the LPA. As will become clear in the exchange of evidence in the Petition (and in the Delaware Proceedings and the Writ), the Petitioners have acted unilaterally, and in breach of their obligations under the LPA, in failing to pay the recent Capital Calls.

11. Furthermore, in attempting to abrogate their responsibility to fund (and to consider and approve budgets in relation to) a significant number of the Partnership's portfolio companies, the Petitioners are simply seeking to cherry pick the investments they may desire at some future time to fund, in breach of the Petitioners' obligations under the LPA and in a blatant attempt to seize and take control of the operations and the funding needs of the Partnership, which role falls to be carried out by the GP.

12. In the premises, and for the reasons which are set out in further detail in this Amended Defence below, any purported loss of trust and confidence in the GP and the Partnership on the part of the Petitioners is not justifiable. Accordingly, the Petition must be dismissed.

13. In this Amended Defence:

    (a) Unless otherwise stated, references to paragraphs are to paragraphs in the Petition.

    (b) Where appropriate, the abbreviations and headings used in the Petition are adopted, without admission as to their accuracy or relevance.

(c) Where the Respondent refers to a written agreement or correspondence, it does so by way of summary and will refer to that agreement or correspondence in due course, for its full terms, meaning and effect.

(d) Where the Respondent does not admit an allegation in the Petition, it is unable to admit or deny that allegation, and where relevant it requires the Petitioners to prove the same.

(e) Unless expressly admitted or not admitted below, the Respondent denies each and every allegation in the Petition.

14. Paragraphs 1 and 2 of the Petition are noted, save that, as stated above, it is averred that the ~~correct respondent to~~ the Petition is a proceeding against the Partnership acting by the GP.

15. As to the first sentence of Paragraph 3 of the Petition, it is denied that there has been serious or any mismanagement and/or lack of probity in the conduct of the affairs of the Partnership by the GP as alleged or at all. The second sentence of Paragraph 3 is admitted.

16. The first sentence of Paragraph 4 of the Petition is denied. As to the particulars pleaded in support of the alleged loss of trust and confidence (which is denied):

(a) The Capital Call notices were issued in accordance with the LPA and the GP's duties to act in the interests of the Partnership as a whole, and not in breach thereof. The capital called was within the Petitioners' capital commitments under the LPA. Further, the Capital Calls were each made in accordance with the budgets approved by the Petitioners. Accordingly, any alleged violation of the LPA or the GP's duties is denied.

(b) Save that it is averred that the GP brought the Delaware Proceedings as it was entitled to do under the LPA and as it was required to do, at all times

acting in the best interests of the Partnership in response to the Petitioners' breach of their funding obligations under the LPA, subparagraph (b) is denied. The GP will refer to the Verified Complaint issued in the Delaware Proceedings at the hearing of the Petition for its full terms and effect.

(b1) For the reasons set out below, including paragraphs 69A and 69B, Paragraph 4.b1 is denied.

(b2) For the reasons set out below, including in paragraphs 69C to 69H below, Paragraph 4.b2 is denied.

(b3) For the reasons in paragraphs 69I to 69K below, Paragraph 4.b3 is denied.

(b4) For the reasons in paragraphs 69L and 69M below, Paragraph 4.b4 is denied.

(c) It is denied that the GP has improperly charged its expenses to the portfolio companies and/or failed to provide necessary information to the Petitioners in a timely manner or at all. The GP has provided the Petitioners with all necessary information for the Petitioners: (i) to approve further budgets for the portfolio companies, which the Petitioners have refused to do in breach of the LPA; and/or (ii) to scrutinise expenses, which have been properly charged to the Partnership. For the avoidance of doubt, it is denied that any expenses have been improperly charged to the Partnership.

(d) It is denied that the GP has a or any conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as alleged or at all. In particular, it is denied that the GP has been acting in the interests of the portfolio companies in place of the interests of the limited partners as a whole, and that the GP has been acting in its own interests or for the improper purpose of placing pressure on the Petitioners, ~~by exposing the Partnership to open ended~~

~~binding commitments to the portfolio companies and/or~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against the wishes of the Petitioners and/or in breach of the LPA as alleged or at all.

17. In the circumstances, it is denied that the substratum of the Partnership has been lost as alleged and/or that there is a need for an independent investigation into the Partnership's affairs, as alleged in Paragraph 5 or at all.

B. THE PARTNERSHIP

18. Paragraph 6 of the Petition is admitted.

19. Save as pleaded below, Paragraphs 7 and 8 of the Petition are admitted:

(a) Dr Rybolovlev is a Russian citizen who acquired Cypriot citizenship by investment in approximately 2010. He currently resides in Monaco.

(b) Dr Rybolovlev and Dr Harrison first met in 2010 and first established, in 2011, an investment fund, ATP III, L.P., to make investments in the life science industry with US$100 million funding from the Family Office of Dr Rybolovlev (the "**Family Office**").

(c) In October 2012, Dr Rybolovlev agreed to provide a US$1.5 billion capital commitment from the Family Office and on 29 October 2012 the Partnership was formed as a Cayman Island exempted limited partnership, through the execution of a limited partnership agreement of that date. On 1 November 2012, the LPA was amended and restated. Since 2012, the LPA has been amended 22 times, by agreement.

(d) The Family Office indirectly owns the Petitioners, through whom, since June 2024, it has provided funding to the Partnership. From the

Partnership's formation in 2012 until June 2024, the Family Office's interests were held through BVI entities named Blue Horizon Enterprise Limited ("**Blue Horizon**") and Ezbon International Limited ("**Ezbon**"). By assignment and assumption agreements dated 10 July 2024, Blue Horizon's partnership interest was transferred to the First Petitioner and Ezbon's partnership interest was transferred to the Second Petitioner, effective from 30 June 2024.

(e) It is denied, if it is alleged, that the Partnership is or should be regarded as an investment vehicle of the Family Office. In addition to the Family Office's investment, Dr Harrison has contributed US$54.7 million to the Partnership, initially funded by way of loan from Ezbon (now fully repaid) as pleaded to at paragraph 24(b) below. Furthermore, as stated in paragraph 23 below, there are 14 additional limited partners, who are current or former employees of entities connected to ATP.

20. Paragraphs 9 and 10 of the Petition are admitted.

21. Paragraph 11 of the Petition is denied. As at June 2025, the contingent subscriptions of the Petitioners totalled US$2,850,681,777 and the total capital contributions of the Petitioners were approximately US$2.3 billion. As at June 2025, the Partnership has made distributions to the Petitioners of approximately US$2.1 billion, made up of cash and marketable securities. The Petitioners' capital contributions to the Partnership represent approximately 97.9% of all the capital contributions made to the Partnership.

22. Paragraph 12 of the Petition is admitted.

23. As to Paragraph 13 of the Petition:

~~(a) The first sentence is denied, if by the term "affiliated" it is intended to suggest that the GP has some control over the other limited partners of the Partnership.~~

(b) It is denied that there are only 12 limited partners who are former or present employees of ATLS. There are 14 limited partners of the Partnership, in addition to the Petitioners, Les Pommes and Dr Harrison. These 14 partners are current or former employees of entities connected to ATP. ~~The most current version of the list of partners was provided to the Family Office on 16 July 2025.~~

(c) Each and every one of the aforesaid 14 limited partners is a party to the LPA.

~~(d) Whilst it is admitted that none of the aforesaid 14 limited partners has contributed capital to the Partnership, they have each contributed their time, work, and expertise to the success of the Partnership.~~

(e) ~~There is no legal justification for the Petitioners not to accept the aforesaid 14 limited partners as legitimate limited partners.~~ Each of the 14 limited partners has a legally binding interest in the value of the Partnership.

24. As to Paragraph 14 of the Petition and as pleaded aforesaid:

(a) It is denied that US$2.7 billion of capital has been invested into the Partnership ~~and that 99% of the capital contributed to the Partnership has been provided by the Petitioners~~. The total amount contributed by the Petitioners as at June 2025 was US$2.3 billion representing 97.9% of the total amount contributed to the Partnership.

(b) As regards the capital contributed by Les Pommes and Dr Harrison, the correct amount is US$54.7 million, not US$53.8 million as pleaded, and the

loan from Ezbon (which was used to initially fund Dr Harrison's contribution) was fully repaid by Dr Harrison through cash payments, offsets to his management fee and the transfer of portions of his limited partnership interest in the Partnership. ~~has been repaid in full out of carried interest value owed to Dr Harrison.~~

(b1) The fact that the other limited partners have not contributed any capital to the Partnership is irrelevant. For the avoidance of doubt, the aforesaid individuals have each contributed their time, work, expertise and/or intellectual property to the success of the Partnership, in consideration of which they have been granted interests in the Partnership. In this way, the Partnership operates as a joint venture between those who have contributed capital and those who have contributed and are still contributing work and other things of value, both of which are necessary, in combination, to create the value that the Partnership was intended to create and has created: namely, new medicines, new technologies upon which new medicines can be created, new biotech companies based upon new inventions, and capital returns.

(c) Paragraph 4 above is repeated: the Partnership has been hugely successful and the Petitioners' US$2.3 billion in capital contributions has translated into a Partnership with an estimated value of US$6.2 billion, built on the skill and efforts of the GP.

25. Paragraph 15 of the Petition is admitted.

26. Paragraph 16 of the Petition is admitted.

27. Paragraph 17 of the Petition is admitted. Amendment No. 13 to the LPA dated 4 February 2019 introduced a concept of pools to the LPA. Each pool is composed of a group of assets and the income, capital contributions and liabilities associated

with those assets. The pools within the current structure of the Partnership are as follows:

(a) Pool ATP-IV: This pool contains the residuals from older investments of the Partnership that have already been exited;

(b) Pool V: Following the successes in ATP IV, this pool was created to found and build new companies and, using a newly recruited team, to continue to develop certain of the already established companies in ATP IV. Pool V contains three sub-pools:

(i) Pools ATP V-1 and ATP V-2: These pools contain newer deals that Dr Harrison and his team founded and are working to develop towards clinical proof of concept or other value milestones at which point their value can be realised. Total capital of US$1 billion was allocated to this pool; and

(ii) Pool ATP V-3: This pool contains deals that were founded by a prior team and Dr Harrison, that were successfully taken forward by the current team. Total capital of US$500 million was allocated to this pool; and

(c) Pool Braeburn: This pool contains the assets of one company, Braeburn Inc ("**Braeburn**"), which holds the regulatory approval for and markets a drug indicated for the treatment of opioid addiction. The Family Office had committed capital of circa US$393 million to this pool (US$203 million of which has come via the transfer of securities, and US$190 million in additional funding through a Royalty Purchase Agreement ("**RPA**")), and has contributed circa US$412 million. Distributions of circa US$668 million have been made to the Family Office in relation to this pool, and there remains US$2.2 billion of value in Braeburn.

28. Paragraph 18 of the Petition is admitted.

29. As to Paragraph 19 of the Petition, the GP will refer to the LPA at the hearing of the Petition for its full terms and effect. Save as aforesaid, the GP pleads as follows in relation to the sub-paragraphs of Paragraph 19:

(a) As to Paragraph 19(a), it is denied that the amount of each limited partner's Contingent Subscription is determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**"):

(i) Paragraph 3(c) of the LPA provides that "*Each Limited Partner who is to make an additional subscription or receive additional Incentive Common Units or Tracking Units shall execute a Subscription Agreement* ***(or the equivalent thereof)***" (emphasis added).

(ii) Furthermore, in relation to the Petitioners, paragraph 1 of the Ezbon Subscription Agreement and the Blue Horizon Subscription Agreement, in each case dated 1 November 2012, contemplated that the total committed capital could be increased by the LPA and the amendments thereto, and states as follows:

"*Subject to the terms and conditions set forth in this Subscription Agreement and in the Partnership Agreement, the undersigned subscribing investor (the "Investor") agrees (a) to purchase from the Partnership a limited partner interest (the "Interest") in the Partnership,* ***to make a commitment to contribute capital to the Partnership in the amount set forth on the signature page below*** *(the "Subscription") and to contribute capital to the Partnership with respect to such commitment,* ***and make such other capital contributions and payments to the Partnership as***

provided for in the Partnership Agreement, in the manner and at the times provided in the Partnership Agreement*, (b) to be admitted to the Partnership as a limited partner of the Partnership and (c) to become a party to and bound by the terms of the Partnership Agreement as a Limited Partner*." (emphasis added)

(iii) Furthermore, and for the avoidance of doubt, over the course of the life of the Partnership, the Petitioners have made additional commitments to the Partnership pursuant to amendments to the LPA. These additional commitments are legally binding and until this present dispute, have always been treated as such by the parties.

(b) As to Paragraphs 19(b) and (c) of the Petition, the GP will refer to paragraph 5(a)(ii) of the LPA (as amended) at the hearing of the Petition for its full terms and effect.

(c) Paragraph 19(d) is admitted and it is averred that the GP has complied with all of the terms of Schedule C of the LPA in providing the Family Office with regular updates (both in person and through the provision of documents) throughout the life of the Partnership, such that the Family Office has received all relevant information concerning the Partnership and the portfolio companies on a regular and frequent basis. In particular, the GP has provided all required financial reports to the Family Office on at least a quarterly basis, and the GP met with the representatives of the Family Office on a much more regular and frequent basis than the twice-yearly meetings contemplated in Schedule C.

(d) As to Paragraph 19(e) of the Petition, it is averred that the GP has prepared the annual budget relating to the ATLS Fee as required on an annual basis. Further, the quote from paragraph 20 of the LPA (as amended by

Amendment No. 18 dated 5 November 2020 ("**Amendment 18**")) in Paragraph 19(e) of the Petition omits the following wording relating to the obligations of the Petitioners (defined as the Subject Limited Partner) to approve the budget, which provides in material part that, (i) if the Petitioners fail to approve the budget, the budget is deemed to have been approved within ten business days, and (ii) if the Petitioners object to a budget and the budget is not approved for a fiscal year then the approved budget for such fiscal year shall be deemed to be the most recently approved budget for a prior fiscal year. Paragraph 20 provides as follows:

"*The General Partner shall prepare, for each fiscal year of the Partnership in advance of such fiscal year, a budget for the annual fee to be paid by the Partnership to ATLS (the "ATLS Fee"). Such budget shall be presented to the Subject Limited Partner for approval, and the Subject Limited Partner shall, within ten (10) business days of the budget being provided by the General Partner, either approve the budget or inform the General Partner that the Subject Limited Partner declines to provide such approval along with the reasons therefor.* ***If the Subject Limited Partner fails to so respond within such ten (10) business day period, the budget shall be deemed to have been approved.*** *If the Subject Limited Partner so informs the General Partner that it declines to approve the proposed budget, the Subject Limited Partner and the General Partner shall discuss in good faith any objections presented by the Subject Limited Partner to the initial proposed budget, and thereafter the General Partner shall have an opportunity to prepare a revised budget, which shall again be submitted for approval as set forth above.* ***If a budget is not approved for a fiscal year, then the approved budget for such fiscal year shall be deemed to be the most recently approved budget for a prior fiscal year.*** *In no event, however, shall the ATLS Fee be less than $8,500,000, except to the extent otherwise agreed by the General Partner. The Limited Partners shall make*

capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee." (emphasis added)

In the present circumstances, the GP currently calls a semi-annual budget of c.US$8.~~95~~ million in respect of the ATLS Fee, reflecting approximately half of the 2021 annual budget (being the last budget approved by the Family Office).

(e) Paragraph 19(f) of the Petition does not fully quote section 11 of Amendment No. 9 dated 22 December 2017 ("**Amendment 9**"). Section 11 provides that, whilst certain expenses of the Partnership shall be paid from the ATLS Fee (as quoted in Paragraph 19(f) of the Petition), the Partnership shall be responsible for all other reasonable expenses of the Partnership which shall be funded by capital contributions in accordance with the LPA, including in respect of the payment of legal expenses for the Partnership, and all expenses relating to any actual or threatened litigation or proceeding involving the Partnership. Section 11 materially states that:

"*The Partnership shall be responsible for all other reasonable expenses of the Partnership, which Partnership expenses shall be funded by capital contributions made by the holders of Preferred Units in accordance with the Agreement, including without limitation: (i) the ATLS Fee and the Management Fee, (ii) Incubation Expenses (as defined below), (iii) 50% of the fully-burdened cost of the Partnership's facilities, including rent, utilities, lessor charges, property and general liability insurance, communications, including phone and internet, and IT support, (iv) all compensation and*

benefits for a fund analyst providing pharmaceutical or biopharmaceutical industry related services to the Partnership, (v) all compensation and benefits related to the Subject Limited Partner's representatives, (vi) fees and expenses of investment and other consultants, including subscription-based research consultants and databases, (vii) professional fees, including legal expenses for the Partnership (including the Partnership's in-house counsel), audit, tax compliance and tax structuring fees and expenses, (viii) all fees and expenses relating to Partnership boards, including the Advisory Boards and Executive Board, (ix) director and officer liability insurance and indemnification costs and expenses, (x) travel expenses relating to making and monitoring investments, including expenses relating to broken deals (except to the extent reimbursed by Operating Companies), (xi) all expenses related to meetings with the Subject Limited Partner, including travel, (xii) liquidation expenses, (xiv) sales or other taxes, fees and government charges which may be assessed against the Partnership, (xv) commissions or brokerage fees, finder's fees or similar charges incurred in connection with the purchase or sale of securities, (xvi) interest expenses for borrowed money (if any) and any other fees and expenses related to any Partnership credit facilities, (xvii) all expenses (including travel and travel-related expenses) relating to any actual or threatened litigation or proceeding involving the Partnership, (xviii) investment banking, commercial banking, valuation, appraisal and custodial fees expenses, and (xix) expenses associated with the preparation and delivery of the Partnership's financial statements."

30. As to Paragraph 20 of the Petition, the GP will refer to the specific provisions of the LPA regarding the approval rights of the Petitioners for investments in Projects, including the provisions set out in the preceding paragraph. Specifically:

(a) The LPA, by Amendment No. 2 dated 15 August 2014, Schedule C, reserves to the Petitioners the right to review and approve budgets for each of the Partnership's investments in pharmaceutical, medical device and other medically related companies, projects and related activities.

(b) As a matter of Cayman Islands law, and in light of the aforesaid, there is an implied contractual obligation and/or duty on the part of the Petitioners that their power to approve or dis-approve budgets be exercised honestly and in good faith and not arbitrarily, capriciously or irrationally or for an improper purpose. The said obligation is implied by law and/or is required to give business efficacy to the LPA. Further, it is consistent with the Petitioners' contractual commitments under the LPA and in the various Amendments thereto, in particular, but without prejudice to the generality of the foregoing, Amendments No. 17 dated 9 September 2020 ("**Amendment 17**"), Amendment 18, and Amendment No. 20 dated 21 June 2021 ("**Amendment 20**").

(c) Once a budget is approved, the GP has the right to make capital calls upon the limited partners to fulfil the approved budgeted amounts and the limited partners "*shall contribute to the capital of the partnership, in such instalments as the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the Column marked "Contingent Subscription" in the List of Partners*" (paragraph 5(a)(i) of the LPA). A limited partner may not make less than the full amount of the required capital contribution.

31. As to Paragraph 21 of the Petition:

(a) It is denied that the Petitioners' total Contingent Subscriptions amount to US$2.425 billion, and it is denied that the Petitioners are only required to contribute capital up to US$2.425 billion.

(b) The Subscription Agreements expressly contemplated that the Petitioners' total committed capital could also be increased by the LPA and the Amendments thereto, as quoted in paragraph 30(a)(ii) above.

(c) The Petitioners (each and both of them) have legally binding contractual commitments under the LPA (and the Amendments thereto) to fund capital to the Partnership in the combined sum of US$2,850,681,777, being their share of the total Partnership capital commitments of US$2,902,216,122 as follows:

(i) Pools V-1 and V-2: US$1 billion, pursuant to Amendment 17 and Amendment 18;

(ii) Pool V-3: US$310,500,000, pursuant to Amendment 20;

(iii) Pool Braeburn: US$208,255,617, pursuant to Amendment 20; and

(iv) Pool IV: US$1,383,360,505, pursuant to Amendments 17, 18, 19 and 20.

32. Paragraph 22 of the Petition is admitted save that it is denied, for the reasons set out above, that the effect of the Subscription Agreements was to limit the Petitioners' total capital commitments to the amounts set out therein.

33. Paragraph 23 of the Petition is denied. The Petitioners have contributed only US$2.3 billion to the Partnership in response to capital calls. This amount does not exceed the Petitioners' Contingent Subscription amounts under the LPA (as amended), the full amount of which is US$2,850,681,777. The Petitioners are, accordingly, obliged to contribute further capital to the Partnership under paragraph 5(a) of the LPA, in the amounts that they have committed to contribute to the Partnership.

34. For the reasons pleaded above, Paragraph 24 of the Petition is denied.

C. GROUND 1

35. As to Paragraph 25 of the Petition, it is denied that there are any or any objectively verifiable grounds upon which the Petitioners can properly rely to allege that they have justifiably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

36. As pleaded more fully below and as will be set out in the evidence in opposition to the Petition, each and every allegation of serious (or any) mismanagement and/or want of probity on the part of the GP in the conduct of the affairs of the Partnership (as alleged or at all), is denied.

37. As to the specific allegations at Paragraph 26 of the Petition:

(a) In relation to Paragraph 26(a):

(i) The GP was entitled to issue the Capital Calls on 30 May 2025 in the total sum of US$107,103,759 and did so in accordance with the LPA.

(ii) The Capital Calls were made for proper purposes, and issued in the best interests of the Partnership. It is denied that they were issued in breach of fiduciary duty as alleged or at all.

(iii) It is denied that the Capital Calls were made to put pressure on the Petitioners in the manner alleged in subparagraph (a) or at all. The Petitioners were obliged to make further capital contributions as at the date of the Capital Calls, and the Capital Calls were made in accordance with budgets that had previously been agreed by the Petitioners. Paragraphs 3 to 5 and 9 to 11 above are repeated.

(iv) The Capital Calls were made on 30 May 2025, bona fide and in the best interests of the Partnership, and not in the best interests of the GP and/or Dr Harrison and/or the portfolio companies, as alleged or at all.

(v) It is admitted that the Petitioners have issued proceedings by way of writ dated 2 June 2025 in the Grand Court of Cayman, in which the Petitioners seek, wrongly, to establish that they are not obliged to pay the ~~May 2025~~ Capital Calls. The allegations pleaded in the Statement of Claim in the Writ Summons have been denied in the Amended Defence filed therein.

(b) The GP was entitled to issue and did issue the Delaware Complaint, bona fide, in the best interests of the Partnership, in response to the Petitioners' breach of their funding obligations under the LPA. It is denied that any of the allegations in the Delaware Complaint are unfounded and/or untruthful and/or that the same are made in order to take control of the Partnership as alleged at Paragraph 26(b) of the Petition or at all.

(b1) Paragraph 26.c is denied. In particular:

~~(c)~~ (i) The GP ~~is~~ was entitled to seek to impose the default charge provisions under the LPA in circumstances where the Petitioners have failed to pay the Capital Calls as they were contractually obliged to do under the LPA. The GP will refer to the Delaware Complaint at the hearing of the Petition for its full terms and effect.

~~(d)~~ (ii) The GP, not Dr Harrison personally, has commenced the Delaware Proceedings. It is denied that by those proceedings, Dr Harrison personally ~~seeks~~ sought to take billions of dollars of assets from the Petitioners and transfer those assets to himself personally. The

global default mechanism at paragraph 5(c) of the LPA ~~has been~~ was relied upon by the GP in accordance with the LPA. It is averred that imposing a global default charge on a defaulting partner is just one of the remedies that is available to the GP if a limited partner becomes a defaulting partner, pursuant to paragraph 5(c) of the LPA. The GP will refer to this provision specifically at the hearing of the Petition for its full terms and effect. It is denied that Dr Harrison's contribution of capital to the Partnership is minimal in and of itself. In the premises, Paragraph 26(c) is denied.

(iii) As pleaded at paragraph 60C(b)(iv) below, it is averred that the GP is no longer seeking to impose the global default charge on the Petitioners in the Delaware Proceedings.

(d1) Paragraph 26.d is denied. In particular:

~~(e)~~ (i) It is denied that the GP has sought to compel the Petitioners to make further contributions to the Partnership's portfolio companies beyond those which the Petitioners are obliged to make under the LPA and/or has sought to make accelerated capital calls and/or unbudgeted capital calls without complying with its obligations under the LPA as alleged at Paragraph 26(d) or at all.

~~(f)~~ (ii) Further, it is denied that by issuing the Delaware Proceedings the GP is acting or has acted in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and/or is acting, clearly or otherwise, out of self-interest and/or has exercised its powers for an improper purpose, as alleged in Paragraph 26(d).

(f1) For the reasons in paragraphs 69A and 69B below, Paragraph 26.d1 is denied.

(f2) For the reasons in paragraphs 69C to 69H below, Paragraph 26.d2 is denied.

(f3) For the reasons in paragraphs 69I to 69K below, Paragraph 26.d3 is denied.

(f4) For the reasons in paragraphs 69L and 69M below, Paragraph 26.d4 is denied.

(g) The GP has properly charged its expenses to the Partnership in accordance with the LPA and has provided all material information to the Petitioners, upon request, in a timely manner. The information that has been provided to the Petitioners has been sufficient to enable the Petitioners to determine whether to approve further budgets for portfolio companies and/or to scrutinise expenses. It is denied that any expenses have been improperly charged to the Partnership and in the premises, Paragraphs 26(e) and (f) are denied. Moreover, as with the other fabricated allegations that the Petitioners claim underpin their supposed loss of trust and confidence, the Family Office's allegations in relation to expenses have been made for the first time, in a business relationship that has lasted from 2011 to the present, with the filing of a Petition designed to allow the Family Office to escape its contractual obligations.

(h) The deletion in paragraph 26.g is noted. It is denied that the GP has failed to act in the best interests of the limited partners as a whole ~~by exposing the Partnership to open-ended, binding commitments to the portfolio companies and/or~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and/or in breach of the LPA as alleged at Paragraph 26.~~(f)~~ g or at all. It is denied that the GP's decision making, by Dr Harrison, is or has at any material time been infected by a conflict of interest. Furthermore, Dr Harrison is and has been a director of each portfolio company of the Partnership since each company's inception, in order to best protect the interests of the

Partnership. The Petitioners have not previously made any complaint in relation to Dr Harrison serving as a director of the portfolio companies. It is denied that this means that the GP is "*infected by a conflict of interest*". This is a fabrication made for the Petition for the purposes of avoiding the contract the Petitioners signed, and under which the parties have operated since 2012. During this 14-year period, the GP, acting on behalf of the Partnership, has entered into innumerable contracts and investments (in respect of which the GP has managed numerous exits and value inflection points). All of these have been done with full transparency and alongside highly frequent meetings with the Family Office and Dr Rybolovlev (by way of illustration, for the period dating from January 2020 until May 2025, Dr Harrison and the Family Office have had approximately 170 meetings in person or by Zoom) and such allegations have never before been made. Dr Harrison has always acted in the best interests of the Partnership, representing the Partnership's interests in the portfolio companies. In the premises, Paragraph 26(g) is denied.

Background to the alleged loss of trust and confidence

38. The first sentence of Paragraph 27 of the Petition is admitted. As to the second sentence, the full extent and manner of the agreement as regards approval of budgets is set out in the LPA. The final sentence of Paragraph 27 is admitted.

39. It is denied that from 2021 or at any time that the GP has improperly charged the employee costs of ATP investment professionals to the Partnership portfolio companies as pleaded at Paragraphs 53-56 of the Petition, which are responded to below. In the premises, Paragraph 28 of the Petition is denied.

40. Save that it is averred that in September 2023, Ezbon and Blue Horizon requested a distribution of assets in the Pool Braeburn investment pool, in breach of the LPA, the first sentence of Paragraph 29 is denied. As to the second sentence, Pool

Braeburn has only existed since Amendment 20 dated 21 June 2021. The assets comprising Pool Braeburn have sat within the Partnership since 2012. Prior to the creation of Pool Braeburn, the Braeburn assets sat within Pool ATP IV. Dr Harrison had repaid the capital loan referred to at paragraph 24(b) above in its entirety by the time Amendment 20 was entered into, with the result that Dr Harrison and Les Pommes did contribute capital to the assets which now form part of Pool Braeburn. It is further averred that Dr Harrison/Les Pommes and Ms Batarina hold 4.5% and 3% respectively of the profits participation in Pool Braeburn through their carry entitlements. The terms and conditions of Amendment 20 to the LPA will be referred to at the hearing of the Petition. Save that it is admitted that the Subject Limited Partner demanded the distribution of assets in Pool Braeburn, it is denied that it was entitled to make such demand in accordance with the terms of the LPA and specifically Amendment 20 thereof. Save as aforesaid, Paragraph 29 of the Petition is denied.

41. As regards Paragraph 30 of the Petition, it is denied that the GP acted improperly in the manner alleged or at all and/or that the GP made any threats with regard the financial position of the Partnership. The demand for distribution was made in circumstances in which a loan between Braeburn (as borrower) and Hercules Capital Inc (as lender) ("**Hercules**") (the "**Hercules Loan**") was essential for the survival and success of Braeburn, and would not be completed if the distribution proceeded. The GP also had serious and well-founded concerns that making the distribution would result in the Family Office failing to meet its contractual obligations to meet capital calls to fund the Partnership, and would therefore be against the best interests of the Partnership. Moreover, the GP had serious and well-founded concerns that the distribution would not be consistent with the internal policies of Braeburn (a further condition precedent to the distribution of the Braeburn assets). These conditions were agreed to by the Petitioners in Amendment 20 of the LPA, as part of the term permitting it to request the

distribution; the distribution right was never unconditional, and the Petitioners' distribution requests did not satisfy the conditions under the LPA.

42. Save that it is averred that the GP, lawfully and properly, in accordance with the terms of the LPA, refused to distribute the assets of Braeburn upon this further request to do so by the Petitioners, Paragraph 31 of the Petition is admitted.

43. Paragraph 32 of the Petition is denied, save that it is admitted and averred that:

(a) The grounds relied upon by the GP in refusing to distribute the Braeburn assets were proper and lawful, and in accordance with the LPA.

(b) The GP's duties under the ELP Law (as defined in the LPA) and/or the internal policies of Braeburn prevented the transfer of ownership of Braeburn from the Partnership to the Petitioners at that the relevant time and in the circumstances. In particular:

(i) any transfer of Braeburn assets would have triggered a default under the Hercules Loan and would have had a negative impact on the Partnership;

(ii) the transfer was not possible as the shares in Braeburn were pledged to Hercules and physically held by the Partnership's attorneys as escrow agents, and were not capable of being distributed;

(iii) a tax withholding obligation on Braeburn of circa US$240 million would have been triggered, and in circumstances in which it held circa US$62.7 million in cash would mean it would be insolvent and at risk of Chapter 11 Bankruptcy;

(iv) there was a risk of triggering filing requirements with the Committee on Foreign Investment in the United States ("**CFIUS**"), an interagency regulatory body that reviews foreign investments in US businesses. If such a CFIUS filing was required, it may have jeopardised Braeburn's business operations at a critical time, and also risked the Partnership's ability to attract investment in other portfolio companies; and

(v) in circumstances in which the Family Office has indicated it may not meet its obligations to approve new budgets or comply with future capital calls, it was not in the best interests of the Partnership as a whole to distribute its largest asset without assurances the Petitioners would comply with their contractual obligations.

(c) The Partnership was the sole shareholder of Braeburn at the time of the Braeburn Proceedings and Dr Harrison was chairman of the Board of directors of Braeburn.

44. It is denied as asserted in Paragraph 32 that Dr Harrison exercised a significant influence over the other directors and members of senior management in Braeburn. The Board of Directors of Braeburn comprises Dr Harrison (Chairman of the Board), Mike Derkacz (President & CEO), Dennis H. Langer, Patrick J. Kennedy, Jerry Karabelas, and Joseph Yanchik. Mr Langer and Mr Kennedy are independent directors with no other affiliations to the GP or Dr Harrison. Mr Kennedy is a retired politician and mental health advocate, having served as a Democratic member of the United States House of Representatives from 1995 to 2011 (including serving on various House committees). In 2017, he was appointed by the President of the United States to serve as a member of the Opioid and Drug Abuse Commission. He is a co-founder of One Mind, a mental health nonprofit organisation. Mr Karabelas is a highly experienced pharmaceutical executive who previously ran Novartis Pharmaceuticals and founded Care Capital LLC. Although

he previously worked for ATP, he retired in 2022 and has received no remuneration from ATP since that time. It is the practice at Braeburn for Dr. Harrison and Mr. Yanchik (who works for ATP) to be recused from any votes in which their affiliations with ATP could present an actual or perceived conflict of interest.

45. It is denied, to the extent that it is averred, that Dr Harrison implemented arrangements such that the event of default provisions in the Hercules Loan were put in place for the purposes of avoiding distributing Braeburn to the Petitioners. The Hercules loan was not only approved by the Family Office, but was put in place because the Family Office wanted Braeburn to find alternative sources of funding for the launch of Braeburn's flagship product (Brixadi) outside of the Partnership. The Family Office was fully involved in the negotiation and finalising of the loan documents (noting that a deal with another lender had previously fallen through because of Braeburn's connection with Dr Rybolovlev and the perceived risks of investments with a connection to Russia).

46. As to Paragraph 33 of the Petition:

(a) The GP will refer to the Settlement Agreement at the hearing of the Petition for its full terms and effect.

(b) The Settlement Agreement was entered into by the Parties without any admission as to liability on the part of either party and by way of compromise of the Braeburn Proceedings.

(c) Further to the Settlement Agreement, Amendment No. 22 to the LPA dated 20 December 2024 ("**Amendment 22**") was agreed, the parties having resolved their disagreement and with the intention of continuing the successful operation of the Partnership. The relationship of the parties at the date of the Braeburn Settlement had not broken down and the parties

evinced a clear intention, by entering into Amendment 22, of continuing their relationship.

47. In the premises, it is denied, contrary to Paragraph 34 of the Petition, that the relationship between the GP and the Petitioners has since "*continued to deteriorate substantially*" and/or that there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership. The GP avers that the Family Office no longer wishes to abide by its funding commitments to the Partnership, and is attempting to pick and choose the specific portfolio companies that the Family Office wishes to fund, thereby assuming the GP's responsibility for managing the Partnership to itself, in breach of the terms of the LPA.

48. In this regard, the GP avers that paragraph 2(b) of the LPA – which has not been amended in any of the 22 amendments to the LPA – provides that "*Control. The management, policies and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner*."

49. Paragraph 35 is denied. As is set out in the following paragraphs in more detail, the GP's actions with regard to these ~~early-stage portfolios~~ Early-Stage Companies have at all material times been in accordance with the LPA and bona fide, in the best interests of the Partnership.

50. As to Paragraph 36:

(a) It is admitted that Dr Harrison is a director of each of the Early-Stage Companies. It is averred that the board of directors for each of the Early-Stage Companies includes individuals other than Dr Harrison.

(b) It is denied, if it is averred, that the GP has insisted on continuing to invest in the Early-Stage Companies otherwise than bona fide, in accordance with the LPA and in the best interests of the Partnership. The fact that the

Petitioners might claim, for the convenience of the Petition, or otherwise to consider them to be hopeless investments (i) does not make them hopeless investments and/or (ii) does not make such investments a breach of the LPA and/or investments to which the Petitioners are not required to contribute under the LPA and/or (iii) does not place the GP in breach of its fiduciary duties and/or in breach of the LPA in continuing to pursue such investments. By refusing to meet the Capital Calls in relation to these investments, the Petitioners have breached their funding obligations under the LPA.

(c) In an email dated 15 May 2025 (the "**15 May 2025 Email**"), the Family Office announced that it no longer intended to be bound by its commitments under Paragraph 5(a) of the LPA and had no intention to commit required capital to the Partnership, even in response to capital calls on approved budgets, including for the Early-Stage Companies and Clinical-Stage Companies with uncalled budgeted amounts.

(d) Furthermore, each of the Capital Calls, including in respect of Deep Apple, Red Queen, Marlinspike, Aethon, Replicate and the other Early-Stage Companies was made in accordance with budgets already approved by the Petitioners. The Capital Calls called approximately 45% of the available budget that the GP was entitled to call on behalf of the Partnership, and were in respect of funds that the Partnership and the portfolio companies required in order to operate and were made in accordance with the LPA. The Petitioners are obliged to meet the Capital Calls. It is averred that Dr Harrison and Les Pommes were also obliged to make contributions in respect of the Pool V-3 companies pursuant to the Capital Calls, and have made those contributions to the Partnership by the due date for payment of the Capital Calls.

(e) The Petitioners were required to make contributions to meet the Capital Calls no later than 13 June 2025 (and by 16 June 2025 for Replicate). The Petitioners have failed to do so, placing them in default under the LPA.

(f) The GP is entitled to the relief claimed in the Delaware Complaint.

51. As regards the alleged milestones in the agreed budgets for these investments pleaded at Paragraph 36 of the Petition:

(a) It is denied that any capital calls are tied to the satisfaction of any milestones as alleged or at all, unless milestones are specifically incorporated into a budget approval. For the avoidance of doubt, milestones were incorporated into a budget approval only twice in the entire history of the Partnership.

(b) In accordance with the terms of the LPA as amended from time to time, the operation of the ~~Fund~~ Partnership depends on the timely contributions of limited partners in response to capital calls made in accordance with approved budgets, together with the approval of new budgets for portfolio companies that are making good progress but have exhausted the funds from their initial budgeted investments.

(c) The LPA, by Amendment 2, Schedule C, reserves to the Petitioners the right to review and approve budgets for each of the Partnership's investments in pharmaceutical, medical device and other medically related companies, projects and related activities.

(d) Paragraph 30 above is repeated as to the Petitioners' obligations in approving budgets for the Partnership's portfolio companies.

(e) For the avoidance of doubt, the LPA does not require capital calls to be tied to the satisfaction of specific or any milestones. The calling of capital for

approved budgets is entirely in the GP's discretion as general partner, save that where the GP, as general partner, requests an acceleration of capital, the LPA requires the GP to represent a good faith belief that the Project (or portion thereof to be covered by the budget) shall be completed within the aggregate amount budgeted therefore and to provide the Petitioners with a "r*easonably detailed and diligenced presentation supporting such representation*".

(f) Until May 2025, the aforesaid procedure for budgeting was repeatedly and successfully facilitated through extensive quarterly reporting procedures and discussions and multiple meetings between the parties, including, on many occasions, with subject matter experts and portfolio company management representatives.

(g) Further, until May 2025, the Petitioners never objected to meeting a capital call on the grounds that a portfolio company had missed an alleged milestone~~, and milestones were never incorporated into the budgets, as approved (with the exception of Replicate, as mentioned in paragraph 53(b) below)~~. Any imposition of a condition for payment that certain milestones should be met would be inconsistent with how biotech and pharmaceutical research and development takes place, throughout the industry. At the time of a capital call and over the course of dealings at the Partnership, a portfolio company might be ahead or behind or meeting any alleged milestones that were developed between the general partner and the company as an initial roadmap, or that were included in an investment memorandum accompanying an initial budget request. For this reason, the LPA does not include the satisfaction of milestones as a condition precedent to capital calls on contributions for companies with approved budgets, which as stated above, are and were at all times in the GP's discretion, as general partner.

52. As to Paragraph 37(a) of the Petition:

(a) The GP will refer to provisions of the LPA, to the Amendments thereto, and to the Subscription Agreements with regard to the proper calculation of the Petitioners' capital commitments thereunder.

(b) The Petitioners have contributed US$2.3 billion to the Partnership in response to capital calls. This amount does not exceed the Petitioners' Contingent Subscription amounts under the LPA (as amended), the full amount of which is US$2,850,681,777.

(c) In this regard, the GP will refer to Amendments 17, 18 and 20 to the LPA, pursuant to which the Petitioners contractually agreed to commit further capital to the Partnership. As stated above, the Petitioners are legally committed to contribute US$2,850,681,777, a sum significantly in excess of the US2.3 billion which the Petitioners admit they have contributed to date.

(d) In the premises, it is denied that the Petitioners are not obliged to fund the Early-Stage Companies as alleged or at all.

53. As to Paragraph 37(b) of the Petition:

(a) As pleaded above, the budgets approved by the Petitioners do not provide for funding against certain specified milestones, as alleged or at all.

(b) In the premises, it is denied that the alleged milestones have to be met as alleged, before the Partnership may invest in the projects. The alleged milestones are not contractual agreements between the Partnership and the Family Office unless expressly incorporated by reference into a specific budget approval, which (with the exception of a recently approved budget

for Replicate, for which the GP made a capital call of US$4 million on 1 June 2025 that the Petitioners have refused to pay) they were not.

(c) It is denied that the GP is seeking to call capital on an accelerated basis; the relevant budgets have been approved by the Petitioners and the Petitioners are not entitled to refuse to provide the capital required in accordance with the approved budgets and in accordance with their funding obligations under the LPA.

(d) The GP's position is that the budgets in respect of the Capital Calls, on which the Petitioners have defaulted, have previously been approved by the Petitioners and there is no entitlement on the part of the Petitioners to refuse to provide capital in relation thereto.

(e) In the premises, the Petitioners' purported summary of the GP's position is denied.

(f) For the avoidance of doubt, each of the Capital Calls, which the Petitioners have refused to honour, including in respect of the Early-Stage Companies was made in accordance with budgets approved by the Petitioners and the Petitioners are obliged to meet the Capital Calls.

54. As to Paragraph 38, save that it is admitted that Mr Yuri Bogdanov emailed the GP on 15 May 2025, the GP will rely upon the full contents of the 15 May 2025 Email at the hearing of the Petition for its full terms and effect.

55. Save that it is admitted that the GP issued the May 2025 Capital Calls on 30 May 2025 and issued the Delaware Proceedings on the same date, Paragraph 39 of the Petition is denied:

(a) It is averred that the total capital contributions sought pursuant to the Capital Calls is US$107,103,759, and not "*US$109,960,926.00 million (sic)*" as pleaded in the Petition.

(b) It is averred that the GP had no alternative but to issue the Delaware Proceedings in light of the Petitioners' clear breach of their funding obligations under the LPA and their intention, made clear in the 15 May 2025 Email, not to provide any further funding to the Partnership, in breach of their obligations under the LPA.

56. Paragraph 40 of the Petition is not admitted. The GP will refer to the Delaware Complaint at the hearing of the Petition for its full terms and effect, by which date the Delaware Complaint will have been determined by the Delaware Court.

57. As to Paragraph 41 of the Petition:

(a) It is denied that the Capital Calls are designed to compel the Petitioners to pay any sum in excess of what they are legally committed and obliged to pay under the LPA, and paragraph 31(c) above is repeated.

(b) It is denied that the GP has sought to engineer a default, as alleged or at ~~all, thereby allowing Dr Harrison and his family trust to take control of the Partnership~~. At all material times, the actions taken by the GP and/or Dr Harrison for and on behalf of the Partnership have been taken in good faith, acting bona fide in the interests of the Partnership, in the face of the Petitioners' wrongful refusal to contribute the capital they are each legally obliged to contribute under the LPA.

(c) It is ~~denied that Dr Harrison and Les Pommes have together contributed less than 1% of the capital in the Partnership.~~ averred that Dr Harrison has contributed US$54.7 million to the Partnership, representing approximately 2.1% of the total capital contributed to the Partnership. In any event, the

amount that Dr Harrison and Les Pommes have contributed to the Partnership is irrelevant.

(d) The last sentence of Paragraph 41 is denied, if and to the extent it is suggested thereby that the GP has acted wrongfully and/or in breach of the LPA and/or otherwise than in good faith and in the best interests of the Partnership in seeking the relief it seeks on behalf of the Partnership in the Delaware Complaint.

58. In the premises, Paragraph 42 of the Petition is denied.

59. Paragraph 43 of the Petition is denied:

(a) The GP is and was entitled to act in the manner it has, in the proper exercise of its discretion and in accordance with the LPA, in response to the 15 May 2025 Email. The Petitioners were fully aware and needed no further explanation from the GP as to why they were required to provide further capital.

(b) The GP does not seek to confiscate assets, as alleged by the Petitioners. The GP is acting in accordance with terms and conditions of the LPA.

(b1) The GP will rely on the default provisions in paragraph 5(c) of the LPA for their full terms, meaning and effect. The Petitioners' pleaded interpretation of these provisions is denied. In particular, the true position is that:

~~(c)~~ (i) The default provisions of paragraph 5(c) of the LPA impose a global default penalty on a defaulting limited partner across all of the defaulting limited partners' interests in the Partnership. This provision has remained unaltered since the inception of the LPA in 2012, across 22 different amendments.

~~(d)~~ (ii) In the event that a limited partner fails to make a required capital call contribution in response to a valid capital call (which, for the avoidance of doubt, the Capital Calls were), after notice and a 30-day cure period, the limited partner is deemed a "Defaulting Partner". The LPA provides that the GP can then pursue one or more of the alternatives set out in paragraph 5(c) of the LPA, including but not limited to the imposition of a Default Charge equal to up to 50% of the defaulting limited partner's interest in the Partnership, with those interests then being distributed to non-defaulting holders of interests in the Partnership.

~~(e)~~ (iii) Once a Default Charge has been imposed, a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as otherwise required by law, and any Units it may hold shall not be deemed outstanding for the purposes of determining the parties required or permitted to take any vote or action. The GP will rely on paragraph 18(f) of the LPA in this regard.

60. As the Family Office has always been aware, the global Default Charge is and always has been an important protection for the Partnership, providing, inter alia, a guarantee of funding implicit in and afforded by the global Default Charge mechanism. It prevents the Petitioners, as they have sought to do by their actions now, cherry picking which portions of the Partnership portfolio they fund after providing budget approvals. The scope of the Default Charge is not limited to the Defaulting Partner's interest in a specific project for which capital is called. Its purpose is to prevent a limited partner from reaping the benefits of self-selected Partnership assets while simultaneously ignoring obligations to meet capital calls across the rest of the Partnership portfolio. It is averred that this is precisely what the Petitioners have sought to and continue to seek to do by their present actions.

60A. Paragraph 43A is denied in its entirety. The GP has at all times acted in accordance with the LPA and never exerted pressure on the Petitioners, illegitimate or otherwise, to contribute capital to the Partnership that the Petitioners were not obliged to contribute. The GP has never sought to create a situation where it could default the Petitioners, or otherwise adopted the alleged "Default Strategy". The inference in the final sentence of paragraph 43A is not supported by any of the matters pleaded in Paragraphs 43A.a-f. and is denied. Further, as to paragraphs 43A.a-f:

(a) As to Paragraph 43A.a, any such inference is denied, and the confidential communications between the GP and its US attorneys are in any event privileged.

(b) Paragraph 43A.b is denied. The Capital Calls were issued for proper purposes, *intra vires*, and were not inflated but reflected the funding needs of the Partnership.

(c) As to Paragraph 43A.c, the appropriateness of the relief sought by the GP in the Delaware Proceedings is a matter for the Delaware Proceedings. Without prejudice to the aforesaid, it is denied that there was anything improper about the relief sought by the GP in the Delaware Proceedings.

(d) As to Paragraph 43A.d, the well-foundedness of the GP's claim in the Delaware Proceedings is irrelevant. Without prejudice to the aforesaid, it is denied that the GP's position on the true meaning of the Default provisions in the LPA was or is wrong.

(e) As to Paragraph 43A.e, it is admitted that a reallocation plan was proposed by the GP to the Petitioners on or around 29 April 2025. However, it is denied that this paragraph presents an accurate account of the events surrounding that plan. It is averred that the GP made clear in

correspondence with the Petitioners at the relevant time that the GP's proposal was part of a triage strategy in light of the Petitioners' starvation of the Partnership. It was a good faith attempt by the GP to accommodate the Petitioners' funding concerns and does not support any inference that the GP acted improperly.

(i) As to Subparagraph 43A.e.i, it is admitted that discussions took place on 9 May 2025 and 13 May 2025. However, it is denied, if alleged, that the GP's proposal was seriously considered by the Petitioners. It is averred that during the call on 13 May 2025, lawyers acting for the Petitioners repeatedly exerted pressure on Dr Harrison to concede the false position that the GP's proposal was evidence of its lack of faith in the Early-Stage Companies. The conduct of the Petitioners and its lawyers during that call caused the GP reasonably to consider that the Petitioners did not intend to engage with the GP's proposal in good faith.

(ii) As to Subparagraph 43A.e.ii, it is admitted that the GP withdrew the reallocation proposal during the call on 13 May 2025. It is denied that, at the time when it was withdrawn, the GP considered the proposal to be in the best interest of the Partnership. The third and fourth sentences of paragraph 60A(e) above are repeated.

(iii) Subparagraph 43A.e.iii is denied and the allegations therein are baseless.

(f) As to Paragraph 43A.f, it is denied, if alleged, that the GP undertook any actions in respect of an attempted sale of Partnership assets that were not in furtherance of its obligations under the LPA or that could reasonably give the Petitioners any cause for concern. It is averred that since the commencement of the Delaware Proceedings, the GP was approached by

or approached 26 investors, including by sending a presentation relating to the opportunity to take over part of the Partnership's portfolio, with a view to remedying the damage caused to the Partnership by the Petitioners' breaches of their funding obligations under the LPA. It is denied, if alleged, that the GP was required to give notice to the Petitioners of any such measures. None of the proposed transactions would be effected unless there is a change of circumstances in the GP's disputes with the Petitioners and/or with appropriate Court sanction.

60B. Paragraph 43B is denied. The existence of any "default strategy" on the GP's part is specifically denied.

60C. As to Paragraph 43C, it is denied that any amendment made by the GP to the relief sought in the Delaware Proceedings is relevant to the issues in these proceedings. The effect of the relief sought by the GP in the Delaware Proceedings is a matter of Delaware law and a matter for the Delaware Proceedings. Without prejudice to the aforesaid, it is admitted that before the trial of the Delaware Proceedings was due to commence, the GP amended the relief sought in those proceedings. Those amendments were reflected in the Proposed Pre-Trial Order dated 5 September 2025. In addition, it is averred that further amendments to the relief sought in the Delaware Proceedings were subsequently made by the GP, as reflected in the Proposed Order and Final Judgment dated 28 October 2025. Further:

(a) Paragraph 43C.g is not understood, but in any event is denied. The GP never claimed to be entitled to relief based "solely" on the 15 May Email. The GP's complaint as filed in the Delaware Proceedings concerns the sum of the Petitioners' wrongful conduct and the numerous breaches of their obligations owed to the Partnership.

(b) As to Paragraphs 43C.h-i, and strictly without prejudice to the GP's position in the Delaware Proceedings:

(i) The GP did not "abandon" anything but rather amended the relief sought.

(ii) The GP's case in the Delaware Proceedings has been (and remains) that there is approximately US$331m in capital committed by the Petitioners towards unapproved budgets.

(iii) Specific performance of the Petitioners' obligation to approve budget proposals within this amount was sought when the Delaware Proceedings were issued, and still at the time of the Proposed Pre-Trial Order (as alternative relief to the finding that the Petitioners had waived their rights to consider and approve budgets).

(iv) The GP initially claimed, but was no longer claiming at the time of the Proposed Pre-Trial Order, and is not claiming now, an order permitting it to impose a Default Charge against all of the Petitioners' interests in the Partnership or, alternatively, in the Pools implicated by their breaches.

(c) Paragraph 43C.j is admitted and it is averred that the GP continues to claim this relief.

(d) As to Paragraph 43C.k, and strictly without prejudice to the GP's position in the Delaware Proceedings:

(i) It is admitted that such declaration was sought at the time of the Proposed Pre-Trial Order.

(ii) However, a materially identical declaration had already been sought when the Delaware Proceedings were issued.

(iii) No such declaration is sought now. It is averred that the only relief claimed by the GP that relates to the Default provisions in paragraph 5(c) of the LPA is a declaration that "*[t]he terms of the Global Default Provision have not been altered or amended since the execution of the First Amended LPA*".

(e) As to Paragraph 43C.I and strictly without prejudice to the GP's position in the Delaware Proceedings:

(i) It is admitted that such relief was sought at the time of the Proposed Pre-Trial Order.

(ii) However, materially identical relief had already been sought when the Delaware Proceedings were issued.

(iii) It is averred that relief currently claimed by the GP does not refer to the Petitioners' obligations specifically to fund the Early-Stage Companies but it does refer to the Petitioners' obligations to pay the Capital Calls and to fund future capital calls in accordance with approved budgets, including in so far as capital is thereby provided to the Early-Stage Companies.

60D. The allegations in Paragraph 43D regarding the GP's conduct are all denied. It is unclear what is meant by the averment that the relief sought is "extreme" and "unjustified": accordingly, it is impossible to plead back to these averments, which are in any event denied. In any event, and without waiver of privilege, as pleaded more fully below, the subsequent amendments were made by the GP to ensure compliance with the terms of the Writ Injunction.

60E. Paragraph 43E is denied in its entirety.

(a) The relief (as amended) sought in the Delaware Proceedings by the GP includes declarations that:

(i) The Petitioners have breached the LPA by (i) refusing to consider budgets in good faith and waived their rights to approve budgets and (ii) failing to pay the Capital Calls;

(ii) The Petitioners have breached their Common Law duties to exercise discretion in approving budgets in a rational and good faith manner;

(iii) The GP's filing of the Delaware Complaint on behalf of the Partnership (i) does not constitute an act taken in bad faith; (ii) is not an instance of willful fraud, willful misconduct or gross negligence; nor (iii) an intentional and material breach of the LPA; and (iv) is consistent with GP's rights and obligations as set forth in LPA paragraph 18(g)(iv); and

(iv) The Petitioners are required to pay the Capital Calls and to fund future capital calls in accordance with approved budgets.

(b) It is denied that the recognition of the any judgment or order of the Delaware Court in the Delaware proceedings would be contrary to public policy. The GP did not breach the Writ Injunction by making the amendments to the relief sought in the Delaware Proceedings reflected in the Proposed Pre-Trial Order dated 5 September 2025 or the subsequent amendments, reflected in the Proposed Order and Final Judgment filed on date 28 October 2025, or pursuing that relief (including the relief set out above).

(c) Any judgment or order in the Delaware Proceedings, including any judgment and order making the declarations set out above in paragraph 60E(a), will be entitled to recognition in the Cayman Islands. Any such judgment or order will: (i) be given by a court of competent jurisdiction; (ii) be a final and conclusive judgment on the merits; (iii) be in proceedings between the same parties; and (iv) not be contrary to Cayman public policy.

60F. The sub-paragraphs of 43E are all denied:

(a) Paragraph 43E.a is denied. The Writ Injunction does not prohibit the GP from seeking any declaratory relief in the Delaware Proceedings but only restricts the GP from taking enforcement steps in the Cayman Islands that would be contrary to the terms of the Writ Injunction. In any event, it is denied that the declaration identified in this subparagraph is now sought by the GP.

(b) Paragraph 43E.b is denied. Pursuant to paragraph 5(c)(iv) of the LPA, the GP is entitled to pursue the remedies referred to therein, including collecting unpaid capital contributions, without GP treating or designating the Petitioners as "*Defaulting Partners*". In any event, the relevant "commencement of a lawsuit" by the GP took place before the Writ Injunction was made, therefore it could not be a breach of the Writ Injunction on any construction of paragraph 5(c)(iv) of the LPA.

(c) Paragraph 43E.c is denied. The GP has not taken a step to designate, deem or treat the Petitioners as a "*Defaulting Partner*" as alleged or at all. The GP has pursued a declaration that the Petitioners have waived their rights to approve budgets, and did so in reliance on the rules of equity recognised in Delaware law, not on the basis of paragraph 18(f) of the LPA.

60G. Further, should the Delaware Court make the declarations, or declarations in materially the same terms as those set out above at paragraph 60E, the Petitioners will thereby be estopped from disputing certain issues raised in this Petition. Alternatively, in so far as any of these issues were not raised in the Delaware Proceedings, this was the result of the Petitioners' failure to bring forward their whole case in the Delaware Proceedings, and it will be an abuse of process to continue to raise them in this Petition. These issues include the following:

(a) If the Delaware Court makes the declaration at paragraph 60E(a)(i) above, the Petitioners will be estopped from disputing, or it will be an abuse of process for them to dispute, the following issues:

(i) Whether the Petitioners were obliged to pay the Capital Calls (Paragraphs 4.a, 26.a, 37.b, 44A-44D, 47).

(ii) Whether the GP has sought to compel the Petitioners to provide funding to the Partnership in excess of the total amount of their Contingent Subscriptions (Paragraphs 4.a, 21-24, 37.a, 47, 49).

(iii) Whether the GP has failed to enable the Petitioners to consider budgets by failing to provide information required by them for this purpose (Paragraphs 26.f, 57-58).

(iv) Whether the GP, by misleading the Petitioners, has interfered with their consideration of budgets (Paragraphs 4.b1, 26.d1, 52A-52I).

(v) Whether the Petitioners have waived their right to approve budgets (Paragraphs 37.b, 52).

(b) If the Delaware Court makes the declaration at paragraphs 60E(a)(ii) above, the Petitioners will be estopped from disputing, or it will be an abuse of process for them to dispute, the following issues:

(i) Whether the GP has sought to compel the Petitioners to provide funding to the Partnership in excess of the total amount of their Contingent Subscriptions (Paragraphs 4.a, 21-24, 37.a, 47, 49).

(ii) Whether the GP has failed to enable the Petitioners to consider budgets by failing to provide information required by them for this purpose (Paragraphs 26.f, 57-58).

(iii) Whether the GP, by allegedly misleading the Petitioners, has obstructed their consideration of budgets (Paragraphs 4.b1, 26.d1, 52A-52I).

(c) If the Delaware Court makes the declaration at paragraph 60E(a)(iii) above, the Petitioners will be estopped from disputing, or it will be an abuse of process for them to dispute, the following issues:

(i) Whether there was any impropriety in the GP's issuing the Delaware Proceedings (Paragraphs 4.b, 26.b-d, 41-43D, 45, 48-49A).

(ii) Whether there was any impropriety in how the GP conducted itself in the Delaware Proceedings (Paragraph 49B).

(iii) Whether there was any impropriety in how the GP has funded the Delaware Proceedings (Paragraph 52N.f).

(d) If the Delaware Court makes the declaration at paragraph 60E(a)(iv) above, the Petitioners will be estopped from disputing, or it will be an abuse of process for them to dispute, the following issues:

(i) Whether the Petitioners were obliged to pay the Capital Calls (Paragraphs 4.a, 26.a, 37.b, 44A-44D, 47).

(ii) Whether the Petitioners have any remaining funding obligations according to their total Contingent Subscriptions (Paragraphs 4.a, 21-24, 37.a, 47, 49).

(iii) Whether there are any reasons, such as relating to conflict of interest, why the Petitioners should not be required to fund future capital calls (Paragraphs 4.d, 26.g, 59-62).

60H. The GP reserves the right to contend that other issues were raised and determined by the Delaware Court in the Delaware Proceedings by the Petitioners, or should have been raised, such that the Petitioners are estopped from disputing those issues, or that it would be an abuse for the Petitioners to dispute them.

Alleged mismanagement/prejudicial conduct/lack of probity in the conduct of the Partnership's affairs

61. Paragraph 44 of the Petition is denied.

Issuing of the Capital Calls

61A. Paragraph 44A is admitted, and it is averred that the GP acted at all times in good faith in the best interests of the Partnership, and exercised its powers for a proper purpose.

61B. As to paragraph 44B, it is admitted that the GP is required to have regard to the interests of the Partnership in complying with the duties referred to in paragraph 44A. It is denied, if it is averred, that the relative amount of the Petitioners' contribution of capital to the Partnership requires the GP to have specific regard to the interests of the Petitioners, to the exclusion of the other limited partners, when discharging its duties.

61C. Paragraph 44C and each and all of Paragraphs 44C.a-d pleaded in support thereof are denied. It is denied that the Capital Calls were not made in good faith, were not made in the interests of the Partnership or were made for improper purposes, whether as alleged or at all. It is denied the GP did not genuinely believe that it was in the best interests of the Partnership to allocate further funding to the Early-Stage Companies either in the amounts sought under the Capital Calls, or at all. It is averred that the GP issued the Capital Calls to meet the Portfolio Companies' funding needs, pursuant to budgets previously agreed with the Petitioners, at all times acting in good faith and for a proper purpose.

61D. Paragraphs 44D and its sub-paragraphs are denied:

(a) It is unclear what is meant by "*enormous economic benefits*" and so it is impossible for the GP to plead back to this averment. Nevertheless, it is denied that the GP was actually or potentially subject to a conflict of interest as alleged at Paragraph 44D.a or at all. It is specifically denied that the entitlements and matters set out at 44D.a.(a)-(c) give rise to any such actual or potential conflict. Further, those entitlements and matters were in any event permitted under the LPA and were fully disclosed to the Petitioners who never objected to and consented to them. Accordingly, if which is denied, there was any such actual or potential conflict, the same was fully disclosed and consented to by the Petitioners, and the GP has not breached any duty, as alleged or at all.

(b) As to Paragraph 44D.b, it is admitted that the Capital Calls were all made on the same day. It is denied, if alleged, that the GP was obliged to provide any additional explanation to the Petitioners prior to issuing them, in circumstances where the Petitioners were well aware of the basis on which they were obliged to contribute capital as per their obligations under the LPA and pursuant to budgets agreed with the Petitioners, and the same had been previously explained by the GP.

(c) As to paragraph 44D.c, the size of the Capital Calls is US$107 million. This amount reflected the genuine funding needs of the relevant Portfolio Companies. Without prejudice to the aforesaid, it is averred that statements made in April 2025 and in the 15 May Spreadsheet reflected the GP's austerity strategy, in an attempt to accommodate the Petitioners in good faith negotiation to provide the bare-minimum funding to the portfolio companies. As to the October Presentation, whilst the Capital Calls were based on the funding needs of the Portfolio Companies by reference to the amounts that the GP was permitted to call pursuant to the LPA, the October Presentation set out revised amounts in relation to these specific Portfolio Companies in light of the reduced company costs following the considerable number of redundancies and restrictions to ongoing business operations that were required to be implemented across the Portfolio Companies as a result of the Petitioners' failure to pay the Capital Calls.

(d) Paragraph 44D.e is denied for the reasons set out at paragraph 60A above.

(e) As to paragraph 44D.f, it is denied that the timing of the Capital Calls could support the conclusion that the GP breached its duties, as alleged or at all.

(f) As to paragraph 44D.g, despite Apertor's financial situation, which was caused by the Petitioners' breach of their funding obligations, the GP rightly considered that Apertor's shutdown at the time when the Capital Calls were issued was not in the best interest of the Partnership. The Capital Call in respect of Apertor reflected that position and corresponded to the Apertor's genuine commercial need.

(g) As to paragraph 44D.h, it is averred that the deal with Novo Nordisk did not provide enough funding to satisfy all Deep Apple's funding needs, was not concluded until June 2025, and the first funding pursuant to it was not

received until late July 2025. There is no basis for the inference pleaded in Subparagraph 44D.h.iv.

(h) As to paragraph 44D.i, paragraph 60A(e) is repeated. The communications between Dr Harrison and Ms Batarina referred to were by WhatsApp, not email. Dr Harrison's assertion to Ms Batarina that the reallocation of capital away from the Early-Stage Companies "*is the right business decision for the portfolio in ANY financing context*" was made specifically in the context of the reallocation proposal, a triage strategy to save the portfolio companies in light of the starvation of funding from the Petitioners. Furthermore, at the time of the messages with Ms Batarina (April 2025), the GP did not contemplate that the Petitioners would cease discussions of budgets completely. The GP will rely upon the complete text of the WhatsApp communications with Ms Batarina to demonstrate that the GP was working on the basis there would be a flexible, ongoing dialogue between the Petitioners and the GP as to portfolio-wide capital calls, budgets and programmes. Accordingly, there is no basis for the inference pleaded in Subparagraph 44D.i.iii.

The Delaware Proceedings

61E. The GP will rely on the transcripts of the Delaware Proceedings, and the pleadings filed in those Proceedings, for their full terms and effect.

62. It is denied that the Delaware Proceedings were issued by the GP for any or the alleged improper reason pleaded at Paragraph 45 of the Petition. Further, as the Petitioners are well aware, no consensual solution was possible, in light of the Petitioners' stated intention not to provide any further capital. The purpose of the

Delaware Proceedings is to compel the Petitioners to abide by their contractual obligations pursuant to the LPA and holding the Petitioners to the agreed bargain.

63. As to Paragraph 46, the GP will refer to the Delaware Complaint at the hearing of the Petition for its full terms and effect.

64. It is denied that the allegations particularised at Paragraph 46 are untruthful and/or wholly unfounded as alleged at Paragraph 47 of the Petition. As pleaded above:

(a) The Petitioners have not paid out the entirety of their legally committed capital under the LPA (as amended), as alleged or at all.

(b) The relevant budgets in relation to the Capital Calls had been approved and there were not and are not any milestones to be met therein.

(c) The Capital Calls are in accordance with the approved budgets and the Petitioners are obliged to pay the same.

(d) It is denied that the Early-Stage Companies are obliged to and/or have failed to meet any requisite milestones, as alleged or at all.

(e) The fact that the Petitioners have purportedly formed the view that the Early-Stage Companies are not viable investments is irrelevant in the circumstances. As pleaded above, paragraph 2(b) of the LPA vests exclusive control of the management, policies and control of the affairs, and the conduct of business, of the Partnership in the GP.

(f) Furthermore, the GP avers that the Petitioners do not, in fact, believe that the Early-Stage Companies are not viable investments, but have adopted this position in support of their own self-serving agenda and in abrogation of their contractual and extra-contractual duties.

(g) The GP has provided the Petitioners with all relevant information with regard to new budgets, but the Petitioners have refused, irrationally and in breach of the LPA, to agree the budgets.

65. Moreover, the GP avers that the Family Office is currently experiencing liquidity issues.

66. In the premises, Paragraph 48 of the Petition is denied.

67. Paragraph 49 of the Petition is denied, for the reasons pleaded above, which are repeated seriatim.

67A. The Petitioners' position at paragraph 49A is noted. Paragraph 60D above is repeated.

67B. As to Paragraph 49B, it is denied that the GP's conduct in the Delaware Proceedings is an issue relevant to the Petition. Further and in any event: (i) it is denied that the GP's conduct in Delaware has given rise to a justifiable loss of trust and confidence; (ii) it is denied that the making of submissions to a Court of competent jurisdiction in proceedings to which the Petitioners were party and afforded an opportunity to respond is capable of giving rise to a justifiable lack of trust and confidence; and (iii) it is denied the GPs made any misrepresentations to the Delaware Court. Without prejudice to the aforesaid:

(a) Paragraph 49B.d is admitted. The Petitioners subsequently abandoned the JPL Summons.

(b) Paragraph 49B.e is admitted and it is averred that this motion was the Emergency Motion for Status Quo Order.

(c) Paragraphs 49B.f-g raise issues which could have been raised by the Petitioners in the Delaware Proceedings. The issues were not raised by the

Petitioners in the Delaware Proceedings, including either at the *inter partes* September Hearing, or in their Answering Brief to the GP's motion. Their attempt to raise these issues now is an abuse of process of this Court. Without prejudice to the aforesaid, the allegations in Paragraphs 49B.f-g are denied. The status quo motion was not pursued in breach of the LPA paragraph 18(g)(vi), nor was it vexatious or oppressive to the Petitioners, nor was it an interference with the Cayman Court's winding up jurisdiction, nor was it unconscionable.

(d) Further and in any event, it is denied that the GP misrepresented any matters to the Delaware Court at the September Hearing, as alleged or at all. In particular:

(i) The same allegation as pleaded at Subparagraph 49B.h.i was also made by the Petitioners at the September Hearing in the Delaware Proceedings. Chancellor McCormick interrupted the Petitioners' attorney and said "*Skip that point because it's a bad one. I read the letter the same way [the GP] did … That sounds like* ex parte *relief to me. I understand why [the GP] took it that way. I'm glad to hear you're not doing that.*"

(ii) The Delaware Court considered that the JPL Summons risked an interference with its jurisdiction, contrary to the Petitioners' position at Subparagraph 49B.h.ii. Chancellor McCormick said: "*[The GP] said that the goal [of the adjournment in Delaware] was … to give you an opportunity to push Cayman proceedings forward. So, yeah, I think they were on to something. That's exactly what is seems like happened. … So had I known this would have been the case, I probably wouldn't have adjourned the trial that was set to go forward yesterday and today.*"

(iii) As to Subparagraphs 49B.h.iii-vi, it is denied that the GP misrepresented anything to the Delaware Court in connection with its motion, either as alleged or at all.

(e) Paragraph 49B.i is admitted.

(f) Paragraph 49B.j is admitted, save that it is denied (to the extent alleged) that there was anything improper in the GP suggesting that the Delaware Court hand down judgment before the JPL Summons was due to be heard on 3 November 2025.

(g) Paragraph 49B.k is denied. The Petitioners chose to have their JPL Summons dismissed because it was bound to fail. It is in any event denied that their reasons for doing so are relevant to the Petition. If and insofar as the Petitioners allege that Chancellor McCormick's management of the Delaware Proceedings and their timescale caused the Petitioners not to obtain a fair trial, that is denied.

Alleged wilful and persistent breaches of the LPA

68. The GP will refer to the Delaware Complaint at the hearing of this Petition for its full terms and effect. ~~The facts and matters pleaded in~~ Paragraph~~s 50 to~~ 52 ~~inclusive~~ of the Petition ~~are~~ is embarrassing for want of particulars and is too vague for the GP to plead back to, but is in any event denied. The GP is not seeking any relief in the Delaware Proceedings to which it is not entitled as a matter of law or equity.

~~69. As to the allegation that the GP is attempting to derive the Petitioners of "oversight", paragraph 18(f) of the LPA provides that "*a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as may otherwise be required by law.*" The provision is automatic where a partner becomes a Defaulting Partner and is not dependent on~~

~~the GP exercising any discretion. The Delaware Complaint seeks a judicial determination that paragraph 18(f) is engaged. It is denied that the GP seeking to enforce an express term of the LPA demonstrates a lack of probity and/or mismanagement.~~

Alleged misleading of the Petitioners into contributing capital to the Partnership

69A. The allegation at Paragraph 52A is embarrassing for want of particulars, but in any event is denied. It is denied that the GP misled the Petitioners, or made false representations, or alternatively that it did so knowingly, as alleged or at all.

69B. As to Paragraphs 52B to 52I:

(a) It is admitted that capital calls in respect of Marlinspike were made and paid as pleaded.

(b) It is admitted that a loan of US$1 million was made by Marlinspike to Nereid.

(c) The loan was made by Marlinspike, not by the GP. It was made within the proper authority and power of Marlinspike.

(d) It is denied that the GP breached its obligations under the LPA or made any misrepresentations to the Petitioners:

(i) At the time when the loan was made, the GP and the Petitioners anticipated that a merger would take place between Marlinspike and Nereid, and which would be in the Partnership's best interest.

(ii) The Petitioners had agreed to that merger, including in January 2025, and by the time when the loan to Nereid was made.

(iii) The loan was made to promote the objectives of that merger and without prejudice to the interests of Marlinspike or the Partnership generally.

(iv) In the circumstances, it is denied that the GP represented by virtue of the Capital Calls, that the capital sought would not be used by Marlinspike to make loans or that Marlinspike would not loan the capital sought to Nereid.

(e) Save as admitted above, the allegations in Paragraphs 52B to 52I are denied.

Alleged misappropriations / dissipations of assets

69C. Paragraph 52J is admitted.

69D. Paragraph 52K is admitted, save that management fees paid to ATLS are not *"alleged"* but were properly due and payable.

69E. The first and second sentences of paragraph 52L are contradictory. The first is denied. As to the second:

(a) The Petitioners became aware that US$20,035,952.54 was received on 31 July 2025 (in respect of an earnout payment in respect of an exit from Tendyne, an older investment of the Partnership) because the GP disclosed this fact, voluntarily, in correspondence in the weeks after it received it. Further, as regards the Braeburn Prepayment, the Petitioners knew (or ought reasonably to have known) that it would occur since at the latest July 2025, when they were copied to correspondence regarding it.

(b) The GP was not under any obligation to disclose the Q3 2025 Payments to the Petitioners earlier than it did.

69F. The first sentence of Paragraph 52M is admitted. The second sentence is denied. It is denied that by obtaining the Braeburn Prepayment the GP demonstrated any lack of probity, or that the Braeburn Prepayment gives rise to any justifiable loss of trust or confidence in the GP's management of the Partnership. The GP chose to forgo a portion of the capital and interest on the Braeburn Notes where the alternative was the collapse of portfolio companies due to the Petitioners' breach of their funding obligations. Without prejudice to the aforesaid:

(a) Paragraph 52M.a is denied. The Braeburn Prepayment represented an early repayment of sums owed to the Partnership under certain convertible loan notes issued by Braeburn between October 2020 and February 2021 (as amended on a number of occasions, most recently on 29 September 2023).

(b) Paragraph 52M.b is denied. The Braeburn Notes were originally forecast to be repaid in Q4 of 2025 (of which the Petitioners were well aware and as has been discussed on numerous occasions between the GP and the Petitioners). Following various issues related to government funding, which affected Braeburn's profit forecast for 2025, the forecast for the date of repayment of the Braeburn Notes was adjusted to Q4 of 2026.

(c) Paragraph 52M.c is admitted.

(d) It is averred that the GP offered the discount to Braeburn as pleaded at Paragraph 52M.c on 24 July 2025. Braeburn calculated that it would save US$4.7 million in interest payments as a result of the 10% discount.

(e) For the reasons above, Paragraphs 52M.d-e are denied.

69G. Paragraph 52N is denied. The Q3 2025 Payments were made by the GP properly in accordance with paragraph 8(c) of the LPA. As to its sub-paragraphs:

(a) On the true construction of the LPA, including paragraph 21 thereof, the GP was permitted to use the proceeds of the Braeburn Notes to make payments in accordance with paragraph 8(c) of the LPA. Otherwise, paragraph 52N.a is denied.

(b) It is admitted that the quotation at paragraph 52N.b is accurate.

(c) As to paragraph 52N.c, it is averred that the GP was also permitted to apply the Q3 2025 Receipts towards the Partnership's legal fees and the ATLS management fee, such expenditure being expressly authorised by paragraph 8(c) of the LPA and paragraph 11 of Amendment 9.

(d) Paragraph 52N.d is denied. In particular:

(i) As to Subparagraph 52N.d.i, it is denied that the approved budget in respect of Aethon incorporates funding milestones or any other conditions restricting the GP's power, in the Partnership's best interest, to make payments to Aethon within that budget. The only role of such milestones referred to in budgets is to assist the GP to decide whether it is in the Partnership's best interest to continue to fund the relevant portfolio company. It is further denied that the GP's refusal to allow Aethon and, by consequence, the Partnership, to suffer irreparable harm by withholding funding from Aethon demonstrates any lack of probity.

(ii) It is admitted that the transfers to Nine Square and Nereid identified at Subparagraph 52N.d.ii were made. These transfers related to asset preservation, including to meet severance costs and legally binding obligations such as payroll and taxes, and, on the true construction of the LPA, fell outside of the budget approval process.

(iii) Save that the transfer to Replicate identified at Subparagraph 52N.d.iii is admitted, and that it is admitted that the quotation from paragraph 26 of the LPA is accurate, this paragraph is denied. It is averred that a budget of US$72.25 million was agreed for Replicate. The budget was contained in a contract dated 11 February 2025, signed by the Petitioners. The only condition referred to in this contract was that US$ 9 million could only be called "*commencing upon the closing of the LATAM deal for rabies.*" The payment to Replicate was made properly and in accordance with its approved budget.

(iv) As to Subparagraph 52N.d.iv, subparagraph 69G(d)(i) above is repeated *mutatis mutandis*.

(e) Save that it is admitted that the payment to Ascidian was made as pleaded, Paragraph 52N.e is denied. It is denied that the matters pleaded therein show any lack of probity on the GP's part. It is noted that the Petitioners have never sought to particularise any alleged obligation of the GP to withdraw validly issued capital calls following a change of circumstances, and their allegation as to lack of probity is baseless. Without prejudice to the aforesaid, it is admitted that the payment was made to Ascidian as pleaded in this paragraph.

(f) Save that it is admitted that the transfer to Quinn Emanuel's client account was made as pleaded, Subparagraph 52N.f is denied. It is averred that legal costs incurred by the GP in connection with the Delaware Proceedings and the Cayman Proceedings are properly incurred on behalf of the Partnership. There is no reason why the GP should not pay funds into the Quinn Emanuel client account and the Petitioners have failed to identify any such reason.

69H. Paragraph 52O is denied. It is denied that there was any impropriety or lack of probity as alleged or at all. The Petitioners have failed to explain why they allege the GP was required to seek such validation orders but in any event it is denied the GP was or is so required. As to its sub-paragraphs:

(a) Paragraph 52O.a is admitted.

(b) Paragraph 52O.b.i-ii are admitted as partial quotations of Harrison 3. The GP will rely on Harrison 3 for its full terms and effect. Harrison 3 was sworn before any of the Q3 2025 Receipts were received by the GP.

(c) Save that it is denied that, by 1 August 2025, the GP or Dr Harrison had resolved to allocate US$6 million to Ascidian, Paragraph 52O.c is admitted. The GP intended to use any funds available to the Partnership in accordance with its obligation to deploy such funds as permitted by the LPA and in the best interest of the Partnership.

(d) Paragraph 52O.d is denied. The GP's evidence for the hearing on 1 August 2025 was in all respects true and not misleading. In particular, the truth of Harrison 3 was not affected by the Q3 2025 Receipts.

(e) For the reasons identified above, Paragraph 52O.e is denied.

Alleged improper denials

69I. Paragraph 52P is admitted.

69J. Paragraph 52Q is denied in its entirety and paragraph 60A above is repeated.

69K. For the reasons above, Paragraph 52R is denied.

Alleged failure to maintain records in the manner of a reasonably competent general manager

69L. As to Paragraph 52S, it is denied that any matters pleaded therein, even if true, are of sufficient gravity as to give rise to a justifiable loss of trust and confidence by the Petitioners in the GP's ability to manage the Partnership.

(a) Paragraph 52S.a is admitted.

(b) The first sentence of Paragraph 52S.b is admitted. As to the second sentence of Paragraph 52S.b, it is averred that section 29(6) of the ELP Act creates an "offence" punishable by a fine. The GP's position is that a general partner could not be properly convicted of this offence or subjected to any punishment under this provision for failures to comply with section 29(1) of the ELP Act which are *de minimis* and which do not cause any prejudice to the partnership or any of its limited partners.

(c) Paragraph 52S.c is denied. The GP regularly provided updated Lists of Partners to the Petitioners on an ongoing basis throughout the life of the Partnership. It is admitted that these Lists of Partners did not comply with some of the requirements under paragraph 16(b) of the LPA. It is averred that the Petitioners never, until the current proceedings, raised complaints about the adequacy of the Lists of Partners provided by the GP over the previous 13 years. To the extent that the Petitioners had the right to receive Lists of Partners that complied with all the requirements under paragraph 16(b) of the LPA, such right was thereby waived.

(d) As to Paragraph 52S.d, it is admitted that the GP did not maintain a Register of Partners in the sense of section 29(1) of the ELP Act until 25 July 2025. It is averred that the Petitioners never requested to see the Register of Partners until these proceedings. Having regularly provided the Petitioners

with Lists of Partners which they accepted as sufficient, any failure to comply with section 29(1) of the ELP Act was *de minimis* and did not cause any prejudice to the Petitioners or to the Partnership and was thereby waived by the Petitioners. The GP rectified this position upon becoming aware of it by producing a compliant Register of Partners on 25 July 2025.

69M. As to Paragraph 52T, it is denied that any matters pleaded therein, even if true, are of sufficient gravity as to give rise to a justifiable loss of trust and confidence by the Petitioners in the GP's ability to manage the Partnership. Further, it is denied that the GP failed to maintain a consistent position as regards the extent of the Petitioners' Contingent Subscriptions. As to paragraph 52T.a-c:

(a) It is admitted that a reasonably competent general partner is required to maintain such records as it requires to discharge its obligations to the partnership. It is averred that the GP has at all times done so. Otherwise, paragraph 52T.a is denied.

(b) Paragraphs 52T.b-c fail to particularise the allegedly inconsistent figures and explanations, such that it is impossible for the GP to plead back to them. In any event, the inferences advanced in these paragraphs are denied. Following execution of Amendment 20 to the LPA on 21 June 2021 (which had the effect of increasing the Petitioners' Contingent Subscriptions across various pools), the GP consistently provided to the Petitioners detailed amounts of their Contingent Subscriptions and remaining Contingent Subscriptions on the occasion of every capital call made since. The Petitioners never objected to the figures stated in the capital calls at the time the capital calls were sent.

Alleged recharging of costs to the portfolio companies

70. Save that the GP will refer to the relevant provisions of the LPA with regard to expenses for their full terms and effect, and in particular paragraph 11 of Amendment 9, Paragraph 53 of the Petition is admitted. Paragraph 29 above is repeated.

71. Paragraph 54 of the Petition is denied. In particular:

(a) Employees of entities connected to ATP have fulfilled various roles at the Partnership's portfolio companies. This approach is more efficient and cost effective to the Partnership, and to the portfolio companies, than if the portfolio companies had independently hired different people to fulfil each of the roles, as it has allowed ATP employees to carry out roles across multiple portfolio companies, and for the costs to be apportioned accordingly. Furthermore, the ATP employees are high level research and development executives, who would otherwise not be available to start-up companies. The process by which this occurred was formalised in 2023 and as mentioned in Paragraph 54(c) of the Petition, the GP commissioned a transfer pricing study by Pricewaterhouse Coopers (which was sent to the Family Office), which calculated the costs of the ATP employees fulfilling these roles, to ensure that arm's length terms applied accordingly. This form of "charge-back" for employee services is very common in the industry. The basis on which this allocation of employee costs could be said to "deprive" the Petitioners of income via the distribution mechanisms in the LPA is not understood.

(b) The costs of the employees have historically been included in the budgets, which have been provided in all cases to the Family Office. The GP has, accordingly, been fully transparent as to the roles that the ATP employees have been carrying out and the terms on which the roles have been

conducted, and the Family Office has been fully aware of the terms. The availability of the ATP employees to the portfolio companies was essential to their business model and was discussed with, and agreed by, the Family Office on multiple occasions.

(c) The GP avers that all relevant service agreements and transaction records in relation to the reimbursement of employee costs ~~have now been~~ were disclosed to the Petitioners in the Delaware Proceedings.

72. It is denied, as pleaded in Paragraph 55 of the Petition, that the travel expenses incurred on behalf of the Partnership and the portfolio companies are exorbitant or demonstrate a serious lack of probity and mismanagement, or give rise to a conflict of interest. Any apparent concern is unwarranted as the GP has not been inappropriately incurring travel expenses for investment professionals, as suggested or at all. It is averred that:

(a) The GP has a detailed and comprehensive Travel and Expenses Reimbursement Policy (the "**Expenses Policy**"), which sets out the policy by which employees can reimburse business expenses and pursuant to which the travel expenses have been incurred and paid. The stated purpose of the Expenses Policy is to promote good business practices, and it sets out the method and process for reimbursement for all ordinary, necessary and reasonable expenses incurred by employees while conducting business on behalf of ATLS. The Expenses Policy sets out reasonable limitations as to the expenses that employees may reimburse, including in respect of the mode (and class) of travel, the cost of accommodation, meals and entertainment, and conferences. Travel expenses are allocated based on the purpose for the relevant business travel. It is averred that travel expenses are incurred and reimbursed in compliance with the Expenses Policy. A copy of the Expenses Policy has been produced to the Petitioners in the Delaware Proceedings.

(b) Paragraph 11 of Amendment 9 provides that travel expenses shall be paid from the ATLS Fee, save that the Partnership shall be liable for travel expenses relating to making and monitoring investments, including expenses relating to broken deals (except to the extent reimbursed by Operating Companies), all expenses (including travel) related to meetings with the Family Office, and all expenses (including travel and travel-related expenses) relating to any actual or threatened litigation or proceeding involving the Partnership.

(c) Information on the travel expenses incurred on behalf of the Partnership and the portfolio companies has historically been included in the ATLS Fee Budgets, which have been provided to the Family Office when the ATLS Fee Budgets were prepared. The Family Office had not raised any concerns in relation to the travel expenses incurred on behalf of the Partnership and the portfolio companies prior to the issue of the Petition.

73. As pleaded above, the GP denies that it has acted in the manner alleged in Paragraphs 56 of the Petition and in the circumstances, Paragraph 56 is denied. This allegation is a further fabrication made to support a Petition brought for the purposes of allowing the Petitioners to avoid their contractual obligations under the LPA.

Alleged failure to provide information

74. Paragraph 57 of the Petition is denied. In particular:

(a) Paragraph 57(a) is wholly unparticularised and lacking in sufficient detail to be properly responded to, and does not include any details of which questions and requests the Petitioners are referring to. However, it is averred that there have been frequent meetings between the GP and the Family Office, and the GP has provided extensive briefing materials to the Family Office, for both Aulos and Ascidian.

(b) As to Paragraph 57(b):

(i) Paragraph 26 of the LPA was added to the LPA by Amendment 22. Paragraph 26 provides, inter alia, that "*If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC*".

(ii) As part of the negotiations and discussions regarding Amendment 22, the Petitioners represented that such a financing agreement as contemplated in Amendment 22 would be available as a matter of course. However, the Petitioners have still not closed a financing agreement in the period of over seven months (11 months as at the date of this Amended Defence) since Amendment 22 was executed.

(iii) Accordingly, the Petitioners are obligated to return to funding the Partnership and the portfolio companies in a rational manner.

(iv) The Petitioners have, however, acted in an arbitrary manner in denying new budgets, irrespective of the need or merit of each budget. As stated in the 15 May 2025 Email, the Petitioners have refused to discuss new budgets unless the GP agrees to close down the Early-Stage Companies. The Petitioners have only approved one recent budget, for Replicate in February 2025 following negotiations which were at odds with a long and consistent course of dealing, and in which half of the budget crystallises only upon an unprecedented condition which the Petitioners inserted with which the GP was obliged to comply in order for Replicate to receive a very small amount of funding, so as

to avoid shutting down the company. After approving this budget in February 2025, the Petitioners defaulted on a valid capital call made against it on 1 June 2025.

(v) It is averred that, in their depositions in the Delaware Proceedings, Mr Rybolovlev and Mr Bogdanov admitted that there is no firm offer available to meet the Royalty Refinancing condition that the Petitioners have asked the board of Braeburn to approve. Furthermore, at the latest meeting of the board of Braeburn held on 24 July 2025, after originally asking the Braeburn CEO to present the Petitioners' Royalty Refinancing proposal to the Board for consideration, the Petitioners subsequently asked that it be discussed but not presented for formal consideration. The independent directors of Braeburn (that is, those other than Dr Harrison and Mr Yanchik) considered the deal but considered it was not in the interest of Braeburn and no vote was taken. An independent committee has been formed to work with the Family Office on the Royalty Refinancing, in keeping with the GP's obligations under Amendment 22.

(c) Paragraph 57(c) is denied and the Petitioners' allegations relating to the Partnership's legal expenses are addressed in paragraphs 82(b)-(d) ~~87 to 88~~ below.

(d) Paragraphs 57(d) to (f) are unparticularised and the Petitioners have not provided any specific allegations as to occasions on which it is alleged that the Petitioners have not been provided with sufficient information. However, it is averred that:

(i) In the Delaware Proceedings, the GP has provided full expedited discovery of the Partnership's general ledger, and including full

financial information, and provided the Petitioners with the opportunity to conduct a deposition of the Partnership's Chief Financial Officer both in his individual capacity and as a corporate representative on certain financial matters requested by the Petitioners.

(ii) The Partnership is a party to contracts, including investment management agreements, third party funding agreements, and Series A funding agreements with the portfolio companies, copies of which have been produced in the Delaware Proceedings. The Partnership has also offered the Petitioners the opportunity to depose Joseph Yanchik, a partner who serves in the capacity of the Partnership's chief business officer and who has been overseeing the budget reductions and portfolio company work outs required due to the Family Office's defaults.

(iii) Paragraphs 55 and 57 above are repeated in relation to the budget approval process and the Petitioners' allegations in respect of the alleged budget milestones. Furthermore, the Series A funding agreements with the portfolio companies may contain more detailed descriptions of the milestones: however, the inclusion of the milestones in ~~the~~ a Series A funding agreement~~s~~ is designed to give the GP a basis for deciding not to provide further funding in the event that an issue has developed that cannot be resolved. The milestones are not designed to allow the limited partners of the Partnership to resile on their funding commitments, in circumstances where (as averred above) the GP is entrusted under paragraph 2(b) of the LPA with sole control over the business of the Partnership.

(iv) The GP has provided quarterly updates to the Family Office as required by the LPA. However, as noted above, the contact between the GP and Family Office has been much more frequent, there having been around 170 meetings in person and via Zoom over the last five years, and many more before this, where the Family Office were kept fully apprised of the Partnership's activities. Capital calls were sent as and when required as a matter of course, in accordance with the LPA, although the GP would reduce or pace capital calls in accordance with the Family Office's requests to meet their stated needs. Until 2025, the Family Office has then met those capital calls, without a reference ever to there being any deficiency in the materials that the GP has provided to the Family Office. As stated above, there have also been regular and numerous in person meetings between the GP and the Family Office, on a basis that is much more frequent than the provision for such meetings to take place twice per year under Schedule C to the LPA.

(v) The GP has prepared the ATLS Fee Budget every year. However, the Family Office has refused to approve any ATLS Fee Budget for 2022 to 2025, with the result that the ATLS Fee has been paid based on the agreed 2021 annual budget, pursuant to paragraph 20 of the LPA.

75. As to Paragraph 58 of the Petition:

(a) It is admitted that Section 22 of the ELP Act provides that, "*Subject to any express or implied term of the partnership agreement, each limited partner may demand and shall receive from a general partner true and full information regarding the state of the business and financial condition of the exempted limited partnership*". It is denied that the GP has acted in breach of Section 22 of the ELP Act as alleged or at all:

(i) The Petitioners have not made a proper request to exercise their rights under Section 22 of the ELP Act: in correspondence between 17 and 26 June 2025 the Petitioners purported to exercise their rights to audit the Partnership pursuant to paragraph 16(c) of the LPA (the "**Audit Request**").

(ii) The Audit Request was a fishing expedition that was served by the Petitioners for the improper purpose of attempting to obtain broad extra-judicial discovery for the purpose of legal proceedings, and would have increased further burdens and costs on the GP for no purpose whatsoever, in circumstances where the parties were simultaneously engaged in conducting discovery in the Delaware Proceedings. The Audit Request was, accordingly and properly, rejected.

(iii) However, in rejecting the Audit Request the GP noted to the Petitioners that it would provide broad discovery of documents in the Delaware Proceedings, including of all or substantially all of the books and records sought by the Audit Request. The GP invited the Petitioners to identify any materials, in addition to their First Requests for Production of Documents and First Set of Interrogatories in the Delaware Proceedings, which they sought to inspect through the Audit Request. The Petitioners have not done so. It is averred that, in the discovery that the GP has provided to the Petitioners in the Delaware Proceedings, the GP has now produced copies of the documents sought by the Petitioners in the Audit Request in any event.

(b) As stated at paragraph 29(c) above, the GP avers that it has complied with – and exceeded – its obligations to provide all relevant information to the Petitioners, pursuant to Schedule C to the LPA or otherwise.

(c) It is denied that the GP has denied the Petitioners their rights to information and/or seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings as alleged in Paragraph 58 of the Petition.

(d) The GP cannot plead to the last sentence of Paragraph 58 which is wholly unparticularised, save that it is denied that the GP has committed any or any serious breaches of duty and/or that the same has resulted in the Petitioners' alleged loss of trust and confidence in the GP.

(e) Paragraphs 3 to 12 above are repeated. There has been no breakdown of trust and confidence as alleged. The Petitioners have presented the Petition in response to the Delaware Proceedings in order to avoid the repercussions of their breach of their contractual obligations (express and/or implied) under the LPA. The allegations relating to the provision of information are, as with all the allegations in the Petition, without foundation and have been fabricated to create the illusion of there being sufficient grounds for the winding up of the Partnership where none exist.

Alleged conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership

76. Paragraph 59 of the Petition is denied.

~~77. As to Paragraph 60:~~

~~(a) The GP repeats its defence at paragraph 37 above. The fact that the Capital Calls are not specifically referenced in the Delaware Complaint is irrelevant. It is denied that the issuance of the Capital Calls amounts to a breach, let alone a further breach, of the GP's duty to act in good faith in the interests of the Partnership. The Capital Calls were issued in good faith and for proper purposes and were intra vires.~~

~~(b) It is denied that the Capital Calls are part of an alleged or any litigation strategy on the part of the GP.~~

~~(c) It is denied that there is any inconsistency between the Capital Calls and the funding scenario proposed by the GP on 30 April 2025. The GP made it clear in correspondence with the Family Office at the relevant time that the GP's proposal on 30 April 2025 was a triage strategy in light of the Family Office's starvation of the Partnership. It was a good faith attempt by the GP to accommodate the Family Office's funding concerns, which is now being misused by the Petitioners as supposed evidence of the GP's improper motives.~~

~~(d) It is denied that it can be inferred and/or is a fact that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying the capital called in the Capital Calls. As stated above, the funding proposal in April 2025 was purely a response to the situation that the Family Office had placed the Partnership in as a result of the Family Office's reluctance to continue funding the Partnership and the portfolio companies. It was, and is, incorrect to suggest that the GP sees no value in the Early-Stage Companies. Paragraph 51 above is repeated.~~

~~78. The relief sought in the Delaware Complaint is self-explanatory and it is denied that the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, as alleged in Paragraph 61 of the Petition or at all.~~

79. The Petitioners have refused to meet the Capital Calls. Contrary to Paragraph 62 of the Petition, however, the funding called for by the Capital Calls is in the interest of the Partnership, and not, as alleged, in the interests of the GP and its employees and ATP. It is denied that the GP has a demonstrable conflict of interest as alleged or at all. The arrangements between the parties have been in place since the

inception of the Partnership. The Family Office has not previously raised any concerns as to the alleged conflict of interest involving the GP, its employees and ATP, and was fully aware of the corporate structure throughout the existence of the Partnership of over 12 years. It is admitted that Dr Harrison is a director of each of the portfolio companies. It is averred that, apart from Aethon and Marlinspike, all Portfolio Companies have at least one board member who is not an employee of the GP or its affiliates. It is denied, if alleged, that the fact that Dr Harrison owes fiduciary duties to the Portfolio Companies creates any actual or potential conflict of interest for the GP. If, which is denied, it did create such an actual or potential conflict of interest: (i) that was fully disclosed and consented to by the Petitioners, over the entirety if the Partnership's operation since inception and (ii) appropriate recusals would occur where warranted. It is averred that the management structure of the Partnership's portfolio is standard in biotech venture capital. In the premises, it is denied that the Petitioners have lost trust and confidence in the GP's ability to manage the Partnership and/or that the matters alleged by the Petitioners are the cause of any such alleged loss of trust and confidence. The allegations concerning the purported conflicts of interest have been manufactured falsely to inflate the Petitioners' grounds for the Petition.

79A. Paragraph 62A is denied:

(a) It is denied there was such actual or potential conflict. Further, or alternatively, the matters said to give rise to the actual or potential conflict and were fully disclosed to the Petitioners who never objected to and consented to them. Accordingly, if which is denied, there was any such actual or potential conflict, the same was fully disclosed and consented to by the Petitioners, and the GP has not breached any duty, as alleged or at all.

(b) As to (a), paragraph 79A(a) above is repeated *mutatis mutandis*.

(c) As to the first (b), the Petitioners fail to particularise what steps to manage the alleged conflict the GP ought to have taken in May 2025. It is denied that there is any such conflict or that there were any such steps.

(d) As to the second (b), it is admitted that the GP did not agree to the Petitioners' proposal to appoint a conflict director in July 2025. The GP was entitled to do so. The Petitioners' proposal was not made in the best interest of the Partnership but instead for the purpose of giving the Petitioners' nominee, and by implication the Petitioners, effective executive control over Partnership's affairs. The GP will rely at trial on the full terms of the Petitioners' proposal.

~~80. As to Paragraph 63, it is denied that the Partnership is exposed to "open-ended" funding commitments to the portfolio companies, to the extent that term is understood. The Petitioners have been provided with all relevant financial information concerning the Partnership's initial investments in the portfolio companies, including in advance of the Partnership reaching any agreements with the respective portfolio companies, and the ongoing and upcoming funding needs of the portfolio companies as their research and development operations have progressed. Paragraph 78(d) above is repeated with respect to the Partnership's obligations to the portfolio companies.~~

~~81. Paragraph 64 is denied, and paragraph 78(d) above is repeated. It is averred that the Petitioners have previously approved the budgets relating to the portfolio companies for which the Capital Calls have been issued, and the Petitioners have failed to meet those Capital Calls notwithstanding their prior agreement to the budgets on which the Capital Calls are based. Paragraphs 30 and 55 above are repeated in relation to the budget approval process, and it is averred that this process was repeatedly and successfully facilitated until the Petitioners adopted the position in May 2025 that they no longer wished, and were not legally required, to continue funding the Partnership and the portfolio companies.~~

82. ~~The Petitioners' alleged concerns~~ The allegations set out in Paragraph 65 are misconceived and unfounded:

(a) Save that it is admitted that email correspondence in December 2024 took place between Mr Bogdanov and Dr Harrison on the one hand, and Patrik Blochlinger and Daniel Finkelman on the other, on the dates set out in paragraphs 65(a)-(c) and (e), Paragraph 65 is denied.

(b) The legal costs associated with the Braeburn Proceedings have not been charged to the Partnership and do not form any part of the Capital Calls. It is averred that the email from Mr Finkelman to Mr Blochlinger dated 23 December 2024, which is partially quoted in Paragraph 65(c) of the Petition, also provided that: "***This email will also confirm that all other charges have been allocated and are being paid in accordance with the expense provisions of the settlement wrapper, including the Cayman litigation, the ATP royalty sub LLC agreement, the put option agreement, the second put option agreement and amendment 22 to the LPA. For your information, we currently estimate aggregate charges borne or to be borne by ATLS and/or Seth for that work to be $2.3M.*** *As mentioned during our calls last Thursday, Seth would like to discuss with Yuri the allocation of those charges in light of the extended time and complexity involved in working through the restructuring documents, including the provisions relating to the Family Office obtaining early liquidity on a portion of the royalty stream*." (emphasis added)

(c) The Petitioners' assertion that the treatment of the legal fees in relation to the Braeburn Proceedings form any basis for a loss of trust and confidence therefore has no basis.

(d) As to Paragraph 65(f), paragraph 11 of Amendment 9 provides that, with the exception of certain defined expenses that are paid from the ATLS Fee

(which is the annual fee payable by the Partnership to ATLS), *"[t]he Partnership shall be responsible for all other reasonable expenses of the Partnership, which Partnership expenses shall be funded by capital contributions made by the holders of Preferred Units in accordance with the Agreement, including without limitation: […] (vii) professional fees, including legal expenses for the Partnership (including the Partnership's inhouse counsel), audit, tax compliance and tax structuring fees and expenses, […] (xvii) all expenses (including travel and travel-related expenses) relating to any actual or threatened litigation or proceeding involving the Partnership*". In the premises, the legal fees that the GP has incurred on behalf of the Partnership fall to be paid by the Partnership.

82A. Paragraph 65A is denied. Paragraph 5.1 of the Settlement Agreement expressly contemplated that the GP would pay its costs "*using its own money (for example, money it has received as payment of a Management Fee*". The invoices listed in Paragraphs 65A.a-h were paid using the ATLS Management Fee, and therefore not in breach of the LPA. Without waiver of privilege, it is denied that the further invoices referred to in paragraphs 65A(a) to (h) related to the Braeburn Proceedings.

D. GROUND 2

83. It is denied that the Partnership is no longer being run in accordance with the reasonable expectations of the limited partners and/or in accordance with the LPA as alleged in Paragraph 66 of the Petition or at all. It is averred, in particular, that:

(a) The Partnerships' investment strategy has been approved by the Petitioners throughout the existence of the Partnership over the course of over 12 years, and the Partnership has not changed or neglected its investment strategy.

(b) The fact that the Petitioners no longer wish to continue the funding of the Partnership and the portfolio companies, in breach of their funding obligations under the LPA, does not mean that the Partnership is not being run in accordance with the LPA and/or to the detriment of the Petitioners or the other limited partners.

(c) As stated in paragraph 4 above, the Partnership has been hugely successful under the stewardship of the GP, and the Partnership's investment decisions have resulted in extraordinary returns to the Petitioners in their capacity as limited partners of the Partnership.

(d) The GP has no intent to "confiscate" 50% of the Petitioners' interests. The operation of the global default mechanism as set out in paragraph 5(c) of the LPA (which, as the Petitioners are well aware, has been included in the LPA from the outset) has been caused by the Petitioners' failure to meet their obligations pursuant to the Capital Calls in accordance with the LPA. The global default mechanism is a provision which the GP is entitled to rely on in the circumstances, and the GP does so acting in the best interests of the Partnership. Paragraphs 64 and 65 above are repeated.

(e) The Petitioners have brought about the present situation by their failure/refusal to pay the Capital Calls and/or to approve budgets for future investment of capital in the Partnership.

E. GROUND 3

84. For all the reasons pleaded above, it is denied that there is any need for a proper, independent, investigation into the Partnership's affairs.

F. CONCLUSION

85. It is denied that it is just and equitable that the Partnership be wound up.

SUE PREVEZER KC
Brick Court Chambers

ANDREW AYRES KC
Twenty Essex

WALKERS (CAYMAN) LLP

~~20 August 2025~~

November 2025

EXHIBIT C

21/1/10

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION
The Hon. Mr Justice Andrew J. Jones QC
Tuesday 19th January 2009 2010

CAUSE NO. FSD 15 of 2009 (AJJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF BELMONT ASSET BASED LENDING LTD

Appearances: Mr Simon Dickson of Mourant du Feu & Jeune for the Petitioner
Mr Sam Dawson of Solomon Harris for the Fund



JUDGMENT

1. This is a petition presented pursuant to section 94(e) of the Companies Law (2009 Revision) for an order that Belmont Asset Based Lending Ltd ("the Fund") be wound up compulsorily and that Messrs Wight and Sybersma of Deloitte be appointed as joint official liquidators.

FACTUAL BACKGROUND

2. The Fund was incorporated on 24th October 2003 as an open ended investment fund and was registered with the Cayman Islands Monetary Authority pursuant to section 4(3)(c) of the Mutual Funds Law. It was promoted by Harcourt Investment Consulting AG ("Harcourt") which is part of the Vontobel Banking Group, headquartered in Zurich, Switzerland. Harcourt acts as the Fund's investment adviser and Alternative Investment Solutions Limited, a wholly owned subsidiary of Harcourt, acts as its investment manager. The Fund's board of directors comprises three individuals who are all employees either of Harcourt or other Vontobel group companies. A nominal 100 voting shares have been issued to the Investment Manager. The Fund's investors have subscribed for redeemable

participating shares which do not carry any voting rights. The result of this structure is that the Fund is wholly controlled by Harcourt. The holders of the redeemable participating shares, who own the whole economic interest in the Fund, are not entitled to requisition an extraordinary general meeting for the purposes of passing a special resolution to put the Fund into voluntary litigation. Only Harcourt has power to put the Fund into voluntary liquidation, but it has declined to do so for reasons which have not been explained to the Court.

3. The Fund's administrator is Citco Fund Services (Europe) BV, which is wholly independent of the Vontobel group. Its custodian and bankers are also members of the Citco group. The Administrator does not now have any representation on the Fund's board of directors.

4. The Petitioner is Bear Sterns Alternative Assets International Ltd ("Bear Sterns") which operated as a division of the Bear Sterns investment bank and is now part of the JP Morgan Chase Group. Bear Sterns is registered as owner of approximately 1.18 million redeemable participating shares in the Fund which were valued at approximately $104 million, based upon the NAV figures issued by the Fund for 30th September 2008. On 19th September Bear Sterns submitted a redemption request in respect of that number of shares which would have a value of $8,800,000 as at 30th September 2008.

5. The investment objective of the Fund, as stated in Section 3 of its offering document (entitled *Confidential Information Memorandum*), is to provide long term capital appreciation to shareholders by investing in a diversified portfolio of asset-based lending and related strategies. As a result of events occurring in September 2008 it is accepted by all those involved in the management of the Fund that it is no longer in a position to pursue its investment objective and that is not now viable as a mutual fund. This situation came about as a result of two factors, namely the general market conditions which caused a severe credit crunch and the effects of a fraud committed by Mr Tom Petters. Allegations of fraud against him were first made public in September 2008 and he has recently been convicted by a US District Court in Minnesota of carrying out what was described as a "multi billion dollar Ponzi scheme". The value of various investments made by the Fund in entities which were managed by or related in some way to Petters Company Inc have been written off or substantially written down in value. Harcourt concluded that investments in Lancelot Investors Fund Ltd and Palm Beach Offshore II (which represented 14.57% of the Fund's recorded assets) should be written off. An investment in Stewardship Credit Arbitrage Fund (representing 4.79% of the Fund's recorded assets) was written down by 61% and investments in other funds (representing 7.9% of its recorded assets) became unrealisable because those funds suspended redemptions.

6. The combination of the credit crunch and the Petters fraud had a serious adverse impact upon the Fund. As a consequence, on 27th October 2008 the Fund's board of directors passed a series of written resolutions by which they (a) recommended that the Investment Manager (as owner of the voting shares) pass a special resolution placing the Fund into voluntary liquidation and (b) declared a suspension of the calculation of NAV and consequential suspension of redemptions and subscriptions. The copy of these written resolutions exhibited (at page148) to Mr Edouard Tijou's affidavit is signed by only one of the three directors, but I was told by counsel that duplicates of the resolutions were in fact signed by all three directors. On 31st October the Fund's Administrator sent a circular letter to the shareholders informing them of the Board's decision. The Administrator stated "the Directors have deemed that the continued operation of the [Fund] is no longer viable and that steps should be taken to realise the [Fund's] portfolio and to place [the Fund] into voluntary liquidation". Since two of these directors are themselves employees of Harcourt and the third is an employee of another Vontobel group company, the shareholders were entitled to assume that the directors' recommendations were in reality decisions which would be implemented immediately.

7. For reasons which have not been explained, Harcourt changed its mind and has not in fact taken the steps necessary to put the Fund into voluntary liquidation pursuant to the Companies Law. Instead, Harcourt set about the task of realising the assets and making distributions to shareholders without having put the Fund into liquidation and appointing a liquidator. Bear Sterns become dissatisfied with the way in which the informal liquidation process was being conducted and on 26th November 2009 presented a petition for an order the Fund be wound up compulsorily by order of the Court and that qualified insolvency practitioners be appointed as official liquidators. It is not in dispute that the Fund is solvent on a balance sheet test. Nor is it in dispute that the Fund is no longer viable as a mutual fund.

BEAR STEARN'S WINDING UP PETITION

8. By its petition Bear Stearns contended that the Fund should be wound up on the "just and equitable" ground for three reasons, namely that (a) having suspended NAV, the Fund's management were acting in a manner which was contrary to its articles of association and therefore in breach of the legal bargain between the company and its shareholders; (b) Harcourt is acting in breach of duty and has lost the confidence of shareholders; and (c) there has been a "loss of substratum", meaning that the purpose for which the Fund was established can no longer be carried out and that it has ceased to be viable as a mutual fund.

9. The Petition was listed for directions on 18th December 2009 in accordance CWR Order 3, rule 11. Having determined that the Petition should be treated as a proceeding *against* the Fund, as opposed to treating it as a proceeding between shareholders in which the Fund itself is merely the subject-matter of the proceeding, I directed that one of the Fund's directors, Mrs Margaret Thompson, should send to every other shareholder and every known creditor copies of the winding up petition, the verifying affidavit, the supporting affidavits sworn by the qualified insolvency practitioners nominated for appointment as official liquidators and any explanatory statement made by Harcourt. Given that the petition contained allegations of breach of duty against Harcourt, this was the classic case in which the independent directors should have determined the Fund's response to the winding up petition in the interests of its investors. It is established best practice for mutual funds incorporated in the Cayman Islands to have a board of directors which includes at least some persons, if not a majority, who are independent of the investment manager and administrator. In this case the Fund has no independent directors at all. Two out of three members of the board are employees of Harcourt and the third, Mrs Margaret Thompson, cannot be regarded as independent because she is an employee of Vontobel Bank Cayman Ltd which is a wholly owned subsidiary of the same group as Harcourt. Why Harcourt failed to comply with industry standards in this respect was not explained. The task of communicating with the shareholders and making a recommendation about the merits of the petition therefore fell upon Mrs Thompson on the basis that she was *relatively* independent in that she was not employed by Harcourt and the allegations of breach of duty were not made against her directly.

10. On 4th January 2010 Mrs Thompson duly sent the petition and other documents to all shareholders and known creditors, together with a covering letter in which she refuted the first two grounds asserted in the petition, but accepted that there has been a "loss of substratum". She advised that the Board of Directors would not oppose the petition on behalf of the Fund and recommended that the other shareholders should not oppose it. In the event, no shareholders gave notice of intention to oppose (or support) the petition and it came on for hearing unopposed. Counsel for Bear Stearns informed me that his client had agreed to withdraw the first two grounds (set out in paragraphs 45-65 of the petition) and argued that it was "just and equitable" for a winding up order to be made solely on the ground that the Fund has suffered a "loss of substratum" and ceased to be viable as a mutual fund. I made an order allowing the petition to be amended by deleting paragraphs 45-65. On this basis the Fund's directors did not oppose the making of a winding up order.

11. A winding up order is a discretionary remedy. By issuing a winding up petition the shareholder or creditor is invoking class rights, with the result that all those in the class are entitled to be heard, for which purpose winding up petitions are normally required to be advertised. A winding up order is "binding upon all the world". It takes effect for the benefit of and is binding upon all shareholders and creditors (including contingent creditors and claimants), whether or not they have had actual notice of the petition. It follows that it is not open to a petitioner and the company (acting by its board of directors) to ask the Court to make a winding up order "by consent". Notwithstanding the agreement between the Fund and Bear Stearns, I must still satisfy myself that this is a proper case in which to make a winding up order on the basis of the facts pleaded in the petition, as now amended.

THE JUST AND EQUITABLE GROUND

12. The issue is whether a finding of "loss of substratum" is, by itself, sufficient to justify the Court in making a winding up order on the just and equitable ground under section 94(e) of the Companies Law (2009 Revision).

13. The expressions "loss of substratum" or "failure of substratum" are derived from English case law dating back to a decision of the Court of Appeal in *Re Suburban Hotel Co* (1867) L.R. 2 Ch. App. 737 at 750. Whilst it may be helpful for the Court to categorise circumstances in which it will be considered just and equitable for a company to be compulsorily wound up, I question whether it is sensible to adopt terminology invented in the context of England's nineteenth century economy. A company was said to have "lost its substratum" if the purpose for which it was formed can no longer be carried out (per Kekewich J. in *Re Bristol Joint Stock Bank* (1890) 44 Ch.D a703 at 712); or if the company has practically ceased to carry on business because it has become impractical to do so (per James LJ in *Re Diamond Fuel Co* (1879) 13 Ch.D 400, at 408); or if the company was formed to pursue a specific business opportunity which is no longer available to it (*Re Haven Gold Mining Co.* (1882) 20 Ch.D 151). To translate these statements into a modern context, it can be said that it is just and equitable to make a winding up order in respect of an open ended corporate mutual fund if the circumstances are such that it has become impractical, if not actually impossible, to carry on its investment business in accordance with the reasonable expectations of its participating shareholders, based upon representations contained in its offering document. If such a company, organised as an open ended mutual fund, has ceased to be viable for whatever reason, the Court will draw the inference that it is just and equitable for a winding up order to be made.

14. This principle has been applied most recently by this Court in *Re Philadelphia Alternative Asset Fund Limited* (Cause 440/2005). This case concerned a solvent company which had ceased to be viable as an open ended mutual fund because its management had fraudulently overstated its NAV and a US District Court had appointed a receiver on the application of the Commodity Futures Trading Commission. Henderson J. said "In cases where the substratum of a company is gone, winding up will usually be ordered despite the opposition of even a majority of members". A winding up order was made.

15. The Supreme Court of Bermuda has recently adopted exactly the same approach in applying a similar "just and equitable" provision contained in the Bermuda Companies Act, 1981 which has essentially the same legislative history as the equivalent Cayman Islands provision. In *Re Stewardship Credit Arbitrage Fund Ltd* (2008: No.2006) the court was asked to make a provisional winding up order in respect of an open ended mutual fund which, as it happens, was also a victim of the Petters fraud. It is actually one of the companies in which the Fund invested. Bell J. said " ..the critical complaint to my mind is ... that the substratum of the Company has gone. From the time of the 9th June directors' meeting, the Company has effectively ceased to carry on business, and in practical terms, I have no doubt that the prospect of its carrying on its business in any real way in future has long since disappeared". A provisional winding up order was made.

16. Wherever it is proved that a company established as an open ended mutual fund is no longer viable as such, for whatever reason, the Court will ordinarily conclude that it is just and equitable to make a winding up order. This situation may come about for any number of reasons and not necessarily as a result of any breach of duty, negligence or even bad judgment on the part of the fund's investment managers or administrators. In the present case, the Fund's inability to meet redemption requests and the sudden collapse of its NAV occurred in September and October 2008 as a result of the combined effects of the Petters fraud and an unprecedented credit crunch. There is no suggestion that the Fund's difficulties were caused by any fault on the part of Harcourt. The allegations made against Harcourt (and now withdrawn) related to their attempts to liquidate the Fund following suspension of NAV, not the manner in which they had invested and managed the Fund's assets prior to the events of September 2008. There are sound policy reasons for making a winding up order in respect of non-viable mutual funds, in spite of the fact that this situation has arisen without fault on the part of its management.

17. Typically, mutual funds are established in the Cayman Islands by foreign financial services companies which then act as investment manager or adviser pursuant to a contract, the terms of which will be summarised in the offering document. The skill set required of a

successful investment manager is wholly different from that required of professional liquidators. Investment management agreements are invariably made on the assumption that the fund is a going concern and that the investment manager will be responsible for making investment decisions and managing investments, with the result that its terms may be inappropriate to the situation in which the fund is being liquidated. Typically, the investment managers are remunerated on the basis of a percentage of NAV, often coupled with performance fees calculated as a percentage of realised gains. This basis of remuneration will become inappropriate if the fund ceases to be viable and the investment manager ceases to perform at least some of the functions contemplated by the investment management agreement and instead attempts to adopt a liquidation role. Investment management agreements rarely, if ever, contemplate the scenario in which the service provider's role changes from that of investment manager into that of liquidator.

18. An investor's decision to subscribe for shares will be based upon the reputation and past performance of the investment manager. So long as a fund's assets are being invested and managed in accordance with investment criteria and guidelines set out in the offering documents, shareholders cannot and do not expect to have any say in the investment decisions. The position changes if the fund ceases to be viable with the result that the calculation of NAV is suspended and the principal or only function left for management is to realise the assets for the benefit of creditors and shareholders. This exercise may involve an investigation and pursuit of claims against the investment manager and other professional services providers which can only be undertaken by profession independent liquidators. Even if a fund is solvent on a balance sheet test and there is no apparent cause of complaint against any of its service providers, its investors should still not be deprived of the advantages of having the task performed by professional independent liquidators. Nor should they be deprived of the protections provided by the Companies Winding Up Rules, simply because the investment manager (who may not have been at fault) chooses to undertake the task itself.

CONCLUSION

19. For these reasons I am satisfied that it is just and equitable to make a winding up order in respect of the Fund simply on the basis that it is no longer viable as an open ended mutual fund and notwithstanding that the allegations of breach of duty made against its investment manager have been withdrawn.

20. I am satisfied that Messrs Wight and Sybersma, partners in the Cayman Islands firm of Deloitte, are qualified insolvency practitioners who meet the requirements of the Insolvency

Practitioners' Regulations in relation to the Fund. I therefore make an order that they be appointed joint official liquidators.

21. Since there never was any allegation of incompetence, negligence or bad judgment against Harcourt in respect of their management of the Fund's assets prior to the events of September 2008 and the allegations made in respect of their attempts to liquidate the Fund have been withdrawn, I authorise the official liquidators to engage the services of Harcourt as advisers if they consider it appropriate to do so.

22. Otherwise, I make a winding up order in the usual terms.

Dated 21st day of January 2010

The Hon Mr Justice Andrew J. Jones QC

GRAND COURT - CAYMAN ISLANDS

EXHIBIT CC

CAYMAN ISLANDS



COMPANIES ACT

(2025 Revision)

Supplement No. 3 published with Legislation Gazette No. 6 dated 28th January, 2025.

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Revised under the authority of the *Law Revision Act (2020 Revision).*

Originally enacted —

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Law 1 of 1971-15th December, 1970	Law 46 of 2001-14th January, 2002
Law 7 of 1973-28th June, 1973	Law 22 of 2002-5th December, 2002
Law 24 of 1974-22nd November, 1974	Law 26 of 2002-5th December, 2002
Law 25 of 1975-9th December, 1975	Law 28 of 2003-3rd December, 2003
Law 19 of 1977-10th November, 1977	Law 13 of 2006-1st June, 2006
Law 16 of 1978-8th September, 1978	Law 15 of 2007-17th September, 2007
Law 6 of 1980-17th March, 1980	Law 12 of 2009-20th March, 2009
Law 21 of 1981-13th October, 1981	Law 33 of 2009-2nd December, 2009
Law 34 of 1983-24th November, 1983	Law 37 of 2010-15th September, 2010
Law 2 of 1984-28th February, 1984	Law 16 of 2011-11th April, 2011
Law 22 of 1984-7th September, 1984	Law 29 of 2011-18th November, 2011
Law 15 of 1985-24th May, 1985	Law 6 of 2012-29th August, 2012
Law 38 of 1985-19th December, 1985	Law 14 of 2012-31st August, 2012
Law 24 of 1987-17th November, 1987	Law 29 of 2012-19th November, 2012
Law 14 of 1988-9th September, 1988	Law 1 of 2013-10th January, 2013

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Law 3 of 1991-21st February, 1991
Law 23 of 1991-12th December, 1991
Law 11 of 1992-13th July, 1992
Law 3 of 1993-26th March, 1993
Law 23 of 1993-29th September, 1993
Law 33 of 1993-29th November, 1993
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Law 14 of 1996-5th September, 1996
Law 26 of 1997-9th March, 1998
Law 4 of 1998-4th March, 1998
Law 6 of 1998-9th March, 1998
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Law 3 of 2016-6th May, 2016
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Law 37 of 2018-22nd November, 2018
Law 46 of 2018-17th December, 2018
Law 10 of 2019-26th July, 2019
Law 4 of 2020-31st January, 2020
Law 19 of 2020-20th May, 2020
Act 56 of 2020-7th December, 2020
Act 60 of 2020-16th December, 2020
Act 6 of 2021-8th December, 2021
Act 15 of 2023-23rd November, 2023
Act 11 of 2024-11th December, 2024

Consolidated and revised this 1st day of January, 2025.

Note (not forming part of this Act): This revision replaces the 2023 Revision which should now be discarded.

CAYMAN ISLANDS

COMPANIES ACT

(2025 Revision)

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CAYMAN ISLANDS

COMPANIES ACT

(2025 Revision)

PART 1 - Preliminary

Short title

1. This Act may be cited as the *Companies Act (2025 Revision)*.

Definitions and interpretation

2. (1) In this Act —

"**Authority**" means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Act (2020 Revision)* and includes a person acting under the Authority's authorisation;

"**bearer share**" means a share in the capital of any company incorporated in the Islands which —

(a) is represented by a certificate that does not record the owner's name; and

(b) is transferable by delivery of the certificate;

"**Cayman Islands exempted limited partnership**" means an exempted limited partnership registered in accordance with section 9 of the *Exempted Limited Partnership Act (2021 Revision)*;

"**Cayman Islands Stock Exchange**" means the Cayman Islands Stock Exchange Company incorporated under section 4 of the *Stock Exchange Company Act (2014 Revision)*;

"**certified translator**" means a person whose interpretation or translation competence has been tested and approved by a professional association or governmental body or any other person determined by the Registrar;

"**Court**" means the Grand Court of the Cayman Islands;

"**company**" except where the context excludes exempted companies, means a company formed and registered under this Act or an existing company;

"**currency**" includes the ECU and any unit of account used at any time by the European Monetary Fund;

"**dual foreign name**" means an additional name in any language not utilising the Roman alphabet, utilising any letters, characters, script, accents and other diacritical marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet;

"**ECU**" or "**European Currency Unit**" means the former currency basket, which was replaced by the euro on 1st January, 1999, that was, from time to time, used as the unit of account of the European Community as defined in *European Council Regulation No. 3320/94*;

"**euro**" means the common currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty as defined in *European Council Regulation No. 974/98*;

"**exempted company**" means a company registered as an exempted company under section 164;

"**exempted limited duration company**" means an exempted company registered as an exempted limited duration company under section 179;

"**existing company**" means a company which, prior to the 1st December, 1961, has been incorporated and its memorandum of association recorded in the Islands pursuant to the laws relating to companies then in force in the Islands;

"**Insolvency Rules Committee**" means the committee established in accordance with section 154;

"**Judge**" means a Judge of the Grand Court;

"**name**", when relating to the name of a company, means a name in the Roman alphabet or Arabic numerals;

"**non-resident company**" bears the meaning ascribed to that term in section 2(1) of the *Local Companies (Control) Act (2019 Revision)*;

"**officer**" in relation to a company, includes a manager or secretary;

"**overseas company**" means a company, body corporate or corporate entity existing under the laws of a jurisdiction outside the Islands;

"**public notice**" means a public notice (whether in digital form or not) affixed by the Registrar at such place as may be determined, from time to time, by the Registrar;

"**Registrar**" means the Registrar of Companies appointed under section 3 and includes, where appropriate, the Deputy Registrar of Companies;

"**regulated business**" means a business which is required to be licensed under one or other of the regulatory laws;

"**regulatory laws**" means any one or more of the following —

(a) *Banks and Trust Companies Act (2025 Revision)*;

(b) *Building Societies Act (2020 Revision)*;

(c) *Companies Management Act (2025 Revision)*;

(d) *Cooperative Societies Act (2020 Revision)*;

(e) *Insurance Act, 2010* [*Law 32 of 2010*];

(f) *Money Services Act (2020 Revision)*;

(g) *Mutual Funds Act (2025 Revision)*;

(h) *Securities Investment Business Act (2020 Revision)*;

(i) *Development Bank Act (2018 Revision);*

(j) *Directors Registration and Licensing Act, 2014*; and

(k) *Private Funds Act (2021 Revision),*

and any other laws that may be prescribed by the Cabinet by regulations made under section 46 of the *Monetary Authority Act (2020 Revision)*;

"**special resolution**" means a special resolution as defined in section 60;

"**special economic zone business**" means any type of business authorised to be carried on in a special economic zone pursuant to any Law in force in the Islands;

"**special economic zone company**" means an exempted company that is registered as such under section 182A;

"**translated name**" means a translation or transliteration of an exempted company's dual foreign name into the English language provided by either a person licensed to provide such company's registered office in the Cayman Islands or a certified translator (together with a statement in the prescribed form as to the foreign language in which such dual foreign name is written); and

"**Treaty**" means the Treaty on European Union signed in Maastricht on 7th February, 1992, as amended by the Treaty of Amsterdam amending the Treaty on European Union, signed in Amsterdam on 2nd October, 1997, the Treaty of Nice and the Convention on the Future of Europe, signed in Nice on 26th February, 2001 and the Treaty of Lisbon amending the Treaty on European Union, signed in Lisbon on 13th December, 2007.

(2) Where, in this Act, it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and

every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine of ten dollars.

(3) In this Act, where it provides that an officer of a company who is in default shall be liable to a default fine, the expression "**officer who is in default**" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

(4) For the purposes of this Act "**paid up**" or "**fully paid**" means, in the case of shares with a nominal or par value, paid up or fully paid as to nominal or par value only and, in the case of shares without nominal or par value, means paid up or fully paid up as to the issue price.

(5) For the purposes of this Act "**carry on business in the Islands**" shall be construed in accordance with the *Local Companies Control Act (2019 Revision)*.

Registrar

3. (1) The Governor shall, by instrument under the Public Seal, appoint a Registrar and a Deputy Registrar of Companies for the purposes of this Act, and the Deputy Registrar may, in the absence of the Registrar, act as Registrar for all purposes of this Act.

(2) Without divesting the Registrar of any of that person's powers or duties the Minister charged with responsibility for Financial Services may authorise by name any officer in the Registrar's department to exercise and perform any of such powers and duties under the direction and control of the Registrar and may, at any time, vary or revoke such authorisation.

Signature of Registrar

4. (1) Any document purporting to bear the signature of the Registrar or of an officer authorised in accordance with section 3(2) shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the Registrar.

(2) In subsection (1) —

"**signature**" includes a facsimile of a signature however reproduced and a digital signature.

PART 2 - Constitution and Incorporation of Companies and Associations - Memorandum of Association

Mode of forming company

5. Any one or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with this Act in respect of registration, form an incorporated company, with or without limited liability.

Mode of limiting liability of members

6. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association

7. (1) The memorandum of association shall, subject to subsections (2), (3) and (4) and to sections 8 and 9, contain —

(a) the name of the proposed company which in the case of an exempted company, may be preceded by or followed with a dual foreign name, with the addition, in the case of any company not being an exempted company or a company formed on the principle of having no limit placed on the liability of its members, in this Act referred to as an "unlimited company", of the word "Limited" or the abbreviation "Ltd." as the last word in such name; and

(b) the part of the Islands in which the registered office of the company is proposed to be situate.

(2) No subscriber shall take less than one share.

(3) Each subscriber of the memorandum of association shall write opposite to that subscriber's name the number of shares that person takes.

(4) The memorandum of association may specify objects for which the proposed company is to be established and may provide that the business of the company shall be restricted to the furtherance of the specified objects. If no objects are specified or if objects are specified but the business of the company is not restricted to the furtherance of those objects, then the company shall have full power and the authority to carry out any object not prohibited by this or any other Law.

Company limited by shares

8. (1) Subject to subsection (2), where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, in this Act referred to as a company limited by shares, the memorandum of association shall also contain —

(a) a declaration that the liability of its members is limited; and

(b) the amount of capital with which it proposes to be registered, divided into shares of a certain fixed amount to be also therein specified:

Provided that the capital with which an exempted company proposes to be registered may be divided into shares without nominal or par value in which case the memorandum of association shall contain the amount of the aggregate consideration for which such shares may be issued:

Provided further that no exempted company shall divide its capital into both shares of a fixed amount and shares without nominal or par value.

(2) Where the capital of such a company is divided into shares of more than one class, the memorandum of association may contain a declaration that in a winding up of the company the liability of members holding the shares of a particular class shall be unlimited.

(3) The capital, fixed amount of shares and aggregate consideration referred to in subsection (1) may be expressed, and subscribed for, in any one or more currencies.

(4) No authorisation or issue, or purported authorisation or issue, by an exempted company of any share without nominal or par value shall, if that company has its capital divided into such shares only, be invalid only by reason of the fact it was authorised or issued, or purportedly authorised or issued, prior to the 20th November, 1989.

Company limited by guarantee

9. (1) Subject to subsection (2), where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, (in this Act referred to as a company limited by guarantee), the memorandum of association shall also contain a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that that person is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which that person ceases to be a member, and of the costs, charges and expenses of the winding up of the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specific amount to be therein named.

(2) Where such a company has more than one class of member, the memorandum of association may contain a declaration that in a winding up of the company the amount of the undertaking of the members of a particular class shall be unlimited.

(3) A company limited by guarantee may have a share capital.

Memorandum of association may be altered

10. Subject to section 13, a company may, by special resolution, alter its memorandum of association with respect to any objects, powers or other matters specified therein.

Address of registered office may be changed

11. (1) A company may, by resolution of the directors, change the address of the registered office of the company to another address in the Islands, and shall, within thirty days from the date on which the resolution is made, file with the Registrar a certified copy of the resolution of the directors authorising the change together with the prescribed amendment fee.

(2) Until subsection (1) is complied with, the company shall not be deemed to have complied with this Act with respect to having a registered office.

Signature and effect of memorandum of association

12. The memorandum of association shall be signed by each subscriber in the presence of and be attested by at least one witness. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed that person's name and affixed that person's seal thereto and there were in the memorandum contained on the part of that person, that person's heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to this Act, and all monies payable by any member to the company under such memorandum shall be deemed to be a debt due from such member to the company.

Power of company limited by shares to alter its share capital

13. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum to —

(a) increase its share capital by new shares of such amount as it thinks expedient:

Provided that an exempted company having no shares of a fixed amount may increase its share capital by such number of shares without nominal or par value, or may increase the aggregate consideration for which such shares may be issued, as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(d) subdivide its shares or any of them, into shares of an amount smaller than that fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; and

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled or, in the case of shares without nominal or par value, diminish the number of shares into which its capital is divided.

(1A) Paragraphs (b), (c) and (d) shall have no application to shares without nominal or par value.

(2) The powers conferred by subsection (1) may not be exercised except by a resolution of the members of the company.

(3) If a currency in which any of the capital of a company limited by shares or by guarantee is replaced by the euro, the provisions of the company's memorandum of association and articles of association shall automatically be altered so as to re-denominate in euros the capital that is denominated in the replaced currency, at the conversion rate specified in, or otherwise calculated in accordance with, the relevant regulations adopted by the Council of the European Union, and the company, by resolution of the directors, may —

(a) take such action to round up or down the euro nominal or par value of each share in the company or the euro guarantee amount to such multiple of the euro as the directors may deem appropriate;

(b) notwithstanding the requirement for a special resolution in section 31, if the name of the company includes a reference to a currency replaced by the euro, or an abbreviation thereof —

(i) alter the name of the company to delete the reference or to substitute the reference with a reference to the euro or an abbreviation thereof; and

(ii) add such further distinguishing wording as the directors consider appropriate; and

(c) if the memorandum of association or articles of association of the company include a reference or references to a currency replaced by the euro, alter any or all such references in either or both of the memorandum of association and the articles of association by substituting such references with references to the euro or an abbreviation thereof.

(4) A company may, by resolution of the directors, reverse or vary the re-denomination of currency or any other action taken under subsection (3).

(5) A copy of any resolution passed under subsection (3) or (4) shall be forwarded to the Registrar within fifteen days and shall be recorded by that person.

(6) A cancellation of shares or a rounding down of the nominal or par value of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(7) If any action is taken by the company under paragraph (a) of subsection (3) to —

(a) round up the euro nominal or par value of any issued share in the company, then an amount equal to the increase in nominal or par value of that share shall be transferred from the share premium account or from the profit and loss account (as the directors shall, in their discretion, determine) and shall thereafter be deemed to be and treated as paid up share capital of the company; or

(b) round down the euro nominal or par value of any issued share in the company, then an amount equal to the decrease in the nominal or par value of that share shall be transferred from the paid up share capital of the company to the share premium account and shall thereafter be deemed to be and treated as share premium for the purposes of this Act.

Special resolution for reduction of share capital

14. (1) Subject to section 37 and to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular (but without prejudice to the generality of the foregoing power) may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability of any of its shares, pay off any paid-up share capital which is in excess of the needs of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under subsection (1) is, in this Act, referred to as "a resolution for reducing share capital".

Application to court for confirming order, objections by creditors

15. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and, in any other case, if the Court so directs, subject to subsection (3), the following shall have effect —

(a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or period on or within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction; and

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of that person's debt or claim by appropriating as the Court may direct, the following amount —

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the Court after the like enquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of Court on making such order

16. (1) The Court, if satisfied with respect to every creditor of the company who under section 15 is entitled to object to the reduction, that either that person's consent to the reduction has been obtained or that person's debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may —

(a) if for any special reason it thinks proper so to do, direct that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last word thereof the words "and reduced"; and

(b) require the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction

17. (1) The Registrar, on delivery to that person of a copy of an order of the Court confirming the reduction of the share capital of a company, and of a minute approved by the Court, showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration of the order and minute deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not earlier, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under that person's hand the registration of the order and minute, and that person's certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

Liability of members in respect of reduced shares

18. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid or the reduced amount, if any, which is to be deemed to have been paid on the shares, as the case may be:

Provided that, if any, creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of that person's ignorance of the proceedings for reduction or of their nature and effect with respect to that person's claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of this Act with respect to winding up by the Court, to pay the amount of that person's debt or claim, then —

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which that person would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of that person's ignorance as aforesaid, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for concealment of names of creditors

19. A person who, being a director, manager, secretary or other officer of the company —

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both.

Articles prescribing regulations for companies

20. There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee

21. (1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

Adoption and application of Table A in Schedule 1

22. (1) Articles of association may adopt all or any of the regulations contained in Table A in Schedule 1.

(2) In the case of a company limited by shares and registered after the 1st December, 1961, if articles are not registered or, if articles are registered, insofar as the articles do not exclude or modify the regulations contained in Table A in Schedule 1, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamping and signature of articles

23. Articles shall —

(a) be divided into paragraphs numbered consecutively;

(b) bear the same stamp as if they were contained in a deed; and

(c) save as otherwise provided in section 25(2), be signed by each subscriber of the memorandum of association or each existing member, as the case may be, in the presence of at least one witness who shall attest the signature, and that attestation shall be sufficient.

Alteration of articles by special resolution

24. (1) Subject to this Act and to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Adoption and effect of articles of association

25. (1) If the memorandum of association is accompanied by articles of association the articles shall be signed by each subscriber to the memorandum in the presence of and be attested by at least one witness.

(2) If the memorandum of association is not accompanied by articles of association, the company may, subject to the conditions contained in the memorandum of association, adopt articles of association which shall be signed by each existing member of the company in the presence of and be attested by at least one witness, or may, by passing a special resolution under section 60, adopt articles of association.

(3) When registered the said articles of association shall bind the company and the members thereof to the same extent as if each member had subscribed that person's name and affixed that person's seal thereto, and there were in such articles contained a covenant on the part of that person, that person's heirs, executors and administrators to conform to all the regulations contained in such articles subject to this Act; and all monies payable by any member to the company in pursuance of the conditions or regulations shall be deemed to be a debt due from such member to the company.

General Provisions

Registration

26. (1) The memorandum of association and the articles of association, if any, shall be delivered in duplicate to the Registrar who shall file and retain the original thereof and shall return the duplicate thereof endorsed with a memorandum of registration and a memorandum of the particulars set out in subsection (2).

(2) Each memorandum of association and the articles of association, if any, shall be numbered and filed consecutively and shall be endorsed with the date of the month and year of such filing.

(3) A register of companies shall be kept by the Registrar in which shall be entered the particulars set out in Schedule 1A and, save for the particulars set out in paragraph (i) of Schedule 1A, such particulars shall be annexed to the memorandum of association and articles of association, if any, insofar as they are not included therein.

(3A) The Registrar shall make the register under subsection (3) available for inspection by any person on payment of the fee specified in Part 1A of Schedule 5 and the inspection shall be subject to such conditions as the Registrar may impose.

(3B) The Cabinet may amend Schedule 1A by Order.

(4) Upon the filing of a memorandum of association under this section, there shall be paid to the Registrar the fees specified in Part 1 of Schedule 5.

Registrar to provide information

26A.(1) The Registrar shall, upon request in writing by an entity under subsection (2), provide any information required to discharge any function or exercise any power, under the following Acts —

(a) the *Anti-Corruption Act (2019 Revision);*

(b) the *Monetary Authority Act (2020 Revision)*;

(c) the *Proceeds of Crime Act (2025 Revision);*

(d) the *Tax Information Authority Act (2021 Revision);*

(2) For the purposes of subsection (1), the following entities may request information from the Registrar —

(a) the Anti-Corruption Commission established under section 3 of *the Anti-Corruption Act (2019 Revision)*;

(b) the Authority;

(ba) the Customs and Border Control Service established under section 3 of the *Customs and Border Control Act (2024 Revision)*;

(c) the Financial Crimes Unit of the Royal Cayman Islands Police Service;

(d) the Financial Reporting Authority, as defined under section 2 of the *Proceeds of Crime Act (2025 Revision);*

(e) the Tax Information Authority, designated under section 4 of the *Tax Information Authority Act (2021 Revision)*; or

(f) a competent authority as defined under section 2(1) of the *Proceeds of Crime Act (2025 Revision)*.

(3) Where a request for information is made under subsection (1), the information shall be provided within forty-eight hours of receipt of the request.

(4) The recipient of any information provided by the Registrar under this section shall —

(a) use the information for the purpose for which it was provided;

(b) retain the information for as long as is necessary to carry out the purpose for which it was provided; and

(c) not disclose the information for any purpose other than the purpose for which it was provided, without the consent of the Registrar.

Consequences of incorporation

27. (1) Upon the filing of the memorandum of association a company shall be deemed to be registered, and the Registrar shall issue a certificate under that person's hand and seal of office that the company is incorporated with effect from the date of the registration of the memorandum of association and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation, the subscribers of the memorandum of association, together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit, and having perpetual succession with power to hold lands but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided in this Act. This subsection applies to companies incorporated before, on or after the 18th January, 1988.

(3) A certificate of incorporation of a company issued under this Act shall be conclusive evidence that compliance has been made with all the requirements of this Act in respect of incorporation and registration.

(4) Every copy of a memorandum or articles of association filed and registered in accordance with this Act or any extract therefrom certified under the hand and seal of office of the Registrar as a true copy shall be received in evidence in any court of the Islands without further proof.

Lack of capacity or power; *ultra vires*

28. (1) No act of a company and no disposition of real or personal property to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to perform the act or to dispose of or receive the property, but the lack of capacity or power may be asserted —

(a) in proceedings by a member or a director against the company to prohibit the performance of any act, or the disposition of real or personal property by or to the company; and

(b) in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through members of the company in a representative capacity, against the incumbent or former officers or directors of the company for loss or damage through their unauthorised act.

(2) This section applies to companies incorporated before, on or after the 18th day of January, 1988.

Copies of memorandum and articles to be given to members

29. A copy of the memorandum of association having annexed thereto the articles of association, if any, shall be forwarded to every member, at that person's request, on payment of such reasonable sum, not exceeding one dollar for each copy as may be fixed by any rule of the company, and in the absence of any such rule, such copy shall be given gratuitously; and whichever company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, commits an offence and is liable, for each default, to a penalty of two dollars.

Name reservation

29A.(1) A person ("applicant") may apply to reserve a specified name by —

(a) filing with the Registrar (including by permitted electronic means) an application executed by the applicant specifying the name to be reserved and the name and address of the applicant; and

(b) paying the prescribed application fee.

(2) If, on an application made under subsection (1), the Registrar finds that the name is available for use by a company, the Registrar may reserve the name for exclusive use by the applicant for a period of up to four months.

(3) On or before the expiry of the period for name reservation under subsection (2), the applicant may make further successive applications pursuant to subsection (2) to reserve the specified name.

Restrictions on registration of certain names

30. (1) No company shall be registered by a name which —

(a) is identical with a name by which a company in existence is already registered or any translated name entered on the register of companies, or so nearly resembles such name or translated name so as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signified its consent in such manner as the Registrar requires;

(b) contains the words "Chamber of Commerce" unless the company is a company which is to be registered under a licence granted by the Registrar under section 80 without the addition of the word "Limited" or the abbreviation "Ltd." to its name; or

(c) contains the words "building society".

(2) Except with the consent of the Registrar, no company shall be registered by a name which —

(a) contains the words "royal", "imperial" or "empire" or in the opinion of the Registrar suggests, or is calculated to suggest the patronage of His Majesty

or of any member of the Royal Family or connection with His Majesty's Government or any department thereof in the United Kingdom or elsewhere;

(b) contains the words "municipal" or "chartered" or any words which in the opinion of the Registrar suggest, or are calculated to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter;

(c) contains the words "co-operative", "assurance", "bank", "insurance", or any similar word which in the opinion of the Registrar connotes any of such activities or any derivative of any of such four words or of such similar words, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any of such activities; or

(d) contains the word "gaming" or "lottery" or any similar word which in the opinion of the Registrar connotes any such activity or any derivative of such words or of such similar word, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any such activity.

(3) A company that is not an exempted limited duration company shall not be registered by a name which includes at its end "Limited Duration Company" or "LDC".

(3A) A company that is not a special economic zone company shall not be registered by a name which includes the words "Special Economic Zone Company" or the letters "SEZC".

(4) The provisions of the regulatory laws shall apply to any translated name as if it were the name of the company and a company shall not have a translated name which is a name —

(a) prohibited under any regulatory laws; or

(b) which requires approval or permission under any regulatory laws unless such approval or permission as is necessary for the use of such name under the relevant regulatory laws has first been obtained.

(5) A company's dual foreign name shall only be entered on the register of companies if its translated name conforms with the provisions of this section and if it does not so conform then such dual foreign name and such translated name shall not be entered on the register of companies.

Change of name

31. (1) Any company may, by special resolution, change its name and, in the case of an exempted company, may adopt a dual foreign name or change its dual foreign name, if any, and any dual foreign name shall precede or follow its name.

(2) Where a company changes its name or its dual foreign name, the Registrar, on receiving the special resolution authorising the same and, in the case of a company changing its dual foreign name, receiving its translated name together with the fees provided under section 199(1), and on being satisfied that the change of name conforms with section 30, shall enter the new name and, if applicable, the new translated name on the register in place of the former name and lodge the special resolution for record and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name or new translated name is registered by a name or a translated name which in any way contravenes section 30 or which, in the opinion of the Registrar, is misleading or undesirable, then the company may, with the sanction of the Registrar, change its name or its translated name as the case may be and shall, if the Registrar so directs, change its name or translated name within six weeks of the date of such direction or within such longer period as the Registrar may think fit.

(4) A company which defaults in complying with a direction under subsection (3) is liable to a fine of ten dollars for every day during which the default continues.

Company with power to issue bearer shares not to hold land in the Islands

32. (1) A company which is empowered by any law or by its articles of association to issue bearer shares, certificates or coupons, has no power to hold land in the Islands:

Provided that the Minister charged with responsibility for Financial Services may, at that Minister's discretion, in the case of an exempt company so empowered that has never issued bearer shares, certificates or coupons, exempt that company in writing from subsection (1) for as long as it does not issue bearer shares, certificates or coupons.

(2) If a company is in breach of subsection (1), section 185(2), (3) and (4) shall apply, *mutatis mutandis*, to the company as if it were a foreign company which had failed to comply with Part 9.

(3) In this section —

"**hold land**" means to be the proprietor of a legal or beneficial interest in or claim to, or over immovable property whether freehold or leasehold and includes being the proprietor of a legal or beneficial interest in the equity capital of a company which holds land; and

"**equity capital**" with respect to a company includes shares, stock and scrip whether registered, inscribed or bearer which (other than by way of a fixed and predetermined right to interest and repayment of subscribed capital at par) entitles the owner to any variable right of participation in the profits of the

company whether by way of dividend, bonus or conversion, or to share in the distribution of the assets of the company upon a winding up.

PART 3 - Distribution of Capital and Liability of Members of Companies and Associations

Distribution of Capital

Share or interest in company to be personalty

33. (1) A share or other interest of a member in a company —

(a) is personal estate and not of the nature of real estate; and

(b) is capable of being transferred if —

(i) a transfer is expressly or impliedly permitted by the regulations of the company; and

(ii) any restriction or condition on the transfer of the shares or interest set out in the regulations of the company is observed.

(2) The shares in a company having a capital divided into shares must each be distinguished by an appropriate number except that if, at any time —

(a) all the issued shares in the company; or

(b) all the issued shares in the company of a particular class,

are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all the shares in the company or all the shares of the particular class of shares, as the case may be, for the time being issued and fully paid up.

(3) A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles, may issue fractions of a share and, unless and to the extent otherwise provided in its articles, a fraction of a share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contribution, calls or otherwise howsoever), limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class of shares; and in this Act the expression "**share**" includes a fraction of a share and no issue or purported issue of a fraction of a share shall be invalid by reason only of the fact that it was issued or purportedly issued prior to the 30th September, 1985.

(4) The nominal or par value of a share may be expressed in an amount which is a fraction or a percentage of the lowest available unit of legal tender of the currency in which the capital of the company is expressed.

Share premium account

34. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the value of the premiums on those shares shall be transferred to an account called "the share premium account". Where a company issues shares without nominal or par value, the consideration received shall be paid up share capital of the company.

(2) The share premium account may be applied by the company subject to the provisions, if any, of its memorandum or articles of association in such manner as the company may, from time to time, determine including, but without limitation —

(a) paying distributions or dividends to members;

(b) paying up unissued shares of the company to be issued to members as fully paid bonus shares;

(c) any manner provided in section 37;

(d) writing off the preliminary expenses of the company; and

(e) writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.

Provided that no distribution or dividend may be paid to members out of the share premium account unless, immediately following the date on which the distribution or dividend is proposed to be paid, the company shall be able to pay its debts as they fall due in the ordinary course of business; and the company and any director or manager thereof who knowingly and wilfully authorises or permits any distribution or dividend to be paid in contravention of the foregoing provision commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

(3) Where a company had, before the 18th day of January, 1988, issued any shares at a premium, this section shall apply as if the shares had been issued after such date.

(4) At the option of the company, subsection (1) shall not apply to premiums on shares of a company allotted in pursuance of any arrangement in consideration for the acquisition or cancellation of shares in any other company, whether a company within the meaning of this Act or not, and issued at a premium.

(5) At the option of the company, an amount corresponding to any amount representing the premiums or part of the premiums on shares issued by a company which, by virtue of subsection (4), is not included in such company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in such company's balance sheet.

(6) For the purposes of subsection (4) —

"**arrangement**" means any agreement, scheme or arrangement, whether of reconstruction, merger, consolidation, take-over, acquisition, purchase or otherwise whereby the allotting company acquires a controlling interest in the company whose shares it acquires or cancels.

(7) The relief allowed by subsections (4) and (5) shall apply even if the issue of shares took place prior to the 18th day of January, 1988.

Power to issue shares at a discount

35. (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that —

(a) the issue of the shares at a discount has been authorised by resolution of the company, and has been sanctioned by the Court;

(b) the resolution specify the maximum rate of discount at which the shares are to be issued;

(c) not less than one year, at the date of the issue, has elapsed since the date on which the company was entitled to commence business; and

(d) the shares to be issued at a discount are issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as had not been written off at the date of the issue of the prospectus and if default is made in complying with this subsection, the company and every officer of the company who is in default is liable to a default fine.

(4) This section does not apply to shares issued, or proposed to be issued, without nominal or par value.

Power of company to pay commissions

36. (1) A company has the power, and shall be deemed always to have had the power, to pay a commission to any person in consideration of that person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the payment of the commission is authorised by the articles of association of the company.

(2) Nothing in subsection (1) affects the power of a company to pay such brokerage as has previously been lawful.

(3) A vendor to, or promoter of, or other person who receives payment in money or shares from a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under subsection (1).

Redemption and purchase of shares

37. (1) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and, for the avoidance of doubt, it shall be lawful for the rights attaching to any shares to be varied, subject to the provisions of the company's articles of association, so as to provide that such shares are to be or are liable to be so redeemed.

(2) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares.

(3) (a) No share may be redeemed or purchased unless it is fully paid.

(b) A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any issued shares of the company other than shares held as treasury shares.

(c) Redemption or purchase of shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the company's articles of association.

(d) If the articles of association do not authorise the manner and terms of the purchase, a company shall not purchase any of its own shares unless the manner and terms of purchase have first been authorised by a resolution of the company.

(da) For the avoidance of doubt —

(i) a company's articles of association; or

(ii) a resolution of the company,

may authorise the company's directors to determine the manner or any of the terms of, any such redemption or purchase not being inconsistent with such articles of association or resolution and subject to such restrictions (if any) as may be provided therein.

(e) The premium, if any, payable on redemption or purchase must have been provided for —

(i) out of either or both of the profits of the company or the company's share premium account, before or at the time the shares are redeemed or purchased; or

(ii) in the manner provided for in subsection (5).

(f) Shares may be redeemed or purchased out of profits of the company, out of the share premium account or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase or in the manner provided for in subsection (5).

(g) Subject to section 37A, shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(h) Without prejudice to paragraph (g), where a company is about to redeem or purchase shares, it has power to issue shares up to the nominal value of the shares to be redeemed or purchased as if those shares had never been issued:

Provided that where new shares are issued before the redemption or purchase of the old shares the new shares shall not, so far as relates to fees payable on or accompanying the filing of any return or list, be deemed to have been issued in pursuance of this subsection if the old shares are redeemed or purchased within one month after the issue of the new shares.

(4) (a) Where, under this section, shares of a company are redeemed or purchased wholly out of either or both of the company's profits or share premium account, the amount by which the company's issued share capital is diminished in accordance with paragraph (g) of subsection (3) on cancellation of the shares redeemed or purchased shall be transferred to a reserve called the "capital redemption reserve" and the share premium account or company's profits, as the case may be, shall be adjusted accordingly.

(b) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(c) Paragraph (b) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under subsection (5).

(d) The provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital

of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

(5) (a) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles of association, make a payment in respect of the redemption or purchase of its own shares otherwise than out of its profits, share premium account, or the proceeds of a fresh issue of shares.

(b) References in subsections (6) to (9) to payment out of capital are, subject to paragraph (f), references to any payment so made, whether or not it would be regarded apart from this subsection as a payment out of capital.

(c) The amount of any payment which may be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with —

(i) any profits and share premium of the company being applied for purposes of the redemption or purchase; and

(ii) the proceeds of any fresh issue of shares made for the purpose of the redemption or purchase, is equal to the price of redemption or purchase, and the payment out of capital permitted under this paragraph is referred to in subsections (6) to (9) as the capital payment for the shares.

Nothing in this paragraph shall be taken to imply that a company shall be obliged to exhaust any profits and share premium before making any capital payment.

(d) Subject to paragraph (f), if the capital payment for shares redeemed or purchased and cancelled is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(e) Subject to paragraph (f), if the capital payment is greater than the nominal amount of the shares redeemed or purchased the amount of any capital redemption reserve or fully paid share capital of the company may be reduced by a sum not exceeding, or by sums not in the aggregate exceeding, the amount by which the capital payment exceeds the nominal amount of the shares.

(f) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this subsection, the references in paragraphs (d) and (e) to the capital payment are to be read as referring to the aggregate of that payment and those proceeds.

(6) (a) A payment out of capital by a company for the redemption or purchase of

its own shares is not lawful unless immediately following the date on which the payment out of capital is proposed to be made the company shall be able to pay its debts as they fall due in the ordinary course of business.

(b) The company and any director or manager thereof who knowingly and wilfully authorises or permits any payment out of capital to effect any redemption or purchase of any share in contravention of paragraph (a) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

(7) (a) Where a company is being wound up and, at the commencement of the winding up, any of its shares which are or are liable to be redeemed have not been redeemed or which the company has agreed to purchase have not been purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.

Provided that this paragraph shall not apply if —

(i) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date of the commencement of the winding up; or

(ii) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not, at any time, have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(b) There shall be paid in priority to any amount which the company is liable by virtue of paragraph (a) to pay in respect of any shares —

(i) all other debts and liabilities of the company (other than any due to members in their character as such); and

(ii) if other shares carry rights whether as to capital or as to income which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(8) (a) Any redeemable preference shares issued by a company before the 18th day of January, 1988, are subject to redemption in accordance with this section.

(b) Any capital redemption reserve fund established by a company before the 18th day of January, 1988, is to be known as the company's capital redemption reserve and to be treated as if it had been established for the

purposes of subsection (4), and accordingly, a reference in any law, the articles of association of any company or any other instrument to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

(9) This section shall apply to shares without nominal or par value, and shall, in relation to such shares, be read and construed as if —

(a) in subsection (3) —

(i) for the words "the nominal value of" appearing in paragraph (g), there were substituted the words "an amount equal to the consideration received for"; and

(ii) for the words "nominal value" appearing in paragraph (h), there was substituted the word "number";

(b) in subsection (4) for the words "aggregate nominal value of" appearing in paragraph (b), there were substituted the words "aggregate consideration received for"; and

(c) in subsection (5) —

(i) for the words "their nominal amount" appearing in paragraph (d), there were substituted the words "the consideration received for such shares"; and

(ii) for the words "nominal amount of" appearing in paragraph (e), there were substituted the words "consideration received for".

Treasury shares

37A. (1) Shares that have been purchased or redeemed by a company or surrendered to the company pursuant to sections 37 or 37B shall not be treated as cancelled pursuant to sections 37(3)(g) or 37B(2) but shall be classified as treasury shares and sections 37(4), 37(5)(d) and 37B(2) shall not apply to such shares at the time of such purchase, redemption or surrender, if —

(a) the memorandum and articles of association of the company do not prohibit it from holding treasury shares;

(b) the relevant provisions of the memorandum and articles of association (if any) are complied with; and

(c) the company is authorised in accordance with the company's articles of association or by a resolution of the directors to hold such shares in the name of the company as treasury shares prior to the purchase, redemption or surrender of such shares.

(2) Shares held by a company pursuant to subsection (1) shall continue to be classified as treasury shares until such shares are either cancelled or transferred pursuant to subsection (3).

(3) A company that holds treasury shares may at any time —

(a) cancel the shares in accordance with the provisions of the company's articles of association or (in the absence of any applicable provisions in the company's articles of association) by a resolution of the directors, and if so cancelled the amount of the company's issued share capital shall be diminished by the nominal or par value of those shares accordingly but the company's authorised share capital shall not be reduced and sections 37(4), 37(5)(d) and 37B(2) shall apply as if the shares had been purchased, redeemed or surrendered as at the date of cancellation; or

(b) transfer the shares to any person, whether or not for valuable consideration (including at a discount to the nominal or par value of such shares).

(4) A sum equal to the consideration (if any) received by the company pursuant to the transfer of a treasury share made in accordance with subsection (3)(b) (such consideration referred to as the "transfer consideration") shall be applied in the following manner —

(a) to the extent that any payment out of capital was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company's share capital an amount equal to the lesser of —

(i) the amount of such payment out of capital; and

(ii) the transfer consideration received in respect of such share;

(b) subject to subsection (5), to the extent that any payment out of share premium was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company's share premium an amount equal to the lesser of —

(i) the amount of such payment out of share premium; and

(ii) the balance of the transfer consideration received in respect of such share after applying subsection (4)(a); and

(c) subject to subsection (5), the balance of the transfer consideration received in respect of such share after applying subsection (4)(a) and (b) shall be credited to the company's profit and loss account.

(5) Notwithstanding the provisions of subsection (4)(b) and (c) but subject to subsection (4)(a), so long as the company shall be able to pay its debts as they fall due in the ordinary course of business immediately following the transfer of a treasury share in accordance with subsection (3)(b), the directors may by resolution determine that all or any part of the transfer consideration received shall be transferred to the company's profit and loss account, share premium account or share capital (or any combination of the foregoing) in such proportions as the directors may (in their sole and absolute discretion but subject to any express contrary provision in the articles of association of the company) determine.

(6) Notwithstanding subsection (7)(b), a treasury share may be transferred by the company and the provisions of this Act and (subject to any specific provisions with respect to the transfer of treasury shares) the memorandum and articles that apply to the transfer of shares shall apply to the transfer of treasury shares.

(7) For so long as a company holds treasury shares —

(a) the company shall be entered in the register of members as holding those shares;

(b) notwithstanding paragraph (a) —

(i) the company shall not be treated as a member for any purpose and shall not exercise any right in respect of the treasury shares, and any purported exercise of such a right shall be void; and

(ii) a treasury share shall not be voted, directly or indirectly, at any meeting of the company and shall not be counted issued shares at any given time, whether for the purposes of the company's articles of association or this Act; and

(c) no dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of a treasury share.

(8) Nothing in subsection (7) prevents an allotment of shares as fully paid bonus shares in respect of a treasury share and shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as treasury shares.

Surrender of shares

37B. (1) Subject to any express provisions of the company's memorandum or articles of association to the contrary, a company may accept the surrender for no consideration of any fully paid share (including a redeemable share) unless, as a result of the surrender, there would no longer be any issued shares of the company other than shares held as treasury shares.

(2) Subject to section 37A, any shares surrendered under subsection (1) shall be treated as cancelled on surrender, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the surrender of shares by a member is not to be taken as reducing the amount of the company's authorised share capital.

(3) This section is without prejudice to any right or power of a company arising under this Act or otherwise to accept the surrender of a share (not being a fully paid share) in lieu of forfeiture.

Definition of member

38. The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative

39. Any transfer of the share or other interest of a deceased member of a company made by that person's personal representative, shall, notwithstanding that such personal representative may not themselves be a member, be of the same validity as if that person had been a member at the time of the execution of the instrument of transfer.

Register of members

40. (1) Every company shall cause to be kept in writing, a register of its members and there shall be entered therein —

(a) the names and addresses of the members of the company, with the addition of, in the case of a company having a capital divided into shares, a statement of the shares held by each member, and the statement shall —

(i) distinguish each share by its number (so long as the share has a number);

(ii) confirm the amount paid, or agreed to be considered as paid on the shares of each member;

(iii) confirm the number and category of shares held by each member; and

(iv) confirm whether each relevant category of shares held by a member carries voting rights under the articles of association of the company, and if so, whether such voting rights are conditional;

(b) the date on which the name of any person was entered on the register as a member; and

(c) the date on which any person ceased to be a member.

(2) Any company making default in complying with this section shall incur a penalty of five thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

(3) For the purpose of subsection (1), "**voting rights**" means, —

(a) rights conferred on shareholders, including the right to appoint or remove directors, in respect of their shares or, in the case of an entity not having a

share capital, on members, to vote at general meetings of the entity on all or substantially all matters; and

(b) in relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights, the rights conferred upon shareholders or members, as applicable, that are equivalent to those of a person entitled to exercise voting rights in a company.

(4) A voting right is conditional where the voting right arises only in certain circumstances.

Branch registers of members

40A. (1) An exempted company may cause to be kept in any country or territory one or more branch registers of such category or categories of members as the exempted company may determine from time to time.

(2) A branch register is deemed to be part of the exempted company's register of members.

(3) Subject to subsection (6), a branch register shall be kept in the same manner in which a principal register is by this Act required or permitted to be kept.

(4) The exempted company shall cause to be kept at the place where the exempted company's principal register is kept a duplicate of any branch register duly entered up from time to time.

(5) If default is made in complying with subsection (4) within twenty-one days after —

(a) establishing a branch register; or

(b) making changes to the details recorded in a branch register,

the exempted company and every officer of the exempted company who is in default is liable to a penalty of five thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

(6) Subject to subsection (4) with respect to a duplicate of any branch register —

(a) the shares registered in a branch register shall be distinguished from those registered in the principal register; and

(b) no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(7) An exempted company may discontinue keeping any branch register, and thereupon all entries in that branch register shall be transferred to some other branch register kept by the exempted company or to the principal register.

(8) For the avoidance of doubt a listed share register maintained under section 40B(3) shall not constitute a branch register for the purposes of this section.

(9) In this section —

"**branch register**" means a branch register referred to in subsection (1); and

"**principal register**" means a company's register of members.

Transfer and registration of shares in respect of a company with listed shares

40B.(1) Title to listed shares of a company may, if so authorised by such company's articles of association, or (in the absence of any applicable provisions in the company's articles of association) by a special resolution of such company, be evidenced and transferred in accordance with the laws applicable to and the rules and regulations of the relevant approved stock exchange that are or shall be applicable to such listed shares as referred to or specified in such articles of association or special resolution.

(2) For the purposes of subsection (1), the laws applicable to an approved stock exchange include, without limitation, the laws of the jurisdiction under which such approved stock exchange is established in so far as they would apply to an entity established under such laws which has listed shares on such approved stock exchange.

(3) Any register of members maintained by a company in respect of its listed shares may be kept by recording the particulars required by section 40 in a form otherwise than legible if such recording otherwise complies with the laws applicable to and the rules and regulations of the relevant approved stock exchange referred to in subsection (1).

(4) To the extent the listed shares register is kept in a form otherwise than legible it must be capable of being reproduced in a legible form.

(5) A company which maintains a listed shares register must also maintain, in respect of any shares which are not listed shares, a separate register of members in accordance with section 40.

(6) References in any enactment or instrument to a company's register of members shall, unless the context otherwise requires, be construed in relation to a company which maintains any listed shares register as referring to each of such company's listed shares register and, if any, its non-listed shares register.

(7) For the purposes of this section —

"**approved stock exchange**" means a stock exchange listed in Schedule 4;

"**listed shares**" means shares which are traded or listed on an approved stock exchange;

"**listed shares register**" means the register of members required to be maintained by a company in respect of its listed shares pursuant to subsection (3); and

"**non-listed shares register**" means the register of members maintained by a company pursuant to subsection (5).

(8) For the purpose of this section —

(a) references to title to shares include any legal or equitable interest in shares; and

(b) references to a transfer of title include a transfer by way of security.

Annual list of members and return of capital, shares, calls, etc.

41. (1) Every company, other than an exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers, having a capital divided into shares shall make a list of all persons who, on the fourteenth day following the date on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the company; and such lists shall state the names and addresses of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the —

(a) amount of the capital of the company and the number of shares into which it is divided;

(b) number of shares taken from the commencement of the company up to the date of the summary;

(c) amount of calls made on each share;

(d) total amount of calls received:

(e) total amount of calls unpaid;

(f) total number of shares forfeited;

(g) names and addresses of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them;

(h) names and addresses of directors and officers of the company and the position or office that they hold; and

(i) nature of the business,

and this list and summary shall be contained in a separate part of the register of the company and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall be forwarded to the Registrar in January of each year after the year of its incorporation.

(2) Every company, other than an exempted company, shall, in January of each year after the year of its registration, pay to the Registrar the annual fee specified in Part 2 of Schedule 5.

(3) Each such annual fee shall be tendered with the list and summary required under subsection (1). A company which has failed to forward to the Registrar any copy required to be forwarded in any January shall be deemed not to have made any default in complying with this section relating to the time within which such copy is required to be forwarded if the company forwards the copy either —

(a) within such further period, if any, as the Registrar, acting in that person's discretion may, by notice, addressed to the company specify; or

(b) within the period of twelve months next following such month of January,

whichever is the shorter, together with the fee payable under subsection (2) and the penalty specified in section 42.

Penalty on company not making return

42. Any company, not being an exempted company, which defaults in forwarding to the Registrar such lists of members or summary or the payment of any fee specified in section 41(1) and (2) shall incur a penalty of —

(a) 33.33% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st April and the 30th June;

(b) 66.67% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st July and the 30th September; and

(c) 100% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st October and the 31st December,

and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Certificate of shares or stock

43. A certificate —

(a) specifying the shares or stock held by a member of a company; and

(b) purportedly signed by a person (including by facsimile or other mechanically affixed signature) with the express or implied authority of that company,

is admissible in evidence as proof of the title of that member to those shares or that stock.

Inspection of register

44. (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company or, in the case of an exempted company, at any other place within or outside the Islands except that, in the case of an exempted company that holds a licence to carry on business in the Islands under any applicable law, the register of members shall be kept at its registered office within the Islands.

(2) Except in the case of an exempted company that does not hold a licence to carry on business in the Islands under any applicable law and when closed as hereinafter provided the register of members shall, during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that no less than two hours in each day be appointed for inspection, be open to the inspection of any member *gratis* and to the inspection of any other person on payment of ten dollars or such less sum as the company may specify for each inspection; and every such member or other person may receive a copy of such register or any part thereof, or of such list or summary of members, on payment of one dollar for every page required to be copied.

(3) If such inspection or copy is refused, the company shall incur for each refusal a penalty of five hundred dollars; and every director and manager of the company who knowingly authorises or permits such refusal shall incur the like penalty; and in addition to the above penalty, a Judge sitting in chambers may, by order, compel an immediate inspection of the register.

(4) A company, including an exempted company, shall make available at the registered office, in electronic form or any other medium, such register, including any branch register in the case of an exempted company, as may be required of it upon service of an order or notice by the Tax Information Authority pursuant to the *Tax Information Authority Act (2021 Revision)*; and if the company fails to comply with the order or notice without reasonable excuse, the company shall incur a penalty of five hundred dollars and a further penalty of one hundred dollars for every day during which such non-compliance continues.

Notice of increase of capital and of members to be given to Registrar

45. (1) Where a company has a capital divided into shares, whether such shares have or have not been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within thirty days from the date of the passing of the resolution by which such increase has been authorised; and, in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

(2) The fees payable on an increase of capital shall be as specified in Part 3 of Schedule 5.

(3) If such notice is not given within the period aforesaid the company in default shall incur a penalty of ten dollars for every day during which such neglect to give notice continues, and every director and officer of the company who knowingly and wilfully authorises or permits such default shall incur a like penalty.

Remedy for improper entry or omission of entry in register

46. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have that person's name entered in or omitted from the register, whether such question arises

between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register:

Provided that the Court may direct an issue to be tried, on which any question of law may be raised.

Notice to Registrar of rectification of register

47. Whenever any order has been made rectifying the register, in the case of a company required by this Act to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence

48. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Liability of Members

Liability of present and past members of company

49. In the event of a company being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves:

Provided that —

(a) a past member shall not be liable to contribute to the assets of the company if that person has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after the time at which that person ceased to be a member;

(c) a past member shall not be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Act;

(d) in case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which that person is liable as a present or past member except where such member or past member holds or held shares of a class which are expressly stated in the memorandum of association to carry unlimited liability, as provided in section 8(2);

(e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on that person's behalf by the memorandum of association, except where the amount of the undertaking of such member is unlimited, as provided in section 9(2);

(f) nothing in this Act shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members

upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and

(g) no sum due to any member of a company in that person's character of a member by way of dividends, profits or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between that person and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributions amongst themselves.

PART 4 - Management and Administration of Companies and Associations - Provisions for Protection of Creditors

Registered office of company

50. (1) Every company shall have a registered office in the Islands to which all communications and notices may be addressed and any company which carries on business without having such an office, shall incur a penalty of ten dollars for every day during which business is so carried on.

(2) In the case of an exempted company or a non-resident company, the address of the registered office referred to in subsection (1) shall be the same as the address of the person licensed by the Authority who provides company management services for the exempted company or non-resident company except where the registered office was located at a different address in the Islands immediately prior to the 10th January, 2013, the date of commencement of this provision by the *Companies (Amendment) Act, 2012 [Law 6 of 2012]*, and remains at such address on or after the date of commencement of this provision.

Notice of situation of registered office

51. (1) Notice of the situation of such registered office shall be given to the Registrar and recorded by that person and shall be published by Public Notice. Until such notice is given and published, the company shall not be deemed to have complied with this Act with respect to having a registered office.

(2) Any member of the public shall be entitled to be informed by the Registrar, on request, of the location of the registered office of any company or exempted company registered under this Act.

Publication of name by a limited company

52. Every company, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, or in any corridor, passage or hallway adjacent or proximate thereto, in a conspicuous position, in letters easily legible, and shall have its name in legible characters on any seal it uses, and shall have its name set out in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company and its name may be followed with or preceded by, at the discretion of the company, its dual foreign name or its translated name, if any, or both.

Penalties on non-publication of name

53. Any company which does not paint or affix, and keep painted or affixed, its name in manner directed by this Act is liable to a penalty of ten dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall be liable to the like penalty; and any director, manager or officer of such company, or any person on its behalf, who uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement or other official publication of such company, or signs or authorises to be signed on behalf of such company any bills of exchange, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not set out in the manner aforesaid, is liable to a penalty of one hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Register of mortgages

54. (1) Every limited company shall keep at its registered office in writing on one or more sheets, whether bound or unbound, a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created and the names of the mortgagees or persons entitled to such charge.

(2) If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry, shall incur a penalty of one hundred dollars.

(3) The register of mortgages required by subsection (1) shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal shall incur a penalty of four dollars for every day during which such refusal continues; and in addition to the above penalty, the Judge sitting in chambers may, by order, compel an immediate inspection of the register.

Filing deadline for updated list of directors etc.

55. (1) Every company shall keep at its registered office a register containing the names and addresses of its directors, including alternate directors, and officers, and shall —

(a) send a copy of such register to the Registrar within sixty days of the first appointment of any director or officer of the company; and

(b) notify the Registrar of any change in such directors or officers including a change of the name of such directors or officers, within thirty days of any such change.

(2) For the purposes of subsection (1) a person shall be registered by a company as an alternate director if that person is —

(a) appointed by a director of the company to exercise all the powers and perform all the responsibilities of that director;

(b) entitled to receive notice of meetings of the board of directors of the company;

(c) entitled to sign or execute written resolutions of the board of directors of the company; and

(d) considered in all respects to be a director of the company.

(3) Subsection (2) does not apply to a person —

(a) appointed by a director to exercise limited powers or to fulfil limited responsibilities;

(b) appointed for a specified period that is less than ninety days;

(c) appointed to attend a particular meeting or series of meetings or adjournments;

(d) appointed to consider and, if approved, sign a particular written resolution or series of written resolutions of the board of directors of the company;

(e) who is a director of the company; or

(f) who at the time of that person's appointment, is the alternate of another director of the company.

Registrar to make list of directors available for inspection

55A. (1) The Registrar shall maintain a list of the names of the current directors, and where applicable, the current alternate directors of a company.

(2) The Registrar shall make available, the list of the names of the current directors of a company and where applicable, the current alternate directors of a company under subsection (1), for inspection by any person, on payment of the fee specified in Part 6A of Schedule 5, for each inspection, and subject to such conditions as the Registrar may impose.

(3) For the purposes of subsection (1), an alternate director is a person who is registered by a company as an alternate director under section 55.

Penalty for failing to notify of changes to the register of directors and officers

56. (1) A company that breaches the provisions of section 55 shall incur a penalty of five hundred dollars.

(2) Notwithstanding subsection (1), if a company is in breach of section 55(1)(b) —

(a) in respect of more than one change in directors or officers and —

(i) the changes occurred within a thirty day period; and

(ii) the Registrar is notified of the changes on the same day;

the applicable penalty for the breach shall be that specified in subsection (1), irrespective of the number of changes notified to the Registrar; and

(b) in respect of directors or officers of five or more companies, the applicable aggregate penalty in respect of the companies to which the breach relates shall not exceed the sum of two thousand five hundred dollars, which shall be equally apportioned between and paid by, such companies.

(3) In addition to the penalty under subsection (1), where the Registrar is satisfied that a breach of section 55 has been knowingly and wilfully authorised or permitted —

(a) every company to which the breach relates shall incur a penalty of one thousand dollars; and

(b) every director and officer of the company to which the breach relates shall incur a penalty of one hundred dollars for every day during which the default continues.

Meetings

57. Subject to the memorandum and articles of association of the company, a meeting of —

(a) members;

(b) a class of members;

(c) the board of directors; or

(d) any committee of the directors,

may be validly convened and business conducted, as provided by the articles of association, with only one such member or director being present in person or otherwise as may be provided by the articles of association.

Provisions for Protection of Members

General meetings

58. A general meeting of every company, other than an exempted company, shall be held at least once in every year.

Accounts and audits

59. (1) Every company shall cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices with respect to —

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(2A) A company which keeps its books of account at any place other than at its registered office or at any other place within the Islands shall, upon service of an order or notice by the Tax Information Authority pursuant to the *Tax Information Authority Act (2021 Revision)*, make available, in electronic form or any other medium, at its registered office copies of its books of account, or any part or parts thereof, as are specified in such order or notice; and if the company fails to comply with the order or notice without reasonable excuse, the company shall incur a penalty of five hundred dollars and a further penalty of one hundred dollars for every day during which such non-compliance continues.

(2B) A company which keeps its books of account outside of the Islands shall, in the form and manner prescribed, provide to its registered office, annually or with such other frequency and within such time as may be prescribed, information regarding its books of account; and, if a company fails to comply with this subsection without reasonable excuse, the company shall incur a penalty of five hundred dollars and a further penalty of one hundred dollars for every day during which such non-compliance continues.

(2C) Subsection (2B) shall not apply to a company that complies with a requirement under any regulatory law to file information regarding its accounts to the Authority.

(3) A company shall cause all books of account required to be kept under subsection (1) to be retained for a minimum period of five years from the date on which they are prepared.

(4) A company that knowingly and wilfully contravenes subsection (1) or (3) shall be subject to a penalty of five thousand dollars.

Definition of special resolution

60. (1) A resolution is a special resolution when —

(a) it has been passed by a majority of at least two-thirds of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given, except that a company may in its articles of association specify that the required majority shall be a number greater than two-thirds, and may additionally so provide that any such majority (being not less than two-thirds) may differ as between matters required to be approved by a special resolution; or

(b) if so authorised by its articles of association, it has been approved in writing by all of the members entitled to vote at a general meeting of the company in one or more instruments each signed by one or more of the members aforesaid, and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

(2) At any meeting mentioned in this section, unless a poll is demanded by at least one member, a declaration of the chairperson that the resolution has been carried shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the same.

(3) Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and the meeting held in manner prescribed by the regulations of the company.

(4) In computing the majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled by the regulations of the company.

Provisions where no regulations as to meetings

61. In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which five days' notice has been served on every member; and in default of any regulations as to the persons to summon meetings, three members shall be competent to summon the same; and in default of any regulations as to who is to be chairperson of such meeting, it shall be competent for any person elected by the members present to preside.

Recording of special resolutions

62. A copy of any special resolution passed by any company under this Act shall be forwarded within fifteen days to the Registrar and shall be recorded by that person.

Copies of special resolutions

63. (1) Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in, every copy of the articles of association that may be issued after the passing of such resolution.

(2) Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of ten cents or such less sum as the company may direct.

(3) Any company which fails to comply with this section shall incur a penalty of two dollars for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Appointment of inspectors to report on affairs of companies

64. The Court may appoint one or more than one competent inspectors to examine into the affairs of any company and to report thereon in such manner as the Court may direct —

(a) in case of a banking company having a capital divided into shares, upon the application of members holding not less than one-third of the shares of the company for the time being issued;

(b) in the case of any other company having a capital divided into shares, upon application of members holding not less than one-fifth of the shares of the company for the time being issued; and

(c) in the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the total number of persons for the time being entered on the register of the company as members.

Powers of inspectors

65. It shall be the duty of all officers and agents of the company to produce for examination by an inspector all books and documents in their custody or power; any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly; and any officer or agent who refuses or neglects to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, shall incur a penalty not exceeding forty dollars in respect of each such offence.

Report of inspectors

66. (1) Upon the conclusion of the examination, the inspectors shall report their opinions to the Court.

(2) Such report shall be filed by the Clerk of the Court, but shall not, unless the Court so directs, be open to public inspection.

(3) All expenses of and incidental to any such examination and report shall be defrayed by the members upon whose application the inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

Inspection by resolution of the company

67. Any company as aforesaid may, by special resolution, appoint inspectors for the purpose of examining into the affairs of such company; and inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Court, except that instead of making their report to the Court, they shall make the same in such manner and to such persons as the company by resolution of its members directs, and the officers and agents of the company shall incur the same penalties in case of any refusal or neglect to produce any book or document hereby required to be produced to such inspectors or answer any question, as they would have incurred if such inspectors had been appointed by the Court.

Inspectors' report admissible as evidence

68. The report of any inspectors appointed under this Act, or any copy thereof certified and signed by the inspectors, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices

Returns, etc., to Registrar

69. Any list, return, notice or information required by this Act to be made, given or supplied to the Registrar shall be authenticated by the signature of the secretary or manager or one of the directors of the company.

Service of notices on company

70. Any writ, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at its registered office.

Postal service

71. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period, if any, prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Authentication of summons, notice, etc.

72. Any summons, notice, order or proceeding requiring authentication by the company may be signed by a director, secretary or other authorised officer of the company, and may be in writing or print or partly in writing and partly in print.

Minutes of proceedings

73. (1) Every company shall cause minutes of all resolutions and proceedings of its members, whether at general meetings or otherwise, and of its directors or managers (where there are directors or managers), whether at meetings or otherwise, to be duly kept in writing.

(2) Any minute of a general meeting of the company or a meeting of the directors or managers, if purporting to be signed by the chairperson of the meeting, or by the chairperson of the next succeeding meeting, shall be received as evidence of the proceedings at that meeting; and until the contrary is proved, every general meeting of the company or meeting of the directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers and liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Security for costs in actions brought by limited companies

74. Where a company is plaintiff in any action, suit or other legal proceeding, any Judge having jurisdiction in the matter, if that person is satisfied that there is reason to believe that if the defendant is successful in that person's defence the assets of the company will be insufficient to pay that person's costs, may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Declaration in action against members

75. In any action or suit brought by the company against any member to recover any call or other monies due from such member in that person's character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other monies due whereby a right of action has accrued to the company.

Arbitration

Power of companies to refer matters to arbitration

76. Any company may, from time to time, by writing, agree to refer and may refer to arbitration any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person; and the companies, parties to the arbitration, may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors or other managing body of such companies.

General Penalty

General penalty; application of fines

77. (1) Where a duty is imposed by this Act on any company, director or officer of any company and no special penalty or fine has been provided for the breach of such duty, then any such company director or officer responsible for such breach commits an offence and is liable on conviction to a fine of five thousand dollars.

(2) All fines shall be recovered in a summary way and shall be applied in aid of the general revenue of the Islands.

Unlimited Liability of Directors and Managers

Unlimited liability of directors and managers

78. The liability of the directors, managers or the managing director of a company may, if so provided by the memorandum of association, be unlimited.

Modification of section 49

79. In the event of a company being wound up, section 49 as respects the contribution to be required from any director or manager whose liability is unlimited by virtue of section 78 shall have effect subject to the following modifications —

(a) subject as hereinafter contained, any such director, managing director or manager whether past or present shall, in addition to that person's liability, if any, to contribute as an ordinary member, be liable to contribute as if that person were at the date of the commencement of such winding up a member of an unlimited company;

(b) no contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of such winding up, shall exceed the amount, if any, which that person is liable to contribute as an ordinary member of the company;

(c) no contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which that person ceased to hold such office shall exceed the amount, if any, which that person is liable to contribute as an ordinary member of the company; and

(d) subject to the regulations of the company, no contribution required from any director or manager shall exceed the amount, if any, which that person is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

Association not for Profit

Circumstances in which a company may be registered without "limited" in its name

80. (1) A company registered under this Act or an association applying to be registered under this Act, may in accordance with section 80A, apply to the Registrar to be designated as a company to which this section applies if the company or association —

(a) was formed or is to be formed primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or objects, including, for the avoidance of doubt, a group of persons sharing a common profession or interest which, to the satisfaction of the Registrar, qualifies the company or association for registration under this section; and

(b) has applied or intends to apply the profits, if any, or other income of the company or association primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or objects, including, for the avoidance of doubt, a group of persons sharing a common profession or interest which, to the satisfaction of the

Registrar, qualifies the company or association for registration under this section.

(2) The Registrar shall only approve an application for designation under this section if the memorandum and articles of association of a company registered under this Act or an association being registered under this Act and applying for designation, contain language to the effect that —

(a) the assets, profits, if any, and other income of the company or association applying for designation, shall be applied exclusively in the furtherance of the objects of the company or association; and

(b) no portion of the assets and income of the company or association shall be distributed as profit or dividend directly or indirectly to the controllers, shareholders, owners or members of the company or association, unless such distribution is intended for the legitimate purpose of compensating a person for services to further the objects of the company or association or to pay the liabilities incurred on behalf of the company or association.

(3) Pursuant to an application made under subsection (1), the Registrar may direct that a company registered under this Act or that an association being registered under this Act, be registered with limited liability without the addition of the word "Limited" or the abbreviation "Ltd." to the company's name and that upon registration shall enjoy all the privileges and be subject to all the obligations by this Act imposed on companies, except the obligations under this Act requiring a company —

(a) to use the word "Limited" or the abbreviation "Ltd." as any part of its name;

(b) to send a list of its members to the Registrar;

(c) to comply with the provisions of sections 51 or 55 or pay any fees pursuant to section 199; or

(d) to pay the fees prescribed by sections 26, 41 and 169.

(4) The Registrar may impose any conditions that the Registrar thinks fit to impose on a company designated under this section and shall cause the conditions imposed to be inserted or endorsed on the memorandum or articles of association of the company or association being registered.

(5) Where a company designated under this section is to be dissolved, the person who owns, controls or directs that company shall ensure that any assets of the company remaining after the satisfaction of all debts and liabilities of the company shall be transferred to another company registered under this section or a non-profit organisation registered under the *Non-Profit Organisations Act (2020 Revision)* which has similar objects.

(6) For the purpose of this section "**non-profit organisation**" has the same meaning as that assigned to these words in the *Non-Profit Organisations Act (2020 Revision).*

Application for designation under section 80

80A.(1) An application for designation as a company under section 80 may be made to the Registrar by a company or an association to which section 80 refers and shall be —

(a) made in the form specified by the Registrar; and

(b) accompanied by the non-refundable application fee prescribed in Part 3A.

(2) A company making an application under subsection (1) shall, at the time of making the application, file with the Registrar a list of the persons who own, control or direct the company.

Obligations for companies designated under section 80

80B.A company designated pursuant to section 80 that is not registered pursuant to the *Non-Profit Organisations Act (2020 Revision)* shall —

(a) file with the Registrar, in the form specified by the Registrar, an annual return confirming the objects and activities of the company;

(b) in the manner specified by the Registrar, notify the Registrar of any change in —

(i) the objects or activities of the company; or

(ii) the address of the registered office or the location of the company,

within thirty days of the date of the change;

(c) maintain the proper books of account for a minimum period of five years;

(d) comply with any conditions imposed by the Registrar upon registration;

(e) establish and maintain internal controls and systems appropriate for the company to identify conduct which may involve the financing of terrorism;

(f) notify the Registrar, in the manner specified by the Registrar, of any change in the person who owns, controls or directs the company, within thirty days of the date of the change; and

(g) pay the fee prescribed in Part 3A for any changes for which the Registrar is required to be notified pursuant to this section.

Examination by the Registrar

80C.To facilitate the monitoring of compliance with section 80B(b) and (c) —

(a) the Registrar may examine all books of account and documents, for a company designated under section 80; and

(b) it shall be the duty of an officer of a company designated under section 80 to produce for examination by the Registrar, all books of account and documents, for the company for which the officer is responsible, that are in the officer's custody or power.

Repealed

80D. **Repealed** by section 2 of the *Companies (Amendment) Act, 2023 [Act 15 of 2023]*.

Penalty for breach of section 80B

80E. (1) The Registrar —

(a) may impose a penalty of five hundred dollars on a company designated under section 80, if the company breaches the provisions of section 80B; and

(b) shall within ten days of the date of the imposition of the penalty, inform the company upon which the penalty has been imposed, of the reasons for the imposition of the penalty.

(2) A company, upon which a penalty is imposed pursuant to subsection (1), which disputes the imposition of the penalty may appeal to the Court for review of the Registrar's decision to impose the penalty.

(3) A dispute in relation to the penalty imposed pursuant to subsection (1) shall not be in respect of the amount of the penalty imposed and is limited to a dispute in relation to the grounds upon which the penalty is imposed.

(4) Notwithstanding subsection (1), if a company is in breach of section 80B —

(a) in respect of more than one change in the person who owns, controls or directs a company and —

(i) the changes occurred within a sixty day period; and

(ii) the Registrar is notified of the changes on the same day,

the applicable penalty for the breach shall be that specified in subsection (1), irrespective of the number of changes notified to the Registrar; and

(b) in respect of a person who owns, controls or directs five or more companies, the applicable aggregate penalty in respect of the companies to which the breach relates shall not exceed the sum of two thousand five hundred dollars, which shall be equally apportioned between and paid by such companies.

(5) In addition to the penalty under subsection (1), where the Registrar is satisfied that a breach of section 80B has been knowingly and wilfully authorised or permitted —

(a) every company to which the breach relates shall incur a penalty of one thousand dollars; and

(b) every person who owns, controls or directs the company to which the breach relates shall incur a penalty of one thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.

Contracts

Contracts and other instruments

81. (1) Contracts, deeds, instruments under seal or other instruments on behalf of any company may be made as follows —

(a) a contract or other instrument which, if made between individuals, would by law be required to be in writing, and to be made by deed or under seal, and a deed or instrument under seal may be made by instrument —

(i) sealed with any seal of the company; or

(ii) which is executed on behalf of the company by any person acting under the express or implied authority of the company and which is either expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed or instrument under seal;

(b) any contract or other instrument which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and

(c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company.

(2) Where a contract or other transaction purports to be made by a company or by a person on its behalf at a time when the company has not been registered, then subject to any agreement to the contrary, the contract or other transaction has effect as one entered into by the person purporting to act on behalf of the company and, subject to subsection (3), that person is personally liable on the contract or other transaction.

(3) A contract or other transaction purported to be entered into by a company prior to its registration or by a person on behalf of the company prior to its registration may be ratified by the company after its registration and thereupon the company shall become bound by and entitled to the benefit thereof from the date of registration, and the person so entering into such contract or other transaction shall be deemed to have been duly authorised to act on behalf of the company and shall cease to be personally liable on the contract or other transaction.

(4) Any contract, deed or other instrument made according to this section may be varied or discharged in the same manner as it is authorised by this section to be made.

(5) All contracts, deeds or other instruments made according to this section shall be effectual in law and shall be binding upon the company and its successors and all other parties thereto, their heirs, executors or administrators, as the case may be.

(6) A contract or other instrument to be governed by the laws of the Islands which is executed by an overseas company is, and is to be treated as, a deed or instrument under seal if it is —

(a) executed in conformity with subsection (1)(a); and

(b) executed in conformity with the requirements imposed by —

(i) the laws of the jurisdiction in which the overseas company was formed or incorporated; and

(ii) its memorandum or articles of association or other constitutional documents (howsoever called).

(7) A contract or other instrument executed in accordance with subsection (6) meets any requirement of any law of the Islands that the contract or instrument is, and is to be treated as, a deed or instrument executed under seal.

(8) A contract, deed or instrument is executed validly as a contract, deed or instrument under seal where it is executed in any manner contemplated by the parties thereto, including, without limitation —

(a) where the complete contract, deed or instrument is executed; or

(b) where any signature or execution page to the contract, deed or instrument is executed (whether or not the contract, deed or instrument is at such time in final form) which is attached by, or on behalf of, the relevant party to, or otherwise with the relevant party's express or implied authority to, the contract, deed or instrument,

provided always that the contract, deed or instrument is executed in conformity with subsection (1)(a) or (b), or subsection (6), as the case may be.

(9) Subsections (1), (4), (5), (6), (7) and (8) shall apply to contracts, deeds, instruments under seal or other instruments regardless of whether they were made before, on or after 27th April, 2011, the date of commencement of this subsection by the *Companies (Amendment) Act, 2011 [Law 16 of 2011]*, and no contract, deed, instrument under seal or other instrument made before the commencement of this subsection shall be invalid by reason only of any provision of subsections (1), (4), (5), (6), (7) and (8).

Bills of exchange and promissory notes

82. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds, etc., by attorney

83. (1) A company may appoint and empower a person either generally or in respect of a specified matter to execute deeds or instruments under seal on its behalf.

(2) Any appointment under subsection (1) need not be made by deed or instrument under seal, but any person so appointed otherwise than by deed or instrument under seal shall not constitute the donee of a power under the *Powers of Attorney Act (1996 Revision)* (but without prejudice to the authority otherwise conferred upon them by the company).

(3) A deed or instrument under seal signed by a person on behalf of a company pursuant to the authority conferred pursuant to subsection (1) shall bind the company and have effect as if it were executed as such by the company.

Power of company to have official seal for use abroad

84. (1) A company may maintain a common seal, which shall bear the name of the company in legible characters, which may, at the discretion of the company, be followed with or preceded by its dual foreign name or its translated name, if any, or both at such place as the company may, from time to time, determine and in default of any such determination, at its registered office, and may, if so authorised by its articles of association, maintain a duplicate seal or seals, each of which shall be a facsimile of its common seal at such place or places throughout the world as it may authorise and any such duplicate seal may, but shall not be obliged to, bear on its face the name of any country, territory, district, or place where it is to be used.

(2) A deed or instrument under seal to which any such duplicate seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having any such duplicate seal may authorise any person appointed for the purpose to affix the duplicate seal to any deed or other document to which the company is party.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, specified in the instrument conferring the authority, or if no period is so specified, then until notice of the revocation or determination of the authority of the agent has been given to such person.

(5) The person affixing any such duplicate seal shall, by writing under that person's hand, certify on the deed or other instrument to which the seal is affixed the date on which it is affixed.

Authentication of documents

85. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company.

Arrangements and Reconstructions

Power to compromise with creditors and members

86. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or of a restructuring officer appointed in respect of the company, or where a company is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.

(2A) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) or (2A) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.

(5) In this section the expression "**company**" means any company liable to be wound up under this Act and the expression "**arrangement**" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies

87. (1) Where an application is made to the Court under section 86 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company") the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provisions to be made for any person who within such time and in such manner as the Court directs dissents from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for

registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section —

"**property**" includes property, rights and powers of every description;

"**liabilities**" includes duties; and

"**transferee company**" means any company or body corporate established in the Islands or in any other jurisdiction.

Power to acquire shares of dissentient shareholders

88. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company") has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than ninety per cent in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire that person's shares, and where such notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received.

(4) In this section —

"**dissenting shareholder**" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer that person's shares to the transferee company, in accordance with the scheme or contract.

PART 5 - Company Restructuring and Winding up of Companies and Associations

Preliminary

Definitions

89. In this Part —

"**company**" includes a foreign company in respect of which the Court has made a winding up order;

"**contributory**" means —

(a) every person liable by virtue of section 49 to contribute to the assets of a company in the event that it is wound up under this Act; and

(b) every holder of fully paid up shares of a company;

"**controller**" means a person appointed by the Authority pursuant to the regulatory laws to take control of a company;

"**document**" includes any device by means of which information is recorded or stored;

"**foreign company**" means any body corporate incorporated outside the Islands;

"**foreign practitioner**" means a person who is qualified under the law of a foreign country to perform functions equivalent to those performed by official liquidators under this Act or by trustees in bankruptcy under the *Bankruptcy Act (1997 Revision)*;

"**limited partnership**" means an ordinary limited partnership registered in accordance with section 49 of the *Partnership Act (2024 Revision)* or an exempted limited partnership registered in accordance with section 9 of the *Exempted Limited Partnership Act (2021 Revision)*;

"**official liquidator**" means the liquidator of a company which is being wound up by order of the Court or under the supervision of the Court and includes a provisional liquidator;

"**prescribed**" means prescribed by the Insolvency Rules Committee;

"**professional service provider**" means a person who contracts to provide general managerial or administrative services to a company on an annual or continuing basis;

"**qualified insolvency practitioner**" means a person holding the qualifications specified in the regulations made by the Insolvency Rules Committee under section 155 or such other qualifications as the Court considers appropriate for the conduct of the winding up of a company;

"**Rules**" mean rules prescribed by the Insolvency Rules Committee;

"**shadow director**" means, in relation to a company, any person in accordance with whose directions or instructions the directors of the company are accustomed to act, but the person is not deemed to be a shadow director by reason only that the directors act on advice given by that person in a professional capacity; and

"**winding up order**" includes an order that a voluntary winding up continue under the supervision of the Court and references to a company being wound up by the Court includes a company which is being wound up under the supervision of the Court.

Alternative modes of winding up

90. A company may be wound up —

(a) compulsorily by order of the Court;

(b) voluntarily —

(i) by virtue of a special resolution;

(ii) because the period, if any, fixed for the duration of the company by its articles of association has expired; or

(iii) because the event, if any, has occurred, on the occurrence of which its articles of association provide that the company shall be wound up; or

(c) under the supervision of the Court.

Jurisdiction of the Court

91. The Court has jurisdiction to make winding up orders in respect of —

(a) an existing company;

(b) a company incorporated and registered under this Act;

(c) a body incorporated under any other law; and

(d) a foreign company which —

(i) has property located in the Islands;

(ii) is carrying on business in the Islands;

(iii) is the general partner of a limited partnership; or

(iv) is registered under Part 9.

Company Restructuring

Interpretation of "company"

91A. For the purposes of sections 91B, 91C, 91D, 91E, 91F, 91G, 91H, 91I and 91J, "**company**" means —

(a) any company liable to be wound up under section 91; or

(b) any other entity or partnership to which the provisions of this Part apply in respect of the entity's or partnership's winding up.

Appointment of a restructuring officer

91B.(1) A company may present a petition to the Court for the appointment of a restructuring officer on the grounds that the company —

(a) is or is likely to become unable to pay its debts within the meaning of section 93; and

(b) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Act, the law of a foreign country or by way of a consensual restructuring.

(2) A petition under subsection (1) may be presented by a company acting by its directors, without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing a petition under subsection (1) —

(a) make an order appointing a restructuring officer;

(b) adjourn the hearing conditionally or unconditionally;

(c) dismiss the petition; or

(d) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

(4) A restructuring officer appointed by the Court under subsection (3)(a) shall have the powers and carry out only such functions as the Court may confer on the restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.

(5) Where the Court makes an order under subsection (3)(a), the Court shall set out in the order —

(a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —

(i) the company's creditors, including any contingent or prospective creditors;

(ii) the company's contributories; and

(iii) the Authority, in respect of any company which is carrying on regulated business;

(b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

(c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

(6) Where a company which is carrying on a regulated business presents a petition under subsection (1), the directors of the company shall, immediately after presenting the petition, serve notice of the petition on the Authority.

(7) A director who fails to comply with subsection (6) commits an offence and is liable to a fine of ten thousand dollars.

Appointment of an interim restructuring officer

91C.(1) A company may, where it is in the interests of the company to do so, make an *ex parte* application to the Court for the appointment of a restructuring officer on an interim basis pending the hearing of the petition under section 91B(1).

(2) An application under subsection (1) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing an application under subsection (1), appoint a restructuring officer on an interim basis, on such terms and conditions as the Court thinks fit.

(4) A restructuring officer appointed on an interim basis by the Court under subsection (3) shall have the powers and carry out only such functions as the Court may confer on that restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.

(5) Where the Court makes an order under subsection (3), the Court shall set out in the order —

(a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —

(i) the company's creditors, including any contingent or prospective creditors;

(ii) the company's contributories; and

(iii) the Authority, in respect of any company which is carrying on regulated business;

(b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

(c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

(6) Where a company which is carrying on a regulated business makes an application under subsection (1), the directors of the company shall, immediately after making the application, serve notice of the application on the Authority.

(7) A director who fails to comply with subsection (6), commits an offence and is liable to a fine of ten thousand dollars.

Restructuring officer

91D. (1) A restructuring officer appointed under section 91B or 91C shall be a qualified insolvency practitioner.

(2) Where two or more persons are appointed as restructuring officers under section 91B or 91C, they shall be authorised to act jointly and severally, unless their powers are expressly limited by an order of the Court.

(3) A restructuring officer appointed under section 91B or 91C is an officer of the Court.

(4) Notwithstanding subsection (1), where the Court has appointed a qualified insolvency practitioner to act as a restructuring officer, the Court may appoint a foreign practitioner to act as a restructuring officer in addition to the qualified insolvency practitioner.

(5) A foreign practitioner appointed by the Court to act as a restructuring officer shall not act as the sole restructuring officer of a company.

(6) The remuneration of a restructuring officer appointed under section 91B or 91C shall, on the application of the restructuring officer, be fixed by the Court from time to time in accordance with section 109.

(7) A restructuring officer, a creditor of the company, including a contingent or prospective creditor, or a contributory of the company may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions.

Variation or discharge of the order appointing a restructuring

91E. (1) At any time after the appointment of a restructuring officer by the Court under section 91B or 91C —

(a) the company acting by its directors;

(b) a restructuring officer appointed under section 91B or 91C;

(c) a creditor of the company, including a contingent or prospective creditor;

(d) a contributory of the company; or

(e) the Authority, in respect of any company which is carrying on a regulated business,

may apply by way of summons to the Court for the variation or discharge of the order appointing the restructuring officer.

(2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) The Court may, on hearing an application under subsection (1) —

(a) vary the order appointing the restructuring officer;

(b) discharge or continue the order appointing the restructuring officer;

(c) adjourn the hearing conditionally or unconditionally;

(d) dismiss the application; or

(e) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

Removal and replacement of restructuring officers

91F. (1) A restructuring officer may be removed from office and replaced by an alternative restructuring officer by order of the Court made on the application of —

(a) the company acting by its directors;

(b) a creditor of the company, including a contingent or prospective creditor;

(c) a contributory of the company; or

(d) the Authority, in respect of any company which is carrying on a regulated business.

(2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.

(3) A restructuring officer who has been removed and replaced pursuant to subsection (1) shall prepare a report and accounts for the restructuring officer replacing the removed restructuring officer, within twenty-one days of the date of removal and replacement.

Stay of proceedings

91G.(1) At any time —

(a) after the presentation of a petition for the appointment of a restructuring officer under section 91B, but before an order for the appointment of a restructuring officer is made, and when the petition has not been withdrawn or dismissed; and

(b) when an order for the appointment of a restructuring officer is made, until the order appointing the restructuring officer has been discharged,

no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company, no resolution shall be passed for the company to be wound up and no winding up petition may be presented against the company, except with the leave of the Court and subject to such terms as the Court may impose.

(2) Where at any time referred to in subsection (1), there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

(a) the company acting by its directors;

(b) a creditor of the company, including a contingent or prospective creditor;

(c) a contributory of the company; or

(d) the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

(3) In this section —

(a) references to a suit, action or other proceedings include a suit, action or other proceedings in a foreign country; and

(b) references to other proceedings include any court supervised insolvency or restructuring proceedings against the company.

Enforcement of creditors' security

91H. Notwithstanding the presentation of a petition for the appointment of a restructuring officer or the appointment of a restructuring officer by the Court under section 91B or 91C, a creditor who has security over the whole or part of the assets of the company is entitled to enforce the creditor's security without the leave of the Court and without reference to the restructuring officer appointed under section 91B or 91C.

Power to compromise with creditors and members within restructuring officer proceeding

91I. (1) Where a restructuring officer is appointed to a company and a compromise or arrangement is proposed between the company and its creditors or any class of them, or the company and its members or any class of them, the Court may, on the application of the restructuring officer, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company.

(3) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company.

(4) An order made under subsection (2) or (3) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If a company makes default in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.

(6) In this section, "**arrangement**" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies

91J. (1) Where an application is made to the Court under section 91I for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "**a transferor company**") is to be transferred to another company (in this section referred to as "**the transferee company**") the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provisions to be made for any person who within such time and in such manner as the Court directs dissents from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section —

"**property**" includes property, rights and powers of every description;

"**liabilities**" includes duties; and

"**transferee company**" means any company or body corporate established in the Islands or in any other jurisdiction.

Winding up by the Court

Circumstances in which a company may be wound up by the Court

92. A company may be wound up by the Court if —

(a) the company has passed a special resolution requiring the company to be wound up by the Court;

(b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(c) the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be wound up;

(d) the company is unable to pay its debts; or

(e) the Court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts

93. A company shall be deemed to be unable to pay its debts if —

(a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding one hundred dollars then due, has served on the company by leaving at its registered office a demand under that person's hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(b) execution of other process issued on a judgment, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Application for winding up

94. (1) An application to the Court for the winding up of a company shall be by petition presented either by —

(a) the company;

(b) any creditor or creditors (including any contingent or prospective creditor or creditors);

(c) any contributory or contributories; or

(d) subject to subsection (4), the Authority pursuant to the regulatory laws.

(2) Where expressly provided for in the articles of association of a company, the directors of a company incorporated before the 31st August, 2022, the commencement date of *the Companies (Amendment) Act, 2021 [Act 6 of 2021]* have the authority to —

(a) present a winding up petition; or

(b) where a winding up petition has been presented, apply for the appointment of a provisional liquidator, on behalf of the company without the sanction of a resolution passed at a general meeting.

(2A) Subject to subsection (2B), the directors of a company incorporated after the 31st August, 2022, the commencement date of the *Companies (Amendment) Act, 2021 [Act 6 of 2021]* may present a winding up petition on behalf of the company on the grounds that the company is unable to pay its debts within the meaning of section 93 or where a winding up petition has been presented, apply on behalf of the company, for the appointment of a provisional liquidator.

(2B) The articles of association of a company may expressly remove or modify the directors' authority to present a winding up petition or apply for the appointment of a provisional liquidator on the company's behalf.

(3) A contributory is not entitled to present a winding up petition unless either —

(a) the shares in respect of which that person is a contributory, or some of them, are partly paid; or

(b) the shares in respect of which that person is a contributory, or some of them, either were —

(i) originally allotted to that person, or have been held by that person, and registered in that person's name for a period of at least six months immediately preceding the presentation of the winding up petition; or

(ii) have devolved on that person through the death of a former holder.

(4) A winding up petition may be presented by the Authority in respect of any company which is carrying on a regulated business in the Islands upon the grounds that it is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other law.

Powers of the Court

95. (1) Upon hearing the winding up petition the Court may —

(a) dismiss the petition;

(b) adjourn the hearing conditionally or unconditionally;

(c) make a provisional order; or

(d) any other order that it thinks fit,

but the Court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged or charged to an amount equal to or in excess of those assets or that the company has no assets.

(2) The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company.

(3) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely —

(a) an order regulating the conduct of the company's affairs in the future;

(b) an order requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;

(c) an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the Court may direct; or

(d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.

(4) Where an alternative order under subsection (3) requires the company not to make any, or any specified, alteration in the memorandum or articles of association, the company does not have power, without the leave of the Court, to make any such alteration in breach of that requirement.

(5) Any alteration in a company's memorandum or articles of association made by virtue of an alternative order under subsection (3) is of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the memorandum or articles of association as so altered accordingly.

(6) A copy of an alternative order made under subsection (3) altering, or giving leave to alter, a company's memorandum or articles of association shall be filed by the company with the Registrar within fourteen days of the making of the order.

Power to stay or restrain proceedings

96. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may —

(a) where any action or proceeding against the company, including a criminal proceeding, is pending in a summary court, the Court, the Court of Appeal or the Privy Council, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any action or proceeding is pending against the company in a foreign court, apply to the Court for an injunction to restrain further proceedings therein,

and the court to which application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of attachments and stay of proceedings

97. (1) When a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

(1A) Where a winding up order is made or a provisional liquidator is appointed in respect of a company, and there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

(a) the company;

(b) a creditor of the company;

(c) a contributory of the company; or

(d) subject to section 94(4), the Authority, in respect of any company which is carrying on regulated business, may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

(2) When a winding up order has been made, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

Notice of winding up order

98. When a winding up order is made, the liquidator shall —

(a) file a copy of the winding up order with the Registrar; and

(b) publish notice of the winding up in the Gazette and any newspaper in which the winding up petition was advertised.

Avoidance of property dispositions, etc.

99. When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void.

Commencement of winding up by the Court

100. (1) If, before the presentation of a petition for the winding up of a company by the Court —

(a) a resolution has been passed by the company for voluntary winding up;

(b) the period, if any, fixed for the duration of the company by the articles of association has expired;

(c) the event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred; or

(d) a restructuring officer has been appointed pursuant to section 91B or 91C and the order appointing the restructuring officer has not been discharged,

the winding up of the company is deemed to have commenced at the time of passing of the relevant resolution or the expiry of the relevant period or the occurrence of the relevant event or the date of the presentation of the petition to appoint a restructuring officer pursuant to section 91B.

(2) In any other circumstance not specified in subsection (1), the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

Company's statement of affairs

101. (1) Where the Court has made a winding up order or appointed a provisional liquidator, the liquidator may require some or all of the persons mentioned in subsection (3) to prepare and submit to that person a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by an affidavit sworn by the persons required to submit it and shall show —

(a) particulars of the company's assets and liabilities, including contingent and prospective liabilities;

(b) the names and addresses of any persons having possession of the company's assets;

(c) the assets of the company held by those persons;

(d) the names and addresses of the company's creditors;

(e) the securities held by those creditors;

(f) the dates when the securities were respectively given; and

(g) such further or other information that the liquidator may require.

(3) The persons referred to in subsection (1) are —

(a) persons who are or have been directors or officers of the company;

(b) persons who are or have been professional service providers to the company; and

(c) persons who are or have been employees of the company, during the period of one year immediately preceding the relevant date.

(4) Where any persons are required under this section to submit a statement of affairs to the liquidator, they shall do so, subject to subsection (5), before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the liquidator.

(5) The liquidator may release a person from an obligation imposed on that person under subsection (1) or, when giving the notice mentioned in subsection (4) or subsequently, the liquidator may extend the time for compliance; and if the liquidator refuses to extend the time for compliance, the Court may do so.

(6) In this section —

"**relevant date**" means —

(a) in a case where a provisional liquidator is appointed, the date of that person's appointment; and

(b) in any other case, the commencement of the winding up.

(7) A person who, without reasonable excuse, fails to comply with any obligation imposed under this section commits an offence and is liable on conviction to a fine of ten thousand dollars.

Investigation by liquidator

102. (1) Where a winding up order is made by the Court, the liquidator shall be empowered to investigate —

(a) if the company has failed, the causes of the failure; and

(b) generally, the promotion, business, dealings and affairs of the company,

and to make such report, if any, to the Court as that person thinks fit.

(2) Subject to obtaining the directions of the Court, the liquidator shall have power to —

(a) assist the Authority and the Royal Cayman Islands Police Service to investigate the conduct of persons referred to in section 101(3); and

(b) institute and conduct a criminal prosecution of persons referred to in section 101(3).

(3) Subject to obtaining the prior approval of the company's creditors, if it is insolvent, or its contributories, if it is solvent, the directions given under

subsection (2) may include a direction that the whole or part of the costs of investigation and prosecution be paid out of the assets of the company.

Duty to co-operate and the private examination of relevant persons

103. (1) This section applies to any person who, whether resident in the Islands or elsewhere —

(a) has made or concurred with the statement of affairs;

(b) is or has been a director or officer of the company;

(c) is or was a professional service provider to the company;

(d) has acted as a controller, advisor or liquidator of the company or receiver or manager of its property;

(e) not being a person falling within paragraphs (a) to (c), is or has been concerned or has taken part in the promotion, or management of the company,

and such person is referred to in this section as the "**relevant person**".

(2) It is the duty of every relevant person to co-operate with the official liquidator.

(3) While a company is being wound up, the official liquidator may at any time before its dissolution apply to the Court for an order —

(a) for the examination of any relevant person; or

(b) that a relevant person transfer or deliver up to the liquidator any property or documents belonging to the company.

(4) Unless the Court otherwise orders, the official liquidator shall make an application under subsection (3) if that person is requested in accordance with the rules to do so by one-half, in value, of the company's creditors or contributories.

(5) On an application made under subsection (3)(a), the Court may order that a relevant person —

(a) swear an affidavit in answer to written interrogatories;

(b) attend for oral examination by the official liquidator at a specified time and place, or

(c) do both things specified in paragraphs (a) and (b).

(6) The Court may direct that any creditor or contributory of the company be permitted by the official liquidator to participate in an oral examination.

(7) The Court shall have jurisdiction —

(a) to make an order under this section against a relevant person resident outside the Islands; and

(b) to issue a letter of request for the purpose of seeking the assistance of a foreign court in obtaining the evidence of a relevant person resident outside the jurisdiction.

Official Liquidators

Appointment and powers of provisional liquidator

104. (1) Subject to this section and any rules made under section 155, the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally.

(2) An application for the appointment of a provisional liquidator may be made under subsection (1) by a creditor or contributory of the company or, subject to subsection (6), the Authority, on the grounds that —

(a) there is a *prima facie* case for making a winding up order; and

(b) the appointment of a provisional liquidator is necessary in order to —

(i) prevent the dissipation or misuse of the company's assets;

(ii) prevent the oppression of minority shareholders; or

(iii) prevent mismanagement or misconduct on the part of the company's directors.

(3) An application for the appointment of a provisional liquidator may be made under subsection (1) by the company and on such an application the Court may appoint a provisional liquidator if it considers it appropriate to do so.

(4) A provisional liquidator shall carry out only such functions as the Court may confer on that person and that person's powers may be limited by the order appointing that person.

(5) The remuneration of the provisional liquidator shall be fixed by the Court from time to time on that person's application and the Court shall in fixing such remuneration act in accordance with rules made under section 155.

(6) An application for the appointment of a provisional liquidator may be presented by the Authority on the grounds under subsection (2), in respect of any company which is carrying on a regulated business in the Islands upon the grounds that it is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other law regardless of whether or not the Authority presented the winding up petition.

Appointment of official liquidator

105. (1) For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed one or more than one person to be called an official liquidator or official liquidators; and the Court may appoint to such office such person as it thinks fit, and if more persons than one are appointed to such office, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any or more of such persons.

(2) The Court may also determine whether any and what security is to be given by an official liquidator on that person's appointment; and if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

(3) The liquidator shall, within twenty-eight days of the date upon which the winding up order is made, summon —

(a) a meeting of the company's creditors if the order was made on the grounds that the company is insolvent; or

(b) a meeting of the company's contributories if the order was made on grounds other than insolvency,

for the purposes of resolving any other matters which the liquidator puts before the meeting.

(4) The Court may make an order dispensing with the need to summon a meeting under this section or extending the time within which it shall be summoned.

Appointment of joint liquidators

106. When two or more persons are appointed to the office of liquidator, either provisionally or as official liquidators, they shall be authorised to act jointly and severally, unless their powers are expressly limited by order of the Court.

Removal of official liquidators

107. An official liquidator may be removed from office by order of the Court made on the application of a creditor or contributory of the company.

Qualifications of official liquidators

108. (1) A foreign practitioner may be appointed to act jointly with a qualified insolvency practitioner.

(2) Official liquidators are officers of the Court.

Remuneration of official liquidators and restructuring officers

109. (1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are , subject to subsection (2), payable out of the company's assets in priority to all other claims.

(2) Where a company is wound up, the expenses properly incurred in any petition for a restructuring officer and during the term of appointment of the restructuring officer appointed —

(a) under section 91B(3)(a); or

(b) on an interim basis under section 91C(3), including the remuneration of the restructuring officer, are payable out of the company's assets in priority to all other claims.

(3) There shall be paid to a restructuring officer, including a restructuring officer appointed on an interim basis, and the official liquidator, such remuneration, by way of percentage or otherwise, that the Court may direct acting in accordance with rules made under section 155.

(4) If more than one restructuring officer, including a restructuring officer appointed on an interim basis, is appointed by the Court under section 91B or 91C, the remuneration paid under subsection (3) shall be distributed among the restructuring officers in such proportions as the Court may direct.

(5) If more than one official liquidator is appointed by the Court when a company is wound up, the remuneration paid under subsection (3) shall be distributed among the official liquidators in such proportions as the Court may direct.

Function and powers of official liquidators

110. (1) It is the function of an official liquidator —

(a) to collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and

(b) to report to the company's creditors and contributories upon the affairs of the company and the manner in which it has been wound up.

(2) The official liquidator may —

(a) with the sanction of the Court, exercise any of the powers specified in Part I of Schedule 3; and

(b) with or without that sanction, exercise any of the general powers specified in Part 2 of Schedule 3.

(3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and subject to subsection (5), any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of such powers (hereinafter referred to as a "sanction application").

(4) In the case of —

(a) a solvent company, a sanction application may only be made by a contributory and the creditors shall have no right to be heard;

(b) an insolvent company, a sanction application may only be made by a creditor and the contributories shall have no right to be heard; and

(c) a company whose solvency is doubtful, a sanction application may be made by both contributories and creditors and both contributories and creditors shall have a right to be heard.

(5) For the purposes of exercising the powers specified under paragraph 3 of Part 1 of Schedule 3, a person shall be treated as related to a company if the person —

(a) has acted for the company as a professional service provider;

(b) is or was a shareholder or director of the company or of any other company in the same group as the company;

(c) has a direct or indirect beneficial interest in the shares of the company; or

(d) is a creditor or debtor of the company.

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General Powers of the Court

Power to stay winding up

111. (1) The Court may at any time after an order for winding up, on the application either of the liquidator or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings either all together or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The Court may at any time after the liquidation has commenced under section 116(c), but before the final meeting has been held as provided for in section 127, on the application of the liquidator accompanied by —

(a) a special resolution stating that the company will not be wound up and setting out the reasons for such decision;

(b) proof of a recall notice published in the Gazette; and

(c) such other documents as the Court may consider necessary,

make an order to recall the liquidation, place the company into active status and place the company back into good standing as it was prior to the commencement of liquidation under section 116(c), on such terms and conditions as the Court thinks fit.

(3) A company shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in the records relating to the company.

Settlement of list of contributories

112. (1) The liquidator shall settle a list of contributories, if any, for which purpose that person shall have power to adjust the rights of contributories amongst themselves.

(2) In the case of a solvent liquidation of a company which has issued redeemable shares at prices based upon its net asset value from time to time, the liquidator shall have power to settle and, if necessary rectify the company's register of members, thereby adjusting the rights of members amongst themselves.

(3) A contributory who is dissatisfied with the liquidator's determination may appeal to the Court against such determination.

Power to make calls

113. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories —

(a) to the extent of their liability, for the payment of any money which the Court considers necessary to satisfy the company's debts and liabilities and the expenses of winding up; and

(b) to the adjustment of the rights of the contributories among themselves,

and make an order for payment of any call so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Inspection of documents by creditors, etc.

114. (1) At any time after making a winding up order the Court may make such orders as it thinks fit for —

(a) the inspection of the company's documents by creditors and contributories; and

(b) the preparation of reports by the official liquidator and the provision of such reports to the company's creditors and contributories.

(2) A contributory shall be entitled to make an application under this section notwithstanding that the company is or may be insolvent and the Court shall not refuse to make an order upon the application of a contributory merely by reason of the fact that the company is or may be insolvent.

Meetings to ascertain wishes of creditors or contributories

115. (1) The Court shall, as to all matters relating to the winding up, have regard to wishes of the creditors or contributories and for that purpose it may direct reports to be prepared by the official liquidator and meetings of creditors or contributories to be summoned.

(2) If it considers it necessary to do so, the Court may direct that separate meetings be held of different classes of creditors or contributories.

(3) Subject to Rules made under section 155, meetings may be requisitioned by creditors, if the company is insolvent, or by contributories if the company is solvent.

(4) The votes of creditors and contributories shall be counted by reference to —

(a) the value of their debts, in the case of creditors;

(b) the number of votes, in the case of contributories whose shares carry voting rights under the articles of association of the company; and

(c) the par value of all the shares held, in the case of contributories whose shares do not carry votes under the articles of association of the company and, where there are no par value shares, the net asset value of the company shown.

Voluntary Winding up

Circumstances in which a company may be wound up voluntarily

116. A company incorporated and registered under this Act or an existing company may be wound up voluntarily —

(a) when the period, if any, fixed for the duration of the company by its memorandum or articles of association expires;

(b) if the event, if any, occurs, on the occurrence of which the memorandum or articles of association provide that the company is to be wound up;

(c) if the company resolves by special resolution that it be wound up voluntarily; or

(d) if the company in general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts.

Commencement of winding up

117. (1) A voluntary winding up is deemed to commence —

(a) at the time of the passing of the resolution for winding up; or

(b) on the expiry of the period or the occurrence of the event specified in the company's memorandum or articles of association,

notwithstanding that a supervision order is subsequently made by the Court.

(2) Subject to any contrary provision in its memorandum or articles of association, the voluntary winding up of an exempted limited duration company is taken to have commenced upon the expiry of a period of ninety days starting on —

(a) the death, insanity, bankruptcy, dissolution, withdrawal, retirement or resignation of a member of the company;

(b) the redemption, repurchase or cancellation of all the shares of a member of the company; or

(c) the occurrence of any event which, under the memorandum or articles of association of the company, terminates the membership of a member of the company,

unless there remain at least two members of the company and the company is continued in existence by the unanimous resolution of the remaining members pursuant to amended memorandum and articles of association adopted during that period of ninety days.

Effect on business and status of the company

118. (1) In the case of a voluntary winding up, the company shall from the commencement of its winding up cease to carry on its business except so far as it may be beneficial for its winding up.

(2) Notwithstanding anything to the contrary contained in the company's articles of association, its corporate state and powers shall continue until the company is dissolved.

Appointment of voluntary liquidator

119. (1) One or more liquidators shall be appointed for the purpose of winding up the company's affairs and distributing its assets.

(2) When the winding up has commenced in accordance with the company's memorandum or articles of association upon the termination of a fixed period or the occurrence of an event —

(a) the persons designated as liquidators in the memorandum or articles of association shall become such liquidators automatically from the commencement of the winding up; or

(b) if no such person is designated in the memorandum or articles of association or the person designated is unable or unwilling to act, the directors shall convene a general meeting of the company for the purpose of appointing a liquidator.

(3) Except in the case of a person designated as liquidator in the company's memorandum or articles of association, the appointment of a voluntary liquidator shall take effect upon the filing of that person's consent to act with the Registrar.

(4) If a vacancy occurs by death, resignation or otherwise in the office of voluntary liquidator appointed by the company —

(a) the company in a general meeting may fill the vacancy; or

(b) the Court may fill the vacancy on the application of any contributory or creditor.

(5) On the appointment of a voluntary liquidator all the powers of the directors cease, except so far as the company in a general meeting or the liquidator sanctions their continuance.

(6) When two or more persons are appointed as voluntary liquidators jointly, they shall be authorised to act jointly and severally unless their powers are expressly limited by the resolution or articles of association under which they are appointed.

Qualifications of voluntary liquidators

120. Any person, including a director or officer of the company, may be appointed as its voluntary liquidator.

Removal of voluntary liquidators

121. (1) A voluntary liquidator may be removed from office by a resolution of the company in a general meeting convened especially for that purpose.

(2) A general meeting of the company for the purpose of considering a resolution to remove its voluntary liquidator may be convened by any shareholder or shareholders holding not less than one fifth of the company's issued share capital.

(3) Whether or not a general meeting has been convened in accordance with subsection (2), any contributory may apply to the Court for an order that a voluntary liquidator be removed from office on the grounds that that person is not a fit and proper person to hold office.

Resignation of voluntary liquidator

122. (1) Where two or more persons are appointed as joint voluntary liquidators, they may resign by filing a notice of resignation with the Registrar, so long as at least one of them continues in office.

(2) Except as provided in subsection (1), a voluntary liquidator wishing to resign shall —

(a) prepare a report and accounts; and

(b) convene a general meeting of the company for the purpose of accepting that person's resignation and releasing that person from the performance of any further duties, and shall cease to hold office with effect from the date upon which the resolution is passed.

(3) In the event that the company fails to pass a resolution accepting that person's resignation, the voluntary liquidator may apply to the Court for an order that that person be released from the performance of any further duties.

Notice of voluntary winding up

123. (1) Within twenty-eight days of the commencement of a voluntary winding up, the liquidator or, in the absence of any liquidator, the directors shall —

(a) file notice of the winding up with the Registrar;

(b) file the liquidator's consent to act with the Registrar;

(c) file the director's declaration of solvency with the Registrar (if the supervision of the court is not sought);

(d) in the case of a company carrying on a regulated business, serve notice of the winding up upon the Authority; and

(e) publish notice of the winding up in the Gazette.

(2) A director or liquidator who fails to comply with this section commits an offence and is liable to a fine of ten thousand dollars.

Application for supervision order

124. (1) Where a company is being wound up voluntarily its liquidator shall apply to the Court for an order that the liquidation continue under the supervision of the Court unless, within twenty-eight days of the commencement of the liquidation, the directors have signed a declaration of solvency in the prescribed form in accordance with subsection (2).

(2) A declaration of solvency means a declaration or affidavit in the prescribed form to the effect that a full enquiry into the company's affairs has been made and that to the best of the directors' knowledge and belief the company will be able to pay its debts in full together with interest at the prescribed rate, within such period, not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

(3) A person who knowingly makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the prescribed rate, within the period specified commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

Avoidance of share transfers

125. Any transfer of shares, not being a transfer with the sanction of the liquidator, and any alteration in the status of the company's members made after the commencement of a voluntary winding up is void.

General meeting at year's end

126. (1) In the event of a voluntary winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and at the end of each succeeding year and such meetings shall be held within three months of each anniversary of the commencement of the liquidation.

(2) At each meeting the liquidator shall lay before the meeting a report and account of that person's acts and dealings and the conduct of the winding up during the preceding year.

(3) A liquidator who fails to comply with this section commits an offence and is liable on conviction to a fine of ten thousand dollars.

Final meeting prior to dissolution

127. (1) As soon as the company's affairs are fully wound up, the liquidator shall make a report and an account of the winding up showing how it has been conducted and how the company's property has been disposed of and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving an explanation for it.

(2) At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each contributory in any manner authorised by the company's articles of association and published in the Gazette.

(3) The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed form specifying —

(a) the date upon which the meeting was held; and

(b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.

(4) A liquidator who fails to call a general meeting of the company as required by subsection (1) or fails to make a return as required by subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars.

Effect of winding up on share capital of company limited by guarantee

128. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be an asset of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by that person, and payable at such time as may be appointed by the liquidator.

Reference of questions to Court

129. (1) The voluntary liquidator or any contributory may apply to the Court to determine any question arising in the voluntary winding up of a company or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up under the supervision of the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partly to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The voluntary liquidator shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in that person's records relating to the company.

Expenses of voluntary winding up

130. (1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

(2) The rate and amount of the liquidator's remuneration shall be fixed and payment authorised by resolution of the company.

(3) Each report and account laid before the company in general meetings by its liquidator shall contain all such information, including the rate at which the liquidator's remuneration is calculated and particulars of the work done, as may be necessary to enable the members to determine what expenses have been properly incurred and what remuneration is properly payable to the liquidator.

(4) If the company fails to approve the liquidator's remuneration and expenses or the liquidator is dissatisfied with the decision of the company, that person may apply to the Court which shall fix the rate and amount of that person's remuneration and expenses.

Winding up subject to the supervision of the Court

Application for supervision order

131. When a resolution has been passed by a company to wind up voluntarily, the liquidator or any contributory or creditor may apply to the Court for an order for the continuation of the winding up under the supervision of the Court, notwithstanding that the declaration of solvency has been made in accordance with section 124, on the grounds that —

(a) the company is or is likely to become insolvent; or

(b) the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors.

Appointment of official liquidator

132. (1) When making a supervision order the Court —

(a) shall appoint one or more qualified insolvency practitioners; and

(b) may, in addition, appoint one or more foreign practitioners,

as liquidator or liquidators of the company and section 105 shall apply as if the Court had made a winding up order.

(2) Unless a voluntary liquidator is appointed as an official liquidator, that person shall prepare a final report and accounts within twenty-eight days from the date of the supervision order.

Effect of supervision order

133. A supervision order shall take effect for all purposes as if it was an order that the company be wound up by the Court except that —

(a) the liquidation commenced in accordance with section 117; and

(b) the prior actions of the voluntary liquidator shall be valid and binding upon the company and its official liquidator.

Offences of fraud, etc.

Fraud, etc. in anticipation of winding up

134. (1) Where a company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, any person, who is or was an officer, professional service provider, voluntary liquidator, restructuring officer or controller of the company and who, within the twelve months immediately preceding the commencement of the winding up, has —

(a) concealed any part of the company's property to the value of ten thousand dollars or more or concealed any debt due to or from the company;

(b) removed any part of the company's property to the value of ten thousand dollars or more;

(c) concealed, destroyed, mutilated or falsified any documents affecting or relating to the company's property or affairs;

(d) made any false entry in any documents affecting or relating to the company's property or affairs;

(e) parted with, altered or made any omission in any document affecting or relating to the company's property or affairs; or

(f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine and to imprisonment for five years.

(2) In this section —

"**officer**" includes a shadow director.

Transactions in fraud of creditors

135. Where a company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, any officer, restructuring officer, controller or professional service provider of the company who —

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property; or

(b) has concealed or removed any part of the company's property,

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine and to imprisonment for five years.

Misconduct in course of winding up

136. (1) Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, officer, restructuring officer, controller or professional service provider of the company and who —

(a) does not to the best of that person's knowledge and belief fully and truly discover to the liquidator —

(i) all the company's property (except such part as has been disposed of in the ordinary way of the company's business);

(ii) the date on which and manner in which the company's property or any part thereof property was disposed of, if it was disposed of;

(iii) the persons to whom any property was transferred, if it was disposed of; or

(iv) the consideration paid for any property which was disposed of;

(b) does not deliver up to the liquidator or does not deliver up in accordance with the directions of the liquidator any of the company's property which is in that person's custody or under that person's control, and which that person is required by law to deliver up;

(c) does not deliver up to the liquidator or does not deliver up, in accordance with the directions of the liquidator, all documents in that person's custody

or under that person's control which belong to the company and which that person is required by law to deliver up;

(d) knows or believes that a false debt has been proved by any person in the winding up and fails to inform the liquidator of such knowledge or belief as soon as practicable;

(e) prevents the production of any document affecting or relating to the company's property or affairs; or

(f) destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company,

with intent to defraud the company's creditors or contributories commits an offence and is liable on conviction to a fine of twenty five thousand dollars or to imprisonment for a term of five years, or to both.

(2) In this section —

"**officer**" includes a shadow director.

Material omissions from statement relating to company's affairs

137. (1) Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, an officer, a manager, restructuring officer, controller or a professional service provider of the company, commits an offence if that person makes any material omission in any statement relating to the company's affairs, with intent to defraud the company's creditors or contributories.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of five years, or to both.

(3) In this section —

"**officer**" includes a shadow director.

General provisions

Getting in the company's property

138. (1) Where any person has in that person's possession any property or documents to which the company appears to be entitled, the Court may require that person to pay, transfer or deliver such property or documents to the official liquidator.

(2) Where the official liquidator seizes or disposes of any property which that person reasonably believed belonged to the company, that person shall not be personally liable for any loss or damage caused to its true owner except in so far as such loss or damage is caused by that person's own negligence.

Provable debts

139. (1) All debts payable on a contingency and all claims against the company whether present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company and the official liquidator shall make a just estimate so far as is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages or which for some other reason do not bear a certain value.

(2) Foreign taxes, fines and penalties shall be admissible to proof against the company only if and to the extent that a judgment in respect of the same would be enforceable against the company pursuant to the *Foreign Judgments Reciprocal Enforcement Act (1996 Revision)* or any laws permitting the enforcement of foreign taxes, fines and penalties.

Distribution of the company's property

140. (1) Subject to subsection (2), the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall be distributed amongst the members according to their rights and interests in the company.

(2) The collection in and application of the property of the company referred to in subsection (1) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors and to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any contractual rights of set-off or netting of claims between the company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the company and any person or persons) and subject to any agreement between the company and any person or persons to waive or limit the same.

(3) In the absence of any contractual right of set-off or non set-off, an account shall be taken of what is due from each party to the other in respect of their mutual dealings, and the sums due from one party shall be set-off against the sums due from the other.

(4) Sums due from the company to another party shall not be included in the account taken under subsection (3) if that other party had notice at the time they became due that a petition for the winding up of the company was pending.

(5) Only the balance, if any, of the account taken under subsection (3) shall be provable in the liquidation or, as the case may be, payable to the liquidator as part of the assets.

Preferential debts

141. (1) In the case of an insolvent company, the debts described in Schedule 2 shall be paid in priority to all other debts.

(2) The preferential debts shall —

(a) rank equally amongst themselves and be paid in full unless the assets available, after having exercised any rights of set-off or netting of claims, are insufficient to meet them in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

Secured creditors

142. (1) Notwithstanding that a winding up order has been made, a creditor who has security over the whole or part of the assets of a company is entitled to enforce that person's security without the leave of the Court and without reference to the liquidator.

(2) Where the liquidator sells assets on behalf of a secured creditor, that person is entitled to deduct from the proceeds of sale a sum by way of remuneration equivalent to that which is or would be payable under section 109.

Preferential charge on goods distrained

143. In the event of a landlord or other person entitled to receive rent distraining or having distrained on any goods or effects of the company within three months preceding the date of the winding up order, the debts to which priority is given by section 141 shall be a first charge on the goods or effects so distrained on or the proceeds of sale thereof.

Effect of execution or attachment

144. (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, that person is not entitled to retain the benefit of the execution or attachment against the liquidator unless that person has completed the execution or attachment before the commencement of the winding up.

(2) Notwithstanding subsection (1) —

(a) where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which that person had notice is substituted for the purpose of subsection (1) for the date of commencement of the winding up;

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator; and

(c) the rights conferred by subsection (1) on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(3) For the purposes of this Act —

(a) an execution against goods is completed by seizure and sale;

(b) an execution against securities is completed upon making a charging order absolute;

(c) an attachment of a debt is completed by receipt of the debt; and

(d) an execution against land is completed by the registration of a charging order.

Voidable preference

145. (1) Every conveyance or transfer of property, or charge thereon, and every payment obligation and judicial proceeding, made, incurred, taken or suffered by any company in favour of any creditor at a time when the company is unable to pay its debts within the meaning of section 93 with a view to giving such creditor a preference over the other creditors shall be voidable upon the application of the company's liquidator if made, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation.

(2) A payment made as aforesaid to a related party of the company shall be deemed to have been made with a view to giving such creditor a preference.

(3) For the purposes of this section a creditor shall be treated as a "related party" if it has the ability to control the company or exercise significant influence over the company in making financial and operating decisions.

Avoidance of dispositions made at an undervalue

146. (1) In this section and section 147 —

(a) "**disposition**" has the meaning ascribed in Part VI of the *Trusts Act (2021 Revision)*;

(b) "**intent to defraud**" means an intention to wilfully defeat an obligation owed to a creditor;

(c) "**obligation**" means an obligation or liability (which includes a contingent liability) which existed on or prior to the date of the relevant disposition;

(d) "**transferee**" means the person to whom a relevant disposition is made and shall include any successor in title; and

(e) "**undervalue**" in relation to a disposition of a company's property means —

(i) the provision of no consideration for the disposition; or

(ii) a consideration for the disposition the value of which in money or monies worth is significantly less than the value of the property which is the subject of the disposition.

(2) Every disposition of property made at an undervalue by or on behalf of a company with intent to defraud its creditors shall be voidable at the instance of its official liquidator.

(3) The burden of establishing an intent to defraud for the purposes of this section shall be upon the official liquidator.

(4) No action or proceedings shall be commenced by an official liquidator under this section more than six years after the date of the relevant disposition.

(5) In the event that any disposition is set aside under this section, then if the Court is satisfied that the transferee has not acted in bad faith —

(a) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings; and

(b) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee who has not acted in bad faith).

Fraudulent trading

147. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose the liquidator may apply to the Court for a declaration under this section.

(2) The Court may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are liable to make such contributions, if any, to the company's assets as the Court thinks proper.

Supply of utilities

148. (1) If a request is made by or with the concurrence of the liquidator (including a provisional liquidator) or a restructuring officer for the giving, after the effective date, of any of the supplies mentioned in subsection (2), the supplier —

(a) may make it a condition of the giving of the supply that the liquidator (including a provisional liquidator) or restructuring officer personally guarantees the payment of any charges in respect of the supply; but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply,

that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(2) The supplies referred to in subsection (1) are —

(a) a supply of electricity;

(b) a supply of water; and

(c) a supply of telecommunication services.

(3) In this section —

"**effective date**" means —

(a) the date on which the provisional liquidator was appointed;

(b) the date on which the winding up order was made; or

(c) the date on which the restructuring officer was appointed.

Interest on debts

149. (1) Subject to subsection (5), in a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder of the debt.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the period during which they have been outstanding since the company went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable ranked equally.

(4) The rate of interest payable under this section in respect of any debt is the greater of —

(a) the rate applicable to the currency of the liquidation prescribed from time to time by the *Judgment Debts (Rates of Interest) Rules (2021 Revision)* made under section 34 of the *Judicature Act (2021 Revision)*; and

(b) the rate applicable to that debt apart from the winding up.

(5) No interest shall be payable if the liquidation is concluded in less than six months or the accrued amount is less than five hundred dollars.

Currency of the liquidation

150. (1) In the case of a solvent liquidation, a company's creditors are entitled to receive payment of their debts in the currency of the obligation.

(2) In the case of an insolvent liquidation, a company's liabilities shall be translated into the functional currency of the company at the exchange rates ruling —

(a) on the date of the commencement of the voluntary liquidation; or

(b) on the day upon which the winding up order is made.

(3) For the purposes of this section the functional currency of a company is the currency of the primary economic environment in which it operated as at the commencement of the liquidation.

Dissolution of a Company

Dissolution following voluntary winding up

151. (1) The Registrar shall, within three days of receiving a liquidator's return under section 127(3), register such return.

(2) Upon the expiration of three months from the registration of the return the company is deemed to be dissolved.

(3) Notwithstanding subsection (2), the Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect to such date as the Court thinks fit.

(4) An application under this section shall not be made after the company is deemed to have been dissolved.

(5) An order of the Court made under this section shall be registered with the Registrar within seven days of the date upon which it was made.

Dissolution following winding up by the Court

152. (1) When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of that order or such other date as the Court thinks fit, and the company shall be dissolved accordingly.

(2) The effect of an order for dissolution in respect of a segregated portfolio is that its creditors' claims against the company shall be extinguished, notwithstanding that the company has not been liquidated and dissolved.

(3) The official liquidator shall file the order for dissolution with the Registrar.

(4) An official liquidator who fails to file the order for dissolution with the Registrar within fourteen days from the date, upon which it was perfected, commits an offence and is liable on summary conviction to a penalty of ten dollars for every day during which that person is so in default.

Unclaimed dividends and undistributed assets

153. (1) Any unclaimed dividends or undistributed assets in the possession or control of the liquidator or former liquidator of a company shall be held by that person as trustee upon trust for the benefit of the contributories or creditors to whom such funds are owed.

(2) At the end of one year after the dissolution of the company, the former liquidator shall transfer any funds or other assets held on trust by that person to the Minister charged with responsibility for Finance who shall manage them in accordance with Part VIII of the *Public Management and Finance Act (2020 Revision)*.

Insolvency rules and regulations

Insolvency Rules Committee

154. (1) There shall be established an Insolvency Rules Committee comprising —

(a) the Chief Justice or other judge nominated by the Chief Justice in that person's place who shall be chairperson;

(b) the Attorney General or that person's nominee;

(c) two attorneys-at-law appointed by the Chief Justice on the recommendation of the Cayman Islands Legal Practitioners Association;

(d) a qualified insolvency practitioner appointed by the Chief Justice upon the recommendation of the Cayman Islands Institute of Professional Accountants;

(e) a person appointed by the Chief Justice who, in that person's opinion, demonstrates a wide knowledge of law, finance, financial regulation or insolvency practice; and

(f) a qualified insolvency practitioner appointed by the Chief Justice on the recommendation of the Recovery and Insolvency Specialists Association.

(2) The quorum of the Insolvency Rules Committee shall be the chairperson and three other members of the Committee; and the chairperson shall have a casting vote.

Powers of the Insolvency Rules Committee

155. (1) The Insolvency Rules Committee shall have power —

(a) to make rules and prescribe forms for the purpose of giving effect to Parts 4, 5 and 16;

(b) to prescribe court fees to be paid in connection with —

(i) applications under Part 4;

(ii) winding up proceedings under Part 5; and

(iii) applications under Part 16; and

(c) to make rules for the purpose of specifying —

(i) the qualifications which must be held by a person appointed to the office of official liquidator;

(ii) persons who are disqualified from holding office as official liquidator either generally or in relation to a particular company which is not in liquidation before the court;

(iii) the nature and scope of professional indemnity insurance, if any, required to be held by persons appointed to the office of official liquidators; and

(iv) the nature and scope of security bonds, if any, required to be posted by persons appointed to the office of official liquidator.

(2) The Insolvency Rules Committee, after consultation with the Authority and with any organisation representing insolvency practitioners in the Islands, shall make rules prescribing the rates of fees which may be charged by an official liquidator.

PART 6 - Removal of Defunct Companies

Company not operating may be struck off register

156. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, that person may strike the company off the register and the company shall thereupon be dissolved.

(2) A request on behalf of the company to strike the company off the register shall be accompanied by a fee of seventy-five dollars.

Striking off for failure to pay fine

156A.Where an administrative fine imposed in accordance with section 26 of the *Beneficial Ownership Transparency Act, 2023 [Act 13 of 2023]* remains unpaid for ninety days after imposition of the fine, the Registrar may strike the company off the register and the company shall thereupon be dissolved.

Company being wound up may be struck off register for want of liquidator, etc.

157. Where a company is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, that person may strike the company off the register and the company shall thereupon be dissolved.

Registrar to publish fact of company being struck off register

158. The Registrar shall immediately publish a Government Notice to the effect that the company in question has been struck off the register, the date on which it has been struck off and the reason therefor. Such notice shall be gazetted.

Company, member or creditor may apply to court for company to be reinstated

159. (1) If a company or any member or creditor of a company feels aggrieved by the company having been struck off the register in accordance with this Act, the company, member or creditor may apply to the Court to have the company restored to the register.

(2) An application referred to in subsection (1) shall be made by the company or any member or creditor of the company —

(a) within two years after the date on which the company was struck off the register; or

(b) where the Cabinet allows, after the two-year period referred to in paragraph (a) but not more than ten years after the date on which the company was struck off the register.

(3) Upon an application under subsection (1), if the Court is satisfied that —

(a) the company was, at the time of the striking off, carrying on business or in operation, or otherwise; and

(b) it is just that the company be restored to the register,

the Court may order that the name of the company be restored to the register on payment by the company of a reinstatement fee equivalent to two times the original incorporation or registration fee, and on terms and conditions as to the Court may seem just.

(4) Where the Court orders that the name of the company is to be restored to the register under subsection (3) —

(a) the company is deemed to have continued in existence as if its name had not been struck off the register; and

(b) the Court, by the same or any subsequent order, may give directions and make provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off the register.

Liability of members of company to remain

160. The striking off the register of any company under this Act shall not affect the liability, if any, of any director, manager, officer or member of the company, and such liability shall continue and may be enforced as if the company had not been dissolved.

Registrar not liable for any act performed under this Part

161. No liability shall attach for any act performed or thing done by the Registrar under this Part.

Vesting of property

162. Any property vested in or belonging to any company struck off the register under this Act shall thereupon vest in the Minister charged with responsibility for Finance and shall be subject to disposition by the Cabinet, or to retention for the benefit of the Islands.

PART 7 - Exempted Companies

What companies may apply to be registered as exempted companies

163. Any proposed company applying for registration under this Act, the objects of which are to be carried out mainly outside the Islands or pursuant to a licence to carry on business in the Islands to which section 174 refers, may apply to be registered as an exempted company.

Registration of exempted companies

164. On being satisfied that section 165 has been complied with, the Registrar shall register the company as an exempted company.

Declaration by proposed company

165. A proposed exempted company applying for registration as an exempted company shall submit to the Registrar a declaration signed by a subscriber to the effect that the operation of the proposed exempted company will be conducted mainly outside the Islands or pursuant to a licence to carry on business in the Islands to which section 174 refers.

Shares shall be non-negotiable

166. The shares of an exempted company shall be non-negotiable and shall be transferred only on the books of the company.

Repealed

167. **Repealed** by section 3 of the *Companies (Amendment) Act, 2016 [Law 3 of 2016]*.

Annual return

168. In January of each year after the year of its registration each exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers shall furnish to the Registrar a return which shall be in the form of a declaration that —

(a) since the previous return or since registration, as the case may be, there has been no alteration in the memorandum of association, other than an alteration in the name of the company effected in accordance with section 31 or an alteration already reported in accordance with section 10;

(aa) states the nature of the business;

(b) the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the Islands; and

(c) section 174 has been and is being complied with.

Annual fee

169. (1) Every exempted company shall, in January of each year after the year of its registration, pay to the revenues of the Islands the annual fee specified in Part 4 of Schedule 5.

(2) Each such annual fee referred to in subsection (1) shall be tendered with the return required by section 168.

(3) An exempted company which defaults in submitting its annual return under section 168 or the fee specified in subsection (1) shall incur a penalty of —

(a) 33.33% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st April and the 30th June;

(b) 66.67% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st July and the 30th September; and

(c) 100% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1st October and the 31st December.

Failure to comply with section 168 or 169

170. Any exempted company which fails to comply with section 168 or 169 shall be deemed to be a defunct company and shall thereupon be dealt with as such under Part 6 but without prejudice to its being registered again as though it were being registered for the first time.

Registrar to give notice

171. Before taking action under section 170, the Registrar shall give one month's notice to the defaulting company and, if the default is made good before the expiry of such notice, sections 168 and 169 shall be deemed to have been complied with.

False statement in declaration

172. If any declaration under section 165 or 168 contains any wilful false statement or misrepresentation the company shall, on proof thereof, be liable to be immediately dissolved and removed from the register and in such case any fee tendered under section 26(4) or 169 shall be forfeited to the Minister charged with responsibility for Finance for credit to the general revenue.

Penalty for false declaration

173. Every director and officer of a company who knowingly makes or permits the making of any such declaration knowing it to be false commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of one year, or to both.

Prohibited enterprises

174. (1) An exempted company shall not carry on a trade or business in the Islands with any person, except in furtherance of the business of the exempted company carried on outside of the Islands, unless that exempted company holds a licence to carry on business in the Islands under any applicable law.

(2) Nothing in this section shall be construed so as to prevent an exempted company effecting and concluding contracts in the Islands and exercising in the Islands all its powers necessary for the carrying on of its business outside the Islands.

(3) An exempted company that holds a licence to carry on business in the Islands under any applicable law, shall from the date of issue of such licence, continue for all purposes as if incorporated and registered as an ordinary resident company under and subject to this Act the provisions of which shall apply to the company and to persons and matters associated with the company as if the company were incorporated and registered under this Act except as provided in section 7(1)(a), 8(1) and (4), 13(1)(a), 26(3), 30(3), 31(1), 41(2), 42, 50(2), 166, 169, 175 or 252(2).

Prohibited sale of securities

175. An exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Islands to subscribe for any of its securities.

Penalty for carrying on business contrary to this Part

176. If an exempted company carries on any business in the Islands in contravention of this Part then, without prejudice to any other proceedings that may be taken in respect of the contravention, the exempted company and every director, provisional director and officer of the exempted company who is responsible for the contravention commits an offence and is liable on summary conviction to a fine of one hundred dollars for every day during which the contravention occurs or continues, and the exempted company shall be liable to be immediately dissolved and removed from the register.

Electronic business by exempted companies

177. Nothing in this Act shall prohibit an exempted company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

PART 8 - Exempted Limited Duration Companies

Exempted company may apply to be registered as an exempted limited duration company

178. (1) An exempted company may, at any time, apply to the Registrar to be registered as an exempted limited duration company.

(2) An application may also be made under subsection (1) at the same time as an application is made —

(a) to register a proposed company as an exempted company;

(b) to re-register an ordinary non-resident company as an exempted company; or

(c) to register a company by way of continuation as an exempted company.

(3) An application under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by an application fee of two hundred dollars.

Registration as an exempted limited duration company

179. (1) The Registrar shall register as an exempted limited duration company an exempted company that has made application under section 178 if —

(a) the company has at least two subscribers or two members;

(b) where the company was not already registered as a company prior to the application —

(i) the memorandum of association of the company limits the duration of the company to a period of thirty years or less; and

(ii) the name of the company includes at its end "Limited Duration Company" or "LDC"; and

(c) where the company was already registered as a company prior to the application —

(i) the Registrar has been supplied, where the duration of the company is not already limited to a period of thirty years or less with a certified copy of a special resolution of the company altering its memorandum of association to limit the duration of the company to a period of thirty years or less; and

(ii) the Registrar has been supplied, in accordance with section 31, with a copy of a special resolution of the company changing its name to a name that includes at its end "Limited Duration Company" or "LDC".

(2) On registering an exempted company as an exempted limited duration company the Registrar shall —

(a) in the case of a company referred to in paragraph (b) of subsection (1), certify in the certificate of incorporation issued in accordance with section 27(3) or the certificate of registration by way of continuation issued in accordance with section 201(1) that the company is registered as an exempted limited duration company; and

(b) in the case of a company referred to in paragraph (c) of subsection (1), certify in the certificate of incorporation issued in accordance with section 31(2) that the company is registered as an exempted limited duration company stating the date of such registration.

(3) A special resolution passed for the purpose of paragraph (c)(ii) of subsection (1) has no effect until the company is registered as an exempted limited duration company.

Contents of articles of association

180. (1) The articles of association of an exempted limited duration company may provide that the transfer of any share or other interest of a member of the company requires the unanimous resolution of all the other members.

(2) The articles of association of an exempted limited duration company may provide that the management of the company is vested in the members of the company either equally per capita or in proportion to their share or other ownership interest in the company or in such other manner as may be specified in the articles of association.

(3) Where the articles of association of an exempted limited duration company contain the provision referred to in subsection (2), the members of the company are to be considered to be the directors of the company but with power, if so provided by the articles of association, to delegate the management to a board of directors.

Cancellation of registration

181. (1) A company ceases to be an exempted limited duration company if —

(a) the Registrar issues a certificate under section 207 on deregistration of the company;

(b) the Registrar issues a certificate of incorporation in accordance with section 31(2) which records a change of name for the company that does not include at its end "Limited Duration Company" or "LDC"; or

(c) the company passes a special resolution in accordance with section 10 to alter its memorandum of association to provide for a period of duration of the company that exceeds or is capable of exceeding thirty years,

and in the case of paragraph (b) or (c), the company pays a deregistration fee of four hundred dollars.

(2) On a company ceasing to be an exempted limited duration company —

(a) the Registrar shall, where the company has ceased to be an exempted limited duration company by virtue of paragraph (b) or (c) of subsection (1), issue to the company a certificate of incorporation altered to meet the circumstances of the case; and

(b) in all cases the certificate issued by virtue of section 179(2) ceases to have effect.

(3) A special resolution passed for the purpose of paragraph (c) of subsection (1) has no effect until a certificate of incorporation is issued by the Registrar under paragraph (a) of subsection (2).

Electronic business by exempted limited duration companies

182. Nothing in this Act shall prohibit an exempted limited duration company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

PART 8A - Special Economic Zone Companies

Exempted company may apply to be registered as a special economic zone company

182A.(1) An exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers may, at any time, apply to the Registrar to be registered as a special economic zone company.

(2) An application may also be made under subsection (1) at the same time as an application is made —

(a) to register a proposed company as an exempted company;

(b) to re-register an ordinary non-resident company as an exempted company; or

(c) to register a company by way of continuation as an exempted company.

(3) An application under subsection (1) shall be accompanied by a fee which shall be equal to the lowest band of the annual fee payable by an exempted company under section 169(1) as specified in paragraph (a) of Part 4 of Schedule 5.

Registration as a special economic zone company

182B.(1) The Registrar shall register as a special economic zone company an exempted company that has made application under section 182A if —

(a) where the company was not already registered as a company prior to the application —

(i) the memorandum of association of the company specifies that the business of the company includes special economic zone business; and

(ii) the name of the company includes the words "Special Economic Zone Company" or the letters "SEZC"; and

(b) where the company was already registered as a company prior to the application —

(i) the Registrar has been supplied, in accordance with section 62, with a copy of a special resolution of the company altering its memorandum of association to carry on special economic zone business; and

(ii) the Registrar has been supplied, in accordance with sections 31 and 62, with a copy of a special resolution of the company changing its name to a name that includes the words "Special Economic Zone Company" or the letters "SEZC".

(2) On registering an exempted company as a special economic zone company the Registrar shall —

(a) in the case of a company referred to in subsection (1)(a), certify in the certificate of incorporation issued in accordance with section 27(1) or the certificate of registration by way of continuation issued pursuant to section 201(1) that the company is registered as a special economic zone company; and

(b) in the case of a company referred to in subsection (1)(b), issue a certificate stating that the company is registered as a special economic zone company and stating the date of such registration.

(3) A special resolution passed for the purpose of subsection (1)(b)(ii) has no effect until the company is registered as a special economic zone company.

Cancellation of registration

182C.(1) A company ceases to be a special economic zone company if —

(a) the Registrar issues a certificate under section 207 on deregistration of the company; or

(b) the Registrar issues a certificate of incorporation —

(i) in accordance with section 31(2) which records a change of name for the company that does not include the words "Special Economic Zone Company" or the letters "SEZC"; and

(ii) altered to meet the circumstances of the case, where the company passes a special resolution in accordance with section 10 to alter its memorandum of association to exclude the carrying on of special economic zone business,

and in the case of paragraph (b), the company pays a deregistration fee of four hundred dollars.

(2) On a company ceasing to be a special economic zone company the certificate issued by virtue of section 182B(2) ceases to have effect.

PART 9 - Overseas Companies

Definition of foreign company

183. In this Part, a foreign company means an overseas company which, after the 1st December, 1961, establishes a place of business or commences carrying on business (which expressions in this Part include, without limiting their generality, the sale by or on behalf of an overseas company of its shares or debentures and offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands) within the Islands, and all overseas companies which before the 1st December, 1961 established a place of business or carried on business as aforesaid within the Islands at the 1st December, 1961.

Documents, etc., to be delivered to Registrar by foreign companies

184. (1) Every foreign company shall, within one month after becoming a foreign company as defined in section 183, deliver to the Registrar for registration the following —

(a) a certified copy of the foreign company's certificate of formation or incorporation, or the equivalent document issued by the relevant authority as evidence of its formation or incorporation;

(b) a certificate of good standing issued by the relevant authority (or a certified copy thereof), or, if the relevant authority does not issue such certificates of good standing, a declaration signed by a director of the foreign company that the foreign company is in good standing with the relevant authority, in either case, dated no earlier than one month prior to the date of its delivery to the Registrar;

(c) a certified copy of any charter, bye-laws or memorandum or articles of association or other constitutional document (howsoever called) of the foreign company that is required to be filed with the relevant authority under the laws of the relevant jurisdiction in connection with the incorporation or formation of the foreign company;

(d) a list of its directors, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company; and

(e) the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it,

and shall pay to the Registrar the fee specified in Part 5 of Schedule 5.

(2) Every foreign company shall, in January of each year pay to the revenues of the Islands the annual fee specified in Part 5 of Schedule 5.

(3) A foreign company which defaults in paying the annual fee specified in subsection (2) shall incur a penalty of —

(a) 33.33% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1st April and the 30th June;

(b) 66.67% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1st July and the 30th September; and

(c) 100% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1st October and the 31st December.

Power of certain foreign companies to hold land

185. (1) An overseas company shall not have power to hold land in the Islands except where it is a foreign company which has delivered to the Registrar documents, particulars and fees specified in section 184.

(2) If an overseas company which is not a foreign company holds land in the Islands or if a foreign company ceases to carry on, or have a place of business in the Islands or ceases to be a foreign company or fails to comply with this Part, the Cabinet may, whenever it appears to it to be necessary in the public interest, order the overseas company to transfer any lands held by, vested in or belonging to it to a person capable of holding such lands and of being registered as proprietor thereof under the *Registered Land Act (2018 Revision)*.

(3) If an overseas company fails to comply with an order under subsection (2), the Registrar may apply to the Court for an order that the land shall vest in the Minister charged with responsibility for Finance for the benefit of the Islands and be subject to the disposition of the Cabinet, and the Court may order accordingly.

(4) An order under subsection (2), and any order or proceedings required by the Court to be served in respect of an application under subsection (3) shall be served by personal service on a person, if any, whose name and address has been delivered by the company to the Registrar under paragraph (e) of section 184(1):

Provided that, in the event any such order or proceedings may not be served by such personal service, it or they may be served by —

(a) personal service on the attorney holding a power of attorney whereunder that person is authorised to accept service of orders and proceedings of the Court;

(b) sending it by registered post to the overseas company at its usual or last known postal address in the Islands;

(c) leaving it at the last known place of business of the overseas company in the Islands;

(d) publication in three consecutive issues of the Gazette;

(e) publication in three consecutive issues of a newspaper published and circulating in the Islands; or

(f) displaying it in a prominent position on the lands and causing it to be kept so displayed for one month.

(5) In this section —

"**hold land**" bears the meaning ascribed to that expression in section 32(3).

Registration of foreign companies

186. (1) Upon compliance with section 184, the Registrar shall issue a certificate under that person's hand and seal of office that the foreign company is registered under this Act.

(2) A certificate of registration of a foreign company issued under subsection (1) shall be conclusive evidence that compliance has been made with all requirements of this Act in respect of registration.

Return to be delivered to Registrar where documents etc., altered

187. If, in the case of any foreign company, an alteration is made in or to any document or other information filed with the Registrar pursuant to section 184(1) (other than a document referred to in section 184(1)(b)) the foreign company shall, within thirty days after the date of such alteration, deliver to the Registrar for registration a return containing the particulars of the alteration.

Obligation to state name of foreign company, whether limited, and country where formed or incorporated

188. Every foreign company shall —

(a) in every prospectus inviting subscriptions for its shares or debentures in the Islands state the country in which the foreign company is formed or incorporated;

(b) conspicuously exhibit on every place where it carries on business in the Islands the name of the foreign company and the country in which the foreign company is formed or incorporated;

(c) cause the name of the foreign company and of the country in which it is formed or incorporated to be stated in legible characters on all bill heads, letter paper, notices, advertisements and other official publications; and

(d) if the liability of the members of the foreign company is limited, cause notice of that fact to be stated in every such prospectus as aforesaid and on all bill heads, letter paper, notices, advertisements and other official publications in the Islands, and to be affixed on every place where it carries on its business in the Islands.

Service on foreign company to which this Part applies

189. Any process or notice required to be served on a foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under sections 184 or 187 and left at or sent by post to the address which has been so delivered:

Provided that —

(a) where any such foreign company makes default in delivering to the Registrar the name and address of a person resident in the Islands who is authorised to accept on behalf of the foreign company service of process or notices; or

(b) if, at any time, all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the foreign company by leaving it at or sending it by post to any place of business established by the foreign company in the Islands.

Deeds, etc., of overseas companies

190. The execution of a contract or other instrument in accordance with section 81(6)(a) and the fact that it was executed in accordance with a requirement referred to in section 81(6)(b) may be proved by the affidavit or solemn declaration of a witness to the execution of the contract or other instrument sworn or made before a notary public or any other person qualified to administer oaths in any jurisdiction.

Execution of deeds, etc.

191. (1) An overseas company may appoint and empower a person either generally or in respect of a specified matter, to execute deeds or instruments under seal on its behalf.

(2) Any appointment under subsection (1) need not be made by deed or instrument under seal, but any person so appointed otherwise than by deed or instrument under seal shall not constitute the donee of a power under the *Powers of Attorney Act (1996 Revision)* (but without prejudice to the authority otherwise conferred upon them by the overseas company).

(3) A deed or instrument under seal, signed by a person on behalf of an overseas company pursuant to authority conferred pursuant to subsection (1), shall be binding on that overseas company and shall have effect as if it were executed as such by the overseas company.

Removing company's name from register

192. If any foreign company ceases to carry on or have a place of business in the Islands it shall forthwith give notice of the fact to the Registrar and, as from the date on which notice is so given, the obligation of the foreign company to deliver any document to the Registrar shall cease:

Provided that where the Registrar is satisfied by any other means that the foreign company has ceased to carry on or have a place of business in the Islands it shall be lawful for the Registrar to close the file of the foreign company and thereupon the obligation of the foreign company to deliver any document to the Registrar shall cease.

Penalties for failing to comply with this Part

193. Whenever any foreign company fails to comply with any of the foregoing provisions of this Part, it and every officer or agent of it, commits an offence and is liable to a fine of one hundred dollars or, in the case of a continuing offence, a further fine of ten dollars for every day during which the default continues.

Definitions in this Part

194. (1) In this Part —

"**certified copies**" includes copies (whether in the form of an electronic record or otherwise) certified as true copies of the originals by —

(a) the relevant authority;

(b) a notary public in the relevant jurisdiction or in the Islands; or

(c) a person qualified to practise law in the relevant jurisdiction or in the Islands, or

(d) any other person acceptable to the Registrar;

"**director**" in relation to a foreign company, means any director, officer, member or other person (howsoever called) in whom the management of the foreign company is vested;

"**electronic record**" has the same meaning as in Part I of the *Electronic Transactions Act (2003 Revision)*;

"**excluded share transfer or share registration office**" means a share transfer or share registration office provided within the Islands by a person licensed or registered to do so under the regulatory laws;

"**place of business**" includes a share transfer or share registration office (except an excluded share transfer or share registration office);

"**relevant authority**" in respect of a foreign company, means the national, state or local government authority, registry or other body in the relevant jurisdiction that is responsible for forming or incorporating the foreign company; and

"**relevant jurisdiction**" means the jurisdiction in which the foreign company has been formed or incorporated.

(2) In this Part, an overseas company shall not be deemed to have established or to have commenced carrying on business within the Islands solely by reason of having an excluded share transfer or share registration office.

Power of Registrar to prohibit sale

195. The Registrar may, at any time and from time to time, prohibit the sale of any shares or debentures of any foreign company in the Islands or any invitation in the Islands to subscribe for any shares or debentures of a foreign company, and in the event of any violation by a foreign company of such prohibition the foreign company and each of its directors and officers is liable on summary conviction to a fine of one thousand dollars and, in default of payment by any director or officer, to imprisonment for three months.

PART 10 - Application of this Act to Companies Formed or Registered in the Islands

Application to existing companies

196. In the application of this Act to existing companies, it shall apply in the same manner in the case of —

(a) a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(b) a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company.

Date of incorporation

197. A reference, express or implied, to the date of incorporation of an existing company shall be, where appropriate, construed as a reference to the date on which the company was incorporated and recorded under the laws relating to companies then in force in the Islands.

Articles of association remain

198. The articles of association of an existing company shall, so far as the same are not contrary to any express provisions of this Act, remain in force until altered or rescinded.

PART 11 - General

Fees in lieu of other provisions

199. (1) Wherever this Act provides for or requires the filing of any document, notice or return with the Registrar or the issue of any certificate or the Registrar provides a copy of any document in respect of which no fee is elsewhere specifically provided, the fees specified in Part 6 of Schedule 5 shall be payable.

(2) The Registrar may, in that person's discretion, extend the time within which any thing is required to be done by this Act, whether the time prescribed therefor has expired or not.

(3) Notwithstanding any provision of this Act which prescribes a specific *per diem* penalty in respect of a default of any obligation to make a filing or to maintain a record set out in this Act, it shall be lawful for the Registrar, in any case where the aggregate *per diem* penalty has exceeded the amount of five hundred dollars and that person is satisfied that the failure is not due to wilful default, to at any time, accept payment of a penalty in the amount of five hundred dollars in lieu thereof.

(4) Without prejudice to the powers exercisable by the Registrar under this Act, all sums that that person is entitled to recover by way of fees or penalties are recoverable either summarily as a civil debt, or as a simple contract debt, in any court of competent jurisdiction.

Fees for administrative services

199A. A person shall pay to the Registrar the fee specified in Part 8 of Schedule 5 for the provision by the Registrar of the corresponding administrative service set out in Part 8 of that Schedule.

Express fees

200. (1) The Registrar, on receipt of —

(a) an application for registration under section 26, 184 or 201;

(b) an application for re-registration under section 178, 182A, 210 or 214;

(c) an application for registration of a change of name under section 31;

(d) an application for a merger or consolidation under section 233 or 237;

(e) the required information and relevant deregistration fee in accordance with section 181(1)(b) or (c) or 182C(1)(b);

(f) an application for deregistration under section 206;

(g) an application for any other certificate which the Registrar is authorised to provide under this Act; or

(h) any relevant information for a transaction under subsection (2),

which is accompanied by the prescribed fees and the prescribed express fee, shall complete the relevant transaction by —

(i) the end of the working day, where the application or relevant information and all fees are received by 12 noon; or

(ii) 12 noon on the following working day, where the application or relevant information and all fees are received after 12 noon.

(2) For the purposes of subsection (1)(h), the transactions are —

(a) the filing of any document with the Registrar (other than the filing of any document made as part of an application);

(b) certifications by the Registrar;

(c) the issuance or making of copies by the Registrar;

(d) the issuance of certificates by the Registrar, including customised certificates; or

(e) the issuance of letters by the Registrar, including customised letters.

Certificate of good standing

200A.(1) The Registrar may on application made by a company issue a certificate of good standing to a company that is in good standing in accordance with subsection (2).

(2) A certificate of good standing is evidence of the fact that the company is in good standing on the date that the certificate of good standing is issued.

(3) A company shall be deemed to be in good standing if all fees and penalties under this Act have been paid and the Registrar has no knowledge that the company is in default under this Act.

PART 12 - Transfer by Way of Continuation

Application for continuation

201. (1) A body corporate incorporated, registered or existing with limited liability and a share capital under the laws of any jurisdiction outside the Islands (which body corporate is in this Part referred to as a "registrant") may apply to the Registrar to be registered by way of continuation as an exempted company limited by shares under this Act.

(2) The Registrar shall register a registrant if —

(a) the registrant is incorporated, registered or existing in a jurisdiction whose laws permit or do not prohibit the transfer of the registrant in the manner hereinafter provided in this Part (hereinafter in this section referred to as "a relevant jurisdiction");

(b) the registrant has paid to the Registrar a fee equal to the fee payable on the registration of an exempted company under section 26;

(c) the registrant has delivered to the Registrar the documents listed in paragraphs (a) to (d) of section184(1) (in this Part referred to as "the charter documents");

(d) the name of the registrant is acceptable to the Registrar under section 30 or the registrant has undertaken to change the name to an acceptable name within sixty days of registration;

(e) the registrant has filed with the Registrar notice of the address of its proposed registered office in the Islands;

(f) the registrant has filed with the Registrar a declaration signed by a director of the registrant that the operations of the registrant will be conducted mainly outside the Islands;

(g) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the registrant in any jurisdiction;

(h) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the registrant, its affairs or its property or any part thereof;

(i) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the registrant are and continue to be suspended or restricted;

(j) the registrant is able to pay its debts as they fall due;

(k) the application for registration is *bona fide* and not intended to defraud existing creditors of the registrant;

(l) the registrant has delivered to the Registrar an undertaking signed by a director of the registrant that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the registrant;

(m) any consent or approval to the transfer required by any contract or undertaking entered into or given by the registrant has been obtained, released or waived, as the case may be;

(n) the transfer is permitted by and has been approved in accordance with the charter documents of the registrant;

(o) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;

(p) the registrant is constituted in a form or substantially a form which could have been incorporated as an exempted company limited by shares under this Act;

(q) the registrant will, upon registration hereunder, cease to be incorporated, registered or exist under the laws of the relevant jurisdiction;

(r) the registrant, if it is (or will when registered by way of continuation be) prohibited from carrying on its business in or from within the Islands unless licensed under any law, has applied for and obtained the requisite licence; and

(s) the Registrar is not aware of any other reason why it would be against the public interest to register the registrant.

(3) Paragraphs (g), (h), (i), (j), (k), (m), (n), (o) and (q) of subsection (2) shall be satisfied by filing with the Registrar a declaration or affidavit of a director of the registrant to the effect that, having made due enquiry, that person is of the opinion that the requirements of those paragraphs have been met, and which declaration or affidavit shall include a statement of the assets and liabilities of the registrant made up to the latest practicable date before making the declaration or affidavit.

(4) A person who, being a director, makes a declaration or affidavit under subsection (3) without reasonable grounds therefor commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

(5) Without prejudice to Part 9, a registrant may apply to be provisionally registered by way of continuation as an exempted company limited by shares under this Act.

(6) The Registrar shall provisionally register a registrant if —

(a) the registrant complies with the requirements of paragraphs (a), (c), (e), (f), (g), (h), (i), (j) and (p) of subsection (2); and

(b) the registrant has paid to the Registrar a fee of one thousand five hundred dollars.

(7) Paragraphs (g), (h), (i), (j) and (p) of subsection (2) shall be satisfied by filing with the Registrar a declaration or affidavit of a director of the registrant to the effect that, having made due enquiry, that person is of the opinion that the requirements of those paragraphs have been met, and subsection (4) shall, *mutatis mutandis* apply with respect to such declaration or affidavit.

(8) The Registrar shall register a registrant which is provisionally registered under this Part upon the requirements of paragraphs (b), (d), (k), (l), (m), (n), (o), (q), (r) and (s) of subsection (2) being met, as to which subsection (3) shall, *mutatis mutandis*, apply where relevant.

(9) A registrant which is provisionally registered shall —

(a) within sixty days after registration, deliver, to the Registrar details of any changes in the information required by paragraphs (c) and (e) of subsection (2);

(b) file with the Registrar in January of each year following provisional registration, a declaration or affidavit in the form described in subsection (7); and

(c) pay to the Registrar in January of each year following provisional registration, a fee of one thousand dollars.

(10) A registrant which is provisionally registered and which fails to comply with paragraphs (b) and (c) of subsection (9) by 30th June in such year shall cease to be provisionally registered but without prejudice to being provisionally registered anew hereunder upon complying with the requirements of this Part.

Registration under this Part

202. (1) Upon registration of a registrant under this Part, the Registrar shall issue a certificate under that person's hand and seal of office that the registrant is registered by way of continuation as an exempted company and specifying the date of such registration, and section 27(3) shall apply, *mutatis mutandis*, to such certificate.

(2) The Registrar shall enter in the register of companies the date of registration of the registrant and, to the extent possible with respect to the registrant, particulars of the matters specified.

(3) From the date of registration of the registrant it shall continue as a body corporate for all purposes as if incorporated and registered as an exempted company under and subject to this Act the provisions of which shall apply to the company and to persons and matters associated therewith as if such company were so incorporated and registered and such company shall have, but without limitation to the generality of the foregoing —

(a) the capacity to perform all the functions of an exempted company;

(b) the capacity to sue and to be sued;

(c) perpetual succession; and

(d) the power to acquire, hold and dispose of property,

and the members of the company shall have such liability to contribute to the assets of the company in the event of its being wound up under this Act as is provided therein:

Provided always that section 201 and this section shall not operate —

(e) to create a new legal entity;

(f) to prejudice or affect the identity or continuity of the registrant as previously constituted;

(g) to affect the property of the registrant;

(h) to affect any appointment made, resolution passed or any other act or thing done in relation to the registrant pursuant to a power conferred by any of the charter documents of the registrant or by the laws of the jurisdiction under which the registrant was previously incorporated, registered or existing;

(i) except to the extent provided by or pursuant to this Part, to affect the rights, powers, authorities, functions and liabilities or obligations of the registrant or any other person; or

(j) to render defective any legal proceedings by or against the registrant and any legal proceedings that could have been continued or commenced by or against the registrant before its registration hereunder may, notwithstanding the registration, be continued or commenced by or against the registrant after registration.

(4) Upon provisional registration of a registrant under this Part the Registrar shall issue a certificate under that person's hand and seal of office that the registrant is provisionally registered by way of continuation as an exempted company and specifying the date of such provisional registration.

(5) The Registrar shall enter in a register maintained for the purpose the date of provisional registration and name of the registrant.

(6) If a registrant which is provisionally registered under this Part is registered pursuant to section 201(2) it shall automatically cease to be provisionally registered and the Registrar shall cancel such provisional registration.

(7) Subsection (3) shall not apply to a registrant which is provisionally registered unless and until it is registered under section 201(2), and nothing in this section shall be construed as enabling a registrant which is provisionally registered to carry on business within the Islands unless it complies with the requirements of Part 9.

Amendment, etc., of charter documents

203. (1) A registrant shall, within ninety days of registration by special resolution passed in accordance with this Act, make such amendments, alterations, modifications, variations, deletions and additions (in this section referred to as "changes"), if any, to its charter documents as are necessary to ensure that they comply with the requirements of this Act as they relate to an exempted company.

(2) Within ninety days of registration, the registrant —

(a) may, instead of passing a special resolution making the changes required by subsection (1); or

(b) shall, whether or not it has passed such a special resolution making, or purporting to make, such changes, if the Registrar so directs,

apply to the Court for an order approving such changes and the Court, if satisfied that the changes (with such modifications, if any, as it considers appropriate) are necessary to ensure that the charter documents of the registrant comply with the requirements of this Act, may approve them accordingly and make such consequential orders as it thinks fit. Changes, when so approved, shall take effect as if they formed part of the charter documents.

(3) A copy of the special resolution passed under subsection (1) or of the order of the Court made under subsection (2) shall be filed with and registered by the Registrar whose certificate of registration thereof shall be conclusive evidence that the charter documents comply with the requirements of this Act.

(4) After registration of the registrant and until such time as the charter documents of the registrant are changed to comply with the requirements of this Act or to the extent they cannot be changed so to comply, this Act shall prevail.

(5) The provisions of the charter documents of a registrant which would, if the company had been incorporated under this Act, have been required by this Act to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company and the provisions of the charter documents that do not by virtue of the foregoing constitute the registered memorandum of association shall be deemed to be the registered articles of association of the company, and the company and its members shall be bound thereby accordingly.

Effect of registration under this Part on companies registered under Part 9

204. Where a registrant is also registered as a foreign company under Part 9 it shall, upon registration under Part 12, automatically cease to be registered under Part 9 and the Registrar shall cancel such registration.

Notice of registration, etc., to be given in Gazette

205. The Registrar shall forthwith give notice in the Gazette of the registration of a registrant under this Part, the jurisdiction under whose laws the registrant was previously incorporated, registered or existing and the previous name of the registrant if different from the current name.

Deregistration of exempted companies including companies registered under this Part

206. (1) An exempted company incorporated and registered with limited liability and a share capital under this Act, including a company registered by way of continuation under this Part, which proposes to be registered by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Islands (hereinafter called an "applicant") may apply to the Registrar to be deregistered in the Islands.

(2) The Registrar shall so deregister an applicant if —

(a) the applicant proposes to be registered by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the applicant in the manner provided in this part (hereinafter in this section referred to as "a relevant jurisdiction");

(b) the applicant has paid to the Registrar a fee equal to three times the annual fee that would have been payable pursuant to section 169 in the January immediately preceding the application for deregistration by an exempt company having the same registered capital as the applicant on the date of that application;

(c) the applicant has filed with the Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction;

(d) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the applicant in any jurisdiction;

(e) no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the applicant, its affairs or its property or any part thereof;

(f) no scheme, order, compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the applicant are and continue to be suspended or restricted;

(g) the applicant is able to pay its debts as they fall due;

(h) the application for deregistration is *bona fide* and not intended to defraud creditors of the applicant;

(i) the applicant has delivered to the Registrar an undertaking signed by a director that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the applicant;

(j) any consent or approval to the transfer required by any contract or undertaking entered into or given by the applicant has been obtained, released or waived, as the case may be;

(k) the transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the applicant;

(l) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;

(m) the applicant, if licensed under the *Banks and Trust Companies Act (2021 Revision)*, or the *Insurance Act, 2010 [Law 32 of 2010]* or, if so previously licensed and in respect of which such licence shall have been suspended or revoked and not reinstated, has obtained consent of the Authority to the transfer;

(n) the applicant will upon registration under the laws of the relevant jurisdiction continue as a body corporate limited by shares; and

(o) the Registrar is not aware of any other reason why it would be against the public interest to deregister the applicant.

(3) Paragraphs (d), (e), (f), (g), (h), (j), (k), (l) and (n) of subsection (2) shall be satisfied by filing with the Registrar a declaration or affidavit of a director of the applicant to the effect that, having made due enquiry, that person is of the opinion that the requirements of those paragraphs have been met and which declaration or affidavit shall include a statement of the assets and liabilities of the applicant made up to the latest practicable date before the making of the declaration or affidavit.

(4) A person who, being a director, makes a declaration or affidavit under subsection (3) without reasonable grounds therefor commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

Certification of deregistration, etc.

207. (1) Upon deregistration of an applicant under this Part, the Registrar shall issue a certificate under that person's hand and seal of office that the applicant has been deregistered as an exempted company and specifying the date of such deregistration.

(2) The Registrar shall enter in the register of companies the date of deregistration of the applicant.

(3) From the commencement of the date of deregistration the applicant shall cease to be a company for all purposes under this Act and shall continue as a company under the laws of the relevant jurisdiction:

Provided always that this shall not operate —

(a) to create a new legal entity;

(b) to prejudice or affect the identity or continuity of the applicant as previously constituted;

(c) to affect the property of the applicant;

(d) to affect any appointment made, resolution passed or any other act or thing done in relation to the applicant pursuant to a power conferred by the memorandum and articles of association of the applicant or by the laws of the Islands;

(e) except to the extent provided by or pursuant to this Part to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant or any other person; or

(f) to render defective any legal proceedings by or against the applicant, and any legal proceedings that could have been continued or commenced by or against the applicant before its deregistration hereunder may, notwithstanding the deregistration, be continued or commenced by or against the applicant after deregistration.

Application of Part 9 to deregistered companies

208. Part 9 shall, where relevant, apply to any company which is deregistered under this Part.

Notice of deregistration, etc., to be given in the Gazette

209. The Registrar shall forthwith give notice in the Gazette of the deregistration of an applicant under this Part, the jurisdiction under the laws of which the applicant has been registered by way of continuation and name of the applicant, if changed.

PART 13 – Re-registration as a Means of an Ordinary Non-resident Company Becoming Exempted

Ordinary non-resident company may be re-registered as exempted company

210. (1) Subject to this section and section 211, an ordinary non-resident company may be re-registered as an exempted company if —

(a) the company passes a special resolution that it should be so re-registered; and

(b) an application for re-registration is delivered to the Registrar together with the necessary documents.

(2) Such special resolution shall —

(a) make such alterations in the company's memorandum of association as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of association of an exempted company; and

(b) make such alterations in the company's articles of association as are requisite in the circumstances.

(3) Such application shall be signed by a director of the company, and accompanied by —

(a) a copy of the memorandum and articles as altered by the special resolution; and

(b) a declaration by a director of the company that the operation of the company will be conducted mainly outside the Islands.

(4) A special resolution that an ordinary non-resident company be re-registered as an exempted company may change the company's name to any name by which an exempted company could be registered.

(5) The application shall be accompanied by a re-registration fee equal to the fee payable on the registration of an exempted company under section 26.

Effect of re-registration of ordinary non-resident company as an exempted company

211. (1) If, on an application under section 210, the Registrar is satisfied that an ordinary non-resident company may be re-registered under that section as an exempted company, that person shall —

(a) retain the application and other documents delivered to that person under the section; and

(b) issue to the company a certificate of re-registration stating that the company has been re-registered as an exempted company.

(2) Upon the issue to a company of a certificate of re-registration under this section —

(a) the company, by virtue of the issue of that certificate, becomes an exempted company; and

(b) any alterations in the memorandum and articles set out in the special resolution take effect accordingly:

Provided that the foregoing shall not operate —

(i) to create a new legal entity;

(ii) to prejudice or affect the identity or continuity of the company;

(iii) to affect the property of the company;

(iv) to affect any appointment made, resolution passed or any other act or thing done in relation to the company pursuant to a power conferred by the memorandum and the articles of association of the company or by the laws of the Islands;

(v) to affect the rights, powers, authorities, functions and liabilities or obligations of the company or any other person; or

(vi) to render defective any legal proceedings by or against the company, and legal proceedings that could have been continued or commenced by or against the company before its re-registration hereunder may, notwithstanding the re-registration, be continued or commenced by or against the company after re-registration.

(3) The certificate of re-registration is conclusive evidence —

(a) that the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is an exempted company.

PART 14 - Segregated Portfolio Companies

Definitions in this Part

212. In this Part —

"**receiver**" means the person specified in a receivership order for the purposes specified in section 224(3);

"**receivership order**" means an order made under section 224(1);

"**segregated portfolio company**" means an exempted company which is registered under section 213(1);

"**segregated portfolio shares**" means shares issued under section 217(1);

"**segregated portfolio share capital**" means the proceeds of the issue of segregated portfolio shares; and

"**segregated portfolio share dividend**" means a dividend paid under section 217(3).

Applications for registration

213. (1) Subject to subsection (2) and section 214, any exempted company may apply to the Registrar to be registered as a segregated portfolio company.

(2) Nothing in this Part shall derogate from the Authority's powers to determine, where relevant, whether a segregated portfolio company is suitable to be licensed under the regulatory laws.

(3) An application may also be made under subsection (1) at the same time as application is made —

(a) to re-register an ordinary non-resident company as an exempted company;

(b) to register a company by way of continuation as an exempted company; or

(c) to register as an exempted limited duration company.

(4) An application under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by the fee specified in Part 7 of Schedule 5.

(5) A segregated portfolio company shall, on paying the annual fee payable under section 169, pay the additional fee specified in Part 7 of Schedule 5 and the additional annual fee specified in Part 7 of Schedule 5 in respect of each segregated portfolio it has created (other than those in respect of which notice of termination has been given under subsection (6)), both of which shall be tendered in accordance with section 169(2).

(6) At the same time as it tenders the fees in accordance with subsection (5) a segregated portfolio company shall furnish to the Registrar a notice containing the names of each segregated portfolio it has created (other than those in respect of which notice of termination has been given hereunder in a prior year) and indicating those which have been terminated under section 228A since the date of the last notice under this subsection.

(7) A segregated portfolio company which fails to furnish the notice in accordance with subsection (6) shall incur a penalty of ten dollars for every day after 31st March of each year during which the notice is not filed.

Conversions of existing companies

214. (1) Where an exempted company has been registered prior to an application under section 213(1) the company shall —

(a) file with the Registrar a declaration made by at least two directors setting out an accurate statement —

(i) of the assets and liabilities of the company as at a date within three months prior to the date of the declaration;

(ii) of any transaction or event which, as at the date of the declaration, has occurred or is expected to occur between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated portfolio company which, if it had occurred before the date of the declaration, would have caused material changes to the assets and liabilities disclosed in the declaration;

(iii) that the segregated portfolio company intends to operate, and the assets and liabilities which the company proposes to transfer to each of those segregated portfolios;

(iv) that, on registration as a segregated portfolio company, the company and each segregated portfolio will be solvent;

(v) that each creditor of the company has consented in writing to the transfer of assets and liabilities into segregated portfolios or alternatively that adequate notice has been given in accordance with subsection (2) to all creditors of the company and that ninety-five per cent by value of the creditors have consented to that transfer of assets and liabilities into segregated portfolios;

(b) pass a special resolution authorising the transfer of assets and liabilities into segregated portfolios and attach a copy of such resolution to the declaration in subparagraph (a); and

(c) where the company is licensed by the Authority under the regulatory laws, obtain the written consent of the Authority and attach a copy of such consent to the declaration referred to in paragraph (a).

(2) For the purposes of subsection (1)(a)(v), adequate notice is given if notice in writing is sent to each creditor having a claim against the company exceeding one thousand dollars.

(3) A director who makes a declaration under subsection (1)(a) without reasonable grounds or who knowingly makes a false declaration commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year.

(4) For the avoidance of doubt, the provisions of the *Fraudulent Dispositions Act (1996 Revision)* shall not apply to an initial transfer of assets and liabilities into segregated portfolios pursuant to an application under section 213(1).

Designation

215. A segregated portfolio company shall include in its name the letters "SPC" or the words "Segregated Portfolio Company".

Segregated portfolios

216. (1) A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the segregated portfolio company held within or on behalf of a segregated portfolio from the assets and liabilities of the segregated portfolio company held within or on behalf of any other segregated portfolio of the segregated portfolio company or the assets and liabilities of the segregated portfolio company which are not held within or on behalf of any segregated portfolio of the segregated portfolio company.

(2) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the segregated portfolio company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words "Segregated Portfolio" or "SP" or "S.P.".

Shares and dividends

217. (1) A segregated portfolio company may create and issue shares in one or more classes or series (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of and accounted for in the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company's general assets.

(3) A segregated portfolio company may pay a dividend or other distribution in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares.

(4) Segregated portfolio dividends or other distributions shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Company to act on behalf of portfolios

218. (1) Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio shall be executed by the segregated portfolio company on behalf of such segregated portfolio which shall be identified or specified, and such execution shall specify that it is in the name of, or by, or for the account of, such segregated portfolio.

(2) If a segregated portfolio company is in breach of subsection (1) the directors shall, forthwith upon becoming aware of the breach —

(a) make any necessary enquiries to determine the correct segregated portfolio to which the relevant act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement should be attributed;

(b) make the correct attribution; and

(c) notify in writing all persons who are party to the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement that was executed, or who may be adversely affected by any such attribution, of that attribution and the parties' rights under subsection (3).

(3) Any person notified under subsection (2)(c) (or who should have been so notified) who objects to an attribution by the directors under subsection (2) may, within thirty days of receiving written notice under that subsection in the case of persons who received such notice, apply to the Court by petition for a re-attribution; and the Court may, upon hearing the petition and taking account of the intention of the parties and such other factors as are deemed relevant by it, order that the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement be deemed to be attributable to a particular segregated portfolio or portfolios or to the general assets (if applicable in particular proportions or on a particular basis) and may make such ancillary orders as may be just and equitable in the case.

(4) Any indemnity given by a segregated portfolio company in favour of a director in respect of a liability incurred by such director on behalf of a segregated portfolio shall only be enforceable against the assets of the segregated portfolio in respect of which such liability arose.

Assets

219. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise —

(a) assets representing the share capital and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to or held within the segregated portfolio.

(5) In subsection (4) —

"**reserves**" includes profits, retained earnings, capital reserves and share premiums.

(6) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures —

(a) to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;

(b) to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and

(c) to ensure that assets and liabilities are not transferred between segregated portfolios or between a segregated portfolio and the general assets otherwise than at full value.

Segregated portfolio assets

220. Segregated portfolio assets —

(a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company and holders of segregated portfolio shares who are creditors or holders of segregated portfolio shares in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company and holders of segregated portfolio shares who are not creditors or holders of segregated portfolio shares in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities

221. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio —

(a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to —

(i) firstly, the segregated portfolio assets attributable to such segregated portfolio; and

(ii) secondly, unless specifically prohibited by the articles of association, the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability, and to the extent that the segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by a regulatory body in the Islands; and

(b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person arises or is imposed otherwise than from a matter in respect of a particular segregated portfolio or portfolios, such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

General liabilities and assets

222. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of or acquired by a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Winding-up of company

223. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a segregated portfolio company, the liquidator —

(a) shall deal with the company's assets only in accordance with the procedures set out in section 219(6); and

(b) in discharge of the claims of creditors of the segregated portfolio company and holders of segregated portfolio shares, shall apply the segregated portfolio company's assets to those entitled to have recourse thereto under this Part.

(2) Section 140 shall be modified so that it shall apply in relation to protected segregated portfolio companies in accordance with this Part and, in the event of any conflict between this Part and section 140, this Part shall prevail.

Receivership orders

224. (1) Subject to subsections (2) to (5), if in relation to a segregated portfolio company, the Court is satisfied —

(a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

(b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make a receivership order under this section in respect of that segregated portfolio.

(2) A receivership order may be made in respect of one or more segregated portfolios.

(3) A receivership order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a receiver specified in the order for the purposes of —

(a) the orderly closing down of the business of or attributable to the segregated portfolio; and

(b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) A receivership order —

(a) may not be made if the segregated portfolio company is in winding up; and

(b) shall cease to be of effect upon commencement of the winding up of the segregated portfolio company, but without prejudice to prior acts of the receiver or that person's agents.

(5) No resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall be effective without leave of the Court.

Applications for receivership orders

225. (1) An application for a receivership order in respect of a segregated portfolio of a segregated portfolio company may be made by —

(a) the company;

(b) the directors of the company;

(c) any creditor of the company in respect of that segregated portfolio;

(d) any holder of segregated portfolio shares in respect of that segregated portfolio; or

(e) in respect of a company licensed under the regulatory laws, the Cayman Islands Monetary Authority where the segregated portfolio company is regulated by the Authority.

(2) The Court, on hearing an application —

(a) for a receivership order; or

(b) for leave, pursuant to section 224(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a segregated portfolio of a segregated portfolio company shall be served upon —

(a) the company;

(b) in respect of a company licensed under the regulatory laws, the Cayman Islands Monetary Authority; and

(c) such other persons, if any, as the Court may direct,

each of whom shall be given an opportunity of making representations to the Court before the order is made.

Administration of receivership orders

226. (1) The receiver of a segregated portfolio —

(a) may do all such things as may be necessary for the purposes set out in section 224(3); and

(b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of or attributable to the segregated portfolio.

(2) The receiver may, at any time, apply to the Court —

(a) for directions as to the extent or exercise of any function or power;

(b) for the receivership order to be discharged or varied; or

(c) for an order as to any matter acting in the course of that person's receivership.

(3) In exercising that person's functions and powers the receiver shall be deemed to act as the agent of the segregated portfolio company, and shall not incur personal liability except to the extent that that person is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within that person's powers.

(5) When an application has been made for, and during the period of operation of, a receivership order, no suit, action or other proceedings shall be instituted against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order —

(a) the functions and powers of the directors shall cease in respect of the business of or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and

(b) the receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio company and to vote at such meetings, as if that person were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

Discharge of receivership orders

227. (1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved, substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a segregated portfolio of a segregated portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

Remuneration of receiver

228. The remuneration of a receiver and any expenses properly incurred by that person shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the receiver was appointed but not from any other assets of the segregated portfolio company.

Termination and re-instatement

228A.(1) Where a segregated portfolio has no segregated portfolio assets or liabilities of the segregated portfolio company attributable to it, the segregated portfolio company may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) terminate such segregated portfolio.

(2) A segregated portfolio company may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) reinstate a segregated portfolio which has been terminated under subsection (1).

Part 15 – Prohibition on Bearer Shares

Issue of bearer shares prohibited

229. (1) Notwithstanding any provision in this Act to the contrary, a company incorporated under this Act shall not issue bearer shares.

(2) In relation to a company which has been struck off the companies register, subsection (1) applies to that company if the company is reinstated.

(3) An order of the Court shall not permit a company which has been struck off the companies register to be reinstated with bearer shares in issue.

(4) Bearer shares issued prior to the commencement of the *Companies (Amendment) (No. 3) Act, 2020 [Act 60 of 2020]* or issued contrary to subsection (1) shall be void.

Repealed

230. **Repealed** by section 5 of the *Companies (Amendment) (No. 3) Act, 2020 [Act 60 of 2020]*.

Repealed

231. **Repealed** by section 5 of the *Companies (Amendment) (No. 3) Act, 2020 [Act 60 of 2020]*.

Repealed

231A. **Repealed** by section 5 of the *Companies (Amendment) (No. 3) Act, 2020 [Act 60 of 2020]*.

PART 16 - Merger and Consolidation

Definitions in this Part

232. In this Part —

"**consolidated company**" means the new company that results from the consolidation of two or more constituent companies;

"**consolidation**" means the combination of two or more constituent companies into a consolidated company and the vesting of the undertaking, property and liabilities of such companies in the consolidated company;

"**constituent company**" means a company that is participating in a merger or consolidation with one or more other companies;

"**merger**" means the merging of two or more constituent companies and the vesting of their undertaking, property and liabilities in one of such companies as the surviving company;

"**parent company**" means, with respect to another company, a company that holds issued shares that together represent at least ninety per cent of the votes at a general meeting of that other company;

"**subsidiary company**" means, with respect to another company, a company of which that other company is the parent company; and

"**surviving company**" means the sole remaining constituent company into which one or more other constituent companies are merged.

Merger and consolidation

233. (1) Without prejudice to sections 86 and 87, but subject to section 239A, two or more companies limited by shares and incorporated under this Act, may, subject to any express provisions to the contrary in the memorandum and articles of association of any of such companies, merge or consolidate in accordance with subsections (3) to (15).

(2) Nothing in this Part shall derogate from the Authority's powers in relation to any constituent company that is a licensee under the regulatory laws and that proposes to participate in a merger or consolidation, or from a constituent company's obligations under the regulatory laws.

(3) The directors of each constituent company that proposes to participate in a merger or consolidation shall on behalf of the constituent company of which they are directors approve a written plan of merger or consolidation.

(4) The plan referred to in subsection (3) shall give particulars of the following matters —

(a) the name of each constituent company and the name of the surviving or consolidated company;

(b) the registered office of each constituent company;

(c) in respect of each constituent company, the designation and number of each class of shares;

(d) the date on which it is intended that the merger or consolidation is to take effect, if it is intended to take effect in accordance with section 234, and not in accordance with subsection (13);

(e) the terms and conditions of the proposed merger or consolidation, including where applicable, the manner and basis of converting shares in each constituent company into shares in the consolidated or surviving company or into other property as provided in subsection (5);

(f) the rights and restrictions attaching to the shares in the consolidated or surviving company;

(g) in respect of a merger, any proposed amendments to the memorandum of association and articles of association of the surviving company, or if none are proposed, a statement that the memorandum of association and articles of association of the surviving company immediately prior to merger shall be its memorandum of association and articles of association after the merger;

(h) in respect of a consolidation, the proposed new memorandum of association and articles of association of the consolidated company;

(i) any amount or benefit paid or payable to any director of a constituent company, a consolidated company or a surviving company consequent upon the merger or consolidation;

(j) the name and address of any secured creditor of a constituent company and of the nature of the secured interest held; and

(k) the names and addresses of the directors of the surviving or consolidated company.

(5) Some or all of the shares whether of different classes or of the same class in each constituent company may be converted into or exchanged for different types of property (consisting of shares, debt obligations or other securities in the surviving company or consolidated company or any other corporate entity, or money or other property, or a combination thereof) as provided in the plan of merger or consolidation.

(6) A plan of merger or consolidation shall be authorised by each constituent company by way of —

(a) a special resolution of the members of each such constituent company; and

(b) such other authorisation, if any, as may be specified in such constituent company's articles of association.

(7) Notwithstanding subsection (6)(a), if a parent company incorporated under this Act is seeking to merge with one or more of its subsidiary companies incorporated under this Act, a special resolution under that subsection of the members of such constituent companies is not required if a copy of the plan of merger is given to every member of each subsidiary company to be merged unless that member agrees otherwise.

(8) The consent of each holder of a fixed or floating security interest of a constituent company in a proposed merger or consolidation shall be obtained but if such secured creditor does not grant that person's consent then the Court may upon application of the constituent company that has issued the security waive the requirement for such consent upon such terms as to security to be issued by the consolidated or surviving company or otherwise as the Court considers reasonable.

(9) After obtaining any authorisations and consents under subsections (6) and (8), the plan of merger or consolidation shall be signed by a director on behalf of each constituent company and filed with the Registrar together with, in relation to each constituent company —

(a) a certificate of good standing;

(b) a director's declaration that the constituent company is, and the consolidated or surviving company will be, immediately after merger or consolidation, able to pay its debts as they fall due;

(c) a director's declaration that the merger or consolidation is *bona fide* and not intended to defraud unsecured creditors of the constituent companies;

(d) a director's declaration that —

(i) no petition or other similar proceeding has been filed and remains outstanding, and that no order has been made or resolution adopted to wind up the company in any jurisdiction;

(ii) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the constituent company, its affairs, or its property or any part thereof; and

(iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent company are, and continue to be, suspended or restricted;

(e) a director's declaration of the assets and liabilities of the constituent company made up to the latest practicable date before the making of the declaration;

(f) in the case of a constituent company that is not a surviving company, a director's declaration that the constituent company has retired from any fiduciary office held or will do so immediately prior to merger or consolidation;

(g) an undertaking that a copy of the certificate of merger or consolidation under subsection (11) will be given to the members and creditors of the constituent company and that notification of the merger or consolidation will be published in the Gazette; and

(h) a director's declaration, where relevant, that the constituent company has complied with any applicable requirements under the regulatory laws.

(10) A director's declaration under subsection (9) shall be in writing, signed by, and shall include the full name and address of, the director making the declaration.

(11) Upon payment of the applicable fees under this Act and upon the Registrar being satisfied that the requirements of subsection (9) in respect of the merger or consolidation have been complied with and that the name of the consolidated company complies with section 30, the Registrar shall register the plan of merger or consolidation including any new or amended memorandum and articles of association and issue a certificate of merger or consolidation under that person's hand and seal of office, and in the case of a consolidation section 27 shall apply in relation to the consolidated company.

(12) A certificate of merger or consolidation issued by the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

(13) Subject to section 234, a merger or consolidation shall be effective on the date the plan of merger or consolidation is registered by the Registrar.

(14) A person who, being a director, makes a false declaration under subsection (9) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for five years, or both.

(15) In any proceedings for an offence under subsection (14) it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by that person or any person under that person's control.

(16) Any director's declaration pursuant to this section may be given in the form of a declaration or an affidavit, as the director may determine.

Delay of effective date

234. A plan of merger or consolidation may provide that such merger or consolidation shall not become effective until a specified date or until the date of the occurrence of a specified event subsequent to the date on which the plan of merger or consolidation is registered by the Registrar, but such date shall not be a date later than the ninetieth day after the date of such registration.

Termination or amendment

235. (1) A plan of merger or consolidation may contain a provision that at any time prior to the date that the plan becomes effective it may be —

(a) terminated by the directors of any constituent company; or

(b) amended by the directors of the constituent companies to —

(i) change the name of the consolidated company;

(ii) change the effective date of the merger or consolidation, provided that the new effective date complies with section 234; and

(iii) effect any other changes to the plan as the plan may expressly authorise the directors to effect in their discretion.

(2) If the plan of merger or consolidation is terminated or amended after it has been filed with the Registrar but before it has become effective, notice of termination or amendment of the plan shall be filed with the Registrar, and shall have effect on the date of registration by the Registrar after that person has satisfied that person's self in accordance with section 233(11).

(3) A copy of the notice under subsection (2) shall be sent to any person entitled to vote on, consent to or be notified of the plan of merger or consolidation in accordance with section 233.

(4) The notice of termination or amendment filed in accordance with subsection (2) shall identify the plan of merger or consolidation that is to be terminated or amended and shall state that the plan has been terminated or state the amendments made and in the former case, the Registrar shall issue a certificate of termination.

Effect of merger or consolidation

236. (1) As soon as a merger or consolidation becomes effective —

(a) in the case of a consolidation, the new memorandum of association and articles of association filed with the plan of consolidation shall immediately become the memorandum of association and articles of association of the consolidated company;

(b) the rights, the property of every description including choses in action, and the business, undertaking, goodwill, benefits, immunities and privileges of each of the constituent companies, shall immediately vest in the surviving or consolidated company; and

(c) subject to any specific arrangements entered into by the relevant parties, the surviving or consolidated company shall be liable for and subject, in the same manner as the constituent companies, to all mortgages, charges or security interests, and all contracts, obligations, claims, debts, and liabilities of each of the constituent companies.

(2) Where a merger or consolidation occurs —

(a) an existing claim, cause or proceeding, whether civil (including arbitration) or criminal pending at the time of the merger or consolidation by or against a constituent company, shall not be abated or discontinued by the merger or consolidation but shall be continued by or against the surviving or consolidated company; and

(b) a conviction, judgment, ruling, order or claim, due or to become due, against a constituent company, shall not be released or impaired by the merger or consolidation, but shall apply to the surviving or consolidated company instead of to the constituent company.

(3) Upon a merger or consolidation becoming effective, the Registrar shall strike off the register —

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation,

and section 158 shall apply.

(4) The cessation of a constituent company that participates in a consolidation or that is not the surviving company in a merger shall not be a winding up within Part 5.

Merger or consolidation with overseas company

237. (1) Subject to section 239A, one or more companies incorporated under this Act may merge or consolidate with one or more overseas companies in accordance with subsections (2) to (18).

(2) Where the surviving or consolidated company is to be a company existing under this Act, in addition to compliance by each constituent company incorporated under this Act with section 233(3) to (10) the Registrar is required to be satisfied in respect of any constituent overseas company that —

(a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent overseas company and by the laws of the jurisdiction in which the constituent overseas company is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;

(b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent overseas company in the jurisdiction in which the constituent overseas company is existing;

(c) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the constituent overseas company, its affairs or its property or any part thereof;

(d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent overseas company are and continue to be suspended or restricted;

(e) the constituent overseas company is able to pay its debts as they fall due and the merger or consolidation is *bona fide* and not intended to defraud unsecured creditors of the constituent overseas company;

(f) in respect of the transfer of any security interest granted by the constituent overseas company to the surviving or consolidated company —

(i) consent or approval to the transfer has been obtained, released or waived;

(ii) the transfer is permitted by and has been approved in accordance with the constitutional documents of the constituent overseas company; and

(iii) the laws of the jurisdiction of the constituent overseas company with respect to the transfer have been or will be complied with;

(g) the constituent overseas company will, upon the merger or consolidation becoming effective, cease to be incorporated, registered or exist under the laws of the relevant foreign jurisdiction; and

(h) there is no other reason why it would be against the public interest to permit the merger or consolidation.

(3) Subsection (2)(a) to (g) shall be satisfied by filing with the Registrar a declaration of a director of the surviving or consolidated company to the effect

that, having made due enquiry, that person is of the opinion that the requirements of those paragraphs have been met; and —

(a) the declaration shall include a statement of the assets and liabilities of the constituent overseas company made up to the latest practicable date before making the declaration; and

(b) a director of the surviving or consolidated company shall be deemed to have made due enquiry for the purposes of subsection (2)(a) to (g) and this subsection if such director has obtained from a director of the constituent overseas company a declaration that the requirements of subsection 2(a) to (g) have been met with respect to such constituent overseas company.

(4) A person who, being a director, makes a false declaration under subsection (3) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for five years, or both.

(5) In any proceedings for an offence under subsection (4), it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by that person or any person under that person's control.

(6) Where the surviving or consolidated company is to be established under this Act, upon payment of the applicable fees under this Act and upon the Registrar being satisfied that the requirements of subsection (2) in respect of the merger or consolidation have been complied with and that the name of the consolidated company complies with section 30, the Registrar shall register the plan of merger or consolidation including any new or amended memorandum and articles of association and issue a certificate of merger or consolidation under that person's hand and seal of office, and in the case of a consolidation section 27 shall apply in relation to the consolidated company.

(7) Where the surviving or consolidated company is to be an overseas company the Registrar is required to be satisfied, in addition to compliance with section 233(2) to (10) (excluding section 233(9)(g)), by each constituent company incorporated under this Act, that —

(a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent overseas company and by the laws of the jurisdiction in which the constituent overseas company is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;

(b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent overseas company in any jurisdiction;

(c) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the surviving company, its affairs or its property or any part thereof;

(d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the surviving company are suspended or restricted; and

(e) there are no reasons why it would be against the public interest to allow the merger or consolidation.

(8) Subsection (7)(a) to (d) shall be satisfied by filing with the Registrar a declaration of a director of each constituent company incorporated under this Act to the effect that, having made due enquiry, that person is of the opinion that the requirements of those paragraphs have been met; and a director of each constituent company incorporated under this Act shall be deemed to have made due enquiry for the purposes of subsection (7)(a) to (d) and this subsection (8) if such director has obtained from a director of the constituent overseas company a declaration that the requirements of subsection (7)(a) to (d) have been met with respect to such constituent overseas company.

(9) A person who, being a director, makes a false declaration under subsection (8) commits an offence and is liable on conviction to a fine of twenty thousand dollars or to imprisonment for five years, or both.

(10) Where the surviving or consolidated company is to be an overseas company, the surviving or consolidated overseas company shall file with the Registrar —

(a) an undertaking that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under section 238; and

(b) such evidence of the merger or consolidation from the jurisdiction of the surviving or consolidated overseas company as the Registrar considers acceptable, such evidence to include the effective date of the merger or consolidation.

(11) The effect of a merger or consolidation where the surviving or consolidated company is to be an overseas company under this section is the same as in the case of a merger or consolidation under this Part if the surviving or consolidated company is incorporated or established under this Act, and all of the relevant provisions of this Part apply, except insofar as the laws of the jurisdiction of the surviving or consolidated overseas company otherwise provide.

(12) For the purposes of this section —

(a) any references in section 233 to the shares of any constituent company shall be deemed to include references to any other equity interests in such constituent company;

(b) any references in section 233 to memoranda and articles of association shall be deemed to include references to the equivalent organisational documents of an overseas company; and

(c) any reference in section 233 or this section to a director of a company shall be deemed to include a reference to any officer, member or other person (howsoever called) in whom the management of an overseas company is vested.

(13) Where the surviving or consolidated company is to be an overseas company, upon payment of the applicable fees under this Act and upon the Registrar being satisfied that the requirements of subsections (7) and (10) have been complied with the Registrar shall, where the overseas company is the surviving or consolidated company, strike off constituent companies incorporated pursuant to this Act from the register and issue a certificate of strike off by way of merger or consolidation with an overseas company; and section 158 shall apply to the constituent companies so struck off.

(14) A certificate of strike off by way of merger or consolidation with an overseas company issued by the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of such merger or consolidation.

(15) Subject to section 234, a merger or consolidation shall be effective on the date the plan of merger or consolidation is registered by the Registrar.

(16) The issuance of a certificate of merger or consolidation relating to the merger or consolidation of an overseas company registered under Part 9 shall be deemed to constitute notice to the Registrar pursuant to section 192.

(17) Any declaration of a director pursuant to this section may be given in the form of a declaration or an affidavit, as the director may determine.

(18) The Registrar shall submit a copy of the certificate of strike off by way of merger or consolidation issued under subsection (13) to the Authority.

Rights of dissenters

238. (1) A member of a constituent company incorporated under this Act shall be entitled to payment of the fair value of that person's shares upon dissenting from a merger or consolidation.

(2) A member who desires to exercise that person's entitlement under subsection (1) shall give to the constituent company, before the vote on the merger or consolidation, written objection to the action.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for that person's shares if the merger or consolidation is authorised by the vote.

(4) Within twenty days immediately following the date on which the vote of members giving authorisation for the merger or consolidation is made, the constituent company shall give written notice of the authorisation to each member who made a written objection.

(5) A member who elects to dissent shall, within twenty days immediately following the date on which the notice referred to in subsection (4) is given, give to the constituent company a written notice of that person's decision to dissent, stating —

(a) that person's name and address;

(b) the number and classes of shares in respect of which that person dissents; and

(c) a demand for payment of the fair value of that person's shares.

(6) A member who dissents shall do so in respect of all shares that that person holds in the constituent company.

(7) Upon the giving of a notice of dissent under subsection (5), the member to whom the notice relates shall cease to have any of the rights of a member except the right to be paid the fair value of that person's shares and the rights referred to in subsections (12) and (16).

(8) Within seven days immediately following the date of the expiration of the period specified in subsection (5), or within seven days immediately following the date on which the plan of merger or consolidation is filed, whichever is later, the constituent company, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase that person's shares at a specified price that the company determines to be their fair value; and if, within thirty days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for that person's shares, the company shall pay to the member the amount in money forthwith.

(9) If the company and a dissenting member fail, within the period specified in subsection (8), to agree on the price to be paid for the shares owned by the member, within twenty days immediately following the date on which the period expires —

(a) the company shall (and any dissenting member may) file a petition with the Court for a determination of the fair value of the shares of all dissenting members; and

(b) the petition by the company shall be accompanied by a verified list containing the names and addresses of all members who have filed a notice under subsection (5) and with whom agreements as to the fair value of their shares have not been reached by the company.

(10) A copy of any petition filed under subsection (9)(a) shall be served on the other party; and where a dissenting member has so filed, the company shall within ten days after such service file the verified list referred to in subsection (9)(b).

(11) At the hearing of a petition, the Court shall determine the fair value of the shares of such dissenting members as it finds are involved, together with a fair rate of

interest, if any, to be paid by the company upon the amount determined to be the fair value.

(12) Any member whose name appears on the list filed by the company under subsection (9)(b) or (10) and who the Court finds are involved may participate fully in all proceedings until the determination of fair value is reached.

(13) The order of the Court resulting from proceeding on the petition shall be enforceable in such manner as other orders of the Court are enforced, whether the company is incorporated under the laws of the Islands or not.

(14) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances; and upon application of a member, the Court may order all or a portion of the expenses incurred by any member in connection with the proceeding, including reasonable attorneys' fees and the fees and expenses of experts, to be charged *pro rata* against the value of all the shares which are the subject of the proceeding.

(15) Shares acquired by the company pursuant to this section shall be cancelled and, if they are shares of a surviving company, they shall be available for re-issue.

(16) The enforcement by a member of that person's entitlement under this section shall exclude the enforcement by the member of any right to which that person might otherwise be entitled by virtue of that person holding shares, except that this section shall not exclude the right of the member to institute proceedings to obtain relief on the ground that the merger or consolidation is void or unlawful.

Limitation on rights of dissenters

239. (1) No rights under section 238 shall be available in respect of the shares of any class for which an open market exists on a recognised stock exchange or recognised interdealer quotation system at the expiry date of the period allowed for written notice of an election to dissent under section 238(5), but this section shall not apply if the holders thereof are required by the terms of a plan of merger or consolidation pursuant to section 233 or 237 to accept for such shares anything except —

(a) shares of a surviving or consolidated company, or depository receipts in respect thereof;

(b) shares of any other company, or depository receipts in respect thereof, which shares or depository receipts at the effective date of the merger or consolidation, are either listed on a national securities exchange or designated as a national market system security on a recognised interdealer quotation system or held of record by more than two thousand holders;

(c) cash in lieu of fractional shares or fractional depository receipts described in paragraphs (a) and (b); or

(d) any combination of the shares, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in paragraphs (a), (b) and (c).

(2) **Repealed** by section 11 of the *Companies (Amendment) (No. 2) Act, 2018 [Law 46 of 2018]*.

Prohibition on being a segregated portfolio company

239A. No constituent company incorporated under this Act or any consolidated company existing under this Act may be a segregated portfolio company.

PART 17 - International Co-operation

Definitions in this Part

240. In this Part —

"**debtor**" means a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established;

"**foreign bankruptcy proceeding**" includes proceedings for the purpose of reorganising or rehabilitating an insolvent debtor; and

"**foreign representative**" means a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding.

Ancillary orders

241. (1) Upon the application of a foreign representative the Court may make orders ancillary to a foreign bankruptcy proceeding for the purposes of —

(a) recognising the right of a foreign representative to act in the Islands on behalf of or in the name of a debtor;

(b) enjoining the commencement or staying the continuation of legal proceedings against a debtor;

(c) staying the enforcement of any judgment against a debtor;

(d) requiring a person in possession of information relating to the business or affairs of a debtor to be examined by and produce documents to its foreign representative; and

(e) ordering the turnover to a foreign representative of any property belonging to a debtor.

(2) An ancillary order may only be made under subsection (1)(d) against —

(a) the debtor itself; or

(b) a person who was or is a relevant person as defined in section 103(1).

Criteria upon which the Court's discretion shall be exercised

242. (1) In determining whether to make an ancillary order under section 241, the Court shall be guided by matters which will best assure an economic and expeditious administration of the debtor's estate, consistent with —

(a) the just treatment of all holders of claims against or interests in a debtor's estate wherever they may be domiciled;

(b) the protection of claim holders in the Islands against prejudice and inconvenience in the processing of claims in the foreign bankruptcy proceeding;

(c) the prevention of preferential or fraudulent dispositions of property comprised in the debtor's estate;

(d) the distribution of the debtor's estate amongst creditors substantially in accordance with the order prescribed by Part 5;

(e) the recognition and enforcement of security interests created by the debtor;

(f) the non-enforcement of foreign taxes, fines and penalties; and

(g) comity.

(2) In the case of a debtor which is registered under Part 9, the Court shall not make an ancillary order under section 241 without also considering whether it should make a winding up order under Part 5 in respect of its local branch.

Publication of foreign bankruptcy proceedings

243. (1) Where a company incorporated under Part 2 or registered under Part 9 is made the subject of a foreign bankruptcy proceeding, notice of this fact shall be filed with the Registrar and published in the Gazette.

(2) The notice shall contain the prescribed particulars and shall be filed by the company's liquidator or, if no liquidator has been appointed under this Act, by its directors within fourteen days of the date upon which the foreign bankruptcy proceeding commenced.

(3) A liquidator or a director who fails to comply with this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

PART 17A – *REPEALED*

Repealed

244-281. **Repealed** by section 4 of the *Companies (Amendment) Act, 2023 [Act 15 of 2023]*.

PART 17B – *REPEALED*

Repealed

281A-H. **Repealed** by section 4 of the *Companies (Amendment) Act, 2023 [Act 15 of 2023]*.

PART 18 - Miscellaneous

Amendment of schedules

282. The Cabinet may by Order amend Schedule 4 or Schedule 5.

Regulations

283. (1) The Cabinet may make regulations prescribing all matters that are required or permitted under this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, including regulations to prescribe any fees payable under this Act.

(2) Regulations made under this Act may —

(a) make different provision in relation to different cases or circumstances;

(b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases and define a class by reference to any circumstances whatsoever; and

(c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary or expedient for the purposes of the regulations.

(3) Regulations made under this Act may create an offence punishable by a fine not exceeding twenty thousand dollars.

(4) Fees prescribed for the purpose of this Act need bear no relationship to the cost of providing any service.

Validation of payment and collection of fees

284. The payment of fees to, and the charging and collection of fees by, the Registrar without statutory authority for any service provided by the Registrar prior to the commencement of the *Companies (Amendment and Validation) Act, 2024 [Act 11 of 2024]* are —

(a) validated; and

(b) taken to have been lawfully charged by, paid to and collected by the Registrar,

as if the Registrar was empowered under the *Companies Act (2023 Revision)* as amended by the *Companies (Amendment and Validation) Act, 2024 [Act 11 of 2024]* to charge and collect those fees.

Orders or determinations by court not affected

285. *The Companies (Amendment and Validation) Act, 2024 [Act?? of 2024]* does not affect any order or determination made by a court with respect to fees charged by, paid to and collected by the Registrar without statutory authority for any service provided by the Registrar prior to 1st January, 2020, the commencement date of the *Companies (Amendment and Validation) Act, 2024 [Act 11 of 2024]*.

SCHEDULE 1

(section 22(1))

Table A

Regulations for Management of a Company Limited by Shares

Preliminary

1. (1) In these regulations —

"**principal Act**" means the *Companies Act (2025 Revision).*

(2) Where any provision of the principal Act is referred to, the reference is to that provision as modified by any law for the time being in force.

(3) Unless the context otherwise requires, expressions defined in the principal Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise as the company may, from time to time, by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of seventy-five per cent of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall, *mutatis mutandis*, apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate of the company specifying the share or shares held by that person and the amount paid up thereon:

   Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee, if any, not exceeding twenty cents and on such terms, if any, as to evidence and indemnity, as the directors think fit.

Lien

6. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by that person or that person's estate to the company; but the directors may, at any time, declare any share to be wholly or in part exempt from this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

7. The company may sell, in such manner as the directors think fit, any shares in which the company has a lien, but no sale shall be made unless some amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the persons entitled thereto by reason of that person's death or bankruptcy.

8. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and that person shall not be bound to see to the application of the purchase money, nor shall that person's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

9. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

10. The directors may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed twenty-five per cent of the nominal amount of the share, or be payable earlier than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on that person's shares.

11. The joint holders of a share shall be jointly and severally liable to pay calls in respect thereof.

12. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of six per cent per annum from the day appointed for the payment thereof to the time of the actual payment but the directors shall be at liberty to waive payment of that interest wholly or in part.

13. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

14. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

15. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by that person; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares

16. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

17. Shares shall be transferred in the following form, or in any usual or common form approved by the directors —

I, A.B., of in consideration of the sum of $ paid to me by C.D., of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the undertaking

called the Company Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witnessed our hands the day of , 20 .

Witness to the signatures of, etc.

18. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless —

(a) a fee not exceeding fifty cents is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer:

Provided that if the directors refuse to register a transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

19. The legal personal representative of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors, survivor or the legal personal representatives of the deceased survivor, shall be the only person recognised by the company as having any title to the share.

20. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

21. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which that person would be entitled if that person were the registered holder of the share, except that that person shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

22. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on that person requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

23. Such notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

24. If the requirements of such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

25. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

26. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture were payable by that person to the company in respect of the shares, but that person's liability shall cease if and when the company receives payment in full of the nominal amount of the shares.

27. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and that person shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall that person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

28. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

29. The company may, by ordinary resolution, convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

30. The holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances admit; but the directors may, from time to time, fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

31. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing shares, have conferred that privilege or advantage.

32. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

33. The company may, from time to time by ordinary resolution, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

34. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on receipt of an intimation from the person to whom the offer is made that that person declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

35. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

36. The company may, by ordinary resolution —

    (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) sub-divide its existing shares, or any of them, into shares of smaller amounts than is fixed by the memorandum of association, subject nevertheless to section 13 of the principal Act; and

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

37. The company may, by special resolution, reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised and consent required by law.

General Meetings

38. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be resolved by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

39. Such general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

40. The directors may, whenever they think fit, convene an extraordinary general meeting. If, at any time, there are not in the Island sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

41. Subject to section 60 of the principal Act relating to special resolutions, at least seven days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, day and hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter provided, or in such other manner, if any, as may be prescribed by the company in general meetings, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

42. The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

43. All business shall be deemed special that is transacted at any extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, election of directors and other officers in the place of those retiring by rotation, and fixing of the remuneration of the auditors.

44. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

45. If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

46. The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company.

47. If there is no such chairperson, or if at any meeting that person is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall choose one of their number to be chairperson.

48. The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

49. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members together holding not less than fifteen per cent of the paid up capital of the company, and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

50. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

51. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the poll is demanded shall be entitled to a second or casting vote.

52. A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith; a poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs.

Votes of Members

53. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which that person is the holder.

54. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

55. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by that person's committee or other person in the nature of a committee appointed by that court, and any such committee or other person may, on a poll, vote by proxy.

56. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by that person in respect of shares in the company have been paid.

57. On a poll votes may be given either personally or by proxy.

58. The instrument appointing a proxy shall be in writing under the hand of the appointor or that person's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

59. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

60. An instrument appointing a proxy may be in the following form or any other form approved by the directors —

Company Limited

I, , of being a member of the

Company Limited hereby appoint of

as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of , 20 , and at any adjournment thereof.

Signed this day of , 20 .

61. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations Acting by Representatives at Meetings

62. Any corporation which is a member of the company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual member of the company.

Directors

63. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

64. The remuneration of the directors shall, from time to time, be determined by the company in general meeting.

65. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

66. The business of the company shall be managed by the directors, who may pay all expenses incurred in setting up and registering the company and may exercise all such powers of the company as are not, by the principal Act or these articles, required to be exercised by the company in general meeting, subject nevertheless, to any regulation of these articles, to the principal Act and to such regulations, being not inconsistent with the aforesaid regulations or principal Act, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

67. The directors may, from time to time, appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as they may think fit and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but that person's appointment shall be subject to determination *ipso facto* if that person ceases from any cause to be a director, or if the company in general meeting resolves that that person's tenure of the office of managing director or manager be determined.

68. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not, at any time, exceed the issued share capital of the company without the sanction of the company in general meeting.

69. The directors shall cause minutes to be made in books provided for the purpose —

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors; and

(c) of all resolutions and proceedings at all meetings of the company, and of the directors and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign that person's name in a book to be kept for that purpose.

The Seal

70. Any seal of the company shall not be affixed to any instrument except by the authority of a resolution of a board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which any seal of the company is so affixed in their presence.

Disqualification of Directors

71. The office of director shall be vacated, if the director —

(a) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager;

(b) becomes bankrupt;

(c) is found to be or becomes of unsound mind;

(d) resigns that person's office by notice in writing to the company; or

(e) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided however, that a director shall not vacate that person's office by reason of that person being a member of any corporation which has entered into contract with or done any work for the company if that person has declared the nature of that person's interest at the first meeting of the directors of the company held after that person became interested in the contract, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if that person does so vote that person's vote shall not be counted.

Rotation of Directors

72. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

73. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

74. A retiring director shall be eligible for re-election.

75. The company at the general meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill such vacated office.

76. The company may, from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

77. Any casual vacancy occurring in the board of directors may be filled by the directors, but the person so chosen shall be subject to retirement at the same time as if that person had become a director on the day on which the director in whose place that person is appointed was last elected a director.

78. The directors shall have power, at any time and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

79. The company may, by special resolution, remove a director before the expiration of that person's period in office, and may, by an ordinary resolution, appoint another person in that person's stead. The person so appointed shall be subject to retirement at the same time as if that person had become a director on the day on which the director in whose place that person is appointed was last elected a director.

Proceedings of Directors

80. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

81. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

82. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

83. The directors may elect a chairperson of their meetings and determine the period for which that person is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairperson of the meeting.

84. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

85. A committee may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairperson of the meeting.

86. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and, in case of an equality of votes, the chairperson shall have a second or casting vote.

87. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

88. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by directors.

89. The directors may, from time to time, pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

90. No dividends shall be paid otherwise than out of profits.

91. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

92. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies or for equalising dividends or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may, from time to time, think fit.

93. If several persons are registered as joint holders of any share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

94. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at that person's registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

95. No dividend shall bear interest against the company.

Accounts

96. The directors shall cause proper books of account to be kept with respect to —

    (a) all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and

    (b) all sales and purchases of goods by the company and the assets and liabilities of the company.

97. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

98. The directors shall, from time to time, determine whether and to what extent, at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account, book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

99. At the ordinary general meeting in every year the directors shall cause to be prepared and shall lay before the company a profit and loss account and a balance sheet for the period since the preceding account or, (in the case of the first ordinary general meeting) since the commencement of business by the company, made up to a date not more than six months before such meeting.

100. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Audit

101. The accounts relating to the company's affairs shall be audited in such manner as may be determined from time to time by the company in general meeting or, failing any such determination, by the directors.

Notices

102. (1) A notice may be given by the company to any member either personally or by sending it by post to that person to that person's registered address, or (if that person has no registered address in the Islands) to the address, if any, in the Islands supplied by that person to the company for the giving of notices to that person.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

103. If a member has no registered address in the Islands and has not supplied to the company an address in the Islands for the giving of notices to that person, a notice addressed to that person and advertised in a daily newspaper circulating in the Islands shall be deemed to be duly given on that person at noon on the day following the day on which the newspaper is circulated and the advertisement appeared therein.

104. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

105. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid envelope addressed to them by name, by the title of representatives of the deceased or trustee of the bankrupt or by any like description, at the address, if any, within the Islands, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied), by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

106. Notice of every general meeting shall be given in some manner hereinbefore authorised to —

(a) every member except those members who (having no registered address in the Islands) have not supplied to the company an address in the Islands for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for that person's death or bankruptcy, would be entitled to receive notice of the meeting.

No other person shall be entitled to receive notices of general meetings.

SCHEDULE 1A

(section 26(3))

Required Particulars

The required particulars are —

(a) the name of the company and, in the case of an exempted company, the exempted company's dual foreign name (if any) together with its translated name;

(b) the part of the Islands in which the registered office of the company is proposed to be situate;

(c) the amount of capital of the company and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof;

(d) the names and addresses of the subscribers to the memorandum and the number of shares taken by each subscriber;

(e) the date of execution of the memorandum of association;

(f) the date of filing of the memorandum of association;

(g) the number assigned to the company;

(h) in the case of a company limited by guarantee or a company that has no limit placed on the liability of its members —

(i) a statement that the company is limited by guarantee or is unlimited, as the case may be; and

(ii) the omission of any of the particulars specified in this Schedule which are irrelevant or inappropriate;

(i) the nature of the business; and

(j) the date of the end of the company's financial year.

SCHEDULE 2

(section 141)

Categories of Preferred Debts

Category 1: Debts due to employees

1. Any sum due by the company to an employee, whether employed in the Islands or elsewhere, in respect of —

   (a) salaries;

   (b) wages; and

   (c) gratuities,

   accrued due during the four months immediately preceding the commencement of the liquidation.

2. Any sum due and payable by the company on behalf of an employee in respect of medical health insurance premiums or pension fund contributions.

3. Where a contract of employment has been terminated as a consequence of the company going into liquidation, any sum due by the company to any former employee in respect of:

   (a) severance pay; and

   (b) earned vacation leave.

4. Any sum payable to a workman in respect of compensation pursuant to the *Workmen's Compensation Act (1996 Revision).*

5. An employee may claim in the liquidation as an ordinary creditor in respect of any other sum due to that person pursuant to or by virtue of the breach of that person's contract of employment or any tortious claim against the company.

6. The words and expressions used in paragraphs 1 and 2 have the meanings ascribed to them by the *Labour Act (2021 Revision).*

Category 2: Debts due to bank depositors

1. Any sum due to eligible depositors who have deposits with a company which —

   (a) is incorporated in the Islands; and

   (b) held an "A" licence issued under the *Banks and Trust Companies Act (2025 Revision),*

   and which does not exceed the deposit limit.

2. The following depositors are not eligible depositors —

(a) a person who holds or is considered to hold a deposit after the presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank (except in the case of the death of the owner of the deposit); and

(b) the following persons making deposits as —

(i) a person licensed under section 6(1) of the *Banks and Trust Companies Act (2025 Revision)*;

(ii) a person authorised, licensed or recognised as a bank or deposit holder in a country or territory outside the Islands;

(iii) a person who, in the opinion of the Court, has any responsibility for, or may have profited, or may profit, directly or indirectly, from the winding up;

(iv) a person who was, at the date of presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank, a director, controller or manager of the bank or who, in the opinion of the court exercised such functions;

(v) a person who is the legal or beneficial owner of five percent or more of the shares of all classes issued by the bank; or

(vi) a company or corporation, whether or not incorporated in the Islands, which is, at the date of the presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank, a parent, subsidiary or fellow subsidiary of the bank, or which is in common ownership with the bank.

3. The deposit limit is twenty thousand dollars in respect of each eligible depositor or its equivalent in any foreign currency for which purpose the applicable exchange rate shall be that determined by the Court in accordance with section 150.

4. For the purpose of calculating the amount of eligible deposits —

(a) separate deposits in the same legal or beneficial ownership shall be aggregated and treated as one deposit;

(b) the ownership of a deposit in joint names shall be deemed to be divided equally between the joint depositors;

(c) the ownership of a deposit in the name of a partnership shall be deemed to be divided equally among the partners;

(d) a deposit which is a client account, and which is designated as such, shall be treated as a separate deposit, made by the client of the depositor, of amounts corresponding to the amount to which such client is entitled; and

(e) the amount of each eligible deposit shall be reduced by the amount of any liability of the depositor to the bank in respect of which a right of set-off

existed at the date of the presentation of the petition for the winding up of the bank, or the commencement of the voluntary winding up of the bank.

Category 3: Taxes due to the Government

1. Sums due in respect of duty and penalties payable under the *Customs and Border Control Act (2024 Revision).*
2. Sums due in respect of fees payable under this Act.
3. Sums due in respect of duty and penalties payable under the *Stamp Duty Act (2019 Revision).*
4. Sums due in respect of licence fees payable under the regulatory laws.
5. Sums due in respect of taxes payable under the *Tourist Accommodation (Taxation) Act (2013 Revision).*

SCHEDULE 3

Powers of Liquidators

(section 110)

PART 1

Powers exercisable with sanction

1. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.
2. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.
3. Power to dispose of any property of the company to a person who is or was related to the company.
4. Power to pay any class of creditors in full.
5. Power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.
6. Power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.
7. Power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.
8. The power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
9. The power to raise or borrow money and grant securities therefor over the property of the company.
10. The power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
11. The power to engage attorneys and other professionally qualified persons to assist that person in the performance of that person's functions.

PART 2

Powers exercisable without sanction

1. The power to take possession of, collect and get in the property of the company and for that purpose to take all such proceedings as that person considers necessary.
2. The power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company seal.
3. The power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against that person's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors.
4. The power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with the respect of the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.
5. The power to promote a scheme of arrangement pursuant to section 86.
6. The power to convene meetings of creditors and contributories.
7. The power to do all other things incidental to the exercise of that person's powers.

SCHEDULE 4

(section 40B)

APPROVED STOCK EXCHANGES

The following are approved stock exchanges —

1. Amman Stock Exchange
2. Athens Stock Exchange
3. Australian Securities Exchange
4. B3 S.A.
5. BATS Global Markets
6. Bermuda Stock Exchange
7. BOAG Borsen AG
8. Bolsa de Barcelona
9. Bolsa de Bilbao
10. Bolsa de Madrid
11. Bolsa de Valencia
12. Bolsa de Comercio de Buenos Aires
13. Bolsa de Comercio de Santiago
14. Bolsa de Valores de Caracas
15. Bolsa de Valores de Lima
16. Bolsa de Valores de Colombia
17. Bolsa Mexicana de Valores (Mexican Stock Exchange)
18. Bolsas y Mercados Espanoles
19. Borsa Istanbul
20. Borsa Italiana
21. Borse Berlin
22. Borse Frankfurt
23. Borse Munchen
24. Borse Stuttgart
25. BSE Limited
26. Bucharest Stock Exchange
27. Budapest Stock Exchange

28. Bursa Malaysia (including the Main Market and the ACE Market)
29. Chicago Board Options Exchange
30. CME Group
31. Colombo Stock Exchange
32. Cyprus Stock Exchange
33. Deutsche Borse
34. Dusseldorf Stock Exchange
35. Eurex
36. Euronext Brussels
37. Euronext Dublin
38. Euronext Lisbon
39. Euronext NV
40. Euronext Oslo Bor
41. Euronext Paris
42. Fukuoka Stock Exchange
43. Hong Kong Exchange and Clearing (HKEX) (including Growth Enterprise Market (GEM))
44. Indonesia Stock Exchange
45. Intercontinental Exchange
46. International Securities Exchange
47. Johannesburg Stock Exchange
48. Korea Exchange (including KOSPI and KOSDAQ Market Divisions)
49. London Stock Exchange (including AIM)
50. Luxembourg Stock Exchange
51. Malta Stock Exchange
52. Montreal Exchange
53. Nagoya Stock Exchange
54. Nasdaq
55. Nasdaq Copenhagen (formerly known as Copenhagen Stock Exchange)
56. Nasdaq Dubai
57. Nasdaq Helsinki
58. Nasdaq Iceland
59. Nasdaq OMX Nordic

60. Nasdaq PHLX
61. Nasdaq Riga
62. Nasdaq Stockholm
63. Nasdaq Tallinn
64. Nasdaq Vilnius
65. National Stock Exchange of Australia
66. National Stock Exchange of India
67. New York Stock Exchange (NYSE)
68. New Zealand Stock Exchange
69. NYSE American
70. NYSE Arca
71. NYSE Chicago
72. NYSE Euronext
73. Osaka Exchange
74. Philippine Stock Exchange
75. Prague Stock Exchange
76. Saudi Exchange (Tadawul)
77. Shanghai Stock Exchange
78. Shenzhen Stock Exchange
79. Singapore Exchange (including Catalist)
80. SIX Swiss Exchange
81. Stock Exchange of Mauritius
82. Taipei Exchange
83. Taiwan Stock Exchange
84. The Egyptian Exchange
85. The Stock Exchange of Thailand
86. Tokyo Stock Exchange
87. Toronto Stock Exchange (including TSX Venture Exchange)
88. Warsaw Stock Exchange
89. Wiener Borse AG (Vienna Stock Exchange)
90. Any stock exchange that the Registrar may from time to time designate as an approved stock exchange by way of notice published in the *Gazette*.

SCHEDULE 5

FEES

(sections 26(3A), 26(4), 41(2), 45(2), 55A(2), 80A, 80B, 169(1), 184(2), 199(1), 213(4) and 213(5))

PART 1

(section 26(4))

The fees payable upon the filing of a memorandum of association under section 26 are as follows —

(a) in respect of a non-resident company —

(i) with no registered capital, or a registered capital not exceeding $42,000, a fee of $675; and

(ii) with a registered capital exceeding $42,000, a fee of $915;

(b) in respect of an exempted company except a special economic zone company —

(i) with no registered capital, or a registered capital not exceeding $42,000, a fee of $700;

(ii) with a registered capital exceeding $42,000, but not exceeding $820,000 a fee of $1,000;

(iii) with a registered capital exceeding $820,000 but not exceeding $1,640,000, a fee of $1,984; and

(iv) with a registered capital exceeding $1,640,000, a fee of $2,568;

(ba) in respect of a special economic zone company a fee equal to the lowest band of the fee payable upon filing of a memorandum of articles of association by an exempted company as set out in paragraph (b)(i); and

(c) in respect of any other company —

(i) with no registered capital or a registered capital not exceeding $42,000, a fee of $300; and

(ii) with a registered capital exceeding $42,000, a fee of $500.

PART 1A

(Section 26(3A))

The fee payable for the inspection of the register under section 26(3A) is $50.

PART 1B

(Section 29A)

The fee payable for an application to reserve a specified name under section 29A is as follows —

(a) in respect of an application for a name reservation for one week, $40;

(b) in respect of an application for a name reservation for one month, $60;

(c) in respect of an application for a name reservation for two months, $80; and

(d) in respect of an application for a name reservation for three months, $120; and

(e) in respect of an application for a name reservation for four months, $160.

PART 2

(section 41(2))

The fees payable by a company, other than an exempted company, in January of each year after the year of its registration, to the Registrar under section 41(2) are as follows —

(a) in the case of a non-resident company —

(i) with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $900; and

(ii) with a registered capital exceeding $42,000, an annual fee of $1,140; and

(b) in the case of any other company —

(i) with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $300; and

(ii) with a registered capital exceeding $42,000, an annual fee of $500.

PART 3

(section 45(1))

The fees payable under section 45(2) on an increase of capital shall be in the case of —

(a) an exempted company which has a capital divided into shares, $500;

(b) an exempted company which has not a capital divided into shares, $500;

(c) a company other than an exempted company which has a capital divided into shares, $500; and

(d) a company which has not a capital divided into shares, $500.

PART 3A

(sections 80A and 80B)

1. The non-refundable application fee payable under section 80A is $300.

2. The fee payable under section 80B on filing a change to —

(a) the objects or activities of a company;

(b) the address of the registered office or the location of a company; or

(c) the information to be submitted to the Registrar pursuant to section 80B(f), is $25.

PART 4

(section 169(1))

1. The annual fee payable by an exempted company except a special economic zone company, in January of each year after the year of its registration, to the revenues of the Islands under section 169(1) is as follows —

(a) in the case of an exempted company with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $925;

(b) in the case of an exempted company with a registered capital exceeding $42,000 but not exceeding $820,000, an annual fee of $1,225;

(c) in the case of an exempted company with a registered capital exceeding $820,000 but not exceeding $1,640,000, an annual fee of $2,209; and

(d) in the case of an exempted company with a registered capital exceeding $1,640,000, an annual fee of $2,793.

2. The annual fee payable by a special economic zone company, in the January of each year of its registration to the revenues of the Islands under section 169(1) is a fee equal to the lowest band of the annual fee by an exempted company as set out in paragraph 1(a).

PART 5

(section 184(2))

1. The fee payable by a foreign company under section 184(1) is $1,500.

2. The annual fee payable by a foreign company under section 184(2) is $1,650.

PART 6

(section 199(1))

The fee payable under section 199(1) wherever this Act provides for or requires the filing of any document, notice or return with the Registrar or the issue of any certificate or the Registrar provides a copy of any document in respect of which no fee is elsewhere specifically provided is as follows —

(a)	filing any resolution, notice, return or any other document;	$100
(b)	issuing any certificate;	$150
(c)	providing a copy of any document (per folio of 72 words);	$150
(d)	general search fee;	$30
(e)	where —	
	(i) filing a plan of merger or consolidation per constituent entity;	$1,000
	(ii) the surviving or consolidated company is a foreign company, each constituent company other than the surviving company pays a fee equal to three times the annual fee that would have been payable pursuant to section 169 in the January immediatelypreceding the filing of the plan of merger or consolidation by an exempt company having the same registered capital as the constituent company on the date of filing of the plan of merger or consolidation;	
(f)	filing an application in respect of a dual foreign name.	$200
(g)	any filing in respect of a liquidation	$200

PART 6A

(section 55A(2))

1. The fee payable under section 55A(2) for each inspection of the list of the current directors of a company, and where applicable, the current alternate directors of a company is $50.

PART 7

(section 213(4) and (5))

1. The fee payable under section 213(4) to accompany an application under section 213(1) is $500.

2. The fees payable by a segregated portfolio company under section 213(5) are —

   (a) an additional fee of $2,000; and

   (b) an additional annual fee of $400 in respect of each segregated portfolio up to a maximum of $6,000.

Note as to savings and transitional provisions:

Section 8 of the Companies (Amendment) Act, 2007 [Law 15 of 2007] hereinafter called "the 2007 Act" provides that —

1. All proceedings in respect of offences committed or alleged to have been committed against any enactment repealed by the 2007 Act may be commenced or continued as if the 2007 Act had not come into force.

2. Every proceeding commenced under such a repealed enactment may be continued and completed —

   (a) if the proceeding has been wholly or partly heard, as if the enactments repealed by the 2007 Act were still in force; and

   (b) in other cases, as if the proceeding had been commenced under the 2007 Act.

3. Where, apart from this section, anything done under or for the purposes of the Law before the coming into force of the 2007 Act would cease to have effect by virtue of the repeal of any enactment in force before the coming into force of the 2007 Act it shall have effect as if it had been done under and for the purposes of the corresponding provisions of the 2007 Act.

PART 8

(section 199(A))

Item Number	Description of administrative service	Fee
1.	Refund processing fee	$50
2.	Pre-clearance applications for mergers or consolidations under section 233	$400
3.	Fee for each application for correction of errors in documents filed with the Registrar under the Act	$125
4.	Customised certificate requested by a company	$500

Item Number	Description of administrative service	Fee
5.	Customised letter requested by a company	$500
6.	Certification	$150

PART 9

(section 200)

Item Number	Description of administrative service	Fee
1.	Application for registration under section 26, 184 or 201	$500
2.	Application for re-registration under section 178, 182A, 210 or 214	$500
3.	Application for the registration of a change of name under section 31	$150
4.	Deregistration in accordance with section 181(1)(b) or (c) or 182C(1)(b)	$500
5.	Application for deregistration under section 206	$500
6.	Application for a merger or consolidation under section 233 or 237	$500
7.	Application for any other certificate which the Registrar is authorised to provide under this Act	$150
8.	Filing of any document (other than the filing of any document made as part of an application)	$150
9.	Certification	$150
10.	Issuing or making a copy	$150
11.	Customised certificate requested by a company	$150
12.	Customised letter requested by a company	$150

Publication in consolidated and revised form authorised by the Cabinet this 21st day of January, 2025.

Kim Bullings
Clerk of the Cabinet

ENDNOTES

Table of Legislation history:

SL #	Act/Law #	Legislation	Commencement	Gazette
50/2024		Companies (Amendment and Validation) Act, 2024 (Commencement) Order, 2024	19-Dec-2024	LG47/2024/s16
	11/2024	Companies (Amendment and Validation) Act, 2024	1-Jan-2025	LG47/2024/s2
37/2024		Companies (Amendment of Schedule 5) Order, 2024	1-Jan-2025	LG36/2024/s1
17/2024		Companies (Amendment) Act, 2023 (Commencement) Order, 2024	31-Jul-2024	LG26/2024/s2
	15/2023	Companies (Amendment) Act, 2023	31-Jul-2024	LG41/2023/s3
27/2023		Companies (Amendment of Schedule 5) Order, 2023	1-Jan-2024	LG38/2023/s1
16/2023		Companies (Amendment of Schedule 4) Order, 2023	19-Jul-2023	LG20/2023/s1
		Companies Act (2023 Revision)	12-Jan-2023	LG1/2023/S1
28/2022		Companies (Amendment) Act, 2021 (Commencement) Order, 2022	29-Jul-2022	LG27/2022/s1
19/2022		Companies (Amendment of Section 254) Regulations, 2022	10-Jun-2022	LG21/2022/s1
	6/2021	Companies (Amendment) Act, 2021	31-Aug-2022	LG72/2021/s3
		Companies Act (2022 Revision)	14-Jan-2022	LG2/2022/s5
9/2021		Companies (Amendment) (No. 3) Act, 2020 (Commencement) Order, 2021	20-Jan-2021	LG5/2021/s6
	60/2020	Companies (Amendment) (No. 3) Act, 2020	1-Mar-2021	LG1/2021/s4
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
		Companies Act (2021 Revision)	12-Jan-2021	LG4/2021/s8
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
115/2020		Companies (Amendment) (No. 2) Law, 2020 (Commencement) (No. 2) Order, 2020	20-Aug-2020	LG60/2020/s2
78/2020		Companies (Amendment) (No. 2) Law, 2020 (Commencement) Order, 2020	9-Jun-2020	LG44/2020/s1
	19/2020	Companies (Amendment) (No. 2) Law, 2020	1-Oct-2020	LG39/2020/s3
27/2020		Companies (Amendment) Law, 2020 (Commencement) (No. 2) Order, 2020	27-Mar-2020	LG22/2020/s1
11/2020		Companies (Amendment) Law, 2020 (Commencement) Order, 2020	18-Feb-2020	LG11/2020/s1
	4/2020	Companies (Amendment) Law, 2020	15-May-2020	LG10/2020s1
		Companies Law (2020 Revision)	9-Jan-2020	LG4/2020/s8
34/2019		Companies (Amendment) Law, 2019 (Commencement of	19-Sep-2019	LG34/2019/s1

SL #	Act/Law #	Legislation	Commencement	Gazette
		Section 5) Order, 2019		
	10/2019	Companies (Amendment) Law, 2019	19-Sep-2019	LG28/2019/s1
	46/2018	Companies (Amendment) (No. 2) Law, 2018	1-Jan-2019	GE98/2018/s3
6/2019		Companies (Amendment) Law, 2017 (Commencement) Order, 2019	1-Feb-2019	GE9/2019/s2
	37/2018	Companies (Amendment) Law, 2018	1-Mar-2019	GE97/2018/s12
62/2017		Schedule 4 of the Companies Law Departmental Notice, 2017	26-Jul-2017	GE61/2017/p3
62/2015		Schedule 4 of the Companies Law Departmental Notice, 2015	13-Feb-2015	GE12/2015/p28
		Companies Law (2018 Revision)	16-Mar-2018	GE22/2018 s6
94/2017		Companies (Amendment) (No.2) Law, 2017 (Commencement) Order, 2017	13-Dec-2017	GE105/2017/s1
	42/2017	Companies (Amendment) (No. 2) Law, 2017	13-Dec-2017	GE100/2017/s2
21/2017		Companies (Amendment) Law, 2017 (Commencement) Order, 2017	21-Apr-2017	GE34/2017s2
	2/2017	Companies (Amendment) Law, 2017	1-Jul-2017	GE31/2017/s1
		Companies Law (2016 Revision)	2-Sep-16	GE68/2016/s5
E5/2013		*ERRATUM*: Companies Law (2016 Revision)		GE93/2013/p42
	3/2016	Companies (Amendment) Law, 2016	13-May-2016	GE36/2016/s1
43/2015		Companies (Amendment) Law, 2015 (Commencement) Order, 2015	21-Oct-2015	GR82/2015/s1
	14/2015	Companies (Amendment) Law, 2015	2-Nov-2015	GE73/2015/s1
		Companies Law (2013 Revision)	11-Oct-2013	GE82/2013/s6
	6/2013	Companies (Amendment) (No. 2) Law, 2013	6-May-2013	G9/2013/s2
	1/2013	Companies (Amendment) Law, 2013	10-Jan-2013	GE8/2013/s1
	29/2012	Companies (Amendment) (No. 3) Law, 2012	11-Dec-2012	GE123/2012/s4
	14/2012	Companies (Amendment) (No.2) Law, 2012	5-Oct-2012	GE94/2012/s1
	6/2012	Companies (Amendment) Law, 2012	10-Jan-2013	GE4/2013/s6
3/2012		Companies (Amendment of Schedule) Order, 2011	31-Jan-2012	GE10/2012/s2
		Companies Law (2012 Revision)	8-Oct-2012	G21/2012/s4
	29/2011	Companies (Amendment) (No.2) Law, 2011	12-Dec-2011	GE108/2011/s2
		Companies Law (2011 Revision)	24-Oct-2011	G21/2011/s4
	16/2011	Companies (Amendment) Law, 2011	27-Apr-2011	GE/32/2011/s3
	37/2010	Companies (Amendment) Law, 2010	28-Sep-2010	GE59/2010/s1
		Companies Law (2010 Revision)	19-Jul-2010	G15/2010/s1
	33/2009	Companies (Amendment) (No.2) Law, 2009	1-Jan-2010	GE91/2009/s4

SL #	Act/Law #	Legislation	Commencement	Gazette
		Companies Law (2009 Revision)	31-Aug-2009	G18/2009/s2
	12/2009	Companies (Amendment) Law, 2009	11-May20-2009	G10/2009/s4
5/2009		Companies (Amendment) Law, 2007 (Commencement) Order, 2009	22-Jan-2009	GE5/2009/s1
	15/2007	Companies (Amendment) Law, 2007	1-Mar-2009	G23/2007/s4
		Companies Law (2007 Revision)	9-Jul-2007	G14/2007/s6
	13/2006	Companies (Amendment) Law, 2006	1-Jul-2006	GE14/2006/s5
		Companies Law (2004 Revision)	26-Jul-2004	G15/2007/s4
	28/2003	Companies (Amendment) (Disposition of Property) Law, 2003	27-Jun-2004	G2/2004/s6
	26/2002	Companies (Amendment) (No.2) Law, 2002	3-Feb-2002	GE2/2002/s6
	22/2002	Companies (Amendment) Law, 2002	28-Jan-2003	GE/2003/s2
	46/2001	Companies (Amendment) (Segregated Portfolio Companies) Law, 2001	19-Mar-2002	GE13/2002/s3
		Companies Law (2002 Revision)	2-Jul-2002	GE13/2002/s1
	29/2001	Companies (Amendment) Law, 2001	12-Dec-2001	GE30/2001/s7
	10/2001	Companies (Amendment) (Fees) Law, 2001	1-Jun-2001	GE11/2001/s14
		Companies Law (2001 Second Revision)	30-Apr-2001	GE8/2001/s2
	5/2001	Companies (Amendment) (Control of Bearer Shares) Law, 2001	26-Apr-2001	GE7/2001/s5
		Companies Law (2001 Revision)	26-Mar-2001	G7/2001/s2
	7/2000	Electronic Transactions Law, 2000 (part)	11-Sep-2000	G19/2000/s2
		Companies Law (2000 Revision)	8-May-2000	G10/2000/s1
	5/1999	Companies (Amendment) (Euro) Law, 1999	7-Jun-1999	G12/1999/s3
	20/1998	Finance Law, 1998 (part)	16-Nov-1998	G7/1999/s10
		Companies Law (1998 Revision)	3-Aug-1998	G16/1998/s2
	6/1998	Companies (Amendment) (Segregated Portfolio Companies) Law	11-May-1998	G10/1998/s4
	4/1998	Companies (Amendment) (Exempted Companies) Law, 1998	14-Apr-1998	G8/1998/s4
	26/1997	Companies (Amendment) (Protection of Depositors) Law, 1997	10-Mar-1998	G16/1998/s16
	14/1996	Companies Law (1995 Revision) (Amendment) (Authorised Signatures) Law	25-Nov-1996	G25/1996/s4
		Companies Law (1995 Revision)	21-Aug-1995	G17/1995/s1
	8/1994	Companies (Amendment) (No.2) Law, 1994	15-Nov-1994	G23/1994/s4
	2/1994	Companies (Amendment) Law, 1994	28-Mar-1994	GE/1994/s2
	33/1993	Companies (Amendment) (No.3) Law, 1993	14-Dec-1993	GE/1993/s10

SL #	Act/Law #	Legislation	Commencement	Gazette
	23/1993	Companies (Amendment) (No.2) Law, 1993	13-Dec-1993	GE25/1993/s2
	3/1993	Companies (Amendment) Law, 1993	18-May-1993	GE10/1993/s7
	11/1992	Companies (Amendment) Law, 1992	2-Sep-1992	GE/1992/s1
	23/1991	The Fees (Miscellaneous Amendment) Law, 1991 (part)	15-Jan-1992	GE/1991/s1
	3/1991	Companies (Amendment) Law, 1991	6-May-1991	G9/1991/s6
	10/1990	Companies (Amendment) Law, 1990	21-Sep-1990	GE/1990/s3
	14/1989	Companies (Amendment) Law, 1989	20-Nov-1989	G24/1989/s8
	14/1988	Companies (Amendment) Law, 1988	13-Mar-1989	G6/1988/s4
	24/1987	Companies (Amendment) Law, 1987	18-Jan-1988	G2/1988/s1
	38/1985	Companies (Amendment) (No.2) Law, 1985	6-Jan-1986	G1/1986/s6
	15/1985	Companies (Amendment) Law, 1985	30-Sep-1985	G14/1985/s7
	22/1984	Companies (Amendment) (No.2) Law, 1984	29-Oct-1984	G22/1984/s5
	2/1984	Companies (Amendment) Law, 1984	30-Apr-1984	G9/1984/s7
	34/1983	Companies (Amendment) Law, 1983	1-Jan-1984	G9/1984/s11
	21/1981	Companies (Amendment) Law, 1981	1-Jan-1982	G23/1981/s3
	6/1980	Companies (Amendment) Law, 1980	19-May-1980	G10/1980/s6
	16/1978	Companies (Amendment) Law, 1978	25-Sep-1978	G20/1987/s1
	19/1977	Companies (Amendment) Law, 1977	21-Nov-1977	G24/1977/s2
	25/1975	Companies (Amendment) Law, 1975	1-Jan-1976	G26/1975/s11
	24/1974	Companies (Amendment) Law, 1974	1-Jan-1975	G1/1975/s6
	7/1973	Companies (Amendment) Law, 1973	2-Aug-1973	GN128/1973
	1/1971	Companies (Amendment) Law, 1970	8-Jan-1971	GN 2 of 1971
	9/1966	Companies (Amendment) Law, 1966	1-Aug-1966	GN 79 of 1996
	Cap 22	Companies Law	1-Jan-1964	Laws of the CI (Vol I – p.283)

(Price: $39.20)

EXHIBIT D

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 22 OF 2024 (IKJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2021 REVISION)

AND IN THE MATTER OF ONE THOUSAND & ONE VOICES AFRICA FUND I, L.P. (IN VOLUNTARY LIQUIDATION)

BETWEEN:

AFRICA INVESTMENTS, LLC

Petitioner

-and-

ONE THOUSAND & ONE VOICES AFRICA FUND I INVESTORS, LTD., AS GENERAL PARTNER FOR AND ON BEHALF OF ONE THOUSAND & ONE VOICES AFRICA FUND I INVESTORS, L.P., AS GENERAL PARTNER FOR AND ON BEHALF OF ONE THOUSAND & ONE VOICES AFRICA FUND I, L.P. (IN VOLUNTARY LIQUIDATION)

Respondent

IN COURT

Before: The Hon. Justice Kawaley

Appearances:

Mr David Allison KC of Counsel with Mr Rupert Bell, Ms Siobhan Sheridan and Mr Sam Hall of Walkers (Cayman) LLP, for the Petitioner

Mr Phillip Marshall KC of Counsel with Mr Ben Hobden and Ms Rhiannon Zanetic of Harneys (Cayman) LLP, for the Respondent

Heard: 11 April 2024 and on the papers

Date of decision: 2 May 2024

Draft Reasons circulated: 7 May 2024

Reasons delivered: 9 May 2024

INDEX

Final order appointing voluntary liquidators summarily-abuse of process by respondent between initial inter partes hearing of petition and adjourned hearing-requirements of substantive justice justifying summary determination of part-heard petition-Exempted Limited Partnership Act (2021 Revision), section 36 (13)-Grand Court Rules (2023 Revision), Preamble, paragraphs 1, 4

REASONS FOR DECISION

Introductory

1. Under the terms of the Limited Partnership Agreement relating to One Thousand and One Voices Africa Fund I, L.P. (the "LPA"), the Respondent as General Partner (the "GP") became the Liquidating Agent when the Limited Partnership (the "LP") entered into voluntary liquidation on 27 November 2023. The overwhelming majority of the limited partners requested the GP to appoint independent voluntary liquidators. It declined. Accordingly, the Petition herein dated 25 January 2024 was presented supported by an aggregate of 97% of the economic stakeholders in the LP.

2. It is or ought to be trite law that the GP's role as manager of the LP is broadly analogous to that of the managing shareholder in an investment fund constituted as a limited company. Once a voluntary liquidation commences on a solvent basis, the liquidation process must be conducted having regard to the interests of the limited partners as economic stakeholders. Their reasonable wishes ought ordinarily to be accommodated.

3. It was easy to understand the GP wishing to avoid the Court replacing the GP with independent voluntary liquidators based on positive findings of misconduct on its part. It was impossible to understand why the GP could legitimately insist on remaining in office over the wishes of 97% of

the stakeholders. Had seriously arguable grounds for opposing the Petition on its merits existed, the GP would surely not have occupied the hearing initially designated for the Petition itself with an intellectually teasing, but ultimately meritless, jurisdictional challenge.

4. Be that as it may, perhaps anticipating that the Court might well be inclined to summarily reject the jurisdictional challenge and the merits of the GP's grounds of opposition, at the end of the 11 April 2024 hearing, the GP's Leading Counsel skilfully interwove elements of his client's merits arguments, into his oral jurisdictional submissions. This *hors d'oeuvre* did little to whet my appetite for the main course of the merits submissions. However, I reserved judgment to consider the more intricate jurisdictional question and heard limited argument on the Petitioner's oral application for interim injunctive relief, since it had hoped that a final order would have been made at the end of that hearing. I declined to grant such interim relief at that stage.

5. Having reserved judgment to consider the jurisdiction question, the Petitioner renewed its application for a freezing injunction over the LP's assets on the papers. Despite the GP's protestations that no risk of dissipation existed, I considered that the balance of convenience lay clearly in favour of granting the injunctive relief sought, effectively on an *ex parte* basis, with liberty to the GP to apply to vary or set aside the 15 April 2024 Order (the "Freezing Order"). It was discomfiting that the GP seemed more determined to deploy a litigation strategy, which put off the 'evil day' when the Court would decide the Petition on its merits, than it was to seek to allay the concerns of the economic stakeholders. Moreover, I had recently been given cause to regret declining to grant urgent ex parte relief in reliance upon a respondent's assurances that there was no justifiable risk of dissipation: *Fortunate Drift Limited -v-Canterbury Securities, Ltd.*, FSD 227/2018 (IKJ), Judgment dated 14 September 2023 (unreported).

6. I delivered my jurisdictional ruling on 24 April 2024 (the "Jurisdictional Ruling"). I set out (at paragraphs 29-34) my strong provisional views that, without resolving the allegations of misconduct against the GP, the case for appointing independent voluntary liquidators seemed compelling due to a demonstrable loss of confidence in the GP on the part of 97% of the relevant stakeholders. I suggested a possible compromise (at paragraph 33), but ultimately granted leave to the GP to apply to seek to persuade the Court (either on the papers or orally) that arguable grounds for opposing the Petition still existed.

7. Needless to say that Jurisdictional Ruling was not an invitation to the GP to, in effect, manufacture entirely new grounds for opposing the Petition. Nonetheless, I received the following communication from the GP's attorneys on 1 May 2024 (while I was overseas on annual leave):

> "*We write further to His Lordship's judgment of 24 April and in particular paragraph 36 of the same. We had previously indicated that we believed that our client would seek an oral hearing to demonstrate that the substantive order sought by the Petitioner should not be granted. We hereby confirm that the General Partner does indeed request that such an oral hearing take place and we will liaise with Walkers and the Court as to its listing.*
>
> *Separately, we note that the General Partner has taken steps pursuant to the LPA to remove the Petitioner and issued proceedings in New York seeking declarative relief on a number of issues. This raises the issue of the standing of the Petitioner which will need to be addressed at the substantive oral hearing.*"

8. I did not initially properly consider the implications of this communication and invited counsel to submit dates to avoid for a hearing. The following day, the Petitioner's counsel forwarded a copy of a complaint filed by the GP against the Petitioner in the United States District Court for the Southern District of New York (the "Complaint") and invited the Court to summarily grant the primary relief it sought on the Petition. It was readily apparent that the GP's abuse of the opportunity afforded to it to advance an improbable opposition to the relief sought by the Petitioner had created irrefutable grounds for summarily granting that relief.

9. Accordingly, on 2 May 2024 I made the following summary ruling:

> "***SUMMARY RULING***
>
> *1. In this case, the Petitioner supported by the overwhelming majority of economic stakeholders in an exempted limited partnership in voluntary liquidation, seeks to replace the GP as the Liquidating Agent. The GP, seemingly unable to face the commercial reality of the ordinary legal consequences which flow from the loss of confidence which has obviously occurred, raised a technical jurisdictional challenge to the Petition.*
>
> *2. In rejecting this challenge in a Ruling dated 24 April 2024, I observed:*
>
> *'34. In summary, at this juncture, the likelihood that this Court can find a rational basis for declining to grant the relief sought by the Petitioner seems quite fanciful in all the circumstances of the present case.'*

3. The Petitioner, which had hoped to obtain a final order on the first return date of the Petition, sought interim injunctive relief pending the hearing of the Petition on the merits. On 15 April 2024 I granted that relief on a de facto ex parte basis because, in an unrelated matter, I had recently wrongly assumed that a party contesting an injunction application would not undermine the efficacy of any order that might not be granted. On balance, I was not prepared to give the GP the benefit of the doubt, having regard to my provisional views of the merits of the Petition set out in the Ruling on Jurisdiction and my concerns that the very fact that the Petition was being opposed by the GP was indicative of a detachment from commercial and legal reality.

4. The 15 April 2024 Injunction Order was clearly designed to preserve the status quo pending the final hearing of the Petition. It explicitly mandated the preservation of assets; it implicitly mandated that no other steps be taken to prejudice the Limited Partners' interests pending the determination of the Petition on its merits. On 1 May 2024, the GP's attorneys requested a hearing of the Petition and indicated that the GP had recently:

(a) purportedly removed the Petitioner from the partnership;

(b) now wished to contest the Petitioner's standing on these grounds.

5. The GP has also filed a Complaint in the US District Court (SDNY) seeking to challenge the legality of the Petitioner's attempts in these proceedings to 'remove' the GP. These actions are a flagrant collateral attack on this Court's jurisdictional Ruling and contrary to spirit of the Injunction Order. As the Petitioner's counsel points out, it would alternatively have status as a creditor. In my judgment the GP's conduct provides irrefutable grounds for the Court preventing any further abuse of its processes and summarily granting the Order the Petitioner seeks as of today's date.

6. Fuller reasons can be provided in due course if required.

KAWALEY J, 2 May 2024." (the "Summary Ruling")

10. An Order was sealed later that day appointing Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited as the persons responsible for winding-up the affairs of the LP.

11. On 3 May 2024, the GP's attorneys indicated that they wished to seek leave to appeal and to apply for a stay pending appeal on an urgent basis. I accordingly decided that it was appropriate to give fuller reasons for my decision to make what was obviously a final Order, which could be appealed as of right, without waiting for counsel's request.

12. These are the fuller reasons for my Summary Ruling of 2 May 2024 to make a final Order on the Petitioner's application for the appointment of alternative independent voluntary liquidators in place of the GP, pursuant to section 36 (13) of the Exempted Limited Partnership Act (2021 Revision) (the "Act").

The jurisdictional requirements under section 36 (13) of the Act

13. Section 36 of the Act provides as follows:

> "*(13) Following the commencement of the winding up of an exempted limited partnership its affairs shall be wound up by the general partner or other person appointed pursuant to the partnership agreement unless the court otherwise orders on the application of any partner, creditor or liquidator of the exempted limited partnership pursuant to subsection (3)(g).*"

14. Section 36 (3) (g) provides:

> "*(g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable.*"

15. In the Jurisdictional Ruling, I noted that:

> "*7. In Malaysia Capital Management Berhad-v-ECM Straits Fund I LP et al, FSD 230 of 2022 (RPJ), Judgment dated 20 December 2022 (unreported), Parker J granted the application of a limited partner to appoint liquidators in place of the general partner which had been struck-off the register and was unable to act. The application under section 36 (13) as read with section 36 (3) (g) was unopposed, but the Court clearly had the benefit of careful argument including reference to the general legislative purpose of section 36 based on extracts from Hansard. Justice Parker (at paragraph 36) accepted the following submission as to the legislative purpose of section 36 (13):*

> *'(a) there is a clear need for a mechanism for a voluntary liquidation to be brought under the supervision of the Court in cases where it is discovered that there is a need for independent, qualified Court-appointed liquidators to take control (such as in cases of insolvency, malfeasance, or where it is otherwise more effective or efficient);[…]*"

16. Parker J's cogent analysis obviously applies, beyond the narrow confines of applications to place a voluntary liquidation under this Court's supervision, to any applications arising out of circumstances where alternative liquidators need to be appointed. I rejected the GP's contention that section 36 (13) only applied to fill gaps in the contractually agreed liquidation mechanism.

17. Against that background, under the rubric of setting out my provisional views on how the relevant statutory jurisdiction should be exercised, I stated:

> "*31. Section 36(13) of the Act confers an unfettered discretion on the Court. There are no statutory conditions to satisfy as in the case of applications for a Supervision Order under section131 (b) of the Companies Act, as in Re Asia Private Credit Fund [2020 (1) CILR 134]. The need to evaluate whether the jurisdictional requirements for appointing Official Liquidators have been met do not arise in relation to an application to give effect to the majority stakeholders' wishes as to whom the voluntary liquidators of the ELP should be. The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition to the Petition is maintained) appears to demonstrate the need for a fresh appointment.*"

18. In the course of the hearing, Mr Allison KC submitted that the term "just and equitable" in section 36 (3) (g) of the Act connoted a broad and generous statutory discretion. I agreed. This Court's established practice is to follow its previous decisions unless they are shown to be wrong. The GP's Supplemental Skeleton Argument expressly dealt with the Petitioner's alternative case that if the pleaded misconduct was disputed, this Court could grant the relief sought on a wider basis. The main thrust of those submissions was the proposition that this Court did not have a general supervisory supervision over the LP, thus displacing the general company law principle that the economic stakeholders' wishes as to who should liquidate an investment vehicle are generally given considerable deference.

19. The GP's submissions, and Mr Marshall's admittedly only preliminary oral argument, failed to identify any seriously arguable basis on which the Court could properly prefer the wishes of 3% of the stakeholders, and the incumbent Liquidating Agent against whom unsubstantiated charges of misconduct had been levied, to the views of the 97%. Demonstrating that the Court was not compelled to give effect to the wishes of the majority was not the same as identifying an arguable basis for the Court declining to do so.

20. Accordingly, I was satisfied when I made the Summary Ruling that this Court enjoyed a broad supervisory jurisdiction over the LP after its voluntary liquidation commenced, which could properly be exercised having regard for the best interests of the majority of the limited partners, being the relevant economic stakeholders. Absent countervailing legal policy considerations, the starting assumption in most commercial legal contexts is that it is for the stakeholders, not the Court, to determine where their best commercial interests lie.

21. The winding-up of investment funds constituted by limited companies provides a useful contextual analogy, the force of which Mr Marshall KC vainly sought to minimise at the initial hearing of the Petition. The typical fund company consists of one or more management shareholders and one or more participating shareholders who have no right to participate in the management of the fund company. That longstanding Caymanian corporate approach may well have inspired the substantially similar exempted limited partnership structure whereby limited partners invest and have no power to manage whilst general partners manage. The management shareholder is usually given the right to place the fund into a solvent voluntary liquidation, but it is well recognised that once the normal business of the fund is at an end, the management shareholder's managerial function fades away and the wishes of the real economic stakeholders ordinarily hold sway.

22. In *Re Asia Private Credit Fund* [2020 (1) CILR 134] Field JA held (at paragraph 99):

> "*…the relationship between those holding the management shares in a fund and those holding the participating shares radically changes when the fund is contemplating the cessation of business and a voluntary winding up. The exclusive power conferred on the manager to resolve to wind up the company is conferred not for their benefit but for the benefit of the participating shareholders who, under the articles, have the predominant financial interest in the proposed winding up. Accordingly, the starting assumption should be that where the majority of the participating shareholders nominates a suitable voluntary liquidator, their wishes should be acceded to by the holder of the management or founder shares…*"

23. This principle is not a narrow company law principle but is simply one expression of the wider principle of commercial law, that those who have invested their property in a venture should ordinarily be free to determine where their best interests lie. It will generally apply with equal force in the field of exempted limited partnerships as it does in the company law field. It might well be possible for this general principle to be displaced by express provisions in a limited partnership agreement conferring on the general partner absolute power in the voluntary liquidation phase, but such an improbable commercial bargain was not struck in the LPA in the present case.

24. This general principle may perhaps best be viewed as being derived from the notion of the sanctity of property rights. A similar principle is routinely articulated by courts in the context of approving solvent or insolvent schemes of arrangement. As long as the statutory requirements are met, with a majority in number representing three quarters in value of the relevant stakeholder class approving the proposed arrangement, this Court will follow the same approach taken by other common law courts. As Marcus Smith J put it in *Re Telford Homes Limited* [2019] EWHC 2944 (Ch) (at paragraph 4):

> "*Essentially, a scheme will be sanctioned where the provisions of the applicable statutory regime have been complied with….and the arrangement is such that an intelligent and honest person, a member of the class concerned, acting win respect of his or her interests, might reasonably approve. The court in such circumstances, will accord due respect to the commercial sense of those involved in the scheme and will not seek to second guess unduly the approach of such persons.*"

25. Where the overwhelming majority of the limited partners of an exempted limited partnership seek the appointment of a voluntary liquidator because they have lost confidence in the incumbent contractually agreed liquidator, this Court should likewise ordinarily give "*due respect to the commercial sense of those involved*".

26. Mr Marshall KC rightly argued that this could not properly be the invariable inflexible position. One obvious generic situation in which the views of the majority could properly be disregarded is if they are themselves the target of credible allegations of wrongdoing and are seeking to abuse their ownership powers to evade investigation. The Petitioner's Skeleton Argument provided

another helpful analogy in this regard from the company law sphere, *Fakhry v Pagden* [2021] BCC 46 (David Richards LJ, as he then was, at paragraphs 94-95).

The need for the Summary Ruling

27. In light of the governing legal principles summarised above, the Court was entitled at the first return date of the Petition to be somewhat mystified as to why the GP felt it could possibly be properly open to the Court to refuse to appoint independent voluntary liquidators as requested by 97% of the relevant stakeholders. It was understandable that the GP should wish to oppose the Order sought being granted based on disputed allegations of wrongdoing, but the Petitioner readily accepted that it was willing to forego a time-consuming and expensive investigation. Apart from the improbable (and subsequently rejected) contention that the Court had no jurisdiction to replace the GP as Liquidating Agent under section 36 (13) of the Act as read with the LPA, no coherent principled case seemed to be advanced.

28. It was not disputed that there had been an unusually frequent changing of the auditor guard, although criticisms of the suitability of the incumbent firm were contested. However, the combination of allegations of financial mismanagement and auditors resigning was in my experience a familiar red flag. It was the sort of factor which, together with others, is frequently relied upon to justify appointing provisional liquidators in place of the impugned incumbent management. Nor was it disputed that the SEC was investigating; it was merely contended that no adverse findings had been recorded. This was a second, similar, red flag.

29. Another strand of the GP's defence was that its Mr Jordaan and the Petitioner's Mr Coors had fallen out for reasons unrelated to the complaints set out in the Petition. The GP asserted that Mr Coors was a very wealthy man and had effectively used his status to sway smaller investors into supporting his personal campaign against the GP. The striking feature of this line of this argument was that it tacitly admitted that there was a breakdown in trust and confidence between the key players. It seemed inherently improbable, in fact incredible, to imply that the true position was that there was no objectively valid basis for any concerns about the GP's fitness to manage the liquidation whatsoever. Indeed, it was easy to summarily conclude that the concerns about the recent turnover of auditors and the mere fact that the SEC had initiated an investigation in 2021, which had not very rapidly vindicated the GP, provided an objectively valid basis for concerns on the part of a non-partisan investor.

30. Moreover, the degree of loss of confidence which would justify giving deference to the wishes of the majority for independent professional voluntary liquidators was not as high as would be required to justify replacing independent professional incumbents. The GP was not an independent professional liquidator at all. It had been managing the LP and had now admittedly fallen out with one of the largest investors. The mere fact of this undisputed falling out provided compelling grounds for the relief the Petitioner sought. Even if Mr Coors had had a "hissy fit" over something inconsequential that Mr Jordaan had done and levied exaggerated complaints of misconduct against the GP's principal, it was reasonable for Mr Coors to harbour genuine doubts that the recipient of his ire could be trusted to fairly wind-up the LP's affairs.

31. Although the analogy between an employer and an employee is only relevant in a figurative sense, in my judgment Mr Coors (as the principal of one of the LP's largest investors) was at the winding-up stage entitled to effectively say to the GP, like the demanding 'boss' in '*The Apprentice*' television series: "*You're fired!*"

32. Another strand to Mr Jordaan's evidence in support of the GP's opposition to the Petition was the plausible notion that he had unique contacts with the underlying investment vehicles in various parts of Africa which were important to an effective liquidation process. This seemed inherently credible. In addition, it was impossible to avoid being impressed by the business concept which married wealth creation with social development in an admirable way. However, the appointment of independent liquidators did not mean that Mr Jordaan's continuing involvement in the liquidation process would necessarily be brought to a complete end. It is standard operating practice for professional liquidators to assess how best to extract and/or preserve value from a liquidation process and engagement with former managers frequently occurs. I sought to encourage consideration of such collaboration in the Jurisdictional Ruling (at paragraph 33).

33. The very fact that the GP wished to remain in office over the wishes of the overwhelming majority of the investors was a powerful indicator that he did not apprehend the fundamental characteristics and requirements of a liquidator's representative role. It thus seemed fanciful to anticipate that the Court could ultimately be persuaded to decline to appoint the professional liquidators that 97% of the investors sought to have appointed.

34. By the date of the Jurisdictional Ruling, the following factors strongly supported appointing independent voluntary liquidators:

(a) the Petitioner complained about the LP's financial management based in part on the fact that there had been five different auditors since 2019;

(b) the GP was said to be subject to an ongoing SEC investigation into allegedly fraudulent conduct;

(c) the Petitioner complained that an asset appeared to have been sold to a party connected to the GP between the date of the filing and the hearing of the Petition; and

(d) having rejected the GP's jurisdictional challenge, it was difficult to identify any arguable grounds for the Court to leave the GP in charge of the LP's voluntary liquidation over the objections of 97% of the relevant economic stakeholders who had on any view lost confidence in the incumbent Liquidating Agent.

35. The Freezing Order was designed most narrowly to preserve the LP's assets pending the final determination of the Petition. More broadly, realistically read in conjunction with my subsequent provisional conclusions on 24 April 2024 that the chances of the GP not being replaced seemed "*fanciful*", the Freezing Order was designed to preserve the status quo until the Petition was finally determined. Two reasonable responses were open to the GP following the delivery of the Jurisdictional Ruling:

(a) appealing the Jurisdictional Ruling and seeking a stay or adjournment of the Petition pending appeal; or

(b) accepting the Jurisdictional Ruling and submitting to the Court's jurisdiction on the merits of the Petition. This option necessarily required the GP to persuade the Court that the Petitioner's concerns about its alleged mismanagement were entirely baseless and it could properly be trusted to properly manage the liquidation process.

36. Bizarrely, the GP elected to submit to the jurisdiction of the Court but, rather than seeking to demonstrate its liquidation credentials, elected instead to demonstrate beyond sensible argument that it was manifestly unfit for such office. The GP achieved this surprising 'feat' by confirming to the Court on 1 May 2024 that by way of response to the Jurisdictional Ruling:

(a) it wished to contest the Petition on its merits;

(b) it had recently removed the Petitioner as a Limited Partner and proposed to challenge its standing to prosecute the Petition on these grounds; and

(c) it had also filed the Complaint in New York. Admittedly the Complaint was filed before the GP informed the Court it wished to contest the merits of the Petition.

37. The Petitioner's attorneys, on 1 May 2024, responded to the GP's attorneys' 1 May 2024 email with a robust criticism of these actions, which were characterised as "*outrageous*", and concluded as follows:

> "*In the circumstances, our client respectfully requests that His Lordship put an end to the General Partner's reckless behaviour immediately. We respectfully submit that the situation is urgent and the General Partner is now clearly out of control by taking steps in its own self-interest no matter what the damage to limited partners. We attach a draft Order that we would invite His Lordship to make 'on the papers' that would result in the immediate appointment of the nominated representatives of Alvarez & Marsal to the exclusion of the General Partner. We are available to attend at an urgent hearing if His Lordship is not minded to make the draft Order 'on the papers', or for us to be heard in respect of the terms of the draft Order.*" [Emphasis added]

38. Brief exchanges the next day did not materially change the overall picture. The following course of conduct amounted to an obvious and serious abuse of the process of the Court:

(a) the GP initially opposed the Petition on the grounds the Court had no jurisdiction to remove it from office, and alternatively sought to persuade the Court to give directions for a full contested hearing with oral evidence and cross-examination (Skeleton Argument dated 5 April 2024, 50 + pages);

(b) the GP next opposed the Petition, in response to the Petitioner's modified case, on the grounds that the Court had no jurisdiction to appoint alternative voluntary liquidators (Supplementary Skeleton Argument dated 10 April 2024, 17 pages);

(c) after the Court had resolved the jurisdiction issue against the GP and indicated that it was difficult to identify any meritorious grounds for refusing the relief sought by the Petition, the GP:

(1) purported to remove the Petitioner as a Limited Partner, and

(2) informed the Court that it proposed to contest the standing of the Petitioner to further prosecute the Petition.

39. Without further analysis, it was impossible to believe that a voluntary liquidator, which is the respondent to an application to replace it with independent liquidators because of concerns about the incumbent's probity, could validly deprive the petitioning limited partner of its status as such. More fundamentally, it is a misuse of the processes of the Court for a litigant to manipulate the legal and factual landscape to its advantage in the midst of pending proceedings. Discovering fresh evidence, which either previously existed or is based on the post-litigation conduct of one's opponent is not improper. Creating new grounds for opposing a pending proceeding by taking steps designed to deprive the claimant of standing will generally be an abuse of process.

40. The GP's purported deprivation of the Petitioner's standing to petition, after the Court had already recorded strong provisional views as to the substantive merits of the Petition and invited the GP to consider whether it wished to further oppose the Petition, was manifestly abusive. The proper advancement of the proceedings required the GP to either:

(a) challenge the Jurisdictional Ruling by way of appeal; or

(b) having decided to fully submit to this Court's jurisdiction, to either: (1) advance arguable grounds for opposing the Petition on its merits; or (2) contest the relief to be granted and/or not oppose the Petition any further.

41. The Petitioner's constitutional fair hearing rights guaranteed not only access to the Court, but a fair hearing in a reasonable time. The GP's own fair hearing rights cannot be exercised in a way which undermines a fair trial overall. Manufacturing a new standing ground sought to both deprive the Petitioner of access to this Court and, to the extent that the attempt to do so was bound to fail, would potentially delay the Petitioner's access to substantive justice in a reasonable time by delaying the final adjudication of the Petition. Moreover, these tactical stratagems were being deployed in circumstances where the Court had found a risk of dissipation of assets existed when making the Freezing Order. Had the GP been the respondent to a winding-up petition, the Court could simply

have appointed provisional liquidators in response to obvious concerns that the Freezing Order provided insufficient protection for the LP's assets.

42. The purported removal of the Petitioner as a limited partner was accompanied by the commencement of proceedings in New York, which were inconsistent with the GP's submission to the jurisdiction of this Court. It sought declarations that, *inter alia,* only the New York Court could validly appoint another liquidator. The Complaint, *inter alia*, alleged:

> "*…notwithstanding the parties' clear contractual agreement that any action or proceeding relating in any way to the LPA* ***shall*** *be brought and enforced in this Court or the courts of the State of New York, Defendant Africa Investments filed a petition in the Cayman Islands to surreptitiously circumvent the clear venue provision and, in doing so, strategically avoid the jurisdiction of the American judicial system that the parties agreed was the exclusive judicial forum. As a result of these actions, and other action to the detriment of the Fund, on April 30, 2024, Defendant Africa Investments was removed as a Limited Partner pursuant to the removal provisions of the LPA. Id. at § 11.2. Accordingly, Plaintiffs seek a declaratory judgment as to the rights and obligations of the parties under the LPA related to the dispute between the parties…*"

43. In the Complaint, filed on 30 April 2024, just over a week after the Jurisdictional Ruling, the GP positively asserts that it has removed the Petitioner as a limited partner because it presented the Petition before this Court. It is impossible to see how it could be contended in good faith that the Petition was in breach of an exclusive jurisdiction clause in the LPA. That point did not form part of the GP's jurisdictional challenge before this Court; if it was articulated at all, the point was not pursued in oral argument. This was unsurprising because it flew in the face of the express terms of the Act. Further, this contention was entirely inconsistent with the Jurisdictional Ruling's findings that this Court had a general supervisory jurisdiction over voluntary liquidations of exempted limited partnerships under the Act.

44. The Complaint clearly launched a collateral attack on this Court's 15 April 2024 Order and the Jurisdictional Ruling as it sought to establish that the New York Court had sole jurisdiction to grant the relief this Court had already determined this Court had jurisdiction to grant. This Court's decision was reached following: (1) an *inter partes* hearing in which the GP participated and had not sought leave to appeal; and (2) a hearing in which the GP did not invite the Court to determine the exclusive jurisdiction clause point. This was a further abuse of process, seemingly designed to

provide another basis for postponing the final determination of the Petition, which the Court had already indicated it considered there appeared to be no valid defence to.

45. How did these developments impact on the need to evaluate whether the Court should proceed to list the Petition for further hearing or to summarily grant the primary relief the Petitioner sought? In short, they demonstrated that the GP had effectively abandoned any serious attempt to persuade the Court that the views of 97% of the LP's investors that the GP was unsuitable to continue as Liquidating Agent should be ignored. No reasonable voluntary liquidator, respectful of the commercial interests it was primarily required to uphold and of the rule of law, would behave in such an improper and unreasonable manner.

46. In explaining my provisional views as to why the wishes of the Petitioner and its supporters were likely to be acceded to, I noted:

> "*32. Unfortunately, the opposition to the present Petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best or the desire to forestall independent investigation into suspect dealings at worst.*"

47. The GP's response to these provisional views was not to seek to contest the Petition on its merits by demonstrating that the Court's concerns were misplaced. Instead, it merely fortified the Court's existing concerns about its desperation to cling to power by any means, fair or foul, to a crescendo which called for decisive and summary judicial action. The Preamble to the Grand Court Rules (2023 Revision) confers a positive obligation on this Court to have regard to the overarching goals of ensuring the efficacy of the relevant substantive law and the normal advancement of proceedings in an economical, expeditious and proportionate manner having regard to the need to avoid wasting the Court's finite resources (paragraph 1). Supplementary case management powers include deciding what issues require full examination and which are appropriate for summary determination, together with taking the initiative to make orders of the Court's own motion (paragraph 4). This panoply of procedural powers were deployed in making the Summary Ruling.

48. In brief, the GP by its abuse of this Court's processes surrendered the right to any further opportunity to oppose the obviously meritorious Petition. Postponing the decision to grant the relief sought by the Petitioner would have undermined the substantive legal imperatives to safeguard the majority investors' investment, one of the main purposes of the statutory jurisdiction which I exercised, while causing unjustifiable delay and a wastage of costs.

Conclusion

49. For these reasons, on 2 May 2024 I granted an Order appointing Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited as the persons responsible for winding-up the affairs of the LP, under section 36 (13) of the Act.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT

EXHIBIT DD

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December 11, 2025

VIA EILE & HAND DELIVERY

The Honorable Kathaleen St. J. McCormick
Court of Chancery
Leonard L. Williams Justice Center
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: *ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al.*,
Del. Ch., C.A. No. 2025-0607-KSJM

Dear Chancellor McCormick:

Last evening we submitted, on behalf of Plaintiff ATP III GP, Ltd., a form of order implementing Your Honor's Post-Trial Memorandum Opinion. Dkt. 290. Defendants did the same. Dkt. 289. Prior to the filing, we exchanged proposed forms of order and, other than one issue, were largely in agreement.

The one issue does not arise from any disagreement about this Court's ruling, but about language sought by Defendants to avoid paying the judgment in a manner that will benefit its ultimate beneficiaries -- the portfolio companies for whom capital was called and ATP. Defendants ask this Court to direct payment owed to Plaintiff to an escrow account, which is relief Defendants never sought despite the fact that

they have long known of the precarious financial position created by their failure to fund their obligations. To avoid unnecessary dispute, Plaintiff is agreeable to have the funds be held in a segregated account in Plaintiff's name. Both sides agree that the funds are subject to the oversight and supervision of United States Bankruptcy Court for the District of Delaware.

The distinction between an escrow account and a segregated account may be subtle, but it is important. After receiving and assessing the Court's post-trial opinion—which achieved this action's central goal of providing the portfolio companies runway to survive for the coming months—Plaintiff and two affiliates commenced voluntary chapter 11 reorganization cases to put the Fund and its portfolio companies in a position where they can reorganize and put resources to work continuing to fulfill their mission to research and develop new life-saving therapies and generate value for its investors. The estate in the recently filed cases "is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). All of the rights associated with this Court's rulings, including the specific performance remedy, constitute "property of the estate."

Moreover, upon the commencement of the cases, the automatic stay in 11 U.S.C. § 362(a) went into effect. While this Chancery action is not stayed because it is not an action against a debtor but an action by a debtor, Defendants' efforts to interfere with the Plaintiff's rights to receive the money owed would violate the automatic stay; no doubt this is why they acknowledge the Bankruptcy Court – and only the Bankruptcy Court – is the right court to decide what happens next.

To be clear, Plaintiff does not believe that it has to agree to the segregation of the funds at all because Defendants are not secured creditors of the Plaintiff; Plaintiff merely offered it as an accommodation to ensure that funds to which Plaintiff is entitled can be quickly put into the bankruptcy estate (unless, of course, Defendants intend to ignore this Court's judgment).

Despite forms of order that are largely in agreement except for this important distinction, Defendants devote six pages to complaining about the commencement of the chapter 11 cases. This inappropriate (and legally wrong) diatribe is irrelevant to what the Court should order, which is to order Defendants to pay what they owe to Plaintiff. Defendants appear to know that this digression is irrelevant. In addition to acknowledging that the Bankruptcy Court is the court with jurisdiction to determine what happens to the funds once received, Defendants expressly state that

if they want to seek to dismiss the chapter 11 cases, they will need to take their complaints to the Bankruptcy Court first. Plaintiff will not burden this Court with responses to most of these attacks, and welcomes the opportunity to demonstrate to the Bankruptcy Court that Plaintiff acted appropriately in managing the affairs of the Partnership and that Defendants wrongly withheld critical funds to companies devoted to developing ground-breaking and lifesaving therapies. Having won from this Court a nearly nine-figure judgment against its pre-bankruptcy funding source and armed with findings that firmly support that it is worthwhile to attempt to save these companies, Plaintiff and its affiliates are seeking the protection of chapter 11 and intend to seek to reorganize in a manner that maximizes value for all stakeholders. If Defendants disagree, they are free to make that case in the Bankruptcy Court.

Plaintiff is compelled to respond to one misleading statement made by Defendants relating to the testimony of Mr. Yanchik. Mr. Yanchik's testimony referred to a "liquidation." That is not what the Chapter 11 filing is; it is a reorganization. Defendants know well that a "liquidation" is exactly what Plaintiff and its debtor affiliates are trying to avoid by commencing chapter 11 cases. Mr. Yanchik's testimony is fully consistent with ATP's chapter 11 filing. If, as

Defendants' letter suggests, a "liquidation" damages Defendants' investment, they may want to ask themselves why they are pursuing a liquidation in the Cayman Islands. In any event, that is not an issue this Court needs to resolve, but will be before the Bankruptcy Court.

Plaintiff requests that this Court enter its proposed form of order, which is consistent with the United States Bankruptcy Code, even with our accommodation of holding the funds in a segregated account subject to the Bankruptcy Court's supervision.

Should Your Honor have any questions, counsel are available at the Court's convenience.

Respectfully,

/s/ Michael A. Barlow

Michael A. Barlow (#3928)
Words: 888 / 1,000

SMD/sls
cc: Register in Chancery (Via File & Serve*Xpress*)
Blake Rohrbacher, Esquire (Via File & Serve*Xpress*)
Daniel E. Kaprow, Esquire (Via File & Serve*Xpress*)
Christine J. Chen, Esquire (Via File & Serve*Xpress*)
Zachary R. Greer, Esquire (Via File & Serve*Xpress*)
Benjamin O. Allen, Esquire (Via File & Serve*Xpress*)
Garrett B. Moritz, Esquire (Via File & Serve*Xpress*)
Roger S. Stronach, Esquire (Via File & Serve*Xpress*)
A. Gage Whirley, Esquire (Via File & Serve*Xpress*)

EXHIBIT E

Neutral Citation Number: [2025] CIGC (FSD) 106

Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen and Mr Jordie Fienberg of Campbells LLP for the Petitioner** **Mr Andrew Ayres KC of counsel instructed by Ms Shelley White and Ms Rebecca Moseley of Walkers for ATP III GP, Ltd**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**31 October 2025**
Ex tempore judgment delivered:	**2 November 2025**
Finalised judgment approved:	**6 November 2025**

Exempted limited partnership—winding up on just and equitable basis—application of CWR O.3, r.12(1)(a) or (b) to winding up of exempted limited partnership—whether court can order petition to proceed against partnership or against general partner, with partnership as subject matter

- -

JUDGMENT

- -

1. This is my judgment on a novel point that has arisen in the course of a directions hearing in connection with this just and equitable winding up petition, which concerns an exempted limited partnership formed under the Exempted Limited Partnership Act.

2. The essential background is that the exempted limited partnership in this case operates in the life sciences or biotech space. The Petitioners are limited partners in the partnership and have contributed around 98% of the capital of the partnership. Dr Seth Harrison, a successful life sciences entrepreneur, has driven the research and development of the products and the portfolio companies developing them. He has contributed approximately 2% of the partnership's capital. There are a number of other limited partners who are said to have acquired minor partnership interests in the exempted limited partnership, apparently as employee incentives.

3. The general partner of the partnership, ATP III GP, Ltd, is a limited company owned and controlled or directed by Dr Harrison.

4. In recent months, the relationship between the individuals behind the Petitioners and Dr Harrison has broken down. I do not need to go into the reasons for that for the purposes of this judgment, but they have given rise to three sets of proceedings between the parties in which their disputes are being decided:

   4.1 a contractual dispute being tried in Delaware;

   4.2 a writ action commenced in the Cayman Islands, and seeking declaratory relief regarding the validity, or otherwise, of certain steps taken by the general partner in relation to capital calls; and

   4.3 these winding up proceedings.

5. In the winding up proceedings, the Petitioners seek the winding up of the partnership on the just and equitable basis. They assert that they have lost all confidence in Dr Harrison and the general partner. This is said to be due to:

   5.1 alleged mismanagement, prejudicial conduct, and a lack of probity in the conduct of the partnership's affairs.

   5.2 alleged conflicts of interest affecting the general partner through Dr Harrison's interest in it, and breach of fiduciary duty by the general partner;

   5.3 a loss of substratum in that the general partner is set on continuing to fund non-performing portfolio companies, contrary to the limited partners' legitimate expectation for the operation of the partnership; and

   5.4 a need for an investigation of the partnership's affairs.

6. Dr Harrison, and through him the general partner, strenuously disputes the Petitioners' claims and is determined to contest the allegations that have been made against them.

7. Due to the potential effect of the dispute on the ongoing operation and management of the portfolio companies, this winding up petition and the writ action have both been advanced on a compressed timetable and are due to be tried together in early January 2026, having been filed in early June 2025.

8. The issue that has arisen in the course of the summons for directions concerns how the petition is to be contested. The Petitioners seek an order under CWR O.3, r.12, as modified by section 36(3) of the Exempted Limited Partnership Act, that the petition be treated as an inter partes proceeding between the Petitioners and the general partner. The Petitioners say that that reflects the substance of the dispute.

9. The general partner resists such an order and contends that the petition should continue between the Petitioners and the exempted limited partnership. The importance of this point is the cost consequences that follow under CWR O.24, r.8. Section 36(3) of the Exempted Limited Partnership Act provides that:

> *"(3) Except to the extent that the provisions are not consistent with this Act, and in the event of any inconsistencies, this Act shall prevail, and subject to any express provisions of this Act to the contrary, the provisions of Part V of the Companies Act (2021 Revision) and the Companies Winding Up Rules, 2018 shall apply to the winding up of an exempted limited partnership and for this purpose —*
>
> *(a) references in Part V to a company shall include references to an exempted limited partnership;*
>
> *(b) the limited partners shall be treated as if they were shareholders of a company and references to contributories in Part V shall be construed accordingly, except that the application of the provisions shall not cause a limited partner to be subject to any greater liability than that limited partner would otherwise bear under this Act, but for the application of this paragraph;*
>
> *(c) references in Part V to a director or officer of a company shall include references to the general partner of an exempted limited partnership;"*

10. Part 3 of CWR O.3 concerns petitions presented by contributories, which, by virtue of section 36(3) of the Exempted Limited Partnership Act, is the analogue for the current situation.

11. CWR O.3, r.12 requires that at the hearing of the summons for directions, the court shall give directions as appropriate in respect of certain specified matters, including:

> *"(a) whether or not the company is properly able to participate in the proceeding or should be treated merely as the subject-matter of the proceeding;*
>
> *(b) whether the proceeding should be treated as a proceeding against the company or as an inter partes proceeding between one or more members of the company as petitioners and the other member or members of the company as respondents;"*

12. CWR O.24, r.8(2) states:

> *"(2) In the case of a contributory's winding up petition under Order 3, Part III, the general rules are that —*
>
> *(a) if the Court has directed that the company itself is properly able to participate in the proceeding, the general rule is that the costs of a successful petitioner be paid out of the assets of the company; or*
>
> *(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

13. I interpose here that there is an obvious error in CWR O.24, r.8(2)(b). The wording *"between one or more members of the other members or members of the company as respondents"* makes no grammatical sense. By comparison with CWR O.3, r.12(b) it appears that two errors have crept into the drafting of CWR O.24, r.8(2)(b). The first is that the words *"company as petitioners and the"*

has been omitted after *"between one or more members of the"*. Secondly, an *"s"* has been wrongly added to *"member"* on the second occasion that it is used in subparagraph (b). In my judgment, I should treat CWR O.24, r.8(2)(b), as if it read:

> *"(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the* [company as petitioners and the] *other member*[**s**] *or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

Counsel agreed in the course of argument with this proposition and construction of CWR O.24 r.8(2)(b).

14. To resume my summary of the Rules, CWR O.24, r.8(2) thus determines the prima facie allocation of the costs of defending the petition, as between the petitioner on one side and the company or members of the company other than the petitioner, as appropriate, on the other.

15. The Petitioners in this case argue that this provision also applies to a winding up of an exempted limited partnership. Applying section 36(3)(a) and (b) of the Exempted Limited Partnership Act, they say that *"members of the company"* in the Companies Winding Up Rules becomes *"members of the exempted limited partnership"* and the members of an exempted limited partnership are the limited partners and the general partners together. Thus, the Petitioners say, there is a direct read over without any need to strain the statutory language. The court should therefore make an order on the summons for directions determining that the petition should proceed as a claim between the Petitioners and the general partner, with the exempted limited partnership as the subject matter of the petition.

16. The Petitioners support that approach to the construction of the Companies Winding Up Rules by arguing that the purpose of CWR O.24, r.8(2) is to apply the legal costs principle, namely that a company's money should not be spent on disputes between shareholders.

17. The Petitioners say that that principle applies wherever the real contest is between parties other than the company itself, for example between its members. The Petitioners say that the reason why that principle is engaged in the context of just and equitable winding up proceedings is because, as stated by Segal J in Re Uphold Limited (unreported, 16/02/23), just and equitable proceedings are:

> *"42. […] grounded on a dispute between the shareholder petitioner and those in control of the company where those in control have behaved in a way that is fundamentally inconsistent […]*

> *with the basis on which the shareholder subscribed for or purchased his / her shares so as to justify the termination of the corporate relationship. It is usually the case that those accused of misconduct should pay for the costs of defending the petition"*

18. The Petitioners argue it would be contrary to the legal costs principle for the general partner to use assets of the partnership, which are held overwhelmingly for the benefit of the Petitioners, to defend the petition by which the Petitioners seek to impugn the general partner's own conduct and other fiduciary failings. The Petitioners say this would effectively have the result that the Petitioners would end up funding both the pursuit of the claim and also its defence.

19. The general partner disputes the Petitioners' stance, based on the wording of section 36(3) of the Exempted Limited Partnership Act. The general partner submits that the Petitioners' approach is not permitted by section 36(3) of the Exempted Limited Partnership Act, so that I do not have jurisdiction to make the order sought by the Petitioners. The general partner's argument is as follows.

    19.1 The general partner says that by virtue of section 36(3)(a) and (b), *"company"* is to be read as *"exempted limited partnership"* and *"contributories"*, in other words, shareholders or members, is to be read as *"limited partners"*.

    19.2 The general partner argues that the reference in section 36(3)(c) to the general partner being assimilated to the position of a director of the company means that the general partner is <u>not</u> to be treated as a *"member"* for the purpose of CWR O.3, r.12, and CWR O.24, r.8.

    19.3 The general partner says in paragraph 16 of its skeleton argument:

> *"16. The choices under (a) and (b) are interdependent, and there are only two options: either (i) the Partnership is properly able to participate, and the proceeding should be treated as being against the Partnership; or (ii) the proceedings is an inter partes proceedings between different limited partners, and the Partnership is merely the subject-matter."*

    19.4 The general partner adds that the fact that there is a binary choice is clear from the structure of CWR O.24, r.8 which mirrors and follows the structure of CWR O.3, r.12.

    19.5 Therefore, the general partner argues, the only question that the court needs to ask is whether the proceedings should be treated as being between different limited partners, or as between limited partners and the exempted limited partnership itself.

20. The general partner submits that the Petitioner's construction requires that the meaning of *"members of the company"* in the Company Winding Up Rules sometimes means limited partners and sometimes means all of the partners in the exempted limited partnership, which the general partner submits indicates that the Petitioners' construction must be wrong.

21. The general partner says that Segal J's comments in *Re Uphold* are simply not relevant, as that case concerned the situation of a company, not an exempted limited partnership.

22. In response to the Petitioner's reliance on the legal costs principle, the general partner argues that there is no room for an argument based on principle where the Exempted Limited Partnership Act expressly requires the court to read the Companies Winding Up Rules in a particular way.

23. Relying on a dictum of Segal J in *Re China Shanshui Cement Group Limited* [2021] 1 CILR 253 at paragraph 39, the general partner submits that:

> *"39. A critical question is whether the company can show that it has a real interest independent of its shareholders in defending the petition (does the company have a separate interest to protect?). As Foster, J. said in* Freerider *(ibid., at para. 45), the court must decide whether the company has any independent interest in the dispute."*

In this case, I have to read *"company"* as *"limited partnership"*.

24. Finally, the general partner argues that even if the court has discretion to make an order under CWR O.3, r.12, the court should not exercise that discretion on the facts of this case. The general partner says that the exempted limited partnership has an independent interest in defending itself and continuing to exist because it has assets built up over many years that generate financial benefits for its limited partners, including 14 limited partners other than the Petitioners. Although that must be the case for many partnerships where disputes arise.

25. I agree with the Petitioners that the legal costs principle is an important one. As explained by Harman J in *Re A Company, ex parte Johnson* [1991] BCC 234, which was a case concerning an unfair prejudice petition under section 459 of the English Companies Act of 1985:

> *"The train of authority being well established, it seems to me quite clear that, if it is shown that directors of a company have been causing the company's money to be spent on financing the resistance either to a "pure" section 459 petition or, according to Plowman J in* Re A &BC Chewing Gum *and myself in* Re Hydrosan*, in financing the company's resistance to a member's winding-up petition based on the just and equitable ground, the court should prevent such*

> *expenditure. Such expenditure is a misfeasance, there is no excuse for it in law and it is not a question of an arguable case being raised showing that it might be right to permit misfeasances. Misfeasances are not matters that are permitted by the courts and there is no question of an arguable case at all."*

26. The Petitioners referred me to *Re Cybernaut Growth Fund LP* (unreported, 11/09/13), where the question of making an order under CWR O.3, r.12, and O.24, r.8 in respect of the winding up of an exempted limited partnership was dealt with by consent. Both parties before me accepted that, whilst it thus provides an example of a case where an order was made, the ability of the court to do so was not in issue and was not considered by either of the judges before whom the matter was listed. In my view, it therefore does not advance the argument.

27. In *Re Freerider Ltd* [2009] CILR 604, Foster J at paragraph 42 rejected the submission that what is now CWR O.3, r.12, was *ultra vires* the Insolvency Rules Committee because it was a legislative change or addition to the provisions of Part V of the Companies Act. He concluded that CWR O.3 r.12 is procedural in nature, giving effect to the legal costs principle, which he considered to be well established in law. In particular, he said, at paragraph 20:

> *"20. It is in this overall context that it seems to me the IRC are empowered by s.155(1)(a) of the Companies Law to make rules, in particular to enable the court giving directions to determine in its discretion in the particular circumstances which parties should most appropriately participate in winding-up proceedings brought under the Companies Law. In my view in the light of this, the relevant provisions of O.3, r.11(2)(a) and (b)* [now O.3, r.12(2)(a) and (b)] *are essentially procedural in nature and are directly related also to the provisions which the IRC is empowered to make and has properly made in relation to the costs of petitions. I do not think there can be any doubt that the IRC is empowered to make such costs rules.*
>
> *21. I also consider that it is probable that the members of the IRC were aware, or were made aware, of the English authorities in which the courts there have either restrained a company from active participation or refused a company permission to participate actively in a winding-up petition on the just and equitable basis and/or a petition under s.459 of the Companies Act 1985 and/or to do so at the expense of the company, when the reality is that the proceedings are in essence a dispute between shareholders and not a dispute with the company itself. […] Wickens, V.C. said* [in *Pickering v. Stephenson*] *(L.R. 14 Eq. at 340):*
>
> > *'It seems to me that where a quasi partnership of this sort is divided into a majority and minority who differ on a question of internal administration, and litigation results from the difference, it is contrary to the spirit of the partnership to pay the expense of the litigation out of the general fund; and that this is independent of the question whether the majority is overwhelming or a bare majority.'"*

28. At paragraph 32, Foster J commented that the provisions of CWR O.3 r.12 are a mechanism to enable the court to determine at an early stage whether the legal costs principle is engaged. He said:

> *"32. I would comment in passing that the provisions of O.3, r.11(2)(a) and (b) of the Companies Winding Up Rules may perhaps be seen as a sort of mechanism of the kind referred to by Lindsay, J. in that they will enable determination by the court at any early stage in the proceedings by way of directions of whether or not it is procedurally appropriate and desirable, in the particular circumstances, for the company concerned to participate in the petition proceedings or whether it should be treated simply as the subject-matter."*

29. The Petitioners submit at paragraph 48 of their skeleton argument:

> *"48. In the context of petitions for the just and equitable winding up of an ELP it is often the case that: (i) the dispute is grounded on the general partner's conduct of the partnership's affairs and (ii) the general partner (and the general partner alone) has the ability to access and deploy partnership assets towards funding a defence of the petition. There is no reason for the Legal Costs Principle not to apply in that context to prevent a general partner from deploying partnership assets (i.e. trust assets) towards defending allegations of misconduct against it."*

30. In my view, that understates the position. Given the statutory roles of the general partner and the limited partners, as provided for by the Exempted Limited Partnership Act, namely that the limited partners have no role in the management of the exempt limited partnership and do not owe any duties to the partnership or to the other limited partners; whereas the general partner is responsible for the management of the exempted limited partnership and does owe fiduciary and other duties to the limited partners, it is hard to see how a just and equitable petition would ever involve parties other than one or more limited partners on one side and the general partner, and possibly an intermeddling limited partner, on the other.

31. This points against the general partner's submission that the proper construction of CWR O.3 r.12 is that it is directed at limited partner on limited partner disputes. This is because it is extremely difficult to contemplate circumstances giving rise to a just and equitable petition in which the dispute would arise between the limited partners and would arise in such a way that it does not involve the general partner, given that no duties owed are owed by limited partners to each other and limited partners have no roles in management, and that the general partner is the entity that owes duties to each limited partner and is responsible for management of the partnership.

32. In addition, I consider there is a conceptual flaw in the argument that the petition should proceed as a dispute between limited partners and the exempted limited partnership. This is because an exempted limited partnership does not have any separate legal personality from the limited partners and the general partner. Neither side appears fully to have grappled with the consequences of this in the arguments that they have advanced before me.

33. By referring to the exempted limited partnership throughout as being the appropriate respondent to the petition, in the absence of separate legal personality, the effect of the general partner's position is that the Petitioners should both pursue the petition and at the same time be respondents to the petition. That is neither legally nor procedurally possible. It would necessarily involve obvious and irreconcilable conflicts of interest for the Petitioners. It also flies in the face of section 33(1) of the Exempted Limited Partnership Act, which provides that:

> *"(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings."*

Subsection (3) deals with the situation where a general partner has failed to bring proceedings against a third party and a limited partner in those circumstances wishes to pursue that claim on behalf of the exempted limited partnership. So that subsection is irrelevant for the purpose of the debate before me.

34. If, as I consider must be correct, the exempted limited partnership cannot itself be a respondent to a just and equitable petition brought by a limited partner, and that only the general partner and any intermeddling limited partners can be the respondents, then it also follows that CWR O.24 r.8(a) cannot be operative as against an exempted limited partnership because the court will not and cannot direct that the exempted limited partnership itself can participate in the proceeding. This is because the exempted limited partnership does not have separate legal personality and the petitioning limited partner cannot also be a respondent. Thus, the respondents to a just and equitable petition can only be the general partner and any limited partners who have intermeddled or who wish to take an active role in defending the petition.

35. In principle, therefore, whilst I accept that there is substantial force in the Petitioners' argument that the legal costs principle should apply equally to just and equitable petitions in the context of the winding up of an exempted limited partnership, just as it applies to companies, I find it impossible to apply the manifestation of it in the CWR, given the legal nature of an exempted limited partnership and the consequences of that nature on the operation of the CWR as regards exempted limited partnerships.

36. In my judgment, this is a situation covered by the opening words of section 36(3) of the Exempted Limited Partnership Act, namely, *"except to the extent that the provisions are not consistent with*

this Act and in the event of any inconsistencies, this Act shall prevail." The Exempted Limited Partnership Act, which creates the legal structure of an exempted limited partnership, has created an animal that does not fit within the application of the relevant rules of the CWR. The provisions of CWR O.3, r.12, and O.24, r.8, in my judgment, are therefore inconsistent with the Exempted Limited Partnership Act, and the Exempted Limited Partnership Act must prevail.

37. I therefore accept that the Court cannot make an order under CWR O.3, r.12(a) or (b) in this case, although not for the reasons advanced by the general partner.

38. It also follows from my conclusion that the joint position of counsel in *Re Cybernaut Growth Fund LP* that the court can apply CWR O.3, r.12 in the context of an exempted limited partnership was incorrect, and that *Re Cybernaut Growth Fund LP* should not be treated as authority for that proposition.

39. As required by section 33(1) of the Exempted Limited Partnership Act, the petition must continue as between the Petitioners and the general partner.

40. Mr Ayres submitted that it is important not to confuse the question of the prima facie liability for costs, which in my judgment will always be with the general partner, and the general partner's right to indemnity under the limited partnership agreement governing the partnership for the costs it has incurred. I agree with Mr Ayres on this point. There is clearly going to be a dispute in this case whether the general partner is entitled to indemnity from the exempted limited partnership's assets for the costs of defending the just and equitable petition and also the Delaware and Cayman writ proceedings.

41. I do not intend to prejudge the outcome of that debate, which will turn upon the wording of the limited partnership agreement. However, it does seem fairly plain that the real disputes are between the two Petitioners on one side and the general partner on the other. This does not appear to be a case where the exempted limited partnership has its own position to put forward, even if that were legally and procedurally possible, which I do not consider it is for the reasons I have already set out.

42. If any of the other limited partners wish to participate in the proceedings, that is a matter for them. Their position as limited partners can be put forward by them as respondents if they have a different interest to advance although, given the procedural position of these proceedings and the approaching trial, any limited partners who wish to do so should make an application to be joined urgently.

43. Finally, I record that Mr Ayres was at pains to say that the general partner does not accept the Petitioners' criticisms, either of the general partner or of Dr Harrison, and that I should avoid forming a view that there is a "good" side and a "bad" side of the court. Mr Ayres said that the general partner and Dr Harrison are very keen to vindicate the position of the general partner.

44. I acknowledge that that is Dr Harrison's and the general partners' position. However, it seems to me that there is a real danger that the general partner is failing to heed the words of Kawaley J in *One Thousand and One Voices Africa Fund I LP* [2024] 1 CILR 371 at paragraphs 30 to 34. The learned judge said:

> *"30. […] The petitioner's case, in a nutshell, amounts to this. It would be inconsistent with elementary principles of winding-up law for the court not to replace the general partner when it has unarguably lost the trust and confidence of 97% of the economic stakeholders of the ELP, no matter what the reasons may be. There is no need for the court to consider the merits of the original complaints laid against the GP. That position appears to be an unassailable one.*
>
> *31. Section 36(13) of the Act confers an unfettered discretion on the court. […] The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition to the petition is maintained) appears to demonstrate the need for a fresh appointment.*
>
> *32. Unfortunately, the opposition to the present petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best, or the desire to forestall independent investigation into suspect dealings at worst.*
>
> *33. In the instant case it is admittedly extremely plausible that the GP's Mr. Jordaan has specialist knowledge of and unique contacts with the businesses the ELP has invested in. The appointment of independent liquidators would not necessarily preclude his expertise being deployed if this was demonstrably in the best interest of the investors as a whole."*

45. It is difficult not to observe the strong similarity between that case and this one on the material that I have seen so far but, as I have indicated, these are all matters that Dr Harrison, through the general

partner, wishes to contest. No doubt at the trial I will hear argument and evidence on both sides of the court in relation to the allegations that are made against Dr Harrison and the general partner by the Petitioners and the counter-allegations that are made by Dr Harrison and the general partner against the Petitioners, and I will make a final decision on the basis of the evidence and argument that I hear on that occasion. However, in doing so, both parties are likely to continue to incur very substantial costs that will have to be paid by the various parties, depending on the costs orders that are made.

46. As to the costs of arguing this issue before me, Mr Ayres contended that the general partner was the winner, albeit for different reasons than he had argued, and should have its costs. Mr Farmer addressed me on costs for the Petitioners and argued that costs should be reserved, which would be the usual outcome on a summons for directions.

47. I have concluded that the general partner has effectively been the winner on this particular issue; the Petitioners raised the specific issue of making an order under CWR O.3, r.12 and have not obtained what they were seeking, and it is right that general partner should have its costs of arguing this point on the summons for directions, to be taxed on the standard basis if not agreed. I do not consider it is appropriate to reserve the costs to the hearing of the petition.

Dated 2 November 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

EXHIBIT EE

[2023] UKPC 33
Privy Council Appeal No 0055 of 2020

JUDGMENT

FamilyMart China Holding Co Ltd (Respondent) *v* Ting Chuan (Cayman Islands) Holding Corporation (Appellant)

On appeal from the Court of Appeal of the Cayman Islands

before

Lord Reed
Lord Hodge
Lord Lloyd-Jones
Lord Briggs
Lord Kitchin

JUDGMENT GIVEN ON
20 September 2023

Heard on 15 and 16 November 2022

Appellant
Charles Kimmins KC
Mac Imrie KC
Paul Smith
Ryan Hallett
Mark Tushingham

(Instructed by Charles Russell Speechlys LLP (London), Maples and Calder (Cayman) LLP and Sidley Austin (Hong Kong))

Respondent
Tom Lowe KC
Hilary Stonefrost
Gemma Lardner
Corey Byrne
(Instructed by Sharpe Pritchard LLP and Ogier (Cayman) LLP)

LORD HODGE:

1. This appeal raises the question whether an agreement to settle disputes arising out of a shareholders' agreement by arbitration may prevent a party to that agreement from pursuing a petition to wind up the company whose management is the focus of those disputes. The other side of the coin is whether an application to the Grand Court to wind up that company on the just and equitable ground makes all matters which are the subject matter of those court proceedings non-arbitrable, thereby rendering inoperative the agreement to resolve such disputes by arbitration.

2. Ting Chuan (Cayman Islands) Holding Corporation ("Ting Chuan") and FamilyMart China Holding Co Ltd ("FMCH") are the shareholders of China CVS (Cayman Islands) Holding Corp ("the Company") which is the company that is subject to the winding up proceedings. Ting Chuan owns 59.65% and FMCH 40.35% of the issued shares in the Company.

3. The relationship between Ting Chuan and FMCH so far as is relevant is governed by a shareholders' agreement dated 11 May 2011 ("the SHA"), pursuant to which four of the Company's seven directors are nominated by Ting Chuan (referred to as "the majority directors") and three are nominated by FMCH (referred to as "the minority directors"). FMCH alleges that there was an understanding between it and Ting Chuan as to how the Company would operate its business.

4. The Company through nine subsidiaries operates a very substantial convenience store business in the People's Republic of China ("PRC") under the brand name "FamilyMart". As at 31 December 2021 the business had an annual turnover in excess of US $1.32 billion. The Company was licensed to operate through its subsidiaries the FamilyMart brand in the PRC in return for a royalty of 1 per cent on all revenues. The Company is solvent and operates as a going concern. As explained below, nobody intends to wind up the business, but establishing the grounds for winding up the Company on the just and equitable ground is a necessary step in the company law of the Cayman Islands in order to obtain a court order for the buy-out of the shareholding in the Company of the majority shareholder (here, Ting Chuan).

1. Factual background

5. FMCH is a Japanese company whose owners are two enterprises, Taiwan FamilyMart Co Ltd and FamilyMart Co Ltd (referred to as "the FM parties"), one of which has had considerable success in the convenience store business in Japan and elsewhere in Asia for over 40 years under the brand name "FamilyMart". The owner of Ting Chuan is Ting Hsin (Cayman Islands) Holding Corporation ("Ting Hsin") which was until 2006 the majority shareholder of the Company. Ting Chuan and Ting Hsin are

part of a group of companies founded by the Wei family which includes entities related to or associated with Ting Chuan or Ting Hsin (referred to as "the Ting Hsin Group").

6. Members of the Ting Hsin Group have experience in the food industry but lacked expertise in the convenience store business. To make up for that lack of expertise they required the assistance of staff provided by the FM parties to act as departmental heads with a view to transferring those responsibilities to Ting Hsin's own staff at a later date. FMCH believes that the Ting Hsin Group is owned and controlled by the majority directors who are members of the Wei family, and their family members.

7. FMCH presented a petition to wind up the Company to the Grand Court on 12 October 2018. In that petition FMCH alleges that the Company was incorporated as a joint venture vehicle to develop and conduct a convenience store business in the PRC. The Ting Hsin Group sought by the joint venture to combine the FamilyMart brand and the expertise of the FM parties with the infrastructure which the Ting Hsin Group had established in the PRC. Relations between Ting Chuan and FMCH became strained because FMCH believed and believes that since about 2012 the majority directors of the Company have diverted profits of the Company to members of the Ting Hsin Group which are suppliers of the Company, being food factories and the suppliers of logistics and information processing services to the Company, and have prevented the minority directors from gaining access to information relating to the Company's business, including the identity of those related party suppliers. FMCH asserts that, by so acting, Ting Chuan acted in breach of an understanding that the contracting of such services would be transparent and disclosed by the Ting Hsin Group to the FM parties and would be on a footing that the terms were fair and reasonable.

8. In its petition FMCH alleges that Ting Chuan and/or Ting Hsin have caused, permitted and/or procured the majority directors to act in breach of their duties to the Company. FMCH alleges (i) that it has lost trust and confidence in the conduct and management of the Company's affairs as a result of that lack of probity and (ii) that its relationship with Ting Chuan has irretrievably broken down. FMCH avers that it is just and equitable that the Company be wound up. In the alternative, and this is the real aim of its application, FMCH seeks an order from the Grand Court that Ting Chuan be required to sell its majority stake in the Company to FMCH at a value to be determined by the Court, if not agreed.

9. Ting Chuan, relying on the arbitration agreement in the SHA, applied to strike out the winding up petition or, alternatively, for an order dismissing or staying the petition under section 4 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) ("FAAEA") or under the inherent jurisdiction of the court until the disputes which underlay the petition had been arbitrated. By the Citation of Acts of Parliament Act 2020 legislation which previously was referred to as a "Law" is now referred to as an "Act". The Board adopts that nomenclature in this judgment.

10. The Grand Court (Kawaley J) in an order dated 25 February 2019 granted Ting Chuan's application to stay the winding up proceedings for arbitration under section 4 of the FAAEA. By order dated 14 July 2020, Kawaley J, in an exercise of his powers under the Companies Winding up Rules O.3 r 12(1)(a), (b) and (d), allowed the Company to defend the proceedings if so advised, and ordered that the petition be treated as an inter partes proceeding and that the advertisement of the petition be dispensed with.

11. As discussed more fully below, the Court of Appeal by order dated 27 July 2020 set aside Kawaley J's order of 25 February 2019 and refused to grant a stay of the winding up petition. Ting Chuan has obtained the permission of the Board to appeal against that decision.

2. The arbitration agreement

12. Section 20.3(a) of the SHA provides that it is governed by the laws of the Cayman Islands. The SHA contains the arbitration agreement (section 20.3(b)) which, so far as relevant, provides:

> "Any and all disputes in connection with or arising out of this Agreement shall, insofar as is possible, first be settled amicably by the Parties hereto. … If the Parties cannot come to an amicable settlement within twenty (20) days of the onset of any dispute, *any and all disputes in connection with or arising out of this Agreement [shall be] submitted for arbitration* in accordance with and finally settled under the Rules of Arbitration of the International Chamber of commerce [sic] in effect at the time of the arbitration, except as may be modified herein or by mutual agreement of the Parties. The arbitration shall be confidential and conducted in the Chinese language. The Parties agree that the arbitration shall take place in Beijing, PRC. The award of the arbitration tribunal shall be final and binding upon the disputing Parties, and the prevailing Party may apply to a court of competent jurisdiction for enforcement of such award. …" (Emphasis added)

13. FMCH initially argued that the dispute between it and Ting Chuan did not fall within the scope of the arbitration agreement, but it abandoned that contention in the course of the hearing before the Court of Appeal. It is now a matter of agreement that the dispute falls within the scope of the arbitration agreement. The central dispute between the parties is now whether FMCH's petition in the Grand Court for the winding

up of the Company has made the matters raised in that petition not susceptible to arbitration.

3. The relevant statutory provisions

14. The Companies Act (2022 Revision) provides in section 90 that a company may be wound up compulsorily by order of the Court. Section 92 provides that a company may be wound up by the Court on various grounds including if "(e) *the Court is of opinion* that it is just and equitable that the company should be wound up" (Emphasis added).

15. Section 95, which sets out the powers of the court, provides in subsection (2):

> "The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company."

Subsection (3) provides for several remedies, including the remedy which FMCH is seeking by its presentation of the winding up petition. It provides so far as relevant:

> "If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely – …
>
> (d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly."

This provision was introduced into the Companies Act by the Companies (Amendment) Act 2007. As is well known, the Cayman Islands has not provided in its company law for a self-standing petition (separate from a winding up petition) by a member of a company for a remedy where the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of members. Such a remedy was introduced into United Kingdom company law by section 75 of the Companies Act 1980 and is now contained in sections 994-996 of the Companies Act 2006.

16. The Cayman Islands has separate legislation governing foreign arbitrations and domestic arbitrations. The FAAEA addresses foreign arbitrations and gives effect to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("the New York Convention"). Section 4 of the FAAEA, which gives effect to article II of the New York Convention, provides:

> "If any party to an arbitration agreement … commences any legal proceedings in any court against any other party to the agreement … in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is … inoperative …, shall make an order staying the proceedings."

Domestic arbitration agreements in the Cayman Islands are governed by the Arbitration Act 2012, which is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006) and the English Arbitration Act 1996.

4. The judgments of the courts below

17. Kawaley J in his judgment of 25 February 2019 observed (para 17) that the petition had been drafted in a "somewhat obtuse way" to sidestep the argument that the complaints arose in relation to the SHA and were caught by the very broad arbitration agreement. He held (para 61) that it was "clear beyond sensible argument" that the allegations in the petition related to the subject matter of the SHA. He rejected FMCH's submission that the underlying disputes were not arbitrable because only the court can grant a winding up order, holding that there was a fundamental difference between the resolution of the underlying disputes and the grant by the court of statutory relief (para 66). He attached no significance to the fact that neither the Company nor the majority directors were parties to the SHA because the genuine dispute was between the minority shareholder and the majority shareholder (para 67). He granted a mandatory stay of the winding up petition under section 4 of the FAAEA.

18. The Court of Appeal (Rix, Martin and Moses JJA), in a judgment dated 23 April 2020, overturned Kawaley J's decision, holding that the court had exclusive jurisdiction to determine whether a company should be wound up on the just and equitable ground and that, as a result, the underlying disputes were not susceptible to arbitration, notwithstanding that they fell within the scope of the arbitration agreement contained in the SHA. In so deciding, the Court of Appeal discussed as a key authority the judgments of Patten, Longmore and Rix LJJ in the Court of Appeal of England and Wales in

Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855; [2012] Ch 333 ("*Fulham*"), in which the court granted a stay of an unfair prejudice petition under section 994 of the Companies Act 2006 to enable the parties to resolve their underlying dispute by arbitration. The Cayman Islands Court of Appeal, in the leading judgment by Moses JA, also considered other cases, including the judgment of Harris J in the Hong Kong High Court in *Quiksilver Greater China Ltd v Quiksilver Glorious Sun JV Ltd* [2014] 4 HKLRD 759 ("*Quiksilver*"), in which the judge stayed a petition seeking a winding up on the just and equitable ground to enable the substantive dispute between the parties, which was within the scope of an arbitration agreement, to be determined by arbitration; and a judgment of the Federal Court of Australia in *WDR Delaware Corporation v Hydrox Holdings Pty Ltd* [2016] FCA 1164 ("*WDR Delaware*"), which followed the *Quiksilver* judgment by granting a stay for arbitration of a petition on the grounds of oppressive or unfairly prejudicial behaviour in which a winding up order was only one of several available remedies. The rationale of those cases was that an essentially private dispute between shareholders, in which discrete issues could be identified, should be resolved, in accordance with the parties' agreement, by arbitration.

19. Moses JA distinguished those cases, holding that under section 92 of the Companies Act the court's consideration of whether it is just and equitable that a company should be wound up is a threshold question and not a question of relief. Section 92 was the sole gateway to obtaining alternative relief under section 95(3): *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2019] CILR 481 ("*Tianrui*"). *Tianrui* did not involve a conflict between an arbitration agreement and a petition to wind up a company but its reasoning was central to the Court of Appeal's reasoning. *Fulham* was to be distinguished on the basis that in that case there was no need to prove conduct that would justify winding up the company. By contrast in the context of an application to wind up a company on the just and equitable ground, Moses JA summarised the question in these terms (para 98):

> "In cases where there is an arbitration agreement the scope of which embraces disputes of fact which are also raised in the petition, the question of a stay to arbitration turns on whether it is possible to submit such disputes to arbitration without trespassing upon the exclusive jurisdiction of the court to make a winding up order."

He stated that in *Fulham* and the cases which had followed it, the courts had identified discrete, substantive issues which did not invoke the exclusive jurisdiction of the court. But where a petitioner was invoking a statutory right to bring the petition and the underlying issues were central and inextricably connected to the question whether the company should be wound up on the just and equitable ground, it was difficult to identify discrete issues outside the exclusive jurisdiction of the court.

20. Moses JA held that in determining the threshold question the court did not have to determine only questions of primary fact but had to evaluate all the circumstances of the case. The court had to decide whether the conduct of the majority directors and the breakdown of the relationship between the shareholders justified the winding up of the Company. If matters were hived off to arbitration, there would be a risk of inconsistent decisions where there was first a decision by an arbitrator and then a further decision by the court which took into account the arbitrator's award where some of the parties to the petition would not be bound by the arbitrator's award. This outcome could be avoided only if the parties had agreed not to present a winding up petition. No such agreement was expressly stated in the SHA and none could be implied. As a result, section 95(2) of the Companies Act did not apply.

21. Moses JA held that because neither the majority directors nor the Company were parties to the SHA and thereby to the arbitration agreement, it was not permissible to apply the mandatory provisions of section 4 of the FAAEA to the petition in its entirety and because the allegations against Ting Chuan could not be separated from the threshold issue, section 4 could not operate pro tanto. The arbitration agreement was therefore inoperative. Finally, there was no basis for the court to grant a discretionary stay in the exercise of its powers of case management.

5. The parties' positions in this appeal

22. Ting Chuan submits that the Court of Appeal erred in refusing to grant a stay of the winding up petition to allow disputes under the SHA to be determined by arbitration. Ting Chuan asserts that (i) it and FMCH are parties to an arbitration agreement, (ii) FMCH has commenced legal proceedings against it, (iii) those legal proceedings are in respect of matters agreed to be referred to arbitration, and (iv) therefore it is entitled to a mandatory stay unless the Board is satisfied that the relevant matters are non-arbitrable.

23. Ting Chuan identifies the matters which it argues are arbitrable and entitle it to a mandatory stay under the FAAEA. It argues that the petition for winding up contains five matters, the first four of which should be determined by arbitration. The five matters are:

> (1) Whether FMCH has lost trust and confidence in Ting Chuan and in the conduct and management of the Company's affairs. Ting Chuan particularises this matter into three sub-headings: (i) whether the majority directors owe various duties to the Company, (ii) whether the majority directors have breached those duties or engaged in misconduct, and (iii) whether Ting Chuan caused, permitted or procured the majority directors to act in breach of their duties or to engage in the alleged misconduct.

(2) Whether the fundamental relationship between FMCH and Ting Chuan has irretrievably broken down. In particular: (i) whether an understanding was reached between the shareholders by 2003 and, if so, what were the terms of that understanding, (ii) was the understanding superseded at any point in time after 2003, for example by reason of the conclusion of the SHA, and (iii) whether Ting Chuan acted contrary to that understanding after 2012.

(3) Whether it is just and equitable that the Company should be wound up.

(4) Whether FMCH should be granted the alternative relief, which it prefers, under section 95(3)(d) of the Companies Act, namely an order requiring Ting Chuan to sell its shares in the Company to FMCH, and, if so, what is the value of those shares.

(5) Whether, if such alternative relief is not appropriate, an order winding up the Company should be made and whether the persons identified by FMCH should be appointed as joint official liquidators.

In the alternative, Ting Chuan argues that the first two matters listed above are arbitrable, that there should be a mandatory stay of the winding up petition pro tanto under the FAAEA, and that the Board should grant a discretionary stay of matters (3) to (5) above.

24. FMCH invites the Board to uphold the judgment of the Court of Appeal. It characterises the principal question raised in the appeal as being whether and, if so, in what respect and to what extent a petition to wind up a Cayman Islands registered company on the just and equitable ground is arbitrable. It argues that the legislation does not allow a private arbitral tribunal to make the critical threshold decision that it is just and equitable that a company should be wound up. It advances two principal reasons for that view. First, it submits that the proceedings are inherently unsuited to arbitration, and, secondly, it argues that the legislature has recognised that there is a public interest in the judicial determination of winding up petitions in open court, which excludes the use of private arbitration to any extent in the process. It points out that a court in deciding whether it is just and equitable that a company be wound up has regard to all the facts as they exist at the date of the hearing and exercises its discretion at that date. The proceedings must be conducted expeditiously because section 99 of the Companies Act may render void dispositions of property and other transactions made after the presentation of the petition. By contrast, the reference to arbitration of matters encompassed by the winding up application might require multiple and successive arbitrations which would not bind all of the parties to the winding up petition. This cannot have been what a rational businessperson would have contemplated. The winding up petition has been stayed since 2018 while the parties, on Ting Chuan's

insistence, engaged in a very expensive arbitration before the ICC International Court of Arbitration which lasted three and a half years dealing with claims which Ting Chuan advanced, unsuccessfully, against FMCH.

6. The structure of The Board's analysis

25. In addressing those submissions, the Board first considers by way of background the uncontested view that, as a general rule, the law of the Cayman Islands, like English law and the laws of many other jurisdictions, respects the right of parties to agree to have their disputes determined by a private arbitral tribunal. Secondly, the Board addresses the interpretation of section 4 of the FAAEA, and in particular the meaning of (i) "legal proceedings", (ii) "matters", and (iii) "the arbitration agreement is … inoperative". The Board, thirdly, considers whether the petition for winding up on the just and equitable ground is an unum quid, excluding any possibility of arbitration, or whether there should be a partial stay under the FAAEA so that matters within the scope of the arbitration agreement can and should be hived off for arbitration. Fourthly, the Board considers the application for a discretionary stay of the winding up petition; and, finally, the Board briefly addresses a submission relating to section 95(2) of the Companies Act.

7. Background: the approach to arbitration agreements

26. It is common ground in this case that the disputes between Ting Chuan and FMCH, which are articulated in the winding up petition, fall within the scope of the arbitration agreement. No question therefore arises as to the interpretation of the arbitration agreement itself. Case law in England and Wales, and the Cayman Islands, which adopts a liberal interpretation of an arbitration agreement, is not directly in issue. Nonetheless, such case law on interpretation is indicative of the respect which the courts of many jurisdictions give to the autonomy of parties to choose how they wish their disputes to be resolved. In *Enka Insaat ve Sanayi AS v OOO "Insurance Co Chubb"* [2020] UKSC 38; [2020] 1 WLR 4117, ("*Enka Insaat*") Lord Hamblen and Lord Leggatt, giving the leading judgment of the court, stated (para 107):

> "In *Fiona Trust & Holding Corpn v Privalov* [[2007] UKHL 40;] [2007] Bus LR 1719, the House of Lords affirmed the principle that 'the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal' (see para 13, per Lord Hoffmann).

> Contrary to a submission made on behalf of Chubb Russia, this is not a parochial approach but one which, as the House of Lords noted in the *Fiona Trust* case, has been recognised by (amongst other foreign courts) the German Federal Supreme Court (Bundesgerichtshof), the Federal Court of Australia and the United States Supreme Court and, as stated by Lord Hope at para 31, 'is now firmly embedded as part of the law of international commerce'. In his monumental work on *International Commercial Arbitration,* 2nd ed (2014), p 1403 Gary Born summarises the position as follows:
>
> 'In a substantial majority of all jurisdictions, national law provides that international arbitration agreements should be interpreted in light of a "pro-arbitration" presumption. Derived from the policies of leading international arbitration conventions and national arbitration legislation, and from the parties' likely objectives, this type of presumption provides that a valid arbitration clause should generally be interpreted expansively and, in cases of doubt, extended to encompass disputed claims. That is particularly true where an arbitration clause encompasses some of the parties' disputes and the question is whether it also applies to related disputes, so that all such controversies can be resolved in a single proceeding (rather than in multiple proceedings in different forums).'"

The Court of Appeal of the Cayman Islands has adopted a similarly expansive approach to the interpretation of arbitration agreements in order to give effect to the reasonable commercial expectations of the parties: *McAlpine Ltd v Butterfield Bank (Cayman) Ltd* (Appeal No 30 of 2019) (unreported) 21 November 2019 at paras 30-31.

27. The legislature of the Cayman Islands in enacting statutory rules for its domestic arbitration in the Arbitration Act 2012 stated the principles on which the Act was founded and by which its provisions should be construed: section 3(3). Those principles are:

> "(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial arbitral tribunal without undue delay or undue expense;
>
> (b) *the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest*; and

> (c) in matters governed by this Law the court should not intervene except as provided in this Law." (Emphasis added)

Those principles are articulated in substantially the same terms in section 1 of the Arbitration Act 1996 in England and Wales and in section 1 of the Arbitration (Scotland) Act 2010. The respect which they show to the autonomy of the parties is not a new phenomenon. In England and Wales, the courts until the later nineteenth century often took the view that a contract to oust the jurisdiction of the courts was against public policy and would not enforce such a contract. This approach was altered by legislation in the Common Law Procedure Act 1854, section 11 and in section 4 of the Arbitration Act 1889. Such a judicial approach to arbitration agreements did not exist in Scotland as the House of Lords explained in *A Sanderson & Son v Armour & Co Ltd* 1922 SC (HL) 117, in which Lord Dunedin expressed the matter pithily (p126): "[i]f the parties have contracted to arbitrate, to arbitration they must go." More recently, similar statements have been made about English law: in *Nori Holding Ltd v PJSC Bank Otkritie Financial Corp* [2018] EWHC 1343 (Comm); [2019] Bus LR 146, at para 66, Males J stated: "[w]here parties agree to arbitrate, it is the policy of the law that they should be held to their bargain." See also Mustill & Boyd, *Commercial Arbitration,* 2nd ed, Companion Vol (2001) p 75.

28. Ting Chuan prays in aid section 26 of the Arbitration Act 2012 which provides:

> "(1) Any dispute that parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law of the Islands, such a dispute is not capable of determination by arbitration.
>
> (2) The fact that any other law confers jurisdiction in respect of any matter on the court but does not refer to the determination of that matter by arbitration, does not mean that a dispute about that matter is incapable of determination by arbitration."

In the Board's view FMCH is correct in its submission that the 2012 Act, which is concerned only with arbitrations where the seat of the arbitration is in the Islands (section 3(1)), is not of itself a valid tool for interpreting the FAAEA, which was enacted at an earlier date and is concerned only with arbitrations with a foreign seat. Nonetheless, the section is consistent with a position in relation to international arbitration which has extensive support internationally. See for example, in England and Wales, *Wealands v CLC Contractors Ltd* [2000] 1 All ER (Comm) 30 ("*Wealands*"), Mance LJ paras 17, 18 and 21; *Bridgehouse (Bradford No 2) Ltd v BAE Systems plc*

[2020] EWCA Civ 759; [2020] Bus LR 2025, Newey LJ paras 56-57; and *Fulham*, Patten LJ paras 27-33; in Singapore, *Tomolugen Holdings Ltd v Silica Investors Ltd* [2015] SGCA 57; [2016] 1 SLR 373 ("*Tomolugen*"), Sundaresh Menon CJ paras 75-76; in Australia, *ACD Tridon Inc v Tridon Australia Pty Ltd* [2002] NSWSC 896 ("*Tridon*"), Austin J paras 192-194, *WDR Delaware* Foster J para 147; in Hong Kong *Quiksilver*, Harris J para 14. The Board observes a similar approach in the jurisprudence of the Supreme Court of the United States: see, for example, *Green Tree Financial Corp-Alabama v Randolph* (2000) 531 US 79, Rehnquist CJ at p 90. It is important in cases which arise out of domestic legislative provisions implementing the New York Convention to have regard to jurisprudence in other contracting states to promote legal certainty in the jurisprudence relating to international arbitration.

29. The Board therefore accepts Ting Chuan's submission that effect should be given to the arbitration agreement unless the agreement is contrary to the public policy of the Islands or there is a rule of law or statutory provision which renders the matters within the scope of the arbitration agreement incapable of resolution by arbitration.

8. The interpretation of section 4 of the FAAEA

30. Section 4 of the FAAEA (para 16 above) implements article II(3) of the New York Convention which provides:

> "The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

31. Many countries which are contracting states to the New York Convention have implemented provisions like section 4 of the FAAEA in accordance with their obligations under the New York Convention. In *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21 ("*Gol Linhas*") the Board, in a judgment delivered by Lord Hamblen and Lord Leggatt, addressed the correct approach to the interpretation of the FAAEA. In para 21 of its judgment the Board referred to the judgment of the UK Supreme Court in *Enka Insaat* at para 126 in which it observed that more than 160 states had signed the New York Convention and stated:

> "The essential aim of the Convention was to establish a single uniform set of international legal standards for the recognition and enforcement of arbitration agreements and awards. Its

> success is reflected in the fact that … the New York Convention has been implemented through national legislation in virtually all contracting states." (Citations omitted)

The Board went on to observe (para 74) that the meaning of a Cayman Islands statute is a question to be decided by applying the law of the Cayman Islands but that the international origin of the provision necessitated a particular approach to its interpretation. The Board stated (para 75):

> "As with any statute which incorporates into domestic law the text of an international treaty, the interpretation and application of the statutory language must take account of its origin in an international instrument intended to have an international currency. That entails that, as Lord Macmillan put it in *Stag Line Ltd v Foscolo, Mango & Co Ltd* [1932] AC 328, 350, in the interests of uniformity the words should not be given a local interpretation controlled by what he called 'domestic precedents of antecedent date', but rather should be construed 'on broad principles of general acceptation'; see also *James Buchanan & Co Ltd v Babco Forwarding & Shipping (UK) Ltd* [1978] AC 141, 152 (Lord Wilberforce); *Fothergill v Monarch Airlines Ltd* [1981] AC 251, 281-282 (Lord Diplock). This principle is just as relevant in determining the scope of application of rules incorporating an international convention as it is in interpreting their linguistic meaning."

It is appropriate therefore to consider the jurisprudence of several countries as guides to the interpretation of section 4 of the FAAEA in so far as they have statutory provisions which are worded in a similar way to the Cayman Islands provision.

32. The Board has set out the relevant text of section 4 of the FAAEA in paragraph 16 above. Several questions of interpretation arise. They are (i) the meaning of "legal proceedings" commenced by a party to an arbitration agreement, (ii) the meaning of any "matter" which the parties have agreed to refer to arbitration, (iii) whether a stay of legal proceedings can be a partial stay, and (iv) the meaning of "inoperative" in the phrase "the court, unless satisfied that the arbitration agreement is ... inoperative… shall make an order staying the proceedings".

(a) The meaning of "legal proceedings"

33. It was not contentious and the Board sees no reason to question that "legal proceedings" in section 4 of the FAAEA can include a petition to wind up a company of which the parties to an arbitration agreement are members. In *Fulham* (para 33) the Court of Appeal of England and Wales treated as legal proceedings under section 9(1) of the Arbitration Act 1996 a petition under section 994 of the Companies Act 2006 alleging that a company's affairs had been conducted in a manner which was unfair to the petitioner as one of its members. In *Quiksilver*, Harris J in the Court of First Instance in Hong Kong dealt with a petition for the winding up of a solvent company on the just and equitable ground. The relevant provision of the Arbitration Ordinance (differing from those of the Cayman Islands and England and Wales) spoke of "a court before which an action is brought" having the power to refer the parties to the petition to an arbitration. He observed that winding up proceedings were not an action and distinguished the case of *Fulham* on that ground; but, as the parties did not dispute that the court had a discretionary power to stay the petition, the difference in wording between the Hong Kong provisions and the English provisions did not have a material impact on the matter which he had to decide (paras 20-21).

(b) The meaning and ascertainment of "matter"

34. There is now considerable jurisprudence in several countries which casts light on the meaning of a "matter" in domestic legislation implementing the New York Convention.

35. In *Fulham* Patten LJ, giving the leading judgment of the Court of Appeal of England and Wales, treated as "matters" falling within the arbitration clause of the rules of the Football Association Premier League Ltd ("the FAPL") the allegation that there had been unfair prejudice to Fulham Football Club (1987) Ltd ("the Club") in the conduct of the affairs of the FAPL and the remedies, which the Club sought, of an order restraining the chairman of the FAPL from participating in future player transfer negotiations and an order that he cease to be chairman of the FAPL. In para 33 Patten LJ observed that it was common ground that an arbitrator could make the orders which the Club sought. In substance, the subject matter of the Club's petition under section 994 of the Companies Act 2006 was treated as a matter to be referred to arbitration and the section 994 petition was stayed. The principal question which was in dispute in that case was whether the matters were arbitrable; a similar question arises in this appeal which the Board addresses below.

36. In *Lombard North Central plc v GATX Corporation* [2012] EWHC 1067 (Comm); [2013] Bus LR 68 ("*Lombard North Central*") Andrew Smith J in the High Court of England and Wales addressed an application under section 9 of the Arbitration Act 1996 for a stay of legal proceedings for arbitration. The arbitration agreement was contained in an agreement for the financing of train vehicles which provided for the establishment of a joint venture by the claimants and another company. The arbitration

agreement covered disputes which arose relating to the joint venture. The claimants sought declaratory relief in the High Court concerning the meaning of a clause in the agreement which provided for the establishment of the joint venture. The defendants applied for a stay of those proceedings. The case involved a dispute as to the scope of the arbitration agreement, a subject with which the Board is not concerned in this appeal, and the meaning of section 9 of the 1996 Act. In his judgment Andrew Smith J focussed on the words "in respect of" a matter rather than the word "matter" in section 9. What he said is nonetheless important with regard to the meaning of "matter" as his statements on the subject in paras 13-17 of his judgment have been relied on in the English cases which the Board discusses below.

37. In his discussion in those paragraphs Andrew Smith J, first, recognised that section 9 empowers the court to grant a stay of part of legal proceedings, where those proceedings were in respect of a referred matter and other matters. He held that the express words of section 9(1) permitted such a stay as they referred to a stay of the proceedings "so far as they concern that matter". Secondly, he stated that the court determines whether the proceedings relate to a referred matter by having regard to the nature of the claim or claims rather than relying only on the formulations in the claim form and any pleadings. In so doing, the court should consider what questions will foreseeably arise for determination in the proceedings, and whether they include, or would foreseeably include, referred matters. Such foreseeable questions would, in the Board's view, include matters raised in defences yet to be pleaded. Thirdly, he held that a party to an arbitration agreement is entitled to a stay unless he could have no real or proper purpose for seeking the stay. Fourthly, the risk of proceedings both before the courts and an arbitral tribunal is inherent in an arbitration agreement which refers only certain disputes to arbitration. Referring to the speech of Lord Mustill in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, at 353, he stated that that is the price of respecting the parties' agreement and the risk that they are to be taken to have chosen to take. Fifthly, he stated that a defendant would not necessarily be entitled to stay the legal proceedings where the referred matter was peripheral to the proceedings as a whole. The proceedings could be partly stayed to allow the referred matter to be determined by arbitration while the proceedings could otherwise proceed.

38. In *Quiksilver* the Court of First Instance in Hong Kong addressed an application to stay or dismiss petitions by a shareholder to wind up two solvent joint venture companies on the just and equitable ground. The shareholders of the companies had entered into a detailed joint venture agreement which contained an arbitration clause and a buy-sell procedure as a means of resolving disputes by enabling one party to buy out the shares of the other. After difficulties had arisen in the buy-sell procedure, Quiksilver Greater China Ltd presented the winding up petitions. The other shareholder, Glorious Sun Overseas Co Ltd, invoked the arbitration agreement and sought a stay of the winding up petitions pending the outcome of the arbitration. Before the judge, the principal disputes between the parties were whether the winding up petitions amounted to class actions and whether a shareholder had an inalienable right of access to the court to seek the winding up of a company rather than any question of statutory interpretation

as to what would amount to a "matter" to be sent to arbitration. Because, as mentioned above, the Hong Kong legislation referred to an "action" rather than "legal proceedings" the Hong Kong equivalent to section 4 of the FAAEA was not in play and the judge was addressing a discretionary stay rather than a mandatory stay under the Hong Kong legislation. Harris J recognised, and it was common ground between the parties, that an arbitrator could not make a winding up order which affected third parties but he held that the precise relief sought in the winding up petitions was not critical. He stated (para 22) that the correct approach is "to identify the substance of the dispute between the parties and ask whether or not that dispute is covered by the arbitration agreement." Harris J analysed the substantive dispute between the parties to be the basis on which the joint venture was to end, being either a buy-out by Glorious Sun or a winding up at the instance of Quiksilver. That commercial dispute was arbitrable and, if Quiksilver were to prevail in the arbitration, the stay of the winding up petitions could be lifted and the court would not need to re-hear the substantive arguments, which would have been determined in the arbitration.

39. In *Tomolugen* the Court of Appeal of Singapore addressed an application under section 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") by Lionsgate Holdings Pte Ltd ("Lionsgate") for a mandatory stay for arbitration of court proceedings raised by a minority shareholder, Silica Investors Ltd ("Silica"), under section 216 of the Companies Act (Cap 50, 2006 Rev Ed) for relief for oppressive or unfairly prejudicial conduct. The defendants in the court proceedings were the company, the shareholders of the company, including Lionsgate, and the directors and former directors of the company and related companies. Lionsgate, which was the wholly owned subsidiary of Tomolugen Holdings Ltd, the majority shareholder in the company, had sold shares in the company to Silica in a share sale agreement which contained an arbitration clause. Lionsgate argued that part of the dispute in the court action fell within the arbitration clause of the share sale agreement and to that extent the legal proceedings should be the subject of a mandatory stay. It, and the other defendants, sought a discretionary case management stay of the remainder of the legal proceedings, pending the outcome of the arbitration. Much of the judgment of the Court of Appeal, delivered by Sundaresh Menon CJ, concerned the question of arbitrability, which the Board considers below in this appeal. But the judgment also contained an important discussion of the concept of a "matter".

40. The Court of Appeal (paras 15-19) analysed the allegations made in the section 216 application under four broad categories (1) the share issuance allegation, (2) the management participation allegation, (3) the guarantees allegation, and (4) the asset exploitation allegation.

41. It will assist the understanding of the judgment if the Board quotes the relevant provision (section 6) of the IAA which provides:

> "(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to *stay the proceedings so far as the proceedings relate to that matter.*
>
> (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings *so far as the proceedings relate to the matter*, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed." (Emphasis added)

42. Between paras 108 and 122 of the court's judgment Sundaresh Menon CJ addressed the question whether a "matter" should be interpreted broadly by identifying the essential dispute or the main issue, as Silica urged, or more granularly, as Lionsgate submitted. He stated (para 108) that establishing whether the dispute pertained to a matter that is subject to the arbitration agreement involves two stages:

> "(a) the court must first determine what the matter or matters are in the court proceedings; and
>
> (b) it must then ascertain whether the matter(s) fall within the scope of the arbitration clause on its true construction."

At the first stage, the court proceedings which are sought to be stayed may involve more than a single matter. In addressing the differing submissions of the parties, Sundaresh Menon CJ stated (para 113) that the starting point of the analysis was the language of section 6 of the IAA. Section 6 of the IAA mandates a stay only "so far as" the court proceedings relate to the matter or matters which are the subject of the arbitration agreement. This, he stated, militates against taking "an excessively broad view of what constitutes a 'matter' or treating it as a synonym for the court proceedings as a whole". He continued (para 113):

> "In our judgment, when the court considers whether any 'matter' is covered by an arbitration clause, it should undertake a practical and common-sense enquiry in relation to

> any reasonably substantial issue that is not merely peripherally or tangentially connected to the dispute in the court proceedings. The court should not characterise the matter(s) in either an overly broad or an unduly narrow and pedantic manner. In *most* cases, the matter would encompass the claims made in the proceedings. But, that is not an absolute or inflexible rule." (Emphasis in the original)

43. In support of this view Sundaresh Menon CJ then addressed jurisprudence from Australia (*Tridon*), the British Virgin Islands (*Ennio Zanotti v Interlog Finance Corp* Claim No BVIHCV 2009/0394 (8 February 2010)) and England (*Lombard North Central*) before concluding at para 122:

> "We therefore consider that a 'matter', for the purposes of s 6 of the IAA, should not be construed in either an overly broad or an unduly narrow way. On the specific facts of this case, each of the four categories of allegations made in the Suit raises substantial issues that are neither peripheral nor tangential to Silica Investors' claim for relief under s 216 of the Companies Act. We accordingly find that each category is a separate 'matter' for the purposes of Lionsgate's stay application under s 6 of the IAA."

44. Thereafter, the court analysed the arbitration clause to determine which of the categories of allegation (para 40 above) fell within the scope of the arbitration agreement. It was not in dispute that the third and fourth categories did not, and the court therefore focused on the first two categories. In each category the court examined the substance of the controversy and concluded that the share issuance allegation was not within the scope of the arbitration agreement but that the management participation allegation was.

45. In *WDR Delaware* Foster J in the Federal Court of Australia addressed an application for a stay under section 7(2) of the International Arbitration Act 1974 and article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration which has the force of law in Australia. Hydrox Ltd was a joint venture company. The legal proceedings in question were for (i) a declaration that the affairs of Hydrox Ltd had been conducted in a manner oppressive to, unfairly prejudicial to or unfairly discriminatory against WDR, and (ii) an order for the winding up of Hydrox Ltd. It was common ground that the disputes between the shareholders were within the scope of the arbitration clause in the joint venture agreement. The principal dispute before Foster J was whether some or all of the claims in the court proceedings were arbitrable and, if so, whether the whole or only part of the court proceedings should be stayed.

46. The relevant statutory provisions were as follows. Section 7(2) of the International Arbitration Act 1974 provided:

> "Subject to this Part, where:
>
> (a) proceedings instituted by a party to an arbitration agreement to which this section applies against another party to the agreement are pending in a court; and
>
> (b) the proceedings involve the *determination of a matter that*, in pursuance of the agreement, *is capable of settlement by arbitration*;
>
> on the application of a party to the agreement, the court shall, by order, upon such conditions (if any) as it thinks fit, stay the proceedings *or so much of the proceedings as involves the determination of that matter*, as the case may be, and refer the parties to arbitration in respect of that matter." (Emphasis added)

Article 8(1) of the Model Law provides:

> "A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

47. Foster J set out his analysis of how the court identifies the matters which are the subject of the legal proceedings between paras 102 and 123 of his judgment. In summary, he reasoned: (i) that the nature and extent of the matters are ordinarily to be ascertained from the pleadings and from the underlying subject matter upon which the pleadings, including any defence, are based; the task is to ascertain the substantive questions in dispute, (ii) multiple matters may exist within the one court proceeding; (iii) a matter is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitral proceedings, (iv) a matter may or may not comprise the whole subject matter of any given proceeding, and (v) the court must first identify the matter or matters to be determined in the court proceeding before asking whether those matters fall within the scope of the arbitration agreement, and, if so, whether they are arbitrable.

48. In support of his third proposition, that a matter is something more than a mere issue or question which might fall for determination in proceedings, Foster J cited the judgment of the High Court of Australia in *Tanning Research Laboratories Inc v O'Brien* (1990) 169 CLR 332 ("*Tanning")*. That case was concerned principally with section 7(2) and (4) of the Arbitration (Foreign Awards and Agreements) Act 1974 (renamed in 1989 the International Arbitration Act 1974, as considered in *WDR Delaware*) and the question whether a liquidator was a person "claiming through" the company in liquidation, which was a party to an arbitration agreement, and therefore entitled to a stay of legal proceedings for arbitration. The High Court held that the liquidator, who had rejected a creditor's proof of debt for goods allegedly sold under a licence agreement which contained an arbitration clause, was a person claiming through the company under section 7(4) and was entitled to a stay under section 7(2). Deane and Gaudron JJ in a joint dissenting judgment discussed the meaning of the word "matter" in section 7(2) at pp 351-352. They observed that "matter" was not defined in the 1974 Act but that, in any context, it was "a word of wide import" and stated:

> "In the context of s. 7(2), the expression 'matter … capable of settlement by arbitration' may, but does not necessarily, mean the whole matter in controversy in the court proceedings. So too, it may, but does not necessarily encompass all the claims within the scope of the controversy in the court proceedings. Even so, the expression 'matter … capable of settlement by arbitration' indicates something more than a mere issue which might fall for decision in the court proceedings or might fall for decision in arbitral proceedings if they were instituted. … It requires that there be some subject matter, some right or liability in controversy which, if not co-extensive with the subject matter in controversy in the court proceedings, is at least susceptible of settlement as a discrete controversy."

Deane and Gaudron JJ went on (p 353) to reject the argument that section 7(2) did not apply to proof of debt proceedings, stating that the operation of the section is not confined to proceedings in which the parties seek the same relief as might be sought in arbitration proceedings.

49. In *Sodzawiczny v Ruhan* [2018] EWHC 1908 (Comm); [2018] Bus LR 2419 ("*Sodzawiczny*") Popplewell J in the High Court of England and Wales addressed an application for a stay of legal proceedings under section 9 of the Arbitration Act 1996 which refers to proceedings having been brought "in respect of a matter which … is to be referred to arbitration." The basis on which the defendants sought a stay of proceedings was that their defence to legal proceedings against them fell within the scope of the parties' arbitration agreement. The claimant opposed the stay, arguing that section 9 was not engaged if the claim itself did not fall within the arbitration agreement.

50. Popplewell J recorded that it was common ground that section 9 of the 1996 Act allowed a stay for arbitration of one or more matters within the legal proceedings while leaving other matters to be pursued in court. It was also common ground that there were two stages in the court's inquiry under section 9: first the court must determine what the matter or matters are in respect of which the court proceedings have been brought; and, secondly, the court must then determine in respect of each such matter whether it falls within the scope of the arbitration agreement (paras 35-36).

51. The material difference between the parties was as to the meaning of "matter". The claimant's counsel submitted that "matter" in section 9 was to be equated with a claim or cause of action and the fact that a defence is raised which falls within an arbitration agreement does not engage section 9. The defendants' counsel argued that "matter" meant an issue and that the court had to search for issues which were the subject matter of the arbitration agreement. Popplewell J referred to various authorities, including *Lombard North Central* and *Tomolugen*. He observed that the thing which parties referred to arbitration was a dispute or difference, words which were in this context synonymous. A dispute could be constituted in general terms, or it might be well defined before legal proceedings were commenced. A cause of action might involve several issues and sub-issues, some of which might be arbitrable and some not, and a commercial action often might involve several causes of action. Defences to a claim might involve a completely different set of facts and legal principles from those involved in the claim itself.

52. Popplewell J rejected the claimant's argument that section 9 was not concerned with a defence but only with a claim. He set out in para 43 what he considered to be the principled approach to what constitutes a "matter". He stated:

> "The court should treat as a 'matter' in respect of which the proceedings are brought any issue which is capable of constituting a dispute or difference which may fall within the scope of an arbitration agreement."

53. He continued his analysis in that paragraph by stating, secondly, that where the issues had not been fully identified in the legal proceedings by the time the court addressed the application for a stay, the court should seek to identify the issues which it was reasonably foreseeable might arise. He stated, thirdly, that the court should stay the proceedings to the extent of any issue which falls within the scope of an arbitration agreement. The search, he said, "is not for the main issue or issues, or what are the most substantial issues, but for any and all issues which may be the subject matter of an arbitration agreement". This applied to any dispute with which the court proceedings were, or would foreseeably be, concerned. Fourthly, section 9 was concerned with substance and not form, and the court should look at the nature and substance of the claim and the issues to which it gave rise and not simply the formulation in the

pleadings. The same approach should be adopted to identified or foreseeable defences. In para 44 of his judgment Popplewell J recognised that this approach could lead to a fragmentation of proceedings but opined that this was the result of the sanctity of the parties' arbitration contract and the requirement in section 9 that the court uphold the parties' bargain. The risk of fragmentation could be reduced either by an expansive construction of the arbitration agreement or by the court's use of its case management powers to stay proceedings in so far as they fall outside the scope of the arbitration agreement.

54. In *Republic of Mozambique (acting through its Attorney General) v Credit Suisse International* [2021] EWCA Civ 329; [2022] 1 All ER Comm 235 ("*Mozambique*") the Court of Appeal of England and Wales addressed the meaning of "matter" in section 9 of the 1996 Act. Carr LJ, in a judgment with which Singh and Henderson LJJ agreed, stated:

> "63. A 'matter' is not the same as a cause of action; it includes any issue capable of constituting a dispute under the relevant arbitration agreement. And a mandatory stay under s. 9(4) can be applied pro tanto (as reflected in the words 'so far as they concern that matter' in s. 9(1)).
>
> 64. There are two stages of inquiry for a court (although there may be overlapping considerations): first, to identify the 'matters' in respect of which the proceedings are brought; secondly, to assess whether those matters are 'matters' which the parties have agreed are 'to be referred to arbitration'. That is to be resolved by reference to the scope of the relevant arbitration agreement properly construed in context...."

55. Carr LJ then stated that the relevant principles were summarised in the judgment of Popplewell J in paras 43 and 44 of his judgment in *Sodzawiczny* and quoted in full those paragraphs, which the Board has summarised in paras 52 and 53 above. She stated (para 66) that the position identified by Popplewell J was consistent with and followed the earlier decision of the Singapore Court of Appeal in *Tomolugen* which the Board has discussed in paras 39-44 above. Carr LJ summarised the position under the title "Discussion and analysis" at paras 70-72 of her judgment stating:

> "70. It is trite law that an arbitration agreement is a contractual agreement to which statute dictates that mandatory effect must be given in so far as it applies: *Sodzawiczny* at para 44. The application of s. 9 can give rise to particular

> difficulties both as a matter of analysis and procedure, but the sanctity of the parties' agreement takes priority.
>
> 71. Thus, whether or not there is futility in practical terms of any stay is immaterial. Equally, the fact that there may be (on the facts of this case particularly acute) unwelcome case management complications if all or parts of claims are stayed is irrelevant. These are complexities which flow from s. 9 and ones which will often arise in multi-party, multi-issue litigation such as this.
>
> 72. I also accept that there is a two-stage test (although the considerations that arise may overlap and it may be convenient to consider the questions together): first to identify the matter and secondly to decide if that matter is one that the parties have agreed can only be arbitrated. Further, the court looks to substance and not form, adopting a practical and common-sense approach. It should guard against placing undue weight on what may be nuanced emphases or artificial characterisations adopted for tactical or other purposes. This is of course not to say that the parties' pleaded position is to be ignored, but rather to emphasise that the search is for the reality of the dispute."

56. The Supreme Court of the United Kingdom has reviewed the decision of the Court of Appeal in *Mozambique* in a judgment handed down on the same day as this judgment is promulgated. The approach of that court to the question of what is a "matter" and how the court ascertains what is a "matter" is consistent with the approach which the Board adopts on this appeal in the following paragraphs.

57. From this brief review of international authorities the Board considers that there is now a general consensus among leading arbitration jurisdictions in the common law world that the domestic courts of countries that are signatories of the New York Convention respect and give priority to the autonomy of the parties to arbitration agreements. The statutory provisions of those countries provide for a mandatory stay of legal proceedings at the request of a party to an arbitration agreement when a matter in those proceedings is referrable to arbitration. There is also a broad consensus on how to approach the determination of matters which must be referred to arbitration.

58. The court in considering such an application adopts a two-stage process. First, the court must determine what the matters are which the parties have raised or foreseeably will raise in the court proceedings, and, secondly, the court must determine

in relation to each such matter whether it falls within the scope of the arbitration agreement. (See *Tomolugen*, para 42 above; *WDR Delaware*, para 47 above and *Sodzawiczny*, para 50 above).

59. The court must ascertain the substance of the dispute or disputes between the parties. This involves looking at the claimant's pleadings but not being overly respectful to the formulations in those pleadings which may be aimed at avoiding a reference to arbitration. It involves also a consideration of the defences, if any, which may be skeletal as the defendant seeks a reference to arbitration, and the court should also take into account all reasonably foreseeable defences to the claim or part of the claim. (See *Lombard North Central*, para 37 above; *Quiksilver*, para 38 above, *Tomolugen*, para 42 above, *WDR Delaware*, para 47 above; and *Sodzawiczny*, para 53 above).

60. Secondly, while article II(3) of the New York Convention, which requires that the court refer a matter to arbitration, is silent as to the stay of the court proceedings, legislation implementing this provision of the New York Convention has generally made express provision for a stay pro tanto. Examples include section 9 of the Arbitration Act 1996 in England and Wales, section 10 of the Arbitration (Scotland) Act 2010 in Scotland, section 7 of the International Arbitration Act 1974 in Australia, and section 6 of the IAA in Singapore. In the Cayman Islands section 4 of the FAAEA speaks of "staying the proceedings" and makes no reference to the possibility of a stay pro tanto. Nonetheless, the context is a domestic statute implementing an international convention, in which broad and generally accepted principles should be adopted in interpreting such a statute: see *Gol Linhas* which the Board discussed in para 31 above. In *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed. 2020) the authors state at section 9.3: "Unless the contrary intention appears, the legislature is presumed to intend an enactment to be read in light of the principle that the greater includes the less." This principle is derived from Roman law ("non debet cui plus licet, quod minus est non licere": Corpus Juris Civilis, Digest 17.21 (Ulpian)). In the Board's view in this context the greater includes the lesser. Counsel did not argue otherwise in this appeal. Accordingly, the Board considers that section 4 of the FAAEA allows a pro tanto stay of legal proceedings.

61. Thirdly, in the Board's view, a "matter" is a substantial issue that is legally relevant to a claim or a defence, or foreseeable defence, in the legal proceedings, and is susceptible to be determined by an arbitrator as a discrete dispute. If the "matter" is not an essential element of the claim or of a relevant defence, it is not a matter in respect of which the legal proceedings are brought. The Board agrees with the statement of Sundaresh Menon CJ in para 113 of *Tomolugen* that a "matter" requiring a stay does not extend to an issue that is peripheral or tangential to the subject matter of the legal proceedings. The Board agrees with Foster J's third proposition in *WDR Delaware* that a "matter" is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitral proceedings.

62. A focus on the substantial nature and relevance of a referred matter to the legal proceedings is consistent with international jurisprudence, including *Lombard North Central*, *Quiksilver*, and *Tomolugen*. It is also consistent with the Australian jurisprudence in *Tanning* and *WDR Delaware*. In those cases, the judicial formulation was influenced by the statutory wording of section 7(2) of the International Arbitration Act 1974 which refers to a matter "capable of settlement by arbitration". But there is no material difference between that formulation and the other judicial formulae as a stay of legal proceedings should be granted only in respect of a dispute which falls within an arbitration agreement and is capable of settlement by arbitration.

63. The judgment of Popplewell J in *Sodzawiczny* is in part consistent with this approach but the passages in his summary of the law in para 43 of his judgment which suggest that a "matter" is any issue which is capable of constituting a dispute or difference within the scope of an arbitration agreement cannot be accepted without qualification in the light of the wider case law discussed above. Popplewell J referred to *Lombard North Central* and *Tomolugen* as the background to his analysis. Those judgments contain further qualifications which are not expressly articulated in his summary, although he may have taken them as read. In para 43 he spoke of a "matter" as "any issue which is capable of constituting a dispute or difference" within the scope of the arbitration agreement and as covering "all issues which may be the subject of the arbitration agreement". These formulae expressly draw on the judgment of Andrew Smith J in *Lombard North Central.* But no mention is made of Andrew Smith J's concern about the abusive application for a stay which the Board discusses in para 64 below nor of his recognition that peripheral matters may not merit a stay of the legal proceedings. The emphasis in *Tomolugen* on the evaluation of the matter as being of reasonable substance and not peripheral to the legal proceedings is not reflected in the relevant paragraph of the *Sodzawiczny* judgment.

64. No judicial formula encapsulating the meaning of "matter" should be treated as if it were a statutory text. A court facing an application for a stay under section 4 of the FAAEA should approach the question in a practical and common-sense way. The court must respect the agreement of the parties to arbitrate their disputes. An agreement to arbitrate a dispute is an agreement not to resolve that dispute in court proceedings. Thus, any substantial matter in the legal proceedings, which is relevant to the claim or foreseeable defence, and which is within the scope of the arbitration agreement, will give rise to a mandatory stay of the legal proceedings pro tanto on the application of one of the parties. There is considerable authority to support the view that the procedural complexity caused by a reference to arbitration does not of itself render a matter non-arbitrable: see, for example, *Wealands*, Mance LJ para 26, *Fulham*, Patten LJ para 25, *Tomolugen*, Sundaresh Menon CJ para 105. That does not mean that procedural complexity is irrelevant in all circumstances because the court, when addressing an application to stay legal proceedings to enable the determination of a dispute by arbitration, should be careful to prevent an abuse of process. The Board agrees with Andrew Smith J in *Lombard North Central* (para 37 above) that the court could refuse an otherwise mandatory stay if the applicant has no real or proper purpose for seeking

the stay. That could include not only an application for a stay in relation to issues that were peripheral to the legal proceedings but also an application that amounted to an abuse of process. In this regard the Board respectfully disagrees with the statement of the Court of Appeal in England and Wales in para 71 of the judgment in *Mozambique* (para 55 above) that the practical futility of a stay will in all circumstances be irrelevant. There may be circumstances in which a party seeks a stay for an improper purpose and it would be contrary to justice if the court could not act to prevent an abuse of process. For example, if matters (1) and (2) were referred to arbitration and an arbitral tribunal were to determine those matters in FMCH's favour and FMCH acted promptly to remove a stay on the legal proceedings before the Grand Court, the court would be entitled to look with some care at any application for a stay for a further arbitration.

65. Fourthly, the exercise involving a judicial evaluation of the substance and relevance of the "matter" entails a matter of judgment and the application of common sense. It is not a mechanistic exercise. It is not sufficient merely to identify that an issue is capable of constituting a dispute or difference within the scope of an arbitration agreement without carrying out an evaluation of whether the issue is reasonably substantial and whether it is relevant to the outcome of the legal proceedings of which a party seeks a stay. In so far as the summary of the law in para 43 of *Sodzawiczny* suggests otherwise, it is in error.

66. The approach to the word "matter" in section 4 of the FAAEA set out in paras 59-65 above may involve the fragmentation of the parties' disputes with some matters being determined by an arbitral panel and other matters being resolved by the court. Such fragmentation may on occasion be inconvenient to one or more of the parties to the court proceedings. Rational businesspeople may as a general rule prefer that their disputes are determined in the same forum: see Lord Hoffmann in *Fiona Trust & Holding Corpn v Privalov* [2007] UKHL 40; [2007] Bus LR 1719 ("*Fiona Trust*"), paras 5-8. An arbitration agreement may be interpreted generously to achieve that end if the court can ascertain that as the parties' commercial purpose and the wording of the agreement can bear that meaning. But, where, on a proper interpretation of the arbitration agreement, the parties have contracted to refer to arbitration disputes which do not extend to all the matters raised in the legal proceedings, giving effect to the parties' contract will involve fragmentation of the disputes. The disadvantages caused by such fragmentation can be mitigated by effective case management by both the court and the arbitral panel.

67. In the light of the case law discussed above, the Board considers that the obiter comments of Carswell LCJ in the Northern Ireland Court of Appeal in *In re Wine Inns Ltd* [2000] NIJB 343, 358-359, should not be followed. He stated that the just and equitable winding up petition or the application for relief against the conduct of the management of a company in an unfairly prejudicial manner in that case, which related to allegations of the breakdown of trust and confidence in a quasi-partnership, each

raised an indivisible issue and not a series of discrete disputes or matters. That is not consistent with the case law which the Board has discussed above.

68. As discussed below, the meaning of "matter" is relevant to the question of whether an arbitration agreement is operative. The Board now turns to that question.

(c) The meaning of "the arbitration agreement is … inoperative"

69. As set out in para 30 above, article II(3) of the New York Convention, which is enacted in domestic law by section 4 of the FAAEA, provides exceptions to the obligation of a court of a contracting state to refer a matter to arbitration if the arbitration agreement is "null and void, inoperative or incapable of being performed." Section 4 uses the same words in defining the exceptions. In this case, the questions whether the subject matter of the dispute between the parties is indivisible or whether the remedies sought are arbitrable would not, in the Board's view, fall within the exception that the agreement was null and void or the exception that that agreement was incapable of being performed. The Board is concerned with the exception that the agreement is inoperative. The essence of the dispute between the parties on this appeal turns on this question. It is whether the arbitration agreement is inoperative or, in other words, the matters at issue between the parties are incapable of being settled by arbitration or the remedies sought are unavailable to an arbitral tribunal.

70. On the authorities there are two broad circumstances in which an arbitration agreement may be inoperative. The first is where certain types of dispute are excluded by statute or public policy from determination by an arbitral tribunal. The second is where the award of certain remedies is beyond the jurisdiction which the parties can confer through their agreement on an arbitral tribunal. The Board refers to the first type as "subject matter non-arbitrability" and to the second as "remedial non-arbitrability".

71. Subject matter non-arbitrability can arise where the state intervenes by statute to preserve a right of access to the courts. Examples of such in English law in the field of employment and discrimination can be found in section 203 of the Employment Rights Act 1996 and section 144(1) of the Equality Act 2010, which, subject to specified exceptions, prevent parties by agreement from contracting out of an employee's right to have access to an employment tribunal, or in the latter Act the courts. Subject matter non-arbitrability may also arise as a result of public policy considerations. In the Singaporean case of *Larsen Oil and Gas Pte Ltd v Petropod Ltd* [2011] 3 SLR 414, ("*Larsen*") V K Rajah JA, delivering the judgment of the Singapore Court of Appeal, at para 44 recognised two grounds for excluding from arbitration a dispute which fell within the scope of an arbitration agreement. The first was where the legislature had precluded the use of arbitration to determine the particular type of dispute and the second was where "there is an inherent conflict between arbitration and the public

policy considerations involved in that particular type of dispute". *Larsen* was concerned with claims by the liquidator of an insolvent company for the avoidance of unfair preferences and payments made with an intention to defraud a creditor which arose only on the onset of insolvency and could be pursued by the liquidator of the insolvent company for the benefit of the company's creditors. The court refused the application by Larsen, the recipient of the alleged preference, to stay the legal proceedings for arbitration of the dispute on grounds of public policy, namely that it would affect the substantive rights of the company's creditors and undermine the policy aims of the insolvency regime.

72. The underlying concept of subject-matter non-arbitrability is that there are certain matters which in the public interest should be reserved to the courts or other public tribunals for determination. But there is no agreement internationally as to the kinds of subject matter or dispute which fall within subject matter non-arbitrability. In the 2001 Companion Volume to their book on Commercial Arbitration Lord Mustill and Stewart Boyd stated (p 71):

> "Since different states have their own traditions and precepts, differing radically from state to state, on matters of politics, economics, morality and the like, it is not surprising that equally radical divergences can be found when each state identifies the matters which are regarded as too important to be left to private dispute resolution."

73. A similar statement can be found in Born, *International Commercial Arbitration*, 3rd ed (2021) Vol I, p 1029, para 6.01 in which the author states:

> "Although the better view is that the [New York] Convention imposes international limits on Contracting States' applications of the nonarbitrability doctrine… the types of claims that are nonarbitrable differ from nation to nation. Among other things, typical examples of nonarbitrable subjects in different jurisdictions include selected categories of disputes involving criminal matters; domestic relations and succession; bankruptcy; trade sanctions; certain competition claims; consumer claims; labor or employment grievances; and certain intellectual property matters. Over the past several decades, the scope of the non-arbitrability doctrine has materially diminished in most developed jurisdictions.
>
> As these examples suggest, the types of disputes which are nonarbitrable nonetheless almost always arise from a common

> set of considerations. The nonarbitrability doctrine rests on the notion that some matters so pervasively involve either 'public' rights and concerns, or interests of third parties, that agreements to resolve such disputes by 'private' arbitration should not be given effect." (Footnotes omitted)

74. It would be wrong, however, to overstate the differences of approach in the commercial sphere between jurisdictions which share the same common law heritage. In the Board's view, the jurisprudence of the courts of other common law jurisdictions in this sphere can provide the generally accepted principles for the commercial law of the Cayman Islands. It is also relevant to bear in mind, when considering these commentaries, the relatively granular meaning of "matter" in the FAAEA, which the Board discussed in paras 61-63 above, when addressing the question whether a matter is excluded from arbitral determination by subject matter non-arbitrability.

75. The second circumstance in which an arbitration agreement may be inoperative, ie where there is remedial non-arbitrability, is concerned with the circumstance in which the parties have the power to refer matters to arbitration but cannot confer on the arbitral tribunal the power to give certain remedies. In the common law world there appears to be a general consensus that an arbitration agreement cannot confer on an arbitral tribunal the power to make an order to wind up a registered company on the application of a creditor where the company is insolvent and there is strong authority in support of such an exclusion when the application is by a contributory where the company is solvent. This is because the power to wind up a company lies within the exclusive jurisdiction of the courts, which alone have the discretion as to whether to make such an order. See in English law, *Fulham* at paras 76 and 83, in Hong Kong, *Quiksilver* para 14, in Singapore, *Tomolugen* para 83 (in relation to a creditor's application), in Australia, *WDR Delaware* para 26. In *Quiksilver* and *WDR Delaware* the inability of an arbitral tribunal to make a winding up order was common ground; it is also common ground between the parties on this appeal.

76. There is a general consensus that an arbitral tribunal has the power to grant inter partes remedies, such as ordering a share buy-out in proceedings for relief for unfairly prejudicial conduct in the management of a company under section 994 of the Companies Act 2006 in the United Kingdom and similar legislation in other jurisdictions. See *Fulham*, Patten LJ at paras 77-78, Longmore LJ at paras 96 and 99; *Tomolugen*, Sundaresh Menon CJ at paras 88-89 and 103; *WDR Delaware*, Foster J at para 147 quoting para 194 of *Tridon.* Although the court is given the power by statute to make such orders, an arbitral tribunal may also grant such a remedy because third parties, who are not involved in the dispute, do not have a legal interest in the dispute and there is no public element in a dispute of that nature.

77. Similarly, in an application to wind up a company on the just and equitable ground there may be matters in dispute between the parties, such as allegations of breaches of a shareholders' agreement, which can be referred to an arbitral tribunal for a determination, which is binding on the parties, notwithstanding that only a court can make a winding up order: *Fulham*, Patten LJ at para 76; *Quiksilver*, Harris J at paras 14, 21-22; *Tomolugen*, Sundaresh Menon CJ at paras 96-103; *WDR Delaware*, Foster J at paras 161-164. The researches by the appellants' counsel demonstrate that a similar approach can be found in case law in Quebec, Canada (*Capital JPEG Inc v Corporation Zone B4 Ltd* [2019] QCCS 2986) in relation to mediation, Cyprus *(In re Kissonerga Development Co Ltd* (Application no 7/20) (unreported) 9 July 2020 which was an interim decision, Jersey (*Consolidated Resources Armenia v Global Gold Consolidated Resources Ltd* [2015] JCA 061 ("*Consolidated Resources*"), and Zambia (*Vedanta Resources Holdings Ltd v ZCCM Investment Holdings plc* [2020] ZMCA 104). See also in Hong Kong *China Europe International Business School v Chengwei Evergreen Capital LP* [2021] HKCFI 3513 ("*China Europe*"). Counsel did not address these cases in any detail, but they are consistent with the main cases which the Board has discussed above and support a conclusion that there is substantial agreement among common law jurisdictions as to the correct approach.

78. In *WDR Delaware* Foster J summarised his conclusion on this matter at para 164:

> "With the exception of that part of the present proceeding which involves the Court forming an opinion as to whether the plaintiffs are entitled to a winding up order, the questions of fact and law which mark out the substantive controversy between the parties in this proceeding are all matters which are capable of resolution by arbitration. Any award or awards which determine those matters will be taken into account when the Court comes to consider whether a winding up order should be made. If, at the end of the arbitral process, the award or awards do not address satisfactorily or comprehensively all of the grounds relied upon by the plaintiffs in support of their claims for relief made in the present proceeding, then it will be open to them to supplement or explain the terms of the relevant award or awards by evidence. The process by which that would be done is the everyday process of applying the law of evidence."

The Board agrees as a general rule with this approach to discrete matters which involve inter partes disputes in the context of a winding up application. Matters, such as whether one party has breached its obligations under a shareholders' agreement or whether equitable rights arising out of the relationship between the parties have been flouted, are arbitrable in the context of an application to wind up a company on the just and

equitable ground and the arbitration agreement is not inoperative because the arbitral tribunal cannot make a winding up order.

9. The application of the FAAEA to the facts of this case

79. The first matter which the Board must address is the interpretation of the Companies Act. As stated in para 14 above, section 92 of that Act sets out the grounds on which the court may wind up a company including the ground which is relevant in this appeal, ie that the court is of the opinion that it is just and equitable that the company should be wound up. Section 95 of that Act sets out the powers of the court, which include the power to make a winding up order or on a contributory's petition on the just and equitable ground, an alternative order providing, among other things, for the purchase of the shares of any members of the company by other members of the company.

80. The Board agrees with Moses JA that the court's consideration under section 92 of the Act whether it is just and equitable that the company should be wound up is a threshold question which is to be answered before a petitioner can get access to any of the remedies available under section 95. That is clear from a straightforward reading of the wording of the Act. The Board also accepts, as Moses JA held, that the court has exclusive jurisdiction to make a winding up order. A winding up order is an order in rem which only a court can make. It is beyond the jurisdiction of an arbitral tribunal as parties cannot confer such a power on an arbitral tribunal by private agreement. An arbitral agreement that purported to confer such a power would be inoperative to that extent.

81. Further, in deciding whether to make a winding up order on the just and equitable ground, the court conducts a wide-ranging enquiry into and evaluation of the facts. The court takes the decision whether it is just and equitable to wind up a company with regard to all the relevant circumstances at the date of the hearing: *Lau v Chu* [2020] UKPC 24; [2020] 1 WLR 4656 ("*Lau v Chu*"), para 43 per Lord Briggs, giving the judgment of the Board. A decision by an arbitral tribunal on whether it was just and equitable to wind up the company by reference to the circumstances which existed on an earlier date could not determine the issue which the court has to consider. Such a decision would be an ineffective legal judgment. The Board therefore respectfully disagrees with the obiter suggestion by Patten LJ in *Fulham* at para 83 (and its endorsement by Sundaresh Menon CJ in *Tomolugen* at para 100) that an arbitrator could make a ruling on whether it would be appropriate for a complainant to initiate winding up proceedings or be limited to some lesser remedy. A ruling by an arbitral tribunal that it was of the view that it was just and equitable that a company be wound up would be ineffective; it could not bind the parties in a hearing before the court and, given the interests of third parties in a possible winding up of the company, it could not bind the court. In deciding on the appropriate remedy under section 95 the court takes into

account the interests of third parties, including the company's directors and employees, and businesses which have dealings with the company, who will be affected if a winding up order is made. See, by way of analogy, *Fulham* para 46; *In re Neath Rugby Ltd* [2009] EWCA Civ 291, [2010] BCC 597, para 84; and *In re Asia Television Ltd* [2015] 1 HKLRD 607, paras 55-58.

82. The parties were therefore correct in their agreement that an arbitral tribunal does not have the power to decide the fifth matter listed in para 23 above, ie whether a winding up order should be made and whether the persons identified by FMCH should be appointed joint liquidators of the Company. Further, for the reasons set out above, the Board agrees with Mr Thomas Lowe, counsel for FMCH, that an arbitral tribunal does not have power to make a ruling on matters (3) and (4), ie whether it is just and equitable that the company should be wound up or whether the remedy of a share buy-out should be granted under section 95 of the Companies Act.

83. That leaves the first and second matters set out in para 23 above. The first is whether FMCH has lost trust and confidence in Ting Chuan and in the conduct and management of the Company's affairs. FMCH allege that Ting Chuan caused, permitted or procured the majority directors, whom it appointed, to act in breach of their duties to the Company and to engage in misconduct in the management of the Company's affairs. The second is whether the fundamental relationship between FMCH and Ting Chuan has irretrievably broken down as a result of Ting Chuan's having acted contrary to the understanding between the parties as to how the business of the Company would be operated. Those two matters raise questions of mixed fact and law.

84. Moses JA further reasoned that, as the majority directors and the Company were not parties to the SHA and to the arbitration agreement which it contained, and as the allegations made against Ting Chuan could not be separated from the threshold issue of whether the court was of the opinion that it was just and equitable that the Company be wound up, the arbitration agreement was inoperative. His conclusion has been summarised in a first instance decision of the High Court of England and Wales in these terms:

> "Where … a necessary precursor to any form of relief is a decision by the court that it would be just and equitable to wind up the company, then bifurcation will not be possible."

See *Riverrock Securities Ltd v International Bank of St Petersburg* [2020] EWHC 2483 (Comm); [2021] 2 All ER (Comm) 1121, para 68 per Foxton J. See also *NDK Ltd v HUO Holding Ltd* [2022] EWHC 1682 (Comm); [2022] Bus LR 761, para 64 in which Foxton J recorded the proposition from *Riverrock* as common ground between the

parties. The issue before the Board in relation to matters (1) and (2) is whether that statement is correct.

85. Mr Lowe advanced several submissions as to why the Court of Appeal had decided this case correctly. On the question of statutory interpretation, he argued that the Companies Act made it clear that no private arbitral tribunal could make the critical decision whether it is just and equitable to wind up the Company. The Board agrees for the reasons discussed above but that argument goes only to matters (3) and (4).

86. Mr Lowe can derive no support from the judgment of the Court of Appeal of England and Wales in *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2014] EWCA Civ 1575; [2015] Ch 589 ("*Salford Estates*"). That case concerned a winding up petition on the ground that the company was unable to pay its debts under section 122(1)(f) of the Insolvency Act 1986. The petitioner cited several debts in its petition as evidence of the company's inability to pay its debts, only some of which arose out of the transaction to which the arbitration agreement applied. Sir Terence Etherton C opined that in those circumstances there was no basis for a mandatory stay of the winding up proceedings under section 9 of the Arbitration Act 1996 (para 34). He then expressed the view (para 35) that it seemed "highly improbable" that Parliament intended section 9 of the 1996 Act to confer on a debtor the right to a non-discretionary order "striking at the heart of the jurisdiction and discretionary power of the court to wind up companies in the public interest where companies are not able to pay their debts". In the Board's view, whether or not this view is correct, it has no bearing on a petition in which a member of a company seeks a winding up order on the just and equitable ground.

87. Mr Lowe also advanced an argument that the Cayman Islands was unique among Commonwealth countries in not introducing either a remedy for oppression, such as the former section 210 of the Companies Act 1948 in the United Kingdom, or a remedy for unfairly prejudicial conduct in the management of the company, such as that which has been available in the United Kingdom since 1980 and is now contained in sections 994-996 of the Companies Act 2006, which was separate from an application to wind up the company. He inferred from the legislature's decision not to introduce such remedies as separate proceedings from a winding up petition that the legislature had evinced an intention that disputes between shareholders concerning the conduct of the management of Cayman Islands companies were to be conducted in open court in the public interest. He pointed out that the Cayman Islands is a very significant jurisdiction for the incorporation of companies which operate in other jurisdictions or internationally and that there was a public interest in maintaining the confidence of incorporators in the competence of the Cayman Islands courts in resolving shareholder disputes. He submitted that, while the Cayman Islands had ambitions to host international arbitrations, it was not a significant centre for such proceedings in contrast to its role as one of the largest offshore incorporation centres. The problems with this argument are, first, that neither party produced or suggested that there were any pre-legislative materials which explained why the Cayman Islands legislature had not

introduced free-standing remedies for oppression and unfair prejudice. The submission therefore is simply speculation. Secondly, in any event, on the basis that matters (3)-(5) are to be determined exclusively by the courts, there will be court proceedings in public in which the critical decisions are made and the factual basis on which those decisions are made will be manifest. The Board is not persuaded that there is a public interest in making the Cayman Islands an outlier in relation to the treatment of international arbitration.

88. FMCH further submitted that winding up was intended to be a quick and efficient process. The presentation of a winding up petition offered protections to the petitioner as section 99 of the Companies Act serves to maintain the status quo by nullifying retrospectively on the making of a winding up order any disposition of the company's property or transfer of shares or alteration in the status of its members after the commencement of the winding up, unless the court orders otherwise. The Court of Appeal of the Cayman Islands clarified the purpose of this provision in *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2020] CILR 417. A prolonged process involving an arbitration in relation to matters (1) and (2) followed by a court process to determine matters (3)-(5) would not achieve the speedy resolution of the disputes and would leave hanging over the Company the possibility of the retrospective nullification of transactions under section 99. Mr Lowe pointed out that the parties had already been involved in a lengthy arbitration at the instance of Ting Chuan which had been very expensive and had taken over three and a half years to complete.

89. This is an argument relating to public policy. Mr Lowe further submitted that the complexity and delay involved in a bifurcation of the proceedings between an arbitral tribunal and the court would frustrate the expectations of reasonable businesspeople. In the Board's view the reference to such expectations is a relevant consideration principally in the interpretation of an arbitration agreement, viz Lord Hoffmann in *Fiona Trust*, rather than a distinct ground of public policy. In any event, there is no necessity that an arbitration of matters (1) and (2) would involve undue delay if the arbitral tribunal exercises robust case management in fulfilment of their task in reaching a speedy resolution of an arbitrated dispute. The Board is not persuaded that the determination of matters (1) and (2) by an arbitral tribunal is excluded on grounds of public policy because of the risk of some delay. In invoking the jurisdiction of the Court on the just and equitable ground FMCH is seeking a statutory remedy of an equitable nature: *In re Westbourne Galleries Ltd; Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, 379 per Lord Wilberforce; *Lau v Chu*, para 64 per Lord Briggs. The clean hands doctrine applies. Further, in the Board's view, in the exercise of this equitable jurisdiction the court must have regard to a party's contractual obligations, which may include an agreement to refer to arbitration disputes which fall within the scope of the relevant arbitration agreement.

90. There is no substance in the submission that a sword of Damocles is hanging over the Company through the operation of the avoidance provisions of section 99 of the Companies Act. As Mr Charles Kimmins KC pointed out on behalf of Ting Chuan, Kawaley J issued a consent order on 16 November 2018 which prevents payments made for the purpose of paying debts and expenses of the Company in the ordinary course of its business after the date of presentation of the winding up petition from being avoided under section 99 of the Companies Act.

91. The Board is not persuaded that an agreement to refer to arbitration disputes arising out of the SHA amounts to a contractual prohibition on initiating a petition to wind up a company. The Board discusses this matter below when it considers section 95(2) of the Companies Act. The submission that an arbitration would deny a party the protections of section 99 of the Companies Act is misconceived both because the arbitration agreement does not prevent the presentation of a winding up petition and because the parties have chosen to limit the application of section 99 in this case.

92. A further submission by FMCH in support of the argument that the just and equitable jurisdiction was indivisible was that the court alone could decide the facts in conducting the broad enquiry which was required when deciding whether it was just and equitable that a company should be wound up. Mr Lowe went so far as to suggest that the court needed to hear and test all the evidence. When questioned by the court he conceded, correctly, that there was nothing to stop the parties presenting the court with a statement of agreed facts. In the Board's view, such a statement could include, in principle, that FMCH had lost trust and confidence in Ting Chuan and that the fundamental relationship between those parties had broken down. A party could admit such facts, if it wished. As the court in exercising its jurisdiction under section 92 of the Companies Act would be bound by such an agreed statement or admission as between the parties, there is no reason in principle why the court should not be bound in a question between Ting Chuan and FMCH by the determination of an arbitral tribunal, which would set out its reasoning and its findings of fact.

93. The Board recalls that Kawaley J in his order of 14 July 2020 ordered that the petition be treated as an inter partes proceeding between those parties. See para 10 above. A finding by the arbitral tribunal on matters (1) and (2) would be binding on the parties under article 35(6) of the ICC Rules of Arbitration which provides:

> "Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made."

There is therefore no danger of duplication of effort or inconsistent findings in relation to matters (1) and (2).

94. Finally, FMCH submits that section 4 of the FAAEA requires a stay only in respect of a matter which is capable of settlement by arbitration. It submits that a matter must be a determination of a right or liability and not merely a declaration. It prays in aid a statement by Deane and Gaudron JJ in their joint judgment in the High Court of Australia in *Tanning* at 351 in which they interpreted the meaning of "matter" in the Australian legislation, which includes the words "capable of settlement by arbitration" in this way:

> "It requires that there be some subject matter, some right or liability in controversy which, if not co-extensive with the subject matter in controversy in the court proceedings, is at least susceptible of settlement as a discrete controversy."

FMCH referred also to a more recent joint judgment of Kiefel CJ and Gageler, Nettle and Gordon JJ in the High Court of Australia in *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514, para 68 in which, paraphrasing the judgment of Deane and Gaudron JJ in *Tanning*, they stated that it was sufficient that the defence puts in issue "among other things, some right or liability which is susceptible of settlement under the arbitration agreement as a discrete controversy". But the Board notes that the meaning of the judgment in *Tanning* was not a matter of controversy in that appeal.

95. The Board does not accept this submission, which is that an arbitrable matter must be a dispute which leads to the determination by an arbitral tribunal of a right or a liability, if by that FMCH means that the arbitral panel must have the jurisdiction to make an award such as an order for payment to enforce the right or require a party to fulfil its obligation. The Board does not interpret the judgment of Deane and Gaudron JJ as excluding the possibility of the determination of a dispute or controversy by means of a declaration, where the dispute is a matter of substance. See paras 59-62 above.

96. Matters (1) and (2) are controversies relating to legal or equitable rights which are of substance. They are matters which lie at the heart of the legal proceedings in the Cayman Islands for an order under section 95 of the Companies Act. A declaration, for example, that Ting Chuan had breached FMCH's equitable rights and that their relationship had irretrievably broken down would be highly relevant to FMCH's application for a just and equitable winding up of the Company or in the alternative a share buy-out. They are also matters which the parties accept fall within the scope of the arbitration agreement.

97. For the reasons set out above, the Board concludes that matters (1) and (2) which it has set out in para 23 above are "matters" in terms of section 4 of the FAAEA for which a stay pro tanto of the winding up proceedings is mandated.

10. The application for a case management stay of the winding up proceedings

98. Ting Chuan seeks a discretionary stay of the winding up proceedings so far as they are formally directed against parties other than itself. Kawaley J in para 75 of his judgment opined that section 95(1)(d) of the Companies Act, which provides that the court may make "any other order that it thinks fit" gave him the power to do so. The Court of Appeal between paras 138 and 141 of Moses JA's judgment discussed the court's power to grant a discretionary case management stay but considered that there was no room to exercise such discretion as the petition to wind up the Company on the just and equitable ground involves an indivisible factual evaluation.

99. As the winding up process is intended to be conducted with expedition, the court will, as a general rule, rarely wish to grant a stay of such proceedings. But a stay for arbitration is a special case. Where the shareholders of a company are engaged in an inter partes dispute which is within the scope of a binding arbitration agreement and an essential precursor to the determination of a winding up petition on the just and equitable ground, there are strong grounds for granting such a stay. In *Salford Estates* the Court of Appeal of England and Wales held that the court's discretionary power under section 122(1) of the Insolvency Act 1986 ("A company *may* be wound up by the court if …") had to be exercised consistently with the parties' agreement as to the proper forum for resolving their disputes and in accordance with the legislative policy of the Arbitration Act 1996. The case concerned a disputed debt alleged to arise under a lease and the lessor presented a petition seeking the winding up of the tenant. Sir Terence Etherton MR, giving the judgment of the court, stated (para 39) that section 122(1) of the Insolvency Act 1986 conferred on the court a discretionary power to wind up a company. He said that it was "entirely appropriate" that the court should, "save in wholly exceptional circumstances", grant a discretionary stay as that was consistent with the pro-arbitration policy of the 1996 Act.

100. The statutory provisions under which the Cayman Islands courts are operating in this case are contained in the FAAEA. The FAAEA does not contain provisions stating the well-known principles that parties are free to agree how their disputes are resolved subject only to such safeguards as are necessary in the public interest, and restricting the intervention of the court, such as are found in section 1 of the 1996 Act, on which the Court of Appeal of England and Wales relied in *Salford Estates*, and in section 3(3) of the Arbitration Act 2012 in the Cayman Islands, which relates to domestic arbitrations. Nonetheless, such principles are wholly consistent with the wide international consensus in favour of a pro-arbitration policy in relation to international arbitrations governed by the New York Convention, which provides in article II(1):

> "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration."

101. Thus, in *Tomolugen* the Court of Appeal in Singapore in an unfair prejudice petition granted a mandatory stay under section 6 of the IAA of one of the matters which fell within the scope of the arbitration agreement and granted a discretionary case management stay of the other matters which did not: see Sundaresh Menon CJ at paras 187-190. In *WDR Delaware*, a case involving a winding up petition arising out of allegations of oppressive conduct, Foster J granted a stay of the whole of the winding up petition although only certain matters were arbitrable. Similarly, in *Consolidated Resources* the Court of Appeal in Jersey granted a mandatory stay of the matters within the scope of the arbitration agreement and, using the court's inherent jurisdiction, a discretionary stay of the remaining claims in the proceedings for unfair prejudice and winding up (para 159). In *China Europe*, Linda Chan J in the Court of First Instance in Hong Kong granted a discretionary stay for arbitration of a winding up petition on the just and equitable ground, where the disputes between the shareholders which grounded the petition fell within the scope of an arbitration agreement. It will be recalled that in Hong Kong section 20 of the Arbitration Ordinance, which provided for a mandatory stay, referred to an "action" and did not extend to a winding up petition; *Quiksilver* para 20.

102. The Board is inclined to think, in agreement with Kawaley J and Sir Terence Etherton MR, that in the Cayman Islands as in England and Wales there is a statutory basis for the grant of a stay of a winding up petition. The Board therefore does not need to determine whether and to what extent a discretion exists under the court's case management powers apart from statute. In *In re Nanfong International Investments Ltd* [2018] CILR 321 ("*Nanfong*") the Cayman Islands Court of Appeal adopted a restrictive approach to the grant of a discretionary stay, applying the principles set out by Lord Bingham of Cornhill CJ in *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173 ("*Reichhold*"). Moses JA adopted the same approach in this case, holding at para 138 that a stay will be granted only in rare and compelling circumstances. The Board observes that in *Reichhold* and *Nanfong* the basis on which a stay was sought did not involve an assertion that all or some of the matters in the legal proceedings fell within the scope of a binding arbitration agreement. While it is not necessary for the Board to decide this matter, it questions the proposition that a discretionary case management stay of winding up proceedings on the just and equitable ground where a substantial part of the dispute between the parties or some of the parties to the petition falls within the scope of a binding arbitration agreement should be granted only in rare and compelling circumstances. Such a conclusion appears to be inconsistent with the support which the courts give to arbitration and the trend of case law internationally.

103. The determination of matters (1) and (2) will be an essential precursor to the court's formation of its opinion whether it is just and equitable to wind up the Company, which in turn is the threshold for giving a remedy under section 95 of the Companies Act (ie matters (3)-(5)). The Board is satisfied that it is appropriate to grant such a stay.

11. Section 95(2) of the Companies Act

104. It will be recalled that section 95(2) states that the court shall dismiss or adjourn a hearing of a winding up petition if the petitioner is contractually bound not to present a petition against the company. In this case there is no contract binding FMCH not to present a winding up petition. The arbitration agreement in the SHA requires certain matters to be determined by arbitration but is silent as to the presentation of a winding up petition against the Company. The Board is satisfied that the contractual obligation on the parties to determine those matters by arbitration entails an obligation not to have those matters determined by a court. That obligation is enforced by the court's grant of a stay of the winding up petition pro tanto. It does not amount to a contractual prohibition against the initiation of winding up proceedings. Section 95(2) is therefore not relevant to the dispute between the parties and the Board will say no more about it.

12. Conclusion

105. Matters (1) and (2) are substantive disputes between FMCH and Ting Chuan which provide the factual basis for the winding up petition on the just and equitable ground. Those matters fall within the scope of the parties' arbitration agreement and must be determined by an arbitral tribunal unless the parties waive their right to arbitration. There must therefore be a mandatory stay of the winding up petition in relation to matters (1) and (2) under section 4 of the FAAEA and a discretionary stay in relation to matters (3)-(5). In relation to the Company, which is the other party to the winding up petition, the Board is satisfied that there should be a stay of the winding up petition. The determination of matters (1) and (2) is the precursor to the determination of the petition which Kawaley J in his order dated 14 July 2020 has ordered be treated as an inter partes proceeding between FMCH and Ting Chuan.

106. The Board will humbly advise His Majesty that this appeal should be allowed.

EXHIBIT F

Neutral Citation Number: [2025] CIGC (FSD) 124

Cause No: FSD 2025-0146 (JAJ)
and Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR ONE LP)

(2) UNICORN BIOTECH VENTURES TWO LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR TWO LP)

Plaintiffs

-and-

ATP III GP, LTD
(in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer and Ms Yuan Wen of Campbells LLP for the Plaintiffs / Petitioners** **Mr Andrew Ayres KC of counsel instructed by Ms Shelley White, Ms Laure Astrid Wigglesworth and Ms Rebecca Mosely of Walkers (Cayman) LLP for the Defendant / Respondent**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**17 December 2025**
Ex tempore judgment delivered:	**17 December 2025**
Finalised judgment approved:	**22 December 2025**

Civil procedure—vacation of trial—effect of defendant filing for Chapter 11 bankruptcy protection in the United States on conduct of proceedings before the Grand Court—case management considerations

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JUDGMENT

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1. This writ action and winding up petition are listed before me today for a combined pre-trial review in advance of a trial in both matters due to commence on 12 January 2026. This hearing has been fixed in the calendar since October 2025 and was intended to be used to address any last-minute issues concerning preparation for the trial.

2. As in previous hearings before me, the limited partners who are the Plaintiffs / Petitioners have been represented by Mr Andrew Scott KC, supported by Mr Liam Faulkner, Mr Hugo Farmer and Ms Yuan Wen of Campbells LLP, and the Defendant / Respondent general partner has been represented by Mr Andrew Ayres KC, supported by Ms Shelley White, Ms Laure Astrid Wigglesworth and Ms Rebecca Mosely from Walkers (Cayman) LLP. I will refer to the parties respectively as the LPs and the GP.

3. In the last two weeks there have been two substantial developments, the first of which will have a significant effect on the intended progress of the trial; the second of which has largely derailed it. The first is that on 5 December 2025, just over 10 business days ago, Chancellor McCormick in Delaware gave judgment in the parallel proceedings between the parties dealing with certain issues about the GP's entitlement to make capital calls from the LPs, rejecting parts of the GP's case. This is likely to have consequences for the conduct of the winding up petition before the Grand Court, in particular Mr Scott argues that it will significantly simplify the question whether a winding up order should be made. If the trial before the Grand Court were to proceed, there would also be arguments about the extent to which any findings by Chancellor McCormick might be binding on the parties in respect of their disputes before the Grand Court. However, the parties have always known that that would be the case.

4. Secondly, and more significantly, on 9 December 2025, the GP and certain other linked entities sought Chapter 11 bankruptcy protection in the United States including, as part of that protection, a worldwide automatic stay of proceedings in any other jurisdiction.

5. The GP's intention to seek Chapter 11 protection was not foreshadowed in any way either to the LPs or to the Grand Court. Indeed on 8 and 9 December 2025, at the same time that the GP and Quinn Emanuel, its lead attorneys in the US proceedings, must have been preparing the GP's Chapter 11 filings (including a lengthy declaration of Dr Seth Harrison, the controller of the GP), Walkers were dealing with the Grand Court and the Court of Appeal in relation to the GP's intended expedited appeal against an Order I had made on 1 December 2025 concerning a privilege issue regarding discovery. In their dealings with Campbells, the Grand Court and the Court of Appeal on 8 and 9 December 2025, Walkers expressly represented that the GP did not intend the appeal to disrupt the trial fixed for 12 January 2026. There is no suggestion that Walkers were aware of the GP's intended Chapter 11 filing in the United States, which would be wholly contradictory to the representations made by them.

6. Thus, it is now clear that, for the second time within less than 3 weeks, the GP and Quinn Emanuel have not informed Walkers of important matters relevant to the proper conduct of the Cayman proceedings, with the result that the position has been actively misrepresented to the Court. This is extremely unsatisfactory and is to be deprecated.

7. Of a piece with this, it is also extremely regrettable that a partner in Quinn Emanuel considered it appropriate to write directly to an associate at Campbells on 11 December 2025 threatening all kinds of personal consequences as a result of Campbells' indication to the Grand Court on 10 December 2025 that they considered that the PTR should proceed, contrary to Walkers' request to vacate it, so that the Court could be properly informed of developments in Delaware and consider what consequences they had for the matters before the Grand Court. Quinn Emanuel asserted in the letter that the communication to the Grand Court was itself a violation of the automatic stay under Chapter 11. This is in marked contrast to the submissions on behalf of the GP at an oral hearing before the Delaware bankruptcy judge on 15 December 2025, where the transcript of the hearing that is before me records that an attorney from Quinn Emanuel orally submitted in relation to the PTR today:

> *"[…] on the specific issue of the Wednesday hearing. It is a pretrial conference. There is no dispute that the lawyers in the Cayman Islands should apprise the Court as to the goings on here. That is not -- I don't think there is any dispute that that can and should happen. In fact, we did inform the Court of the filing of the case and the judge did indicate that he wants to have counsel there to, at least, give him an update as to what is going on here. That makes all the sense in the world."*

Bullying correspondence of the kind exemplified by Quinn Emanuel's letter dated 11 December 2025, whilst it might be acceptable in the United States (although I doubt that), is completely unacceptable in the Cayman Islands. I do not want to see similar conduct in any matters that come before me by any American law firms involved in the background, still less by any local attorneys.

8. The PTR hearing before me today has focused on the consequences of the GP's filing of the Chapter 11 proceedings in the United States and the impact of the automatic stay under American law on what is happening and due to happen before the Grand Court.

9. It seems to me that the first point is the obvious one that the trial cannot proceed on 12 January 2026 and must be vacated. That is for two reasons. First, because neither of the parties are able to take steps to prepare for that trial whilst the Chapter 11 proceedings are live. Whilst the Chapter 11 stay is not directly enforceable in the Cayman Islands and no application has been made to recognise the Chapter 11 proceedings here, the GP and all the partnership assets are based in the United States. Thus, even if either of the parties were to take steps to try to progress the matters before the Grand Court, there would probably be arguments in Delaware that they are in contempt, with potentially severe consequences for them and for all of the partnership's assets. So, I do not criticise either party for taking the view that the January trial cannot realistically proceed.

10. I note that the LPs are seeking or intend to seek in Delaware, first, to dismiss the Chapter 11 proceedings as an abuse, and secondly, an order waiving or disapplying the automatic stay so that a slimmed down trial, taking into account Chancellor McCormick's recent judgment, can proceed before the Grand Court later in January 2026. Those motions in Delaware have not yet been briefed or determined and it appears unlikely that they will be determined until sometime during January 2026 at the earliest, which is also inconsistent with the ability to proceed with the intended trial on 12 January 2026.

11. The second reason why it seems to me that the trial cannot and should not proceed on 12 January 2026 is that the LPs' position is that the effect of the GP's Chapter 11 filing is that the partnership is now in voluntary liquidation under Cayman law. So, a number of the issues that were going to be fought out in the 12 January trial are likely no longer to be live issues and will probably not need to be determined by the Court. I therefore have no hesitation concluding that the trial fixed to commence on 12 January 2026 should be vacated.

12. The second question is whether the Court should fix a date in January or February 2026 for hearing a streamlined version of the substantive winding up petition presented by the LPs, which is the LPs' position, or whether, as the GP argues, the Court should simply await developments in Delaware and essentially take no further steps to move the Cayman disputes forward until clarity is obtained on the position in the United States.

13. I do not find the GP's position to be a particularly attractive one. The parties have throughout sought to advance the resolution of the disputes between them both in Delaware and in the Grand Court on an expedited basis. My own view is that an orderly separation of the GP from the LPs needs to occur sooner rather than later to avoid the continuation of these obviously corrosive disputes between the parties on each side. It does not seem to me to be productive or a beneficial use of the parties' time and resources for this dispute to drag on for any longer than absolutely necessary. The only people who are profiting from this dispute at the moment are the lawyers on each side.

14. I therefore conclude that I should fix a date for the trial of what the LPs have called the "paragraph 10(b) issues" for the week commencing 2 February 2026. If, for any reason, events in Delaware do not progress on a schedule that allows the parties to prepare for and conduct that hearing, then the parties can apply to me in mid to late January with a view to adjourning the trial and moving it perhaps into March 2026. But it seems to me that it is far better that I allocate that time and give the parties a date to be working towards now so that my calendar does not fill up in the intervening period. If I did not do so, and the parties were to come back to me in mid to late January 2026 following a decision by the Delaware judge on either the dismissal of the Chapter 11 proceedings or a carve out for the Grand Court proceedings from the automatic stay, the likelihood is that the earliest date that I could then give them would not be until the middle to the end of March, and perhaps even into April 2026.

15. I am inclined to accept Mr Scott's submission that Chancellor McCormick's findings and the fact of the Chapter 11 filing in the United States, and their consequences under the limited partnership agreement and Cayman Islands law, have the result that it ought not to be necessary any longer to get into the question whether the LPs have lost trust and confidence in the GP's ability to manage the partnership. It seems to me that Mr Scott is right to say that the issue for the Court, or at least a preliminary issue for the Court, is the question whether there has been a loss of substratum, which on its own would justify the making of a winding-up order without the necessity to get into the questions of loss and of trust and confidence.

16. It seems to me that two days should be sufficient for the Court to determine the paragraph 10(b) issues, which are largely matters of law and construction of the limited partnership agreement. To the extent that there is likely to be any need to consider questions of fact, they are likely to be relatively circumscribed in their scope. I note in passing, and with some admiration, that Chancellor McCormick was able to hear the Delaware trial in two days. I appreciate that there are significant differences in the procedural approach of the US courts to the conduct of trials compared to the approach of the Grand Court, but I think that with goodwill and cooperation on both sides it ought to be feasible to have a hearing of the more limited nature proposed by the LPs within a two-day time estimate.

17. I agree with Mr Ayres on behalf of the GP that it will be necessary for the LPs to make amendments to their winding up petition so that it is clear precisely what their case is, both for the GP and also for the Court when it comes to deal with the hearing of the petition. It also seems to me that Mr Scott is correct that the appropriate procedural way to characterise the hearing in February 2026 is that it will be a trial of preliminary issues, so that if, for any reason, I determine that the partnership's substratum has not been lost, then the LPs have the ability to come back and to argue the loss of trust and confidence points at a later stage, if there is any real appetite on either side for the matter to proceed beyond February 2026.

18. However, having said that, I will not make an order at this stage imposing any procedural timeline for the preparation of amended pleadings because I am conscious that there may well be arguments that the parties are unable to take any such substantive steps whilst the stay under Chapter 11 applies to them.

19. I understand that the matter is before the Delaware judge this afternoon. It does seem to me that, at the very least, it would be of real utility for the Delaware judge to authorise the preparation of amended pleadings on both sides in order to re-state what are the issues that the Grand Court will need to determine in due course. It also seems to me that it would be of real utility for the Delaware judge, as soon as possible, to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made. A decision on those points is likely to be of real benefit to the parties and also to the Delaware court if the Chapter 11 proceedings are not dismissed and continue.

20. For what it is worth, I will conclude by saying that I generally take the view that the conduct of the winding up of a Cayman exempted limited partnership, and by whom that winding up ought to be carried out, are more appropriately questions for the Grand Court to determine supported by Chapter 15 recognition in due course, rather than by Chapter 11 proceedings. It is for the Delaware judge to take whatever view of that indication that she wishes to take.

21. It also occurs to me, without the benefit of full argument, but as a preliminary view, that the proposal for capital restructuring and the introduction of new investors, which is adverted to by Dr Harrison in his declaration in support of the Chapter 11 proceedings, appears at first blush to be outside the proper scope of the GP's powers based on the limited partnership agreement which is binding upon the GP, and also having regard to applicable Cayman law on what a GP's obligations are in the context of a winding-up of a Cayman exempted limited partnership.

Dated 17 December 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

EXHIBIT FF

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

[PROPOSED] PARTIAL FINAL JUDGMENT AND ORDER PURSUANT TO RULE 54(b)

WHEREAS, the Court conducted a two-day trial on October 16 and 17, 2025;

WHEREAS, the Court issued its Post-Trial Memorandum Opinion (the "Opinion") on December 5, 2025;

WHEREAS, the Court did not resolve one of the pending claims; and

WHEREAS, the parties have agreed on a proposed form of order implementing the Opinion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. With respect to the Second Cause of Action of the Verified Complaint, as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76) ("Count II") judgment is hereby entered in favor of Plaintiff

ATP III GP Ltd. in its capacity as General Partner of ATP Life Science Ventures, L.P. ("ATP") and against Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Defendants").

2. In respect of the judgement entered in Count II, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls (as defined in the Opinion) issued on May 30, 2025 for Aethon Therapeutics, Apertor Pharmaceuticals, Ascidian Therapeutics, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marengo Therapeutics, Marlinspike Therapeutics, Red Queen Therapeutics, and ATLS fees and partnership expenses in the amount of $96,960,925.88.

3. Defendants, jointly and severally, shall make such payments to ATP Life Science Ventures, L.P. in satisfaction of the Capital Calls by paying $96,960,925.88 to a segregated account within 10 days of the entry of this Partial Final Judgment and Order. Such funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware. The parties shall work in good faith to establish such segregated account.

4. Judgment is hereby entered in favor of Defendants and against Plaintiff ATP on the following counts: the First Cause of Action (Breach of Contract – Budget Approvals), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), and the Fourth Cause of Action (Global Default Charge).

5. The Court reserves decision on the Fifth Cause of Action (Declaratory Relief – Proper Actions of General Partner).

6. ATP's request for attorney's fees in connection with the above-captioned action is denied.

7. All other requests for relief are denied.

8. Court of Chancery Rule 54(b) provides this Court with discretion to enter a partial final judgment if: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal.

9. The Post-Trial Opinion satisfies the requirements of Court of Chancery Rule 54(b).

10. This case involves multiple claims against multiple parties, and the Opinion resolved all of the claims except for one, on which the Court reserved judgment.

11. The unresolved claim involves issues being resolved in a pending litigation in the Cayman Islands and is "not a core dispute in this litigation." Accordingly, there is no just reason for delaying the finality of this Partial Final Judgment and Order pending appeal.

12. Pursuant to Court of Chancery Rule 54(b), the Court expressly directs (i) that this Partial Final Judgment and Order be entered as a final order and judgment

with respect to all proceedings to date regarding the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies) (as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76)), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), the Fourth Cause of Action (Global Default Charge), and (ii) that this Partial Final Judgment and Order be immediately appealable.

Chancellor Kathaleen St. Jude McCormick

This document constitutes a ruling of the court and should be treated as such.

Court:	DE Court of Chancery Civil Action
Judge:	Kathaleen St Jude McCormick
File & Serve Transaction ID:	77974253
Current Date:	Dec 11, 2025
Case Number:	2025-0607-KSJM
Case Name:	CONF REQ - ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al.
Court Authorizer:	Kathaleen St Jude McCormick

/s/ Judge Kathaleen St Jude McCormick

EXHIBIT G

EFiled: Sep 16 2025 03:38PM EDT
Transaction ID 77090203
Case No. 2025-0607-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	**REDACTED PUBLIC VERSION EFILED: September 16, 2025**
Defendants.	)	

STIPULATION AND [PROPOSED] PRE-TRIAL ORDER

Pursuant to Court of Chancery Rule 16(c), and subject to the approval of the Court, Plaintiff ATP III GP, Ltd. ("ATP" or "Plaintiff"), in its capacity as general partner of ATP Life Science Ventures, L.P. (the "Fund"), and Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Rigmora" or "Defendants"), by and through their undersigned counsel, jointly submit this Stipulation and [Proposed] Pre-Trial Order (the "Pre-Trial Order"). Plaintiff and Defendants (each a "Party," and together the "Parties") reserve the right to modify this Pre-Trial Order by agreement with approval of the Court.

I. NATURE OF THE ACTION AND PROCEDURAL HISTORY

1. This action arises from a dispute regarding the First Amended and Restated Limited Partnership Agreement of ATP Life Science Ventures dated November 1, 2012, as amended (the "LPA," Dkt. 29). *See* Complaint, Dkt. 1.

2. On May 30, ATP filed its Verified Complaint, along with a Motion to Expedite Proceedings. Dkt. 1.

3. On June 9, 2025, Defendants filed a Motion to Stay Proceedings (Dkt. 10) and a Motion to Dismiss (Dkt. 11).

4. The Parties completed briefing on ATP's Motion to Expedite on June 12, 2025, and the Court heard argument on the motion on June 13, 2025. Pl. Reply ISO Mot. to Expedite, Dkt. 28; June 13, 2025 Hr'g Tr., Dkt. 31. The Court granted expedition but stayed discovery pending a determination of the Defendants' Motion to Stay Proceedings. June 13, 2025 Hr'g Tr. at 43:8-43:22.

5. The Parties completed briefing on Defendants' Motion to Stay Proceedings on June 24, 2025, and the Court heard argument on the motion on June 27, 2025. Defs. Reply ISO Mot. To Stay, Dkt. 40; June 27, 2025 Hr'g Tr. Dkt., 45. The Court denied the motion. June 27, 2025 Hr'g Tr. at 52:5-52:18.

6. On July 7, 2025, the Court entered the Parties' Stipulation and Order Governing Case Schedule. Dkt. 54.

7. On July 7, 2025, Defendants filed their Answer. Dkt. 57.

8. The Parties conducted written and document discovery and depositions, including expert depositions.

9. A pre-trial conference is presently scheduled for September 11, 2025, at 3:15 p.m. Dkt. 54.

10. A two-day trial is currently scheduled for September 18 and 19, 2025, beginning at 9:15 a.m. ET in Wilmington, Delaware. *Id*.

11. A related dispute between the Parties is pending in the Grand Court of the Cayman Islands, pursuant to a writ filed by Defendants on June 2, 2025 and a petition filed by Defendants on June 6, 2025. JX-1416, Writ of Summons, Cause No. FSD 2025-0146; JX-1417, Winding Up Petition, Cause No. FSD 2025-0151. The Grand Court of the Cayman Islands has scheduled a trial in those proceedings starting on January 12, 2026.

II. UNDISPUTED FACTS

12. The facts set forth below have been admitted or stipulated as true and require no proof. The inclusion of any fact herein is not an admission or acknowledgment of its relevance to any issue in this action. The Parties reserve all rights with respect to any legal or factual dispute other than those specifically addressed in this Stipulation. The undisputed facts are as follows:

A. The Parties

13. Plaintiff ATP III GP, Ltd. ("ATP") is a Cayman Islands exempted company, designated as the general partner of Apple Tree Partners Life Sciences Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund").

14. The Fund invests in companies pursuing biopharmaceutical research. Ans. ¶ 29.

15. ATP is owned and controlled by Dr. Seth Harrison. Compl. ¶ 2.

16. Dr. Harrison and a trust created for Dr. Harrison's children, Les Pommes LLC, are both limited partners in the Fund. Ans. ¶ 44.

17. Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP are both limited partnerships organized under the laws of the British Virgin Islands. Ans. ¶¶ 18-19.

18. Defendants are limited partners in the Fund and the successors-in-interest to Blue Horizon Enterprise Ltd. and Ezbon International Ltd.[1] Ans. ¶ 21.

19. Rigmora Holdings Ltd. ("Rigmora Holdings") is a limited partner of each of the Defendants.

20. Defendants are ultimately owned by the family trust of Dr. Dmitry Rybolovlev (the "Trust"). Ans. ¶ 20.

[1] Any reference herein to "Defendants" includes reference to their predecessors-in-interest, if applicable.

21. Dr. Rybolovlev is a Russian-born Cypriot national who made his fortune in Russia. Ans. ¶ 96.

B. The Limited Partnership Agreement and Subsequent Amendments

22. In 2010, Dr. Rybolovlev and Dr. Harrison met and subsequently discussed forming the Fund. Ans. ¶ 26.

23. On October 29, 2012, the Parties entered into a limited partnership agreement to create the Fund as an exempted limited partnership under Cayman law, with ATP as the general partner, and Defendants as limited partners. JX-1. The Fund was originally named Apple Tree Partners IV, L.P. *See* JX-1. On November 27, 2020, the name of the Fund was changed to ATP Life Science Ventures, L.P. pursuant to Amendment No. 19 (*infra* ¶ 32).

24. On November 1, 2012, the Parties entered into the First Amended and Restated Limited Partnership Agreement (as amended, the "LPA"). JX-1.

25. The LPA is governed by Cayman Law. JX-1, Paragraph 18(g)(i).

26. On November 1, 2012, Defendants entered into Subscription Agreements with the Fund, with a total Contingent Subscription amount of [redacted]. JX-212, 213.

27. On November 1, 2012, Dr. Harrison entered into a Subscription Agreement with the Fund, with a total Contingent Subscription of [redacted]. JX-216.

28. Between 2012 and 2020, Amendment Nos. 1 through 16 to the LPA were executed.

29. On September 2, 2020, Amendment No. 17 to the LPA was executed. JX-89.

30. On September 20, 2020, Defendants and the Fund executed Amendment No. 1 to Defendants' Subscription Agreements, which increased the total amount of Defendants' Contingent Subscriptions by [redacted] to [redacted]. JX-99, 101; Ans. ¶ 36.

31. On November 5, 2020, Amendment No. 18 to the LPA was executed. JX-126.

32. On November 27, 2020, Amendment No. 19 to the LPA was executed. JX-132.

33. On December 31, 2020, Dr. Harrison transferred certain percentages of his interests in the Fund to his discretionary trust Les Pommes LLC, along with rights and obligations under the LPA and Dr. Harrison's Subscription Agreement. JX-157.

34. On June 21, 2021, Amendment No. 20 to the LPA was executed. JX-222.

35. On December 5, 2022, Amendment No. 21 to the LPA was executed. JX-480.

36. On July 10, 2024, the Defendants received transfers of the limited partner interests held by their predecessors-in-interest Blue Horizon and Ezbon along with rights and obligations under the LPA and Subscription Agreements. JX-1048.

37. On December 20, 2024, Amendment No. 22 to the LPA was executed. JX-1068.

38. Since the execution of Amendment No. 22 to the LPA, Braeburn, Plaintiff, and Rigmora Holdings have not entered into a royalty financing transaction.

39. The LPA has not been amended since Amendment No. 22.

C. The Thirteen Portfolio Companies

40. The Fund has invested in the following thirteen companies, among others: Aethon Therapeutics ("Aethon"), Apertor Pharmaceuticals ("Apertor"), Ascidian Therapeutics ("Ascidian"), Aulos Bioscience ("Aulos"), Deep Apple Therapeutics ("Deep Apple"), Evercrisp Biosciences ("Evercrisp"), Initial Therapeutics ("Initial"), Marengo Therapeutics ("Marengo"), Marlinspike Therapeutics ("Marlinspike"), Nereid Therapeutics ("Nereid"), Nine Square Therapeutics ("Nine Square"), Red Queen Therapeutics ("Red Queen"), and Replicate Biosciences ("Replicate," collectively the "Portfolio Companies"). Compl. ¶ 9.

41. In correspondence, dated May 15, 2025 and from time to time thereafter, Defendants and Plaintiff referred to Aethon Therapeutics, Apertor Pharmaceuticals, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marlinspike Therapeutics, and Red Queen Therapeutics as the seven "Early Stage Companies."

D. Fund Operations Between 2020 and 2024

42. Between 2020 and 2022, the Fund proposed initial investments in twelve of the thirteen Portfolio Companies. Ans. ¶ 64.

43. Prior to each investment, Plaintiff and Defendants had detailed discussions regarding the budget for each proposed Portfolio Company. Ans. ¶ 31.

44. Following discussions, Defendants approved initial investments in Ascidian in March 2020; Initial, Nereid, and Nine Square in May 2020; Aulos and Apertor in October 2020; Replicate in January 2021; Evercrisp in July 2021; Red Queen in September 2021; Deep Apple in November 2021; Marlinspike in December 2021; and Aethon in December 2022.

45. Plaintiff provided quarterly reports to the Defendants. Ans. ¶ 144.

46. The Fund has had multiple "exits" creating certain revenue and returns on investment. Defendants received certain distributions from the Fund relating to investments in Stoke Therapeutics, Akero Therapeutics, and Syntimmune, Inc. Ans. ¶¶ 60, 71. The Fund has distributed approximately [redacted] to the

Defendants.

47. The Fund's most valuable current asset is its investment in Braeburn Pharmaceuticals, Inc. ("Braeburn"). Braeburn is a pharmaceutical company founded in 2012 to develop and commercialize pharmaceutical products designed to address opioid use disorder. Braeburn is currently engaged in a commercial launch of the company's flagship product, Brixadi. Ans. ¶ 68.

48. Braeburn's likelihood of achieving commercial success was uncertain for many years. Ans. ¶ 69.

49. Brixadi faced regulatory delays, but ultimately received FDA Approval for marketing in the United States in June 2023. Ans. ¶¶ 73, 91.

50. In 2023, Braeburn entered into a Loan and Security Agreement with Hercules Capital. Ans. ¶ 91.

E. Braeburn Litigation

51. On September 28, 2023, Defendants requested distribution of the net assets of the Fund's investment in Braeburn pursuant to Amendment No. 20. Ans. ¶ 92.

52. Plaintiff refused Defendants' 2023 request for distribution of the net assets of the Fund's investment in Braeburn. Ans. ¶ 94.

53. On July 30, 2024, Defendants renewed their request for distribution of the net assets of the Fund's investment in Braeburn. Ans. ¶ 98.

54. On August 2, 2024, Defendants filed an originating summons in the Grand Court of the Cayman Islands (the "Braeburn Action"), seeking a ruling that Amendment No. 20 required Plaintiff to make the requested distribution. Ans. ¶ 106.

55. On December 20, 2024, the Parties settled the Braeburn Action which was contingent on the Parties executing Amendment No. 22. Ans. ¶ 100.

56. Also on December 20, 2024, the Parties entered into Amendment No. 22 to the LPA.

F. 2025

57. In January 2025, Defendants paid a [redacted] capital call for Replicate. Ans. ¶ 119. In January 2025, Defendants also paid a [redacted] capital call for Aulos, a [redacted] capital call for Deep Apple, a [redacted] capital call for Evercrisp, a [redacted] capital call Marlinspike, and a [redacted] capital call for Nine Square.

58. In February 2025, Defendants approved an [redacted] increase in the budget for Replicate contingent on certain conditions. Ans. ¶ 120.

59. In February 2025, Defendants paid a [redacted] capital call for Replicate, a [redacted] capital call for Marlinspike, and an approximately [redacted] capital call for certain expenses.

60. In March 2025, Defendants paid a [redacted] capital call for Red Queen.

61. In April 2025, Defendants paid a [redacted] capital call for Deep Apple, a [redacted] capital call for Initial, and a [redacted] capital call for Nine Square.

62. In April 2025, Dr. Harrison sent a spreadsheet to Defendants modelling reallocation of budgeted amounts from the Early Stage Companies to Aulos, Ascidian, and Marengo. Ans. ¶ 125.

63. On May 6, 2025, Plaintiff made capital calls for Apertor and Initial in the amounts of [redacted] and [redacted] respectively (the "May 6 Capital Calls"). Ans. ¶ 131. Defendants paid the May 6 Capital Calls and Plaintiff acknowledged receipt of the funds on May 22, 2025. Ans. ¶ 147.

64. On May 30, at approximately 11:36pm EDT, Plaintiff sent capital calls for ten Portfolio Companies and for certain expenses. JX-1387, 1388, 1390-1399.

65. On May 30, at approximately 11:44pm EDT, Plaintiff filed the Verified Complaint.

66. The total amount of the capital calls sent by Plaintiff on May 30, 2025 was US [redacted].

67. On June 1, 2025, Plaintiff sent Defendants an amended capital call for Replicate, lowering the amount called from US [redacted] to US [redacted].

68. Following the June 1 revision, the total amount of the capital calls initially dated as of May 30, 2025 is US [redacted].

III. ISSUES OF FACT AND LAW TO BE LITIGATED AT TRIAL

A. ATP's Issues of Fact and Law

69. On May 30, 2025, Plaintiff filed its Verified Complaint seeking, among other relief, an order of specific performance that Defendants must comply with their obligations under the LPA to provide funding to the Early-Stage Companies.

70. ATP respectfully refers the Court to its Pre-Trial Brief, to be filed in accordance with the Scheduling Order, for ATP's statement of the issues of fact it intends to establish at trial and statements of legal issues to be tried.

B. Defendants' Issues of Fact and Law

71. Defendants deny that Plaintiff is entitled to the relief sought in its Complaint, any order of specific performance, or to any relief at all.

72. Defendants respectfully refer the Court to their Pre-Trial Brief, to be filed in accordance with the Scheduling Order, for their statement of the issues of fact they intend to establish at trial and statements of legal issues to be tried.

73. Defendants respectfully reserve the right to revisit the Pre-Trial Order or to seek to modify it for good cause shown upon resolution of the outstanding disputes over Plaintiff's withholding of documents subject to Defendants' motions to compel.

IV. STATEMENT OF RELIEF SOUGHT

A. Plaintiff

74. Plaintiff requests the following relief:

a. Declaring that Defendants have:

(i) breached the LPA by refusing to consider budgets and have waived their rights to approve budgets;

(ii) breached the LPA by preemptively refusing to respond to capital calls relating to approved budgets;

(iii) breached the LPA by refusing to pay the May 30th Capital Calls;

(iv) breached their obligations under the LPA to fund and approve budgets sufficient to qualify as a Defaulting Partner; and

(v) breached their Common Law duties to exercise its discretion in approving budgets in a rational and good faith manner.

b. Declaring that Defendants waived or otherwise forfeited its voting and budget approval rights and that it "shall not have the right to vote on

or grant or withhold consent or approval with respect to any matter except as required by law" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA;

c. Ordering Defendants to specifically perform their obligations to approve budgets in good faith, if the Court does not find Defendants waived their right to consider budgets.

d. Ordering Defendants to specifically perform their obligations to fund capital calls for the Early-Stage Companies.

e. Enjoining Defendants from interfering with Plaintiff in the exercise of its discretion over the Fund, upon deeming Defendants a Defaulting Partner.

f. Declaring that ATP's filing of this action on behalf of the Fund is (i) not an act taken in bad faith; (ii) not an instance of willful fraud, willful misconduct, or gross negligence; nor (iii) an intentional and material breach of the LPA; and/or (iv) is consistent with ATP's rights and obligations as set forth in LPA ¶ 18(g)(iv).

g. Awarding Defendants to reimburse Plaintiff for its fees, costs, and expenses under the "loser pays" principles of Cayman Island laws and common law.

h. Awarding Plaintiff pre-judgment and post-judgment

interest.

i. Awarding Plaintiff such other, further, and different relief as this Court deems just and proper under the circumstances.

B. Defendants

75. Defendants deny that Plaintiff is entitled to the relief sought in its Complaint, any order of specific performance, or to any relief at all.

V. AMENDMENTS TO THE PLEADINGS

76. Plaintiff ATP respectfully moves, pursuant to Court of Chancery Rule 15(b), for leave to conform the pleadings in its Verified Complaint to the evidence by adding a claim for Breach of Contract for Defendants' failure to pay the May 30 Capital Calls as required by Paragraph 5(a) of the LPA. This additional claim is the maturation of a portion of the anticipatory breach claim forming the basis of Count II of the Verified Complaint.

77. Specifically, in its Verified Complaint, ATP asserts a claim for Anticipatory Breach of the LPA. Compl. ¶¶ 165-175. In Count II, ATP alleges, *inter alia*, that Defendants have repudiated their obligations under the LPA in their May 15 Email where they disavowed any outstanding capital commitment to the Fund, including for the Early Stage Companies that have approved budgets. Compl. ¶ 170. As such, Defendants had anticipatorily breached their obligations to respond

to capital calls. Since the filing of the Complaint, Defendants have followed through with their threats.

78. Shortly before filing the Complaint, ATP issued its May 30 Capital Calls to the Defendants. The May 30 Capital Calls called capital for Pre-clinical Companies with approved budgets, and each of the May 30 Capital Calls was within the amount of the approved budget for the subject portfolio company. In response to the May 30 Capital Calls, Defendants were required to provide the requested capital by June 13, 2025[2]. Defendants failed to do so.

79. As such, Defendants have breached their obligations under the LPA. ATP requests the Court allow it to conform its pleadings to these recent facts that will be put forward at trial as evidence of Defendants' breach.

80. The Court has "discretion to allow the pleadings to be amended to reflect any new issues not asserted in the pleadings so long as the responding party is not prejudiced by its admission." *Norberg v. Security Storage Co.*, 2000 WL 1375868, at *5 (Del. Ch. Sept. 19, 2000); *see also Bellanca Corp. v. Bellanca*, 169 A.2d 620, 622 (Del. 1961) (permitting Rule 15(b) amendment to add quasi-contractual theories of recovery in addition to breach of contract claim where evidence relevant to the claims overlapped and therefore no prejudice existed). "A

[2] With the exception of Replicate for which a revised capital call issued on May 31, 2025 and thus capital was required by June 16, 2025.

party may move to amend the pleadings to conform to the evidence and to raise an unpled issue." Ct. Ch. R. 15(b) .

81. "The party opposing the amendment has the burden of showing that the amendment would be prejudicial to that party's defense." *Taplin v. Schuitemaker*, 2019 WL 126981, at *5 (Del. Super. Jan. 7, 2019) (citation omitted).

82. Defendants cannot meet that burden because they do not suffer any prejudice. Defendants were on notice of this claim. In fact, Defendants were so aware of the possibility they could be found in breach of the LPA that they filed the Cayman's Writ Proceedings seeking to invalidate the May 30 Capital Calls *mere days after receiving them*. *Supra* ¶ 11

83. In addition, Defendants have been expressly aware of Plaintiff's view that the May 30 Capital Calls form a basis for this action since at least June 13, 2025, when Plaintiff first asserted that the May 30 Capital calls "should necessarily be determined by the court seised of these matters, the Court of Chancery in the State of Delaware, before the Grand Court [of the Cayman Islands] is asked to determine" the Winding-Up Petition. Again, in response to Defendants' asserted position in its June 24 Letter that there was not an entire overlap between the Delaware proceedings and the Cayman proceedings due to, inter alia, the lack of any express reference to the May 30 Capital Calls in the Delaware complaint, Plaintiff responded its Petition to Stay the Writ Proceeding that the relief sought in this Action "is broad enough to

determine whether [Defendants are] obliged to meet" the May 30 Capital Calls (*see* First Affidavit of Seth Harrison, JX-940), making clear that Plaintiff considered the May 30 Capital Calls to be at-issue in this action.

84. Further, both Parties had the opportunity to take discovery on this issue including asking questions about the May 30 Capital Calls during each of the Parties' 30(b)(6) witness depositions. *See* Transcript of the August 12, 2025 Deposition of Dr. Seth Harrison at 394:9-396:22 and Transcript of the August 8, 2025 Deposition of Yuri Bogdanov at 270:14-274:19.

85. As such, Defendants face no prejudice. Further, the Court should allow Plaintiff to amend its Verified Complaint and litigate both its anticipatory and actual breach claims together in order to promote judicial efficiency. *See Agilent Technologies, Inc. v. Kirkland*, 2009 WL 119865 (Del. Ch. Jan. 20 2009) (deciding a motion to amend in favor of "notions of judicial efficiency that seek to limit the number of separate occasions on which a court must consider a matter."). Given the Court's liberal standard for amending pleadings, Plaintiff respectfully requests the Court allow it to conform its pleadings to these new events that are the natural continuation of its original claims.

86. **Defendants' Position:** On June 27, 2025, this Court denied Defendants' motion to stay, leaving only 83 days before the start of trial for Defendants to take discovery and prepare for trial. Plaintiff waited 63 of those days—and after the close

of fact discovery and the exchange of expert reports—to raise a claim that it purports to have known about weeks before the denial of the motion to stay. That is exactly the type of strategy that this Court protects parties against.

87. As an initial matter, Delaware law is clear that, although Court of Chancery Rule 15(a) provides that "leave [to amend] shall be freely given when justice so requires," the Court may deny leave "if there is a showing of substantial prejudice, bad faith, dilatory motive, or repeated failures to cure by prior amendment." *OptimisCorp v. Waite*, 2015 WL 357675, at *2-3 (Del. Ch. Jan. 28, 2015); *cf. Martinez v. E.I. DuPont de Nemours & Co.*, 2012 WL 4479164, at *2 (Del. Super. Ct. Sept. 21, 2012) ("Where a movant has no valid explanation for his delay, and the facts upon which the proposed amendments are based were known long in advance of the motion, it is entirely proper for the Court, in its discretion, to deny the motion.").

88. Plaintiff cites Court of Chancery Rule 15(b), which does not apply. Rule 15(b) governs "Amendments During and After Trial," but trial does not start until September 18.

89. The proposed amendment would be futile because the capital calls were invalid from the start and exceed Defendants' obligations to provide capital.

90. But the real issue is prejudice and Plaintiff's strategic decision to withhold this new claim until the very end of the case. In a different expedited action,

then-Vice Chancellor Strine reacted adversely to a plaintiff trying to add pre-trial a new claim that the plaintiff effectively knew about from the outset, where he rejected the amendment request on (among others) the following grounds: "that you could have raised the claim, that you didn't do it until right before trial after everybody had already written their briefs and everybody had taken their discovery and everybody is focused on what they had; and that that kind of tactic produces prejudice when you're asking people to operate on a short schedule like you've asked for." *Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, C.A. No. 5465-VCS, at 31 (Del. Ch. July 6, 2010) (TRANSCRIPT); *see also id.* at 29-30 ("And I think that since the beginning of this lawsuit you've been fully aware that there would be a management slate and that it would be approved by the nominating committee, if not the full board, perhaps by both; that you had plenty of time to raise this in your briefs; that you let all the discovery go forward. . . . When you file an affidavit from all the attorneys swearing under oath that the first time that you believed there would be a management slate of Barnes & Noble, that the first time there would be a management slate, you learned that last Thursday? You all swear under oath, every member of your team. . . . And you do that, I'll grant your motion to amend . . . .").

VI. LIST OF WITNESSES

A. Plaintiff

91. Plaintiff expects to call the following witnesses live at trial:

a. Seth Harrison, M.D.

b. Joseph Yanchik

c. Spiros Liras, Ph.D.

d. Yuri Bogdanov

e. Michael Bloch, KC

f. Mark Robbins, Ph.D., J.D.

g. Mohan Rao, Ph.D.

92. Plaintiff further reserves the right to call by deposition at trial any witness to the extent permitted under applicable rules, by order of the Court, or by agreement of the Parties.

B. Defendants

93. Defendants expect to call the following witnesses live at trial:

a. Seth Harrison, M.D.

b. Dmitry Rybolovlev, M.D.

c. Yuri Bogdanov

d. Alexey Yakovlev

e. Mark Phillips KC

f. Dr. Ilonna Rimm, MD, Ph.D, CFA

g. Ilya A. Strebulaev, Ph.D

h. Paul Da Silva Jardine

i. William Engels[3]

j. Michael Ehlers[4]

94. Defendants further reserve the right to call by deposition at trial any witness to the extent permitted under applicable rules, by order of the Court, or by agreement of the Parties

C. Reservation Of Rights

95. The Parties reserve the right to (a) rely upon the testimony of any witness(es) identified by or called by any other Party; (b) call any witness(es) on any other Party's witness list; (c) call or introduce testimony from any witness(es) necessary for impeachment or rebuttal purposes, if previously deposed ; (d) to call custodians of records solely for the purpose of establishing the foundational facts necessary to admit into evidence any exhibit whose admissibility any Party challenges; (e) to call by deposition a witness listed as appearing live except to the extent such witness appears on the other Party's will call list and such testimony is not used for impeachment; and (f) object to any trial testimony offered by any witness(es) not identified in this Pre-Trial Order.

[3] Plaintiff has taken the position that Mr. Engels is not within Plaintiff's control and will not be produced at trial. Defendants' position is that they do not have sufficient information to accept Plaintiff's position. The Parties agree that Defendants will present Mr. Engels' testimony by deposition.

[4] Plaintiff has taken the position that Dr. Ehlers is not within Plaintiff's control and will not be produced at trial. Defendants disagree with that assertion. The Parties agree that Defendants will present Dr. Ehlers' testimony by deposition.

VII. WITNESS ORDER

96. Plaintiff will provide its proposed order of witnesses to Defendants by September 14, 2025 at 5:00pm. Defendants will provide their proposed order of witnesses to Plaintiff by September 15, 2025 at 5:00 p.m., reflecting the Parties' good faith belief regarding the witnesses they will call and examine at the two-day trial. The Parties will meet and confer and work in good faith to schedule those witnesses after taking into account witness availability.

97. Each Party shall promptly notify the opposing Party of any changes to their respective witness order and, in any event, by the day before the witness is set to testify.

98. The Parties may narrow their witness lists up to and including the time of trial. If a Party removes from its witness list any witness that it controls after the date of submission of this Pre-Trial Order, such Party still must make such witness available for the opposing Party to call at trial. Each Party reserves the right to call any witness solely as a rebuttal witness, if such witness was previously deposed.

99. Each Party reserves its right upon a showing of good cause to supplement its witness list up to and including the time of trial, and each Party reserves the right to object to any such attempt to supplement.

100. Each Party will make any witness that is under its control available to testify at trial on the date scheduled without the need for a subpoena.

VIII. DEPOSITION TESTIMONY

101. On or before September 17, 2025, Plaintiff shall lodge copies of all deposition transcripts for each deposition taken by any Party in this action. The lodging or any other presentation of deposition testimony with the Court is without prejudice to any Party's objection to the admissibility of such testimony.

102. Any Party may use the deposition testimony taken in this case in connection with trial, including pre-trial briefing and post-trial briefing (if any). Deposition testimony shall be admitted into evidence to the extent it is cited in the Parties' pre- and post-trial briefs or is used at trial (if any), as if it were given at trial. Subject to Court of Chancery Rule 32, the admissibility of deposition testimony cited in the Parties' briefs shall be subject to the Court's determination of any evidentiary objection made by a Party as if the deponent—were testifying—live at trial. Unless resolved at or before trial, objections to particular testimony (unless resolved at or before trial) will be addressed in the Parties' post-trial briefs.

103. For the avoidance of doubt, Defendants do not agree to any use of deposition testimony in a manner that is inconsistent with Court of Chancery Rule 32(a).

104. The Parties shall not exchange deposition designations, counter-designations, or reply designations. Each Party reserves any and all objections to the admissibility of deposition testimony. In addition, any Party shall remain free to

address the weight, if any, the Court should place on any such deposition testimony that is admitted.

105. If any Party intends to read or play deposition testimony during the trial of a witness (other than for the purpose of impeachment), such Party shall identify the testimony to be presented to opposing counsel no later than 10:00 a.m. ET on September 16, 2025. The noticed Party may cross-designate testimony and provide such cross-designations to the noticing Party by 10:00 a.m. ET on September 17, 2025. The noticing Party may then provide the noticed Party with additional designations within 8 hours, only as needed for completeness. Further designations must be limited to those needed for completeness and must be provided within two hours.

106. Deposition clips (including designations and counter-designations) for a given witness will be played sequentially as the testimony was given in the deposition.

107. A Party may use non-argumentative introductory language as transitions in advance of presenting a video deposition at trial. The Parties shall exchange such language at the time they provide the other Parties with notice of the specific videotaped designations of the testimony to be preceded by such language. The Parties shall meet and confer regarding any language any Party deems argumentative, and the Parties reserve all rights regarding any introductory language.

IX. STIPULATIONS REGARDING WITNESSES

108. Fact witnesses shall not be called more than once, except to the extent they are called in rebuttal. Any Party reserves the right to call its own witnesses for rebuttal. Each Party may use the testimony of any witness (whether on direct or cross examination) presented by the other Party in the Party's case in chief in order to avoid the necessity of calling the same witness more than once.

109. When a witness testifies, the Party controlling the witness shall present any direct examination of such witness first. Other Parties may then cross-examine without limitation to the scope of the direct examination, except that cross-examination of witnesses called in a Party's rebuttal case shall be limited to the scope of the direct examination in such rebuttal case. Re-direct examination will be limited to the scope of the cross-examination, and re-cross examination will be limited to the scope of the re-direct examination.

110. Except for purposes of impeachment or upon a showing that good cause exists to supplement the Exhibit List, the Parties' examinations of a witness shall be limited to the documents appearing on the JX List at the beginning of the examination of that witness. For avoidance of doubt, should the examination of a witness carry over to the next day, the Parties agree that they are unable to conduct an examination of the witness on exhibits added after the commencement of the

witness's examination, except for purposes of impeachment or upon a showing that good cause exists.

111. Fact witnesses will be sequestered until their testimony is complete; provided, however, such sequestration does not apply to one testifying corporate representative designated by Plaintiff and one testifying corporate representative designated by Defendants. Expert witnesses need not be sequestered during trial.

X. TRIAL AND TRIAL RECORD

112. The Parties shall submit an initial exhibit list of chronological Joint Trial Exhibits (the "Exhibit List," attached hereto as Exhibit A) to the Court on September 5, 2025, and an up-to-date list of Joint Trial Exhibits to the Court by 9:00 a.m. on September 18, 2025. Each of the Parties reserves the right to use at trial any exhibit from the Exhibit List identified by any Party. The Exhibit List will assign each exhibit a unique "JX" number. The Exhibit List will identify each exhibit by date (where available) and Bates number (where available), provide a brief description of the document, and list the occasions (if any) on which the document was marked as a deposition exhibit. All trial exhibits shall be pre-marked with a unique JX stamp on the first page (e.g. "JX-1) and pagination stamps (e.g., "JX-1.0001," "JX-1.0002," etc.) on each page of each exhibit. The party designating a document as a trial exhibit shall redact from such document individuals' social security numbers and similar personal identifying information, including from tax

returns designated as trial exhibits. Such redactions of personal data will also be consistent with the requirements of the General Data Protection Regulation ("GDPR").

113. The Parties will make a good faith effort to include all exhibits on the final Joint Exhibit List provided to the Court at the start of trial. Nevertheless, the Parties may supplement the Exhibit List through and including the close of trial, provided that the opportunity to object shall be provided to the other Party with respect to any supplemental exhibit, with each side reserving the right to object to any supplemental exhibits. The Party supplementing the Exhibit List shall simultaneously provide to the other Party copies of the exhibit(s) to be added to the Exhibit List. The Parties shall also coordinate to update the Court's exhibit list, tabbed binders, and thumb drives to reflect additions to the Exhibit List.

114. The Parties will provide certified translations of all exhibits on the exhibit list that contain foreign language communications. Each Party seeking to admit each foreign language exhibit will bear its own cost of obtaining the certified translation for that exhibit. Any objections to a certified translation must be made promptly and no later than 8:00 p.m. EDT on September 12, or within twenty-four (24) hours for any exhibit added to the Joint Exhibit List thereafter. Any dispute over a certified translation will be resolved by the Parties' jointly selected interpreter promptly.

115. The Parties reserve the right to raise evidentiary objections at trial concerning specific documents and testimony depending on the reason or basis for which the document or testimony is offered. The merits of any evidentiary objection, unless resolved at or before trial, will be addressed in the Parties' post-trial briefs, and the Court may determine after trial, in light of such briefing, that any exhibit is ultimately inadmissible. Unless an objection to a proposed trial exhibit has been noted on the Exhibit List or raised at the pre-trial conference, at trial, or in post-trial briefing, all exhibits that were used at trial or used in trial briefing shall be deemed admitted into evidence without objection. Notwithstanding the foregoing, the Parties are not prohibited from raising additional objections to specific exhibits that are first used in post-trial briefing.

116. Any document on the Exhibit List not used at trial or cited in any pre-trial or post-trial brief shall not be considered admitted in evidence or part of the record. After trial and post hearing briefing is complete, the Parties will identify all documents that were used in pre-trial briefing, at trial, or in post-trial briefing to identify the agreed-upon set of documents admitted into evidence and the complete trial record.

117. Each Party reserves the right to offer into evidence any documents not on the Exhibit List for the purposes of impeachment, subject to the Delaware Rules of Evidence. Each Party further reserves the right to introduce into evidence

documents not on the Exhibit List in rebuttal to any evidence introduced by any other Party, subject to the Delaware Rules of Evidence. Absent a showing of good cause, all exhibits must be included on the Exhibit List by the close of trial.

118. The Parties shall prepare binders containing the exhibits from the Exhibit List and provide the Court with two sets of binders, which will be delivered to the Court on or before the first day of trial. For any Excel files or other documents presented only in native format, the exhibit binder submitted to the court shall contain a slip sheet stating, "Produced in Native." Plaintiff will also provide the Court with three thumb drives containing electronic copies of the exhibits (including any documents presented only in native format) in searchable form. Plaintiff shall be responsible for arranging the printing, marking/labeling, binding, and tabbing of the Joint Exhibits provided to the Court, and shall provide Defendants opportunities to review and comment on such items prior to providing to the Court; however, the Parties shall share evenly the costs associated therewith.

119. Demonstrative exhibits need not appear on the Exhibit List. The Parties shall exchange any demonstrative exhibit(s) by 8:00 p.m. EDT the day before the trial day on which those exhibit(s) will be used. The opposing Party shall make a good faith effort to advise of any objection to the demonstrative by 11:00 p.m. EDT. and will in any event advise of any objection before trial begins the following day. If a demonstrative exhibit is prepared in response to testimony that was given for the

first time at trial, however, it shall be provided to counsel for the opposing Party at the earliest practicable time. This shall not be construed as a limitation on a Party's right to create demonstrative exhibits during the course of testimony at trial; nor shall it require the advance exchange of exhibits that are merely excerpts, enlargements, or highlights of trial exhibits. The Parties reserve the right to object to any demonstrative exhibit(s).

XI. TRIAL LOGISTICS

120. The Court has currently allotted two days for trial beginning on September 18, 2025 at 9:15 a.m. at The Leonard L. Williams Justice Center in Wilmington, Delaware.

121. The Parties have agreed to divide trial time equally, with Plaintiff having one-half and Defendants having the other half of the calculable trial time. Unless otherwise ordered by the Court, each Party will be charged with all the time its counsel spends questioning a witness, whether on direct examination, cross-examination, redirect examination, or otherwise. The time used to play video of depositions shall be charged against the designating or counter-designating Party for the time associated with such designations or counter-designations. For witnesses requiring translators, the Party taking testimony from the witness will be charged with all the time expended for translation during that testimony.

122. Unless otherwise ordered by the Court, time spent addressing in-trial motions or evidentiary issues shall be split equally between each side. Time used by the Court or by either Party addressing the Court's questions will be split equally between each side. Each Party shall have the burden of monitoring its own use of time for direct and cross-examination, and all other purposes.

123. The reports of all expert witnesses, and the deposition transcripts of such experts, shall be lodged with the Court and treated as if such reports and depositions constitute in-Court testimony. Nothing in this paragraph precludes a Party from calling one of its own experts to testify during the trial. Objections to the admissibility of expert reports and deposition testimony shall be resolved in the same manner set forth above for other deposition testimony. Without limiting the foregoing, ATP respectfully objects to, and reserves the right to challenge, the admissibility of any part of the expert report or rebuttal expert report of Mark Phillips, KC, to the extent they seek to improperly make conclusions of facts and law or opine on the hypothetical actions of a Cayman Court. Without limiting the foregoing, as set forth further herein, Defendants respectfully submit that the grounds that ATP advances to exclude certain portions of the expert report and rebuttal report of Mark Phillips, KC are meritless. To the extent the Court agrees with Plaintiff about the admissibility of those portions Phillips' reports, Defendants respectfully submit that the equivalent portions of the expert and rebuttal reports of Michael Bloch, KC must

be excluded as well because Mr. Bloch's testimony presents the same issues about which ATP complains. ATP disputes that Mr. Bloch's testimony presents the same deficiencies as Mr. Phillips'.

XII. EVIDENTIARY ISSUES REQUIRING RESOLUTION

124. Pursuant to Paragraph 11 of the Stipulation and Order Governing Case Schedule (Dkt. 54), the Parties are to address Motions *in limine* in this Order.

125. The Parties identify the following disputes which the Parties intend to address at the pre-trial conference.

A. Motion to Exclude Certain Testimony of Mark Phillips, KC

126. **Plaintiff's Position:** The Court should exclude the testimony of Mark Phillips, KC, including his expert and rebuttal reports, to the extent that Phillips: i) opines on what a Cayman Court would do; ii) seeks to provide legal conclusions on contractual interpretation; and iii) applies conclusions or assumptions. "Expert testimony is admissible only if relevant and reliable," *Scottoline v. Women First, LLC*, 2025 WL 1707364, at *4 (Del. June 18, 2025), and Mr. Phillips' testimony is neither relevant nor reliable.

127. The Court should also exclude Mr. Phillips' rebuttal report to the extent it exceeds the scope of the report to which it purports to rebut.

128. ***Mr. Phillips is Not Qualified to Predict the Actions of a Cayman Court.*** Throughout his reports, Mr. Phillips improperly states his "opinion that a Cayman

court would be likely to reach" certain conclusions. Report ¶ 18. Mr. Phillips opines on what provisions of the LPA a Cayman Court would consider, what facts the Cayman Court would assess, and how the Cayman Court would decide specific issues. *See* Report ¶¶ 18, 88, 92, 105, 108, 112-115, 117-120, 122, 129, 142, 143, 145, 150, 154, 159, 160, 164-165, 171-173; Rebuttal Report ¶¶ 17, 33, 35. This type of testimony is irrelevant and improper.

129. Despite this emphasis on predicting the decisions of the Cayman courts, Mr. Phillips is not qualified to speak on behalf of or regarding the Cayman Courts. Even assuming Mr. Phillips is qualified to opine on the principles and foundations of English law that influence Cayman law—as Plaintiff's expert is—predicting the behavior and outcomes of a particular judicial body require different sets of knowledge, and is akin to a social science determination rather than an explanation of the law. Mr. Phillips is an English lawyer whose extensive career has been in English courts. *See* Report ¶¶ 2-12. While Mr. Phillips has litigated in Cayman Courts, he is not a sitting Cayman judge weighing the evidence. His assumption of that role is improper and unhelpful.

130. ***A Hypothetical Analysis of a Cayman Court is Irrelevant.*** While the LPA is largely governed by Cayman law, it specifically provides that both Cayman and Delaware Courts are proper fora. In this Delaware forum, it is the Delaware Court's responsibility to determine how Cayman law applies to the disputed issues.

See *Kostolany v. Davis*, 1995 WL 662683, at *2 (Del. Ch. Nov. 7, 1995) ("The court's determination of foreign law is treated as a ruling on a question of law."). Delaware Courts have extensive experience applying foreign law. The Court need not consider an expert's speculation about how a Cayman Court would rule because that is not at issue in this case. *See* Del. R. Evid. 702(a) (an expert can testify only if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue).

131. ***Mr. Phillips' Opinions Concerning Cayman Courts and His Final Determinations of Law are Unreliable.*** Mr. Phillips also offers no bases for predictions of the Cayman Court; indeed, he does not cite to Cayman trial records to support his opinion. His conclusions are *ipse dixit*, as he has not explained how or why he knows "what a Cayman Court would do."

132. Rather, Mr. Phillips' opinion of what a Cayman Court would decide is an improper "backdoor way" to express his own conclusions of the law based on Defendants' view of the facts. *See In re Columbia Pipeline Grp. Merger Litig.*, 2022 WL 2902769, at *1-2 (Del. Ch. July 14, 2022) ("An expert cannot displace the court's role by offering conclusions of law or purporting to make specific factual findings."). Delaware Courts do not rely on experts' legal interpretations of parties' contractual obligations. *Mine Safety Appliances Co. v. AIU Insur. Co.*, 2015 WL 5818071, at *2 (Del. Super. Aug. 4, 2025) (citations omitted).

133. Mr. Phillips' report purports to conclude, as a definitive matter, the scope of the parties' obligations under the LPA and the permissibility of their disputed conduct. This is not his job. Delaware Courts have specifically held that the "[i]nterpretation of the Company's internal governing documents is a matter exclusively for the Court." *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 741 (Del. Ch. 2005) (finding expert reports provided little benefit where they opined on "core issues" or were based on experts' factual determinations with which the Court disagreed).

134. Without citing to any Cayman (or English) precedent, Mr. Phillips attempts to walk the Court through what a Cayman Court "might" do or, more accurately, what he would do if he were the Cayman Court.

135. Some examples are as follows:

- Without citing precedent, Mr. Phillips concludes that [redacted]. *See* Report ¶ 105. Instead of citing to any related Cayman (or English) Court precedent, Mr. Phillips simply interprets the contract for the Court based on his reading of the provision. *Id.* ([redacted]).
- Mr. Phillips further concludes that [redacted] based on his own assumptions and assessment of the "[redacted]." Report at 112-115. To that extent, without

any precedent, he postures hypothetical legal questions the Court "might" consider. *See Id.* ("[redacted]").

- Without citing any precedent, Mr. Phillips opines that, [redacted]. Report at ¶¶ 118-120. ("[redacted]").
- With regards to "[redacted]," Mr. Phillips opines—without even his own explanation or interpretation—that the [redacted] Report ¶ 122 ([redacted]").
- Mr. Phillips opines, without explanation, that [redacted] Rebuttal ¶ 33.

136. To reach his conclusions of law, Mr. Phillips also just assumes numerous disputed facts as true, including but not limited to the following:

- The Defendants' role in the limited partnership—which he defines as [redacted]. *See*

Report ¶ 88. Mr. Phillips uses this factual assumption to conclude that [redacted] *Id.*

- [redacted] Report ¶ 113. And as such, the [redacted] *Id.* 114.
- The total capital contributed by Rigmora was over [redacted] when the May 15 Email was sent. Rebuttal ¶ 36.

137. Mr. Phillips' opinions are not based on a view of the record or even *any* documents of discovery cited besides the pertinent contracts themselves and the Complaint. So not only is the scope of the opinion a reach beyond that appropriate and relevant for a foreign law expert, but also the final conclusions are unreliable as *ipse dixit*. The Court should exclude such testimony. While the Court has broad discretion in considering evidence related to foreign law under Del. Ch. 44.1, even a foreign law expert's opinion is meant to inform and assist the Court, not to supplant the Court's role on the basis of untested and uncited facts.

138. Further, the Court should exclude Mr. Phillips' rebuttal report and testimony to the extent that it exceeds the scope of Michael Bloch, KC's report. Mr. Phillips uses his rebuttal report to elaborate on numerous opinions that he made in his own report, and are not proper to rehash or supplement in rebuttal. See Rebuttal ¶¶ 15-22.

139. **Defendants' Position:** Defendants oppose Plaintiff's motion to exclude

certain testimony from Mark Phillips KC. Plaintiff badly understates Mr. Phillips' experience; incorrectly suggests that his reports of over one hundred pages, citing dozens of authorities, fail to "cite precedent"; and seeks to improperly disqualify core testimony based on the faulty assumption that an expert in foreign law should not opine as to the content of that same foreign law as such experts (including Plaintiff's expert, Mr. Bloch) routinely do. In doing so, Plaintiff ignores Rule 44.1's broad mandate allowing judges to review "any relevant material or source" on foreign law, Ct. Ch. R. 44.1, and its motion should be rejected.

140. ***Mr. Phillips is Undisputedly Qualified to Provide Expertise on Cayman Contract Law.*** Mr. Phillips is an exceedingly experienced King's Counsel in the United Kingdom with extensive experience practicing in Cayman courts, including handling the longest trial (12 months) in the history of Cayman courts. *See* Phillips Report ¶ 5. Plaintiff's expert, Mr. Bloch, refers to him as an "eminent King's Counsel." Bloch Rebuttal ¶ 3. Plaintiff does not (and cannot) seriously attack his credentials. Like Plaintiff's expert, he is an English lawyer who has litigated in the Cayman courts, and that he is "not a sitting Cayman judge" is beside the point. Courts "should not impose overly rigorous requirements of expertise; more generalized qualifications suffice." *Allscripts Healthcare, LLC v. Andor Health, LLC*, 2022 WL 3021560, at *2 (D. Del. July 29, 2022) (citations and alterations omitted). Mr. Phillips more than clears that bar.

141. ***Mr. Phillips' Opinions Are Extensively Grounded In Precedent.*** Mr. Phillips wrote 121 pages, citing 74 relevant authorities to ground his analysis, across two expert reports. *See* Phillips Report ¶¶ 1-173; Phillips Rebuttal ¶¶ 1-41. He also reviewed all of the parties' agreements. Indeed, Plaintiff's expert "agree[d] with much of what [Mr. Phillips] says as regards exempt limited partnerships, the principles of contractual interpretation, and the implication of contractual terms." Bloch Rebuttal ¶ 3.

142. Against this backdrop, Plaintiff's suggestion that Mr. Phillips' conclusions are made "[w]ithout citing precedent" is meritless. Mr. Phillips spent dozens of pages outlining the applicable principles of interpretation under Cayman law in his opening report alone. *See, e.g.*, Phillips Report ¶¶ 19-52 (law applicable to exempted limited partnerships); ¶¶ 53-65 (principles by which contracts, including partnership agreements, are interpreted under Cayman law); ¶¶ 66-83 (duties owed by the general partner of an exempted limited partnership, and limits on duties of limited partners); ¶¶ 89-90 (the general requirements for exempted limited partnerships under Cayman law regarding capital contributions and commitments); ¶¶ 94-99 (limitations on enforcement of penalty clauses). He describes in great detail the relevant Cayman and UK statutes, Cayman and UK court decisions, and other commentaries. *See id., e.g.*, Phillips Report ¶¶ 19-99. Only then does he identify the terms at issue, and how those principles of contract and

statute might apply as a matter of Cayman law. Phillips Report ¶¶ 100-65. He of course does not restate or recite all of his prior discussion in doing so (which would stretch his reports to hundreds of pages each), but it is that authority that supports his expert opinion. That is consistent with the approach of Mr. Bloch. Bloch Dep. Tr. at 234:5-21 (describing his conclusions on the contract as a "summary" of his analysis).

143. ***The Court Has Broad Discretion to Review the Testimony of Foreign Law Experts.*** Plaintiff's motion fails to even acknowledge the particular rules that apply to foreign law experts, which recognize that the role they play and the testimony they offer differ in meaningful ways from other experts. Plaintiffs ignore those rules to rely on arguments and cases that apply to other types of expert testimony and are wholly irrelevant to that of Mr. Phillips, as an expert in foreign law.

144. The standard for foreign law experts is more generous than Plaintiff acknowledges. For foreign law experts, Delaware Rule of Evidence 702's standard is substantially broadened by Court of Chancery Rule 44.1, which allows courts to "consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43." As the Delaware Supreme Court has recently explained, Rule 44.1 gives trial judges "wide latitude in determining what evidence to consider and in what form." *Germaninvestments AG v. Allomet*

Corp., 225 A.3d 316, 333 (Del. 2020). Plaintiff's attempt to cabin the Court's discretion conflicts with the Court's mandate to "make the process of determining alien law identical with the method of ascertaining domestic law to the extent that it is possible to do so." *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co. Ltd.*, 585 U.S. 33, 42 (2018) (quoting Wright & Miller § 2444, at 338–342.).[5]

145. None of the cases that Plaintiff relies on address the role of foreign law experts, none consider the scope of Rule 44.1, and, as a result, none support their motion to exclude portions of Mr. Phillips' testimony. *See Scottoline v. Women First, LLC*, 2025 WL 1707364, at *5–6 (Del. June 18, 2025) (pediatric neurology expert opining in medical malpractice suit); *In re Columbia Pipeline Grp. Merger Litig.*, 2022 WL 2902769, at *1-2 (Del. Ch. July 14, 2022) ("expert on M&A negotiations" offering opinion in merger litigation); *Mine Safety Appliances Co. v. AIU Insur. Co.*, 2015 WL 5818071 (Del. Super. Ct. Aug. 4, 2015) (experts opining regarding insurance); *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 741 (Del. Ch. 2005) (expert opining on "core issues in this case—whether the defendants breached their fiduciary duties as they exist *under Delaware law*" (emphasis added)).[6]

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[5] Delaware courts follow the U.S. Supreme Court's interpretations of expert admissibility. *See Bowen v. E.I. DuPont de Nemours & Co.*, 906 A.2d 787, 794 (Del. 2006) (noting the Delaware Supreme Court has "expressly adopted" the "United States Supreme Court's interpretations of F.R.E. 702 in *Daubert* and *Kumho* . . . as correct interpretations of D.R.E. 702").

[6] The only case Plaintiff relies on that *does* engage with foreign law stands for the

146. Rather, Delaware precedent regarding foreign law expert testimony recognizes that the foreign law expert's role is to help the Court understand the complexities of a foreign legal scheme and provide the Court with the tools to appropriately apply the law to the case. *See Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 33 (Del. 2005) (making conclusions as to expert credibility in deciding which interpretation of Saudi law to apply to the case). Mr. Phillips was retained, like Mr. Bloch, to opine on Cayman law and appropriately did so throughout his report. That he did so by reference to Cayman courts, consistent with their practice and his own, Phillips Dep. Tr. at 34:2-35:9, is not disqualifying.

147. Plaintiff's suggestion that Mr. Phillips may try to supplant this Court's role is unfounded. As Mr. Phillips testified at his deposition, his report and contemplated testimony seek to assist this Court in its analysis of Cayman law, not supplant the role of the Court in Delaware in applying that law to the claims and facts at issue. Phillips Dep. Tr. at 100:23-101:3 ("[redacted]"); 318:16-18 ("[redacted]

unremarkable proposition that "[t]he court's determination of foreign law is treated as a ruling on a question of law." *Kostolany v. Davis*, 1995 WL 662683, at *2 (Del. Ch. Nov. 7, 1995). The Court in *Kostolany* did not exclude expert testimony on foreign law and merely utilized competing foreign law expert reports to reach a conclusion on the law.

[redacted]

[redacted].”); *see CertiSign Holding, Inc. v. Kulikovsky*, 2018 WL 2938311, at *22, n.232 (Del. Ch. June 7, 2018) (denying plaintiff’s motion *in limine* to exclude foreign law expert’s rebuttal report where the expert “was not purporting to address Delaware choice of law principles or to tell this Court how to apply them” and the court “view[ed] her opinions as addressing Brazilian law only and [] considered them solely in that context”); *Germaninvestments AG*, 225 A.3d at 336 (finding error not to have a foreign law expert identify and explain foreign law issues “*based on the facts and nuances in the case*”) (emphasis added).

148. ***Mr. Phillips’ Opinions Are Otherwise Admissible.*** Plaintiff relies on a series of mischaracterizations and irrelevant excerpts in an attempt to bolster its “conclusions” that (i) Mr. Phillips assumes Defendants’ view of disputed facts; (ii) Mr. Phillips’ reports included conclusions about how to interpret obligations of the LPA under Cayman law; (iii) Mr. Phillips relied on speculation as to what a Cayman court would likely do; and (iv) Mr. Phillips’ rebuttal was out of scope. None of its arguments warrants exclusion and on every single point, Mr. Phillips was consistent with Plaintiff’s own expert.

149. ***First***, as to Mr. Phillips’ assumption of facts, Mr. Phillips did not take a position as to the facts of this case. Mr. Phillips merely assumed certain facts were true for the sake of his analysis, as is customary in expert reports across broad subject

matter. Phillips Report ¶¶ 112-115, 118-120; *see also* Bloch Report ¶ 75; Bloch Rebuttal ¶¶ 53, 72.

150. ***Second***, as to his interpretations of the LPA under Cayman law, Mr. Phillips was applying Cayman contractual interpretation principles to inform the kinds of questions that the Cayman court might ask when reading the LPA. This common form of foreign law analysis is entirely appropriate and Mr. Phillips' objective and technically sound methodology is consistent with the approach to which Mr. Bloch adhered and testified. *See, e.g.*, Bloch Report ¶¶ 65-66; Bloch Dep. Tr. at 239:10-241:12.

151. ***Third***, as to Mr. Phillips' application of Cayman law to the contracts (wrongly labeled by Plaintiff as "speculation"), that is precisely the analysis "based upon the facts and nuances in the case" expected of a foreign law expert. *Germaninvestments*, 225 A.3d at 336. It is also exactly what Mr. Bloch testified to at his deposition. Bloch Dep. Tr. at 158:5-14; 179:24-180:8; 232:25-235:21. It is up to the Court to decide whether it agrees with each expert's analysis and to give each opinion the weight it is owed.

152. ***Finally***, Plaintiff's argument that Mr. Phillips' rebuttal exceeded the scope of Mr. Bloch's report has no merit. Mr. Phillips' rebuttal highlighted the omissions in Mr. Bloch's report to the extent it fails to address (as Mr. Bloch acknowledges) whether Defendants had an outstanding Capital Commitment and

disregards the parties' Subscription Agreements. Phillips Rebuttal ¶¶ 15-22; Bloch Report ¶ 79. It is entirely proper for a rebuttal report to point out that the other expert's analysis is incomplete.

153. In sum, Plaintiff's arguments amount to nothing more than complaining about the standard analysis from a foreign law expert, much of which precisely mirrors its own expert's analysis. *See, e.g.*, Bloch Rebuttal ¶¶ 12 (agreeing with Mr. Phillips both "[redacted]" and "[redacted]"), 18 ("[redacted]"); 38 ("[redacted]"); 70 (agreeing with Mr. Phillips "[redacted]"). Plaintiff's arguments thus cannot serve as a basis for exclusion.

154. ***An Expert's Legal Opinion Goes to Weight, Not Admissibility.*** Even if the Court were to determine that parts of Mr. Phillips' opinion were improper, the Court is well equipped to make those determinations and should not exclude the entire opinion. Instead, the Court may consider how much weight to give the expert's opinion. *See CertiSign*, 2018 WL 293831, at *22 n.232 (considering expert's analysis of foreign law and declining to grant a motion *in limine* to exclude the expert's report and testimony). This is especially true in the context of a bench trial, because the Court's "gatekeeper" obligation in analyzing the admissibility of expert testimony "predominantly operates in cases that will be tried before a jury." *In re Del. Pub. Sch. Litig.*, 239 A.3d 451, 501 (Del. Ch. 2020). Without a jury, there is little need to exclude expert testimony.

155. ***Based on Plaintiff's Own Analysis, Mr. Bloch's Testimony Should Be Excluded At Trial.*** Defendants' view is that the Court should consider both parties' Cayman law experts. Should the Court grant Plaintiff's request to exclude Mr. Phillips, however, Defendants respectfully request that Mr. Bloch also be excluded.

156. Mr. Bloch engages in exactly the type of analysis that Plaintiff complains is improper. For example,

- Mr. Bloch provided a specific interpretation of Amendment 22 that implied a duty of good faith in the budget approval provisions. Bloch

Report ¶¶ 65-71.

- Mr. Bloch provided five separate factual scenarios related to this case and drew conclusions about how the law (e.g., the application of implied terms) would apply to each scenario. Bloch Report ¶¶ 72-87.
- Mr. Bloch offers an interpretation of a May 15, 2025 email from Mr. Bogdanov as contravening the LPA, stating that it "[redacted]" Bloch Report ¶¶ 88-94 (emphasis added).

B. The Parties Dispute Whether the Court Should Exclude Testimony Regarding Settlement Communications

157. **Plaintiff's Position:** Plaintiff objects to the use of any document or communications that was used or sent for the purpose of settlement, including but not limited to all communications sent "Without Prejudice" by the Parties. Under Delaware Rule of Evidence 408, settlement communications are not admissible to "prove or disprove the validity" of a claim. Under Cayman law, marking a documents or communications as "Without Prejudice" is the equivalent of marking communications for settlement under Rule 408. As such, Plaintiff requests the Court exclude any evidence or testimony regarding settlement communications, including

those marked "Without Prejudice."

158. **Defendants' Position:** Defendants agree that *settlement* communications may only be used by the parties consistent with Delaware Rule of Evidence 408, but oppose Plaintiff's overbroad attempt to bar the admission of *all* "without prejudice" documents for *any* purpose. This issue should be addressed document by document, because (i) not every document marked "without prejudice" is a settlement communication protected by Rule 408 and (ii) Rule 408 only bars the use of protected documents to "prove or disprove the validity or amount of a disputed claim." D.R.E. 408. All of the communications Plaintiff seeks to exclude predate the complaint or any threat of litigation and were business communications, and are thus outside the scope of Rule 408's protections. Further, given the purpose-specific use prohibition in Rule 408, Plaintiff's request is premature. Finally, Plaintiff has itself attached a "without prejudice" document to its own complaint. Dkt. 1, Compl. Ex. 9; *see also Buck v. Viking Hldg. Mgt. Co. LLC*, 2024 WL 639391, at *4 n.41 (rejecting exclusion, given party's use of a Rule 408 document).

XIII. PRE-TRIAL CONFERENCE

159. A pre-trial teleconference has been scheduled for September 11, 2025, at 3:15 p.m.

XIV. POST-TRIAL BRIEFING AND ARGUMENT

160. The Parties will discuss with the Court regarding its preference for post-trial briefing at the Pre-Trial Conference.

A. Plaintiff's Position

161. Plaintiff proposes simultaneous opening brief by 11:59 p.m. on September 23, 2025 and simultaneous answering briefs by noon on September 26, 2025, with no further briefing. Plaintiff respectfully requests entry of a final order as soon as possible because the Portfolio Companies are [redacted] due to the lack of funding at issue here. Each additional day that Defendants fail to provide funding for the Portfolio Companies, including answering the May 30 Capital Calls, threatens the Portfolio Companies and [redacted] and their development of numerous cutting-edge medical technologies.

B. Defendants' Position

162. Defendants agree that the schedule for post-trial briefing can be addressed at the pre-trial conference, but dispute Plaintiff's proposed schedule. Plaintiff may file its opening post-trial brief on any schedule it prefers; Defendants will file their answering post-trial brief 14 calendar days later; and Plaintiff may file its reply post-trial brief within five calendar days. The Parties can promptly reach out to the Court to schedule post-trial argument.

163. To the extent the Court finds any facts regarding the Portfolio Companies' performance relevant to these claims, they will show on the one hand, that the Portfolio Companies' lack of success or need for funding was not due to any breach by the Defendants but rather to the Portfolio Companies' own failure to perform (as Plaintiff had admitted before filing suit) or to Plaintiff's own overreaching and mismanagement, and on the other, that a number of Portfolio Companies have been able to achieve what appear to be lucrative deals even in the few weeks since the Complaint was filed. Just last week Replicate reportedly inked a research deal with Novo Nordisk for up to $550 million in funding; *see* https://www.appletreepartners.com/news/540.

164. First, the preferred post-trial briefing in this Court proceeds sequentially, with opening, answering, and reply briefs. As Vice Chancellor Laster has explained, Plaintiff's suggested simultaneous post-trial briefing is "less helpful" to the Court: "When addressing the legal issues in the case, the parties' post-trial briefs were less helpful than they could have been. . . . The parties also engaged in simultaneous post-trial briefing, with each filing an opening post-trial brief and an answering post-trial brief. As often happens when this sequence is used, the parties did not clearly engage with each other's arguments. This decision attempts to grapple with the result." *HOMF II Inv. Corp. v. Alternberg*, 2020 WL 2529806, at *25 (Del. Ch. May 19, 2020).

165. Second, Plaintiff bears the burden in this action, and it should be required to set forth its position on the evidence after trial in an opening post-trial brief, to which Defendants have a fair chance to respond. *Cf. CompoSecure, L.L.C. v. CardUX, LLC*, 2018 WL 660178, at *22 n. 283 (Del. Ch. Feb. 1, 2018) (instructing the parties to proceed based on burden of proof "to provide a framework for post-trial briefing" and noting that "[t]his approach facilitated a seriatim briefing schedule"), *aff'd in part, rev'd in part and remanded*, 206 A.3d 807 (Del. 2018).

XV. AMENDMENT OF PRE-TRIAL ORDER

166. This Pre-Trial Order may be amended upon application to the Court by any Party for good cause shown or by agreement of the Parties with approval of the Court.

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Dated: September 5, 2025

SO ORDERED this ___ day of _____, 2025.

_____
The Hon. Kathaleen St. Jude McCormick

EXHIBIT H

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

POST-TRIAL MEMORANDUM OPINION

Date Submitted: December 3, 2025
Date Decided: December 5, 2025

Michael A. Barlow, Shannon M. Doughty, Morgan R. Harrison, QUINN EMANUEL URQUHART & SULLIVAN LLP, Wilmington, Delaware; Garrett B. Moritz, Roger S. Stronach, A. Gage Whirley, ROSS ARONSTAM & MORITZ LLP, Wilmington, Delaware; Andrew M. Berdon, Rachel E. Epstein, Kathryn D. Bonacorsi, Jonathan M. Acevedo, Taylor L. Jones, Jenny Braun, QUINN EMANUEL URQUHART & SULLIVAN, LLP, New York, New York; Jessica T. Reese, John F. Ferraro, QUINN EMANUEL URQUHART & SULLIVAN, LLP, Boston, Massachusetts; *Counsel for Plaintiff ATP III GP, Ltd.*

Blake Rohrbacher, Daniel E. Kaprow, Christine J. Chen, Zachary R. Greer, Benjamin O. Allen, RICHARDS, LAYTON & FINGER, P.A, Wilmington, Delaware; Shannon Rose Selden, William H. Taft V, Zachary Saltzman, Natascha Born, Carl Micarelli, Sebastian Dutz, DEBEVOISE & PLIMPTON LLP, New York, New York; *Counsel for Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP.*

McCORMICK, C.

The plaintiff is the general partner of a Cayman exempted limited partnership that holds a portfolio of Delaware life science companies. The plaintiff sued its limited partners to enforce capital calls, to force them to work in good faith to approve budgets for the portfolio companies, and to obtain declarations concerning the plaintiff's rights under the fund agreement. The funding freeze at issue here placed several of the portfolio companies at risk of insolvency, and so the court entered a highly expedited schedule leading to trial.

This post-trial decision orders specific performance of all but one of the capital calls and otherwise sides with the limited partners. The plaintiff's effort to force budget approvals rests on an implied contractual duty of good faith recognized under Cayman law, a duty that constrains the exercise of discretionary contractual rights when it is implied. Although Cayman law recognizes this implied duty, no court has implied the duty in the context of an exempted limited partnership. This court will not be the first. And the plaintiff's requested declarations that are ripe, which also implicate primarily Cayman law, do not relate to the capital call or budgeting issues that warranted expedition of this case. They relate mainly to issues pending parallel proceedings in a Cayman court. This court thus defers to the Cayman court on those issues.

That's a highly abbreviated summary of what follows. Given the precarious position of the affected portfolio companies, the court worked hard to issue this decision promptly.[1] Wasting no time on wordsmithing, this introduction foregoes an

[1] The plaintiff requested that the court issue this decision on or by December 5, 2025.

extensive and riveting account of the facts learned at trial—the deeply human story of a fund formed by two doctors-turned-businessmen motivated to develop drug therapies that improve human health, their many successful years of collaboration, the temporary surge in early stage biotech investment spurred by a global response to the pandemic, the geopolitical events and attendant adjustments to risk strategies that strained the parties' relationship, and the complex legal framework governing their dispute. Although the court streamlined the decision given the press of time, these details and more follow.

I. FACTUAL BACKGROUND

Trial took place on October 16 and 17, 2025. The record comprises 1,930 trial exhibits, live testimony from five fact witnesses and three expert witnesses, deposition testimony from four fact witnesses, and 57 stipulations of fact.[2] These are the facts as the court finds them after trial.

[2] This decision cites to: C.A. No. 2025-0607-KSJM docket entries (by docket "Dkt." number); trial exhibits (by "JX" number); the trial transcript, Dkts. 277–79 ("Trial Tr."); and stipulated facts set forth in the Parties' Stipulation and Pre-Trial Order, Dkt. 209 ("PTO"). The parties called the following fact witnesses: Yuri Bogdanov (Rigmora CEO), Seth Harrison (ATP Founder and Managing Partner), Spiros Liras (ATP Venture Partner), Dmitry Rybolovlev (Rigmora Founder), and Joseph Yanchik (ATP Venture Partner). The parties called the following expert witnesses: Ilonna Rimm (Rigmora Biotechnology Investing Expert), Mark Robbins (ATP Biotechnology Investing Expert), and Ilya Strebulaev (Rigmora Venture Capital Expert). The parties submitted the deposition transcripts of the live witnesses and called the following witnesses by deposition only: Michael Ehlers (ATP Chief Scientific Officer, Venture Partner, and Portfolio Company Officer & Director), William Engels (ATP CFO), Daniel Finkelman (ATP General Counsel), and Alexey Yakovlev (Rigmora CFO). Depositions transcripts are cited using the witnesses' last name and "Dep. Tr."

A. The Fund And The Limited Partnership Agreement

In 2012, Dr. Seth Harrison and Dr. Dimitry Rybolovlev formed Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund").[3]

Both Harrison and Rybolovlev were medical doctors. Harrison received his M.D. from Columbia Medical School[4] and worked as a surgeon at a New York City hospital for a year.[5] He then left the field of medicine to attend Columbia Business School.[6] After business school, in the 1990s, he joined a large venture capital firm and formed Apple Tree Partners I to hold his life-science investments.[7]

Rybolovlev received his medical degree in 1990 from Perm Medical Institute and practiced medicine for a year after.[8] He switched careers in the 1990s when the Soviet Union was privatizing.[9] Rybolovlev acquired stakes in multiple companies before consolidating his investments in the most successful, a fertilizer manufacturer named Uralkali.[10] Rybolovlev acquired voting control of Uralkali by 2000, instituted "western style" corporate governance mechanisms,[11] and took it public in 2007 on the

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[3] PTO ¶ 23.

[4] Trial Tr. at 7:22–8:1 (Harrison).

[5] *Id*. at 8:1–3 (Harrison).

[6] *Id*. at 8:2–16 (Harrison).

[7] *Id*. 8:13–21 (Harrison).

[8] *Id*. at 345:2–14 (Rybolovlev).

[9] *Id*. at 346:8–347:1 (Rybolovlev).

[10] *Id*. at 347:2–16 (Rybolovlev).

[11] *Id*. at 347:20–348:5 (Rybolovlev).

London Stock Exchange.[12] Rybolovlev sold his interests in Uralkali in 2010, personally earning around $5 billion through the transaction.[13]

Rybolovlev decided to invest the proceeds in companies addressing the "three major ways" in which, in his view, the future of "humanity will benefit the most": "health, . . . food, and entertainment."[14] He ultimately invested in a diverse array of companies intended to fulfill these goals, including a cellular-based meat producer and AS Monaco Football Club.[15] To promote human health, Rybolovlev met with fund managers in the U.S. "to find an optimal way to invest in biotech industry."[16] He ultimately determined to replicate the investment strategy that led to his success with Uralkali, creating a "family-owned pharma company" using the "apparatus" of "venture capital."[17]

In 2010, a biotech analyst at Merrill Lynch introduced Harrison to Rybolovlev.[18] Harrison liked Rybolovlev's investment strategy.[19] Harrison and Rybolovlev formed the Fund to invest in and develop biotechnology.[20]

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[12] *Id.* at 348:6–7 (Rybolovlev).

[13] *Id*. at 348:11–13 (Rybolovlev).

[14] *Id.* at 351:2–6 (Rybolovlev).

[15] *Id.* at 351:7–352:6 (Rybolovlev).

[16] *Id*. at 349:24–350:5 (Rybolovlev).

[17] *Id.* at 16:18–23 (Harrison); *id*. at 350:6–9 (Rybolovlev).

[18] *Id.* at 9:10–14 (Harrison).

[19] *Id*. at 350:14–17 (Rybolovlev).

[20] *Id*.; *id.* at 9:24–10:10 (Harrison); *id.* at 349:20–351:9 (Rybolovlev); JX-1 (LPA) at 3; JX-1574 ("Bloch Report") ¶ 15.

ATP III GP, Ltd. ("ATP") serves as the General Partner of the Fund, and Harrison is the manager of ATP.[21] The Fund's largest limited partners, contributing approximately 98% of the Fund's overall capital,[22] are Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP, both owned by Rybolovlev's family trust.[23] The Rigmora entities are successors-in-interest to the original limited partners Blue Horizon Enterprise Ltd. and Ezbon International Ltd. (together with the Rigmora entities, "Rigmora").[24]

On November 1, 2012, the parties entered into the First Amended and Restated Limited Partnership Agreement (the "LPA"), which governs the Fund's operations.[25] The LPA is governed by the law of the Cayman Islands.[26] The parties have amended the LPA twenty-two times.[27]

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[21] PTO ¶¶ 13, 15.

[22] JX-1237 at 4 (contributions through 2024); JX 1302 at 3–5 (showing Defendants' combined contributions accounted for about 98% of the Fund's ~$2.309 billion of capital contributions as of December 31, 2024); PTO ¶¶ 57, 59–61, 63 (contributions in 2025); Trial Tr. at 469:11–22, 470:12–17 (Yakovlev) (explaining how to navigate JX-1237 and calculate total contributions); *id.* at 208:10–18 (Strebulaev). Harrison and Les Pommes have contributed $54.7 million combined. JX-1400 ¶ 44; Trial Tr. 11:16–12:5 (Harrison).

[23] PTO ¶¶ 17–20; *see also* Trial Tr. at 270:12–271:3, 271:13–15 (Bogdanov).

[24] PTO ¶ 18; *see also* Trial Tr. at 11:4–7, 25:10–17 (Harrison).

[25] LPA; *see also* PTO ¶¶ 24–25.

[26] LPA ¶ 18(g).

[27] JX-1–JX-6 (LPA and LPA Ams. 1–5); JX-8–JX-17 (LPA Ams. 6–15); JX-19 (LPA Am. 16); JX-89 (LPA Am. 17); JX-126 (LPA Am. 18); JX-132 (LPA Am. 19); JX-222 (LPA Am. 20); JX-480 (LPA Am. 20); JX-1068 (LPA Am. 22).

At issue here, the LPA provides a framework for making capital calls and approving budgets.[28] Also relevant to this litigation, the LPA contains an "Exculpation Provision" that protects ATP from liability for actions taken in good faith that are not willful fraud, willful misconduct, gross negligence, or an intentional and material breach of the LPA.[29] It as well contains a "Discretionary-Action Provision" that grants ATP the discretion to take action against any limited partner who breaches the LPA.[30] The LPA's "Global Default Provision" authorizes ATP as General Partner to declare a Limited Partner who failed to honor its capital call obligations a "Defaulting Partner," and outlines a set of remedies that ATP can elect to pursue.[31] Those remedies include imposing a "Default Charge" by reducing the limited partner's preferred units.[32]

B. The Historical Budgeting Process

The LPA authorizes the General Partner to call capital for "Projects approved by" the Limited Partners "in writing" and "in accordance with a budget therefor approved" by the Limited Partners.[33] The LPA thus granted Rigmora the right to approve budgets for projects before the General Partner can call capital for those projects.

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[28] LPA ¶ 5(a); LPA Am. 3 ¶ 3.

[29] LPA ¶ 2(g).

[30] *Id.* ¶ 18(g)(iv).

[31] *Id.* 5(c).

[32] *Id.*

[33] LPA Am. 3 ¶ 5(a)(iii).

Until late 2024, the process by which the parties agreed on budgets began with informal discussions among Rigmora's Chief Investment Officer (whoever occupied that position at the time), Harrison, and Rybolovlev.[34] For each new Series A investment, Harrison and Rybolovlev met—often in person, although Harrison lives in the United States and Rybolovlev lives in Switzerland—to discuss the opportunity, its prospects for commercial and scientific success, and funding needs.[35]

Rybolovlev personally approved every new investment informally.[36] Once he did so, ATP prepared a packet of materials to secure formal approval.[37] The packet included things like a CFIUS memorandum,[38] a request for formal budget approval,[39] and an investment memorandum.[40]

ATP employees drafted the investment memoranda,[41] which served as a "roadmap from the implementation of a project all the way to the delivery of value as measured by exits."[42] The investment memoranda included the investment thesis, the investment rationale, and an assessment of the quality of the company's

[34] Trial Tr. at 14:1–24 (Harrison).

[35] *Id.* at 31:15–32:4, 33:5–10 (Harrison); *id*. at 349:9–14, 355:4–12 (Rybolovlev).

[36] *Id.*

[37] *Id.* at 32:19–33:4 (Harrison).

[38] JX-310 at 6–7.

[39] Trial Tr. at 31:15–33:4 (Harrison); *id*. at 355:9–18 (Rybolovlev).

[40] *Id.* at 32:19–33:4 (Harrison); *id.* at 245:13–17, 251:3–13 (Liras).

[41] *Id.* at 132:8–12 (Harrison).

[42] *Id*. at 241:21–24 (Liras).

founders.[43] The memoranda also contained performance milestones by which ATP could "measure progress against stated goals."[44]

As Harrison explained, milestones supplied a useful starting point in projecting a portfolio company's performance, but the initial milestones identified in the investment memoranda became less important in middle and later stages of the investment.[45] As the portfolio companies were "developing drugs from new technologies" and "working with teams of scientists of various stripes," their progress could not easily be predicted from the outset and they would often pivot if their initial strategy was not progressing well.[46]

In this litigation, Rigmora argues that the milestones served as conditions to Rigmora's obligation to fund approved budgets.[47] For this purpose, Rigmora cites to evidence reflecting the significance that ATP placed on milestones.[48] But that

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[43] *See, e.g.,* JX-150 at 8.

[44] Trial Tr. at 242:1–6 (Liras). They also included risk mitigation strategies, which could involve analyses of comparable companies to assess the novelty of the science and its potential value to patients and investors. *Id*. at 242:6–10 (Liras).

[45] Trial Tr. at 134:5–135:13 (Harrison).

[46] *Id*.

[47] JX-1579 ("Rimm Report") Figs. 5–11; *see also, e.g.*, JX-243 at 32 (Evercrisp) (dividing funding into "six milestone-driven tranches"); JX-114 at 1, 7, 32–33 (Apertor) (establishing $50m financing in "milestone-driven tranches"); JX-269 at 27 (Red Queen) (establishing tranches "based on milestones and progress").

[48] *See* Dkt. 269 ("Rigmora Post-Trial Br.") at 8, 28 (citing investment memoranda explaining the significant of milestones, JX-243 at 32, JX-309 at 4, JX-269 at 27; Ehlers's testimony that milestones were valuable for focusing the company's management and protecting investors, Trial Tr. at 403:20–404:2 (Ehlers); and Harrison's investment deck characterizing the Fund's investing practices as "[d]iscipline funding" consisting of "[m]ilestone-based tranches infused over time," JX-2280 at 6).

evidence reflects that ATP viewed milestones as important tools for managing the portfolio companies. No evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[49] Rigmora lacked the substantive expertise to set or track performance milestones.[50] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[51] The fact that certain of the Rigmora approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda.

After formal budget approval, the Fund would enter into Series A stock purchase agreements with the relevant portfolio companies.[52] ATP viewed the Series A commitments as key to recruiting top scientists and staff.[53] This is because most of the Fund's portfolio companies rely on funding from the Fund exclusively.[54]

[49] *Id*. at 33:11–14 (Harrison).

[50] Bogdanov Dep. Tr. at 31:2–9; 45:23–46:10; 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–31.

[51] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[52] Trial Tr. at 34:19–35:2 (Harrison).

[53] JX-1174 at 2.

[54] Trial Tr. at 20:8–21:1 (Harrison).

C. Rigmora's Capital Commitments

Since the inception of the Fund, Rigmora agreed to multiple capital commitments. The LPA limits ATP's right to call capital to the maximum amount of money each limited partner, including Rigmora, committed to the Fund, which the LPA refers to as a limited partner's "Contingent Subscription."[55] Rigmora's commitments began with an initial commitment of $1.425 billion alongside the November 2012 LPA and were followed by additional commitments negotiated in connection with amendments to the LPA.

1. Rigmora Commits $1.425 Billion To Establish The Fund.

The parties agreed to capitalize the Fund with $1.5 billion initially.[56] Rigmora would supply $1.425 billion and Harrison would supply the remaining $75 million pursuant to a loan from Rigmora.[57] Rigmora made its initial capital commitments totaling $1.425 billion on November 1, 2012, under subscription agreements signed by Blue Horizon for $698.25 million and Ezbon for $726.75 million.[58] The

[55] LPA ¶ 5(a)(i).

[56] Trial Tr. at 350:18–23 (Rybolovlev).

[57] PTO ¶¶ 26–27; Trial Tr. at 23:16–25:22 (testifying that Rigmora's total subscription at the time the parties executed the LPA was $1.425 billion when combining Blue Horizon's and Ezbon's subscriptions); JX-212 at 19–23; JX-213 at 19–23; JX-216 at 19–23; Trial Tr. at 25:18–26:3 (Harrison); *id*. at 354:12–19 (Rybolovlev); *see also* JX-1, Sch. D (describing Rigmora's financing of Harrison's capital contributions).

[58] JX-212 at 19–23 (signature pages); JX-213 at 19–23 (signature pages); Trial Tr. at 25:18–22 (Harrison).

subscription agreements were "[s]ubject to the terms and conditions set forth in . . . the [LPA]."[59]

Rigmora also agreed to "make such other capital contributions and payments to the Fund as provided for in the LPA, in the manner and at the times provided in the [LPA]," and to become "bound by the terms of the [LPA]."[60] ATP's right to call capital, in addition to being limited in amount to each partner's Contingent Subscription, was restricted to contractually specified purposes.

2. The Parties Amend The LPA To Create Investment Pools.

Amendment 13 to the LPA, dated February 4, 2019, introduced a Fund structure through which commitments, assets, and contributions would be allocated and tracked across separate "pools."[61] The aim of the pool concept was to segregate money so that profits on new investments would not leak to former Fund employees.[62] As Harrison explained, "we had old teams and new teams coming in that would found [sic] new deals. So we needed to segregate their deals in a pool out of fairness."[63] Pools also allowed the parties to increase capital commitments without having to establish new entities, thus avoiding potential know-your-customer roadblocks.[64]

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[59] JX-212 ¶ 1; JX-213 ¶ 1.

[60] *Id.*

[61] JX-15 (LPA Am. 13) ¶ 17(a).

[62] Trial Tr. at 27:11–28:9 (Harrison)

[63] *Id.* at 27:13–17 (Harrison).

[64] *Id.* at 27:11–28:9 (Harrison).

Amendment 13 established two pools: Pool A, which held the existing projects, and Pool B, which held the Fund's new projects.[65] Rigmora was responsible for funding 100% of capital called for Pool B.[66] Amendment 13 stated that expenses "directly attributable" to a particular pool would be allocated exclusively to that pool with other expenses apportioned between the pools based on the relative cost basis of the remaining assets in each pool.[67] Amendment 13 identified the "Management Fee" paid to Harrison, and the "Apple Tree Life Sciences, Inc. Fee, or "ATLS Fee" for Fund expenses incurred across the portfolio companies, as expenses attributable to both pools.[68]

Amendment 13 further provided that "separate and distinct records shall be maintained for each Pool, and capital contributions . . . shall also be accounted for separately on a Pool-by-Pool basis."[69]

3. Rigmora Commits An Additional $1 Billion.

Rigmora increased its commitment to the Fund as early-stage biotech investment surged in 2020 and 2021, spurred by the global response to the Covid-19

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[65] LPA Am. 13 ¶ 17(a).

[66] *Id.*¶ 17(b).

[67] *Id.* ¶ 17(d)).

[68] JX-9 (LPA Am. 7) Schedule A ¶ 3; JX-19 (LPA Am. 13) ¶ 17(d). ATLS is a wholly owned subsidiary of the Fund that covers Fund operational expenses like facility costs, leases, rents, and employee costs. JX-9 (LPA Am. 7) Schedule A ¶ 3; Trial Tr. at 17:17–18:4 (Harrison). The parties allocated the Management Fee and ATLS Fee between the pools according to fixed percentages. LPA Am. 20 ¶ 6.

[69] LPA Am. 13 ¶ 17(a).

pandemic.[70] Amendment 17 to the Limited Partnership Agreement, dated September 9, 2020, committed Rigmora to fund an additional $1 billion to be allocated between Pool B and a new Pool C.[71] Thereafter, Pool A would consist of Rigmora's original $1.425 billion capital commitment and all economics of the Fund not expressly allocated to Pools B or C. Pools B and C would split Rigmora's new $1 billion commitment.[72]

Amendment 17 further specified that Pool B would contain: Chinook Therapeutics U.S., Inc.; Nine Square Therapeutics Corporation; and Initial Therapeutics, Inc., along with a proportionate share of the Management Fee and ATLS Fee.[73] Pool C would contain Kynos Therapeutics Ltd and any new projects after the execution of Amendment 17, along with a proportionate share of the ATLS Fee and Management Fee.[74]

Each of these pools would be funded "exclusively" by Rigmora, and "[a]ll capital invested in the Pool C Projects . . . [would] be treated as contributed to [Pool C]."[75]

[70] Trial Tr. at 362:7–12 (Rybolovlev); *see also id.* at 402:20–22 (Ehlers); JX-1579 ¶ 19.

[71] Trial Tr. at 29:1–19 (Harrison); JX-89 (LPA Am. 17).

[72] LPA Am. 17 ¶ 20(a)

[73] *Id.*

[74] *Id.*

[75] *Id.* ¶ 20(b).

After Amendment 17, the parties executed amended subscription agreements under which Blue Horizon and Ezbon committed to contributing $490 million and $510 million, respectively, to Pools B and C.[76]

In Amendment 19, dated November 27, 2020, the parties renamed Pools A, B, and C, as Pool ATP IV, Pool ATP V-1, and Pool ATP V-2, respectively.[77] In their testimony, the witnesses further shortened the Pool names to Pool IV, Pool V-1, and Pool V-2,[78] and this decision follows suit.

D. Amendment 20 To The Limited Partnership Agreement

In 2021, while investments in early-stage biotech companies still surged, the parties decided to restructure the economic rights and obligations surrounding an existing Pool IV project called Braeburn Inc. The Fund founded Braeburn in 2012 as "a Phase 1 company."[79] By 2021, it was "market[ing] a drug for opioid addiction" and had around "$300 million in sales revenue."[80] Pool IV held Braeburn, but the company was "capital intensive."[81] So Rybolovlev agreed to fund the capital commitments to Braeburn, and ATP agreed to "change[] . . . carry economics in favor of [Rybolovlev]."[82] To facilitate this arrangement, the parties amended the LPA to

[76] Trial Tr. at 41:11–42:14 (Harrison); JX-99; JX-101.

[77] JX-132 (LPA Am. 19) ¶ 1; Trial Tr. at 28:22–24 (Harrison).

[78] *See, e.g.*, Trial Tr. at 40:19–23 (Harrison).

[79] Trial Tr. at 44:14–19 (Harrison).

[80] *Id.* at 44:13–21 (Harrison).

[81] *Id.* at 45:8–21 (Harrison).

[82] *Id*. at 45:8–24 (Harrison); LPA Am. 20 ¶ 21(b).

"segregate the investment in Braeburn."[83] Meanwhile, ATP had placed new executives in charge of existing projects.[84] This, coupled with changes at Braeburn, prompted a wholesale restructuring of Pool IV to allocate existing assets and liabilities to newly created pools and align managers' carried interests with their performance.[85]

In June 2021, the parties executed Amendment 20 to for this purpose.[86] Amendment 20 created two new pools.[87] The first, "Pool Braeburn," held Braeburn in a segregated fund for which Rigmora would be the exclusive source of capital.[88] The second, "Pool V-3," held seven companies formerly under Pool IV that "hadn't quite made it" and "would be managed by the members of our new team"[89]—Ascidian Therapeutics, Inc., Gala Therapeutics, Inc., Galary, Inc., Galvanize Therapeutics, Inc., Galaxy Medical, Inc., Intergalactic Therapeutics, Inc., and Marengo

[83] *Id.* at 44:22–45:2 (Harrison).

[84] *Id.* at 46:6–15 (Harrison).

[85] LPA Am. 20 ¶¶ 21(a), 22(a) (describing Pools V-3 and Braeburn as "consist[ing] of the assets, liabilities, income, gains, losses and expenses associated with the Partnership's investments" in the relevant portfolio companies); Trial Tr. at 44:22–45:11 (Harrison) (Pool Braeburn created to change "carry economics" for investment in Braeburn); *id.* at 39:21–41:10, 46:6–15 (Harrison) (Pool V-3 set up to segregate economics for new managers).

[86] Trial Tr. at 44:11–46:15 (Harrison).

[87] LPA Am. 20 ¶¶ 21, 22.

[88] LPA Am. 20 ¶ 21; *id.* ¶ 21(b) (stating that capital shall be called from Rigmora "exclusively" and that "[n]o other Partner shall be required to contribute capital to or in respect of Pool Braeburn").

[89] Trial Tr. at 46:6–15 (Harrison).

Therapeutics, Inc.[90] Amendment 20 also reduced Rigmora's funding commitments to Pool IV.[91]

The parties dispute whether Rigmora agreed to increase its overall capital commitments through Amendment 20. Before Amendment 20, Rigmora had committed a total of $2.425 billion: $1.425 billion to Pool IV and $1 billion to Pools V-1 and V-2.[92] Of that amount, Rigmora had contributed approximately $1.3 billion[93] to Pool IV and $58.5 million to Pools V-1 or V-2.[94] Rigmora's commitments thus left around $1.067 billion in head room in its Contingent Subscription to achieve the then contemplated projects.[95] In this litigation, Rigmora argues that $1.067 billion was

[90] LPA Am. 20 ¶ 22(a).

[91] LPA Am. 20 ¶ 24.

[92] PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); -213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a) (committing an additional $1 billion to Pools B and C); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1 (renaming Pool A to Pool IV and Pools B and C to Pools V-1 and V-2 respectively).

[93] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840,047.14).

[94] *See id.*, Tab "Capital Calls – V-1 and V-2," Adding cells D23 and D47, the totals for Rigmora's contributions to V-1 and V-2, yields $58,486,530.

[95] As described in the legal analysis, immediately prior to Amendment 20's adoption, Rigmora committed $2.425 billion to the Fund. PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); JX-213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1. Rigmora's combined contributions to all pools immediately prior to Amendment 20's adoption was $1,358,326,577.14. JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (showing Rigmora's total contributions to Pool IV as $1,299,840,047.14); *id.*, Tab "Capital Calls – V-1 and V-2," Cells D23, D47 (showing Rigmora's total contributions to Pools V-1 and V-2 as $58,486,530). Subtracting Rigmora's capital contributions of $1,358,326,577.14 from its then current Contingent Subscription of $2.425 billion yields unfunded capital commitments of $1,066,673,422.86.

more than enough to accomplish anticipated projects. And the parties did not expressly amend the subscription agreements in connection with Amendment 20 as they had with prior LPA amendments.[96]

But Amendment 20 and communications leading up to it, all during the biotech boom, reflect that the parties anticipated unfunded commitments exceeding $1.067 billion, and total commitments from Rigmora exceeding $2.425 billion.

In May 2021, Harrison emailed a draft outline of the transaction to Rigmora's then-CEO and CIO Anna Kolonchina, who indicated Rigmora's assent to the outline a few days later.[97] The outline included a section titled "Remaining Unfunded Capital Commitments" of approximately $1.385 billion as follows: (1) $20 million for ATP IV; (2) $220 million for ATP V-1; (3) $664 million for ATP V-2; (4) $291 million for new Pool ATP V-3; and (5) $189.95 million for new Pool Braeburn.[98] Adding up Rigmora's obligation for those commitments (approximately $1.384 billion),[99] to its then-funded commitments ($1.3 billion) equals $2.684 billion.

On its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, more than those of the May 2021 outline.[100]

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[96] *See* PTO ¶¶ 26–27, 30 (listing amendments to subscription agreements).

[97] JX-195 at 1 (Kolonchina circulated a revised draft and stating it "make[s] sense to start drafting a long form" amendment).

[98] JX-195 at 4–5.

[99] Of that, Rigmora would be responsible for approximately $1.384 billion based on its agreement to fund 99.6028% of Pool IV and Pool V-3 and 100% of the remaining pools. JX-195 at 1, 4–5.

[100] LPA Am. 20.

Amendment 20 reflected anywhere from $304.6 to $309.2 million in contributions to Pool V-3[101] (more than the $291 million reflected in the outline). It also reflected a minimum of $189.9 million to Pool Braeburn plus a commitment to fund additional securities fees (thus likely more than the flat $189.9 million reflected in the outline).[102] Amendment 20 reduced the $1.425 billion commitment to Pool IV consistent with the email (subtracting approximately $92 million to even the

[101] As discussed in the legal analysis, to Pool V-3, Amendment 20 reflected a total commitment of $500 million. LPA Am. 20 ¶ 22(b). This included $189,544,660 in "deemed commitments" to the existing investments into the Pool V-3 companies and implied approximately $310.5 million in new commitments. *Id.* The new commitments expressly identify two new expenses totaling $305.8 million: $70,853,399 in previously approved, unfunded budgets and $235 million in additional commitments to those companies. *Id.* Amendment 20 further states that "Ezbon, Blue Horizon, Harrison, and Les Pommes shall contribute 50.7974%, 48.8054%, 0.1869%, and 0.2103%, respectively," to any unfunded remaining budgets. *Id.* Assuming the implied $310.5 million, then Rigmora would be required to contribute approximately $309.2 million. Assuming the expressly noted $305.8 million, then Rigmora would be required to contribute approximately $304.6 million. So Amendment 20 reflects anticipated additional capital commitments from Rigmora to Pool V-3 in a range of $304.6 million to $309.2 million.

[102] As discussed in the legal analysis, to Pool Braeburn, Amendment 20 reflected Rigmora's commitment of $189.9 million. LPA Am. 20 ¶ 21(a). Amendment 20 also committed Pool Braeburn to "any additional securities of Braeburn acquired by the Partnership after the date of Amendment 20" and fees and expenses related to Pool Braeburn. *Id.* ATP's former CFO Engels testified that the Braeburn later purchased $30.6 million in additional Series B shares for Braeburn and called approximately $9 million in expenses to Pool Braeburn. Engels Dep. Tr. at 355:3–15. The parties executed a settlement agreement in December 2024 to resolve a dispute that Rigmora initiated in Cayman. Trial Tr. at 71:5–10 (Harrison). Pursuant to that settlement, the parties waived the then-remaining $21.3 million in commitments to Pool Braeburn. Engels Dep. Tr. at 355:16–21; JX-1068 (LPA Am. 22); JX-1072.As Engels explained, these commitments "netted out to a total obligation of $208,355,000." Engels Dep. Tr. at 355:22–356:4. Even assuming that the parties did not know the precise costs of the additional securities, fees, and expenses at the time of executing Amendment 20, the Amendment anticipated $189.9 million in additonal funding to Braeburn.

commitment to the funds already contributed and adding the then-anticipated $20 million in fees)[103] but did not reduce the $1 billion commitment to Pools V-1/V-2.

And immediately following Amendment 20, ATP began calling committed capital from Rigmora and Harrison. On June 24, 2021, ATP transmitted a capital call to Rigmora for approximately $16.4 million, consisting of $2 million for Pool Braeburn, $1.6 million for Pool V-2, and $12.8 million in expenses charged to the pools, all split among Rigmora and Harrison in line with their commitment obligations to the pools.[104]

This capital call—and every call that followed—included as "Exhibit A" a tracker of the outstanding capital commitments.[105] The tracker included the amount of funds being called from each party on a pool-by-pool basis (including the breakdown of ATLS fees proportionately for each pool), and the amount of unfunded committed capital that would remain following the capital call.[106] Exhibit A to the June 2021 capital call evidenced a total remaining commitment of $1.447 billion.[107] Before this

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[103] The parties agreed to reduce Pool IV's remaining unfunded commitments from the initial $1.5 billion to approximately $20 million to be used to cover expenses, including the cost of litigating a then-ongoing portfolio company exit. JX-1061 (LPA Am. 20) ¶ 24. The actual cost of expenses related to that litigation, and what was ultimately paid into Pool IV after Amendment 20, totaled around $33.3 million. Engels Dep. Tr. at 321:20–322:22. Adding Rigmora's share of those costs to the amount Rigmora contributed to Pool IV prior to Amendment 20 equals $1,333,059,463.85. *See infra* § II.A.1.

[104] Trial Tr. at 47:10-48:3 (Harrison); JX-230 at 1–2.

[105] JX-230 at 4; Trial Tr. at 48:19–50:18 (Harrison).

[106] *Id.*

[107] JX-224 at 3.

litigation, no one at Rigmora (including then-CEO Kolonchina, who received these calls) ever objected to the accounting.[108]

E. Amendment 22 To The Limited Partnership Agreement

Biotech markets retrenched in 2022,[109] and Russia invaded the Ukraine early that year.[110] Rigmora's investment strategy and risk appetite changed after these events,[111] and the parties' relationship began to strain.[112] By 2023, Rigmora had started conditioning its capital contributions on budget reductions.[113] Braeburn had achieved commercial success.[114] The FDA approved Braeburn's drug Brixadi, transforming Braeburn into a commercial-stage company with multi-billion dollar potential.[115] In July 2021, Braeburn entered into a royalty purchase agreement with ATP which gave ATP a license to Braeburn's IP and the associated royalty

[108] Trial Tr. at 48:19–51:1 (Harrison); *id.* at 474:22–476:10 (Yakovlev) (testifying that he was "not . . . aware" of anyone at Rigmora challenging these records)

[109] *Id.* at 382:10–19 (Rybolovlev).

[110] *Id.* at 199:2–3 (Strebulaev).

[111] JX-463 at 2–3; Trial Tr. at 51:15–52:12 (Harrison). At trial, Rybolovlev denied that the invasion of Ukraine played a part in Rigmora's decision making. Trial Tr. at 352:20–353:3 (Rybolovlev).

[112] *See* Trial Tr. at 51:15–52:12 (Harrison).

[113] JX-698.

[114] PTO ¶¶ 48–50.

[115] *Id.*

payments.[116] And Rigmora demanded immediate distributions from Braeburn.[117] ATP refused the demand.[118]

Ultimately, ATP sued in the Cayman Islands to compel Braeburn distributions.[119] In that litigation, Rigmora previewed the defense it would make in this litigation. On October 10, 2024, Kolonchina filed an affidavit in the Cayman court.[120] The LPA authorizes the General Partner to request capital calls in "an amount equal to, *but not in excess of*" the "Contingent Subscriptions" as that term is defined in the LPA.[121] In an October 10, 2024 affidavit, Kolonchina stated, for the first time, that Rigmora's "combined Contingent Subscriptions are US$2.425 billion."[122] Because Rigmora had already funded $2.6 billion, in Rigmora's view, "it is therefore impossible" that Rigmora had outstanding Contingent Subscriptions.[123]

Rigmora did not stand on its newly formed legal defense in the Cayman litigation but instead agreed to meet its capital obligations.[124] The day that she filed her affidavit, Kolonchina stated in an email to ATP that Rigmora would pay a

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[116] JX-586 at 2,

[117] Trial Tr. at 67:9–68:14 (Harrison); PTO ¶¶ 51, 53.

[118] PTO ¶ 52.

[119] PTO ¶ 54; Dkt 57 ("Answer") ¶¶ 98, 100.

[120] JX-1002.

[121] LPA ¶ 5(a)(i) (emphasis added).

[122] JX-1002 ¶¶ 23–26.

[123] *Id.*

[124] JX-998 at 1.

pending capital call although it was "not obligated to do so."[125] By October 2024, Rigmora was explicitly disclaiming any obligation to respond to capital calls for budgets already approved in writing, insisting that further payments would be made only "on a voluntary basis."[126]

During this time, ATP portfolio companies were nearing the end of their Series A commitments and initial budgets, making new budgets critical.[127]

Harrison flew to Monaco and suggested to Rybolovlev that they settle the Cayman litigation.[128] This led to a "couple of days of meetings" where they "agreed to the basic outline of a settlement in order to continue to work together."[129] On December 20, 2024, the parties implemented the settlement terms through Amendment 22 to the LPA.[130]

Through Amendment 22, Rigmora agreed to "discuss" budgets for ATP portfolio companies in exchange for distributions from a newly secured Braeburn royalty valued at approximately $700 million.[131] Amendment 22 provides:

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[125] *Id.*

[126] *Id.*

[127] Trial Tr. at 72:6–73:10 (Harrison).

[128] *Id.* at 68:22–69:1 (Harrison).

[129] *Id.* at 68:24–69:4 (Harrison).

[130] *See* LPA Am. 22 ¶ 26; Trial Tr. at 275:6–21 (Bogdanov).

[131] LPA Am. 22 ¶¶21, 26. By this time, Braeburn was a successful public company and the Braeburn royalty reflected the Fund's share of the company's cash flows. Trial Tr. at 64:18–65:12 (Harrison). ATP removed the Braeburn royalty from the Fund into a separate entity, ATP LLC. *Id.* Amendment 22 allowed Rigmora to receive distributions from the Braeburn royalty. LPA Am. 22 ¶ 21.

> From and after the date of [Amendment 22], the General Partner and [Rigmora] shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Bioscience, Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized . . . .[132]

Amendment 22 noted, on its face, the projected dates by which each company would run out of cash: January 2025 for Aulos, February 2025 for Replicate, April 2025 for Nereid, May 2025 for Nine Square, and first quarter 2026 for Ascidian.[133]

At the same time, Amendments 22 created a "Royalty Financing" contingency. It stated that "[i]f any approval of a new budget is given by [Rigmora], *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by [Rigmora] on a sale or financing of its interest in ATP LLC."[134] Put differently, no budget for entities identified in Amendment 22 would be approved, and thus subject to capital calls, absent a Royalty Financing.

Harrison expected that the parties would work together to obtain the Royalty Financing.[135] These expectations were consistent with the terms of Amendment 22, which mandates that, in pursuing the financing, as well as approving budget proposals, each party would "do and perform, or cause to be done and performed, all

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[132] LPA Am. 22 ¶ 26.

[133] *Id.* ¶ 26.

[134] *Id.* ¶ 26 (emphasis added).

[135] Trial Tr. at 77:24–78:3 (Harrison).

such further acts and things . . . as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation of the transactions contemplated hereby."[136]

F. Rigmora's New Management Shifts Funding Priorities And Delays Budget Approvals.

In October 2024, Kolonchina left Rigmora,[137] and Rybolovlev promoted Yuri Bogdanov to CIO and co-CEO.[138] Rybolovlev had known Bogdanov for two decades.[139] Before Rigmora, Bogdanov had worked for Uralkali in Russia.[140] Prior to his elevation at Rigmora, Bogdanov worked as a special advisor for several years which entailed giving a "second opinion" and challenging management on investments and other matters.[141] Bogdanov was promoted due to his "general understanding" of Rigmora's operations.[142] But Rybolovlev identified drawbacks to his elevation. For one, "background i[n] auditing" made him "very, very, conservative."[143] Also, Bogdanov had no prior involvement in the Fund's company budgets nor any meaningful exposure to biotech.[144]

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[136] LPA Am. 22 ¶ Miscellaneous.

[137] Trial Tr. at 378:7–14 (Rybolovlev)

[138] *Id.* at 271:24–272:7 (Bogdanov).

[139] Trial Tr. at 273:20–274:1 (Bogdanov).

[140] *Id.*

[141] *Id.* at 272:14–20 (Bogdanov).

[142] Rybolovlev Dep. Tr. at 51:5–52:4.

[143] *Id.* at 50:17–51:3.

[144] Trial Tr. at 272:8–24, 316:24–13 (Bogdanov).

1. Bogdanov Proposes Drastically Reducing Rigmora's Investment In ATP.

Years before his elevation, Bogdanov was working as an investment analyst at Rigmora and recommended that Rigmora slash its investment in ATP.[145] By the fall of 2022, Rigmora's investment strategy and macroeconomic trends landed Rigmora in what Bogdanov described as a "liquidity crisis."[146] To address it, Bogdanov prepared an internal memorandum proposing a change in investment strategy.[147]

In the memorandum, Bogdanov observed that "two to three years ago" a crisis with similar characteristics had been "resolved by liquidating the private equity portfolio."[148] He warned that Rigmora's structure, with mainly "venture businesses (biotech [and] gaming) carries similar risks that had led to the current crisis: poorly predictable money inflows (divestments) and massive outflows (capital calls), which will grow exponentially if the divestments are delayed."[149]

Bogdanov's solution was straightforward: "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture."[150] Otherwise, Rigmora would remain trapped in "the same logic of

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[145] JX-446.

[146] *Id.*; *see also* Trial Tr. at 352:10–15 (Rybolovlev) (testifying that Rigmora did "not like to keep a lot of liquidity on hand" because "the money, whether it's cash, it has to work").

[147] JX-446; *see* Trial Tr. at 318:2–321:23 (Bogdanov).

[148] JX-446 at 1.

[149] *Id.*; Trial Tr. at 320:11–18 (Bogdanov).

[150] JX-463 at 2; Trial Tr. at 320:3–7 (Bogdanov).

shifting money from less risk (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time" to resolve periodic emergency cash shortages.[151]

According to Bogdanov, Rigmora would "most importantly" re-encounter emergency cash shortages due to "guaranteed obligations on . . . biotech venture projects."[152] "Biotech ventures" referred to the Fund.[153] And although the Fund could be "a source of capital gains," it could not "serve as a reliable source of cash for funding [Rigmora's] regular needs."[154] If Rigmora were to exit its biotech investments, it would gain a "buffer" of at least $300 million—enough to mitigate Rigmora's liquidity crisis and achieve a "stable position" long term.[155] Bogdanov concluded that the way "to start moving towards the cash buffer" was "to drastically reduce ATP payments."[156]

[151] JX-463 at 2; Trial Tr. at 320:19–24 (Bogdanov).

[152] JX-440 at 2 (emphasis added). This email was sent by Bogdanov's associate, but Bogdanov testified that he is "the author." Bogdanov Dep. Tr. 162:5–10.

[153] Trial Tr. at 320:8–10 (Bogdanov).

[154] JX-440 at 2.

[155] JX-446 at 1.

[156] JX-462 at 2 (emphasis added); Bogdanov Dep. Tr. at 174:14–21.

Bogdanov believed that Rigmora could achieve "drastic" payment reductions through "tight controls," including "clear rules for review and approval of new projects."[157] His "priority number one [was] to create the cash buffer."[158]

2. Bogdanov Delays Budget Approvals To Reduce Funding Commitments.

No one gave Bogdanov any "specific instructions" on his new priorities when he became CIO and co-CEO in late 2024.[159] All indications are that Bogdanov set his fall 2022 plans in motion and began implementing a shift toward reducing long-term investments and building a cash buffer by cutting funds to ATP.

Meanwhile, ATP was on the verge of crisis. That is what prompted Harrison to make settlement overtures to Rybolovlev, overtures that led to Amendment 22 and Rigmora's commitment to discuss new budgets. And ATP wasted little time after executing Amendment 22 before sending Rigmora proposed budgets.[160]

Bogdanov had negotiated Amendment 22 for Rigmora and remained ATP's point of contact.[161] On December 24, 2024, Harrison emailed Bogdanov budget requests for:[162] Auolos, "align[ing] with management's recommendation for the middle scenario of $28M"; Replicate, for "$11M"; and Nine Square, "with a budget

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[157] JX-462 at 2; Bogdanov Dep. Tr. at 173:16–22.

[158] JX-462 at 2.

[159] Trial Tr. at 342:20–343:3 (Bogdanov).

[160] JX-1079 at 1; Trial Tr. at 79:10–80:5 (Harrison).

[161] Trial Tr. at 271:24–272:7, 275:2–5 (Bogdanov).

[162] JX-1079 at 1.

request of $15M" (the "Budgeting Requests").[163] Harrison also explained that he had attached materials concerning budgets for: Nereid, which could merge with Marlinspike and "utilize Marlinspike's remaining budget" and therefore required no additional funds; and Ascidian, which would "require more discussion and time to understand" due to "contingent variables" expected to "emerge" in the coming year.[164]

Harrison provided a spreadsheet showing "expected tranching by quarter for 2025," plus access to data rooms with "supporting materials for the new budgets."[165] ATP had not historically provided this level of information when requesting budget approval.[166] Harrison testified at trial that ATP provided this information "to make sure [Rigmora] understood that after the settlement agreement we were being radically transparent."[167] Bogdanov forwarded Harrison's email to Rigmora's analyst, Zufar Iskhakov, exclaiming "Let's start. Merry Christmas!"[168] This seems like a positive response. Yet Bogdanov testified in deposition that he did not mean "let's start approving budgets."[169] And events that followed seem to suggest that he meant "let's start" imposing "tight controls."

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[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] Trial Tr. at 80:18–81:7 (Harrison).

[167] Trial Tr. at 128:6–9 (Harrison).

[168] JX-1079 at 1.

[169] Bogdanov Dep. Tr. at 228:13–15.

Bogdanov prioritized Replicate, which Harrison had warned would "run out of cash by the third week of January."[170] Over the holidays, Bogdanov's team prepared a "list of the follow-up diligence questions,"[171] which Bogdanov sent to Harrison.[172]

Bogdanov testified that this was appropriate. He characterized the list as "basic diligence questions on the company's past performance" and "how the company executed its original plan."[173] The questions determine the "most important indicators before [] mak[ing] any decision on the new budget."[174]

Harrison, on the other hand, viewed Bogdanov's diligence questions as bizarre.[175] As he testified, Rigmora "already knew about" Replicate and had "approved the budget[.]"[176] Replicate had pivoted "from oncology to a rabies vaccine over the course of the fund's investment."[177] As Harrison explained: "this is a company that we founded I think in 2021 and on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with [Rybolovlev]."[178]

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[170] Trial Tr. at 291:11–16 (Bogdanov).

[171] *Id.* 291:17–20 (Bogdanov).

[172] JX-1107 at 1–5.

[173] Trial Tr. at 292:1–8 (Bogdanov).

[174] *Id.* at 292:9–15 (Bogdanov).

[175] Trial Tr. at 129:3–5 (Harrison).

[176] *Id.*

[177] *Id.* at 128:19–23 (Harrison); JX-1107 at 3.

[178] Trial Tr. at 82:23–83:3 (Harrison).

Rigmora's diligence requests ignored this history. Some of the requests were open-ended, seeking, for example, narratives explaining whether Replicate had "lost its differentiation," and how its "technology evolved over the past four years compared to its main peers."[179] When confronted on cross-examination about whether he knew if his diligence questions could "be answered in a reasonable amount of time," Bogdanov admitted: "I didn't know."[180]

Rigmora ultimately approved Replicate's budget.[181] But the budgeting experience for Replicate marked a departure from the parties' historically collaborative approach over the Fund's twelve-year history and, in that way, foretold events to come.

3. To Move Forward, Harrison Proposes Reallocating Committed Funds To Clinical-Stage Companies.

Additional meetings occurred in March 2025 in Monaco to discuss the budgeting efforts contemplated by Amendment 22, including Aulos, Ascidian, and Marengo.[182] Bogdanov continued to issue requests for extensive information in connection with the budgeting process.[183] And ATP continued responding to those requests.[184] The senior management teams for those budgets under review flew

[179] *Id.* at 130:4–16 (Harrison); JX-1107 at 3.

[180] *Id.* at 328:17–329:1 (Bogdanov).

[181] *Id.* at 87:4–17 (Harrison); *id.* at 295:13–18 (Bogdanov).

[182] *Id.* at 92:15–18 (Harrison).

[183] *Id.* at 293:3–19 (Bogdanov).

[184] *Id.* at 94:5–24 (Harrison); JX-1222 at 1.

overseas, as did consultant Bill Grossman, whom ATP engaged for Bogdanov's and Rybolovlev's benefit.[185]

The Monaco meetings, however, did not result in approved budgets for Aulos, Ascidian, or Marengo.[186] Nor had Rigmora made any progress toward Royalty Financing.[187] With the understanding that the only capital the Fund would receive from Rigmora would be capital called within approved budgets, Harrison proposed as a compromise that the parties reallocate funding to "move some of the clinical projects along."[188] He proposed reallocating some of the approved budget amounts from the preclinical companies to clinical companies.[189]

Harrison put the reallocation proposal forward although he believed that the preclinical projects had value.[190] He engaged Rigmora to "attempt to minimize any need for near-term cash funding."[191] He sought to neutralize Rigmora's "incessant refrain that it faced cash flow issues and that it either could not, or would not, meet the funding needs of the Pool V-1 and V-2 portfolio companies."[192]

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[185] Trial Tr. at 95:1–18 (Harrison). Grossman assessed courses of action for Aulos. *Id.* at 95:19–96:6. Eventually, Rybolovlev deferred to Harrison's expertise before agreeing, in Harrison's words, "we should do Aulos." *Id.* at 95:24–97:15 (Harrison).

[186] *Id.* at 97:16–18 (Harrison).

[187] *Id.* at 98:1–12 (Harrison).

[188] *Id.* at 97:19–98:20 (Harrison).

[189] *Id.* at 98:21–99:2 (Harrison).

[190] *Id.* at 101:19–102:7 (Harrison).

[191] JX-1336 at 1.

[192] *Id.*

4. In Response To A Hostile Reaction From Rigmora, Harrison Withdraws The Reallocation Proposal.

Rigmora did not agree to Harrison's reallocation proposal.[193] At first, Rigmora seemed receptive to the approach. On May 9, Harrison held a Zoom call with Bogdanov, Rybolovlev, and Anna Batarina, an ATP partner.[194] At this meeting Harrison provided a brief introduction and then offered a more formal presentation.[195] In response, Bogdanov and Rybolovlev said that a presentation would be unnecessary because it is moving in the right direction, and the next step would be to speak with Rigmora's lawyers.[196]

Harrison spoke with Rigmora's lawyers on May 12, 2025.[197] Harrison characterized the call as an "ambush."[198] In his view, the lawyers distorted the purpose and meaning behind his reallocation proposal, saying to Harrison "it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation."[199] Harrison withdrew the proposal during the May 12 call.[200]

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[193] Trial Tr. at 99:3–6 (Harrison).

[194] *Id.* at 47:20–23, 99:7–15 (Harrison).

[195] *Id.*

[196] *Id.*

[197] *Id.* at 99:8–100:8 (Harrison).

[198] *Id.* at 100:18–21 (Harrison).

[199] *Id.* at 101:2–12 (Harrison).

[200] *Id.* at 305:2–20 (Bogdanov).

G. Rigmora Disclaims Any Outstanding Capital Commitments To ATP.

Rigmora ratcheted up the parties' level of conflict further on May 15, 2025, when Bogdanov emailed ATP an alarming communication (the "May 15 Email").[201]

In the email, Bogdanov declared that the Fund should cease further funding of seven preclinical companies, which he referred to as the "Early-Stage Companies," and which all had approved yet unspent budgets.[202] He claimed those companies had "no way for a path to commercial success," had "failed to meet the milestones set out in the investment memoranda on which [Rigmora's] initial funding was premised," and there was "no third party interest."[203] In describing the companies as dead-ends, the May 15 Email contorted the purpose of Harrison's reallocation proposal, misstating that Harrison "hold[s] a similar view" that "further funding of those Early-Stage Companies will waste the ATP Fund's assets."[204]

Although Rigmora had already approved budgets for the preclinical companies, Bogdanov invited a "detailed explanation" of why, despite the companies' supposed unworthiness, Rigmora should "contribute further capital" to the preclinical companies.[205] Bogdanov stated Rigmora's intent to "comply" with the LPA but

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[201] JX-1319 at 1.

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

conditioned its cooperation on whether ATP could "demonstrate that the LPA allows" ATP to call further capital.[206]

And although the parties had just spent months discussing budgets for the four clinical-stage companies, and ATP had called capital for those companies on December 24, 2024, Bogdanov conditioned any further funding for those companies on ATP's agreement to "wind down or liquidate the Early-Stage Companies."[207]

Bogdanov gave ATP an ultimatum: liquidate the preclinical companies with already approved budgets to obtain funding for companies during clinical trials. Rigmora stated that it would not even "consider" the budgets for clinical-stage companies until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and abandon existing investments through liquidation or wind down.

The May 15 Email demanded "objective information" to "facilitate the discussion" of any "new budgets"— ignoring the past five months' of data and erecting new hoops for ATP to jump through.[208]

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[206] *Id.*

[207] *Id.* Bogdanov did not address the two preclinical companies Nereid and Nine Square that had already expended their initial Series A funding. *See id.*

[208] *Id.*

In the penultimate sentence, the May 15 Email stated that Rigmora did "*not presently have any outstanding capital commitments to ATP Fund* and therefore has full discretion on whether to agree to fund any new investment proposals."[209]

H. ATP Calls Six Months Of Capital.

The May 15 Email ultimatum left ATP with very few options. ATP decided to lean on its contractual rights. On May 30 and June 1, the GP called $87.76 million in capital needed to maintain six months of research activity for ten companies—the seven preclinical companies as well as Replicate, Marengo, and Ascidian—and $19,371,099 in ATLS Fees and partnership expenses (the "Capital Calls").[210] The capital called and unfunded approved budgets are below:

[209] *Id*. (emphasis added).

[210] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* Trial Tr. at 110:8–21 (Harrison) (testifying that the figures were keyed to estimates for six months of budgets, with the goal of permitting company survival and "following forward on . . . research plans"); *id.* at 392:8–11 (Rybolovlev) (corroborating Harrison's view that six-months' worth of money permits a company's "normal functioning").

Company	Pool	Capital Called	Unfunded Approved Budget[211]
Aethon	ATP V-2	$5,000,000	$8,000,000
Apertor	ATP V-2	$7,100,000	$19,400,000
Ascidian	ATP V-3	$6,000,000	$6,000,000
Deep Apple	ATP V-2	$9,000,000	$9,000,000
Evercrisp	ATP V-2	$7,000,000	$49,000,000
Initial	ATP V-1	$7,000,000	$19,880,000
Marengo	ATP V-3	$29,960,000	$29,960,000
Marlinspike	ATP V-2	$6,300,000	$36,275,000
Red Queen	ATP V-2	$6,400,000	$23,600,000
Replicate	ATP V-2	$4,000,000	$13,000,000
	TOTAL:	$87,760,000	$214,170,000

Except for Replicate, for which the GP issued a revised capital call on June 1, 2025, the Capital Calls were due on June 13.[212] The revised Replicate capital call was due June 16, 2025.[213] ATP issued Default Notices on June 17, 2025.[214] With ATLS Fees and the June 1 revision, the Capital Calls totaled $101,103,759. Rigmora has never contributed capital in response to any of the Capital Calls.[215]

I. ATP Files This Litigation.

Concurrently with sending the May 30 capital calls, ATP filed this suit.[216] The Verified Complaint (the "Complaint") asserts five Counts.

- In Count I, ATP claims that Rigmora breached the LPA and Amendments 17, 18, and 20 to the LPA, by refusing to engage in

[211] JX-1622.

[212] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

[213] JX-1415 at 1.

[214] *See, e.g.*, JX-1620.

[215] PTO ¶ 78.

[216] Dkt. 1, Verified Complaint ("Compl.") ¶¶ 23, 183–196.

substantive discussions of new budgets, imposing improper conditions to the occurrence of budget discussions, and repudiating any obligation to consider new budgets.

- In Count II, ATP claims that Rigmora breached or repudiated its obligations under the LPA to fund capital calls made consistent with the budgets it approved.
- In Count III, ATP claims that Rigmora breached its implied obligations under Cayman law to act rationally and in good faith in exercising discretionary rights (absent clear language to the contrary) by refusing to consider requests for new budgets for the Fund's clinical-stage portfolio companies.
- In Count IV, ATP seeks a declaration that the Global Default Provisions of the LPA warrant a Global Default penalty on Rigmora—not on a project-by-project or pool-by-pool basis, but across all of the Limited Partner's interests in the Fund.
- In Count V, ATP seeks a declaration that the Fund is entitled to exculpation, under Paragraph 2(g) of the LPA, for filing this action.

ATP moved to expedite proceedings due to the impending shutdown of several of the affected portfolio companies for lack of funding.[217] The court granted the motion to expedite over Rigmora's opposition and scheduled trial for September.[218]

J. Rigmora Files Competing Litigation In The Cayman Islands.

On June 2, Rigmora filed a Writ of Summons against ATP in the Grand Court of the Cayman Islands.[219] Rigmora resurrected its argument debuted in the prior Cayman litigation—that Rigmora committed $2.425 billion in Contingent Subscription, Rigmora has already made capital commitments in excess of that amount, and thus Rigmora is not required to fund any further capital calls under the

[217] Dkt. 1, Pl.'s Mot. to Expedite Proceedings ¶ 1.

[218] Dkt. 31; Dkt. 39 at 43:8–22.

[219] PTO ¶ 11.

LPA.[220] Four days later, Rigmora filed a Winding Up Petition against ATP in the same court (together with the Writ of Summons, the "Cayman Litigation").[221] Rigmora argued that it had lost trust and confidence in ATP due to ATP's "mismanagement and lack of probity[.]"[222] And Rigmora sought to accomplish through the Cayman court what Bogdanov had unilaterally demanded in the May 15 Email—a liquidation.

K. Forum Jockeying Ensues.

Through motion practice in the competing lawsuits, the parties fought bitterly over the dominance of their preferred forums. On June 9, 2025, Rigmora moved to dismiss ATP's claims and a motion to stay this proceeding pending the resolution of the Cayman Litigation. Three days later, Rigmora filed an ex parte summons in the Cayman Litigation seeking an injunction barring ATP from declaring Rigmora in default of the LPA or issuing any further capital calls.[223] ATP responded by moving to stay the Cayman Litigation.[224]

This court denied Rigmora's motion to dismiss or stay these proceedings, concluding that its motion relied on convenience defenses that it waived in the LPA, and that ATP's allegations supported a finding of irreparable harm to multiple

[220] JX-1416 ¶¶ 4–5.

[221] PTO ¶ 11.

[222] JX-1417 ¶ 4.

[223] JX-1434.

[224] JX-1446.

Delaware entities absent expedition.[225] The Cayman court entered Rigmora's requested injunction and scheduled trial for January 2026 (the "Writ Injunction").[226] And ATP withdrew its motion to stay the Cayman Litigation.[227]

The parties began a sprint to trial in both fora.[228] The parties engaged in further motion practice in these proceedings, filing a combined five motions to compel in one month.[229] This court continued the September trial to October based on Rigmora's claim that ATP's late-produced documents prejudiced its ability to prepare for trial.[230] When seeking a continuance, Rigmora stated that its trial team "may not be able to review [the documents] in time to integrate them into their preparations for the trial[,]" and that "[t]here's no question that there's been actual prejudice" to Rigmora.[231]

Rigmora used its newfound time secured by the continuance to return to the forum fight. Rigmora filed an emergency motion in the Cayman court based on the late-produced documents, seeking the appointment of provisional liquidators to take

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[225] Dkt. 56 at 51:10–52:18. The LPA contains provisions (i) selecting both Delaware and the Cayman Islands as the exclusive forums for related suits, and (ii) waiving all venue and forum non conveniens defenses as to suits filed in Delaware or the Cayman Islands.

[226] JX-1439 ¶¶ 1–2; JX-1446.

[227] JX-1533 ¶ 5.

[228] *Id.* ¶¶ 6, 16.

[229] *See* Dkts. 92, 113, 141, 143, 186.

[230] Dkt. 225.

[231] Dkt. 215 ¶ 7; Dkt. 238 at 13:3–4.

control of the Fund.[232] The Cayman court scheduled a hearing on the emergency motion for October 31.[233]

ATP responded to Rigmora's new advances in the Cayman Litigation by petitioning this court for an emergency status quo order that would prevent Rigmora from pursuing relief in the Cayman court pending resolution of this action.[234] After an initial hearing on the motion for a status quo order,[235] Rigmora agreed not to pursue a hearing on the emergency application in the Cayman court before October 31 and would provide notice to this court of any change in position.[236] The parties ultimately reached a resolution on the status quo order that involved Rigmora withdrawing its emergency application in the Cayman Litigation. [237]

The court held a two-day trial from October 16, 2025 through October 17, 2025.[238] The parties completed post-trial briefing on November 12, 2025, presented post-trial arguments on November 21, 2025, and submitted the Schedule of Evidence on December 3, 2025.[239]

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[232] Dkt. 232 (Pl.'s Mot. for Status Quo Order Br.) at 5–6.

[233] *Id.* at 3.

[234] *Id.*

[235] Dkt. 261.

[236] Dkt. 267 at 7:13–8:13.

[237] Dkt. 267 at 7:13–8:13.

[238] Dkt. 259.

[239] Dkt. 265 (ATP Post-Trial Opening Br.); Dkt. 262 (Rigmora Post-Trial Br.); Dkt. 272 ("ATP Post-Trial Reply Br."); Dkt. 282 (Schedule of Evidence).

L. The Current Status Of The Portfolio Companies

The Capital Calls and Budgeting Requests affect 13 portfolio companies—nine preclinical and four in clinical trials.[240]

The eight preclinical companies—Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Nine Square, and Red Queen—have shown merit in addressing a major unmet therapeutic need. In some instances, initial research and data provided pivot points for the preclinical companies to refocus their efforts on unexpected, more fruitful avenues. ATP personnel, including Harrison and Venture Partner Spiros Liras, Ph.D., testified to these facts, which were further expounded upon by ATP's expert, Robbins Dr. Mark Robbins, Ph.D, J.D.,[241] whose analysis of the preclinical companies, individually and in aggregate, indicated "significant

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[240] *See* JX-1390 (Aethon May 30 Capital Call); JX-1391 (Apertor May 30 Capital Call); JX-1393 (Deep Apple May 30 Capital Call); JX-1394 (Evercrisp May 30 Capital Call); JX-1395 (Initial May 30 Capital Call); JX-1397 (Marlinspike May 30 Capital Call); JX-1398 (Red Queen May 30 Capital Call); JX-1387 (Ascidian May 30 Capital Call); JX-1396 (Marengo May 30 Capital Call); JX-1415 (Replicate June Capital Call). To recap, ATP initially sent a capital call for Replicate on May 30, 2025 for $13 million (JX-1399), but it later issued a revised and superseding capital call for $4 million on June 1. JX-1415. ATP sent the Budgeting Requests for Replicate, Ascidian, Aulos, and Nine Square to Rigmora in a December 24, 2024 email. JX-1079. ATP never sent Rigmora a formal Budgeting Request to increase Marengo's budget. Marengo's management first sought additional money from the Fund in its presentation to Rybolovlev and Bogdanov in Monaco on March 12, 2025. JX-1222, at 147. They requested the Fund commit an additional $75 million to Marengo above what it had already budgeted for the company. *Id*. But Rigmora did not approve the request coming out of the Monaco meetings. Trial Tr. at 97:16-18 (Harrison). Later, on May 19, four days after Bogdanov refused to provide further funding or consider additional budgets unless certain "Early Stage Companies" were wound down, ATP asked Rigmora to discuss (in good faith) and approve a new budget for Marengo. JX-1349. ATP then estimated Marengo's additional funding needs to be $63 million. *Id*.

[241] *See, e.g.,* Trial Tr. at 74:13–20 (Harrison); *id.* at 246:23–247:16 (Liras).

scientific and clinical potential."[242] ATP offered Robbins as an expert on pharmaceutical and biotechnology industry custom and practice to evaluate the scientific and clinical potential of the treatments being developed by the Portfolio Companies.

The four companies in clinical trials—Aulos, Ascidian, Marengo, and Replicate—are similarly promising.[243] ATP has placed each under the direction of a talented group of founders and leaders, including past biotech CEOs who have sold their companies to pharma giants like Bristol Myers Squibb and Amgen for billions of dollars,[244] holders of several patents,[245] and seasoned pharma executives and scientific leaders.[246] The clinical stage companies are all currently engaged in active clinical trials[247] and have generated interest from potential third-party collaborators.[248]

The negative impacts of a funding default for early-stage life sciences companies are severe. These impacts include "[t]alent loss," "[d]elayed, abandoned,

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[242] JX-1573 (Robbins Opening) ¶¶ 23(iv), 38; Trial Tr. at 183:13–23 (Robbins).

[243] Robbins Report ¶¶ 15, 124–159,

[244] *Id.* ¶ 125.

[245] *Id.* ¶¶ 133–134.

[246] *Id.* ¶ 155.

[247] *Id.* ¶¶ 126–128; 137–142; 149–150; 157.

[248] *Id.* ¶ 131 (Aulos' developing partnerships with Pfizer, Regeneron), ¶ 143 (Replicate's partnership with leading Brazilian pharma company, and negotiations with Novo Nordisk), ¶ 152 (Marengo in partnerships with Ipsen and Gilead), ¶ 158 (Ascidian partnership with Roche, and discussions with Lilly, Regeneron, and Bayer).

disrupted R&D," [d]ifficulty in restarting halted or delayed [] trials," "[d]ifficulty attracting future investments or partners, and [n]egative market perception in general."[249] The sudden discontinuation of funding can lead creditors to trigger bankruptcy proceedings and force a sale of the companies for "a fraction of their actual value."[250]

ATP has kept the affected portfolio companies alive during this litigation by scaling down operations with the goal of preserving "critical projects" and "key employees," and trying to operate with a skeleton crew without destroying the company.[251] This has involved "mov[ing] companies [] out of facilities, heavy negotiations with landlords, sales of capital equipment, consolidations, reduction of research programs," and terminating approximately 70% of employees across all companies.[252] One company has been forced to cede platform technology back to the source institution.[253] Despite entering survival mode at great expense to the companies, ATP does not "believe [the creditors] will hold off for much longer" and that the Fund is "likely to lose the assets."[254]

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[249] JX-1572 ("Rao Report") ¶ 67; *see also* Trial Tr. at 60:19–61:10 (Harrison); *id.* at 165:5–21 (Yanchik).

[250] Robbins Report ¶ 162; *see also* Trial Tr. at 165:17–21 (Yanchik).

[251] Trial Tr. at 113:14–114:12 (Harrison); *id.* at 163:21–23 (Yanchik); *id.* at 266:3–7 (Liras).

[252] *Id.* at 113:14–20 (Harrison); *id.* at 162:23–163:6 (Yanchik).

[253] *Id.* at 113:21–114:1 (Harrison).

[254] *Id.* at 163:3–6, 165:17–21 (Yanchik).

Operationally, the companies are in a form of "stasis" and could be revived upon receipt of funding.[255] But the window for revival is closing, because "whenever you stop a research organization, it starts to deteriorate."[256]

II. LEGAL ANALYSIS

In the Pretrial Order and in post-trial briefing, the parties narrowed their disputes to four issues. First, is ATP entitled to specific performance of the Capital Calls under the LPA? Second, did Rigmora breach a duty, implied by common law, to exercise its discretion to approve budgets in good faith?[257] Third, is ATP entitled to a declaration that it did not violate the LPA by bringing this action or that Rigmora is a Defaulting Partner as defined in the LPA? Fourth, is ATP entitled to attorney's fees and expenses incurred in connection with this lawsuit? ATP bears the burden of proof on each of its claims.[258]

A. Capital Calls

The parties' dispute over the Capital Calls centers on two parts of Paragraph 5(a) of the LPA: Paragraph 5(a)(i), which allows the GP to call capital in amounts up to but not "in excess of" the Limited Partners "Contingent

[255] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[256] *Id.* at 164:18–167:2 (Yanchik).

[257] In the Pre-Trial Order, ATP sought a declaration that Rigmora waived or otherwise forfeited its voting and budget approval rights, but dropped this request after trial. *See generally* Dkt. 265 ("ATP Post-Trial Opening Br.").

[258] *See AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *49 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Subscriptions";[259] and Paragraph 5(a)(ii), which requires that any capital call be for a purpose stated in the LPA.[260] The parties' competing positions raise two sets of issues: Under Paragraph 5(a)(i), were the Capital Calls in excess of Rigmora's unfunded Contingent Subscriptions? Under Paragraph 5(a)(ii), were the Capital Calls for contractually specified purposes? If the first set of issues go ATP's way, the court must also determine whether ATP is entitled to specific performance of the Capital Calls. To obtain specific performance, ATP bears the burden of showing the existence of terms that it seeks to enforce by clear and convincing evidence.[261]

This contract analysis is governed by Cayman law, consistent with the LPA.[262] The parties dispute the LPA's meaning. Under Cayman law, a court interprets a written contract according to "the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the

[259] LPA ¶ 5(a)(i).

[260] LPA ¶ 5(a)(ii).

[261] Which party bears the burden of proof is a procedural question governed by Delaware law, but the nature of the burden is arguably a substantive issue governed by Cayman law. *See In re IBP, Inc. S'holder Litig.*, 789 A.2d 14, 53 (Del. Ch. 2001). Yet Rigmora cited Delaware law on the nature of the burden. *See* Rigmora Post-Trial Br. at 29 (citing *Vill. Prac. Mgmt. Co. v. West*, 342 A.3d 295, 321 (Del. 2025)). And ATP did not brief it, so this decision applies Delaware law.

[262] LPA ¶ 18(g)(i) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands"); PTO ¶ 25. The elements to prove a breach are: (1) a valid contract, (2) a breach of that contract, and (3) damages arising from the breach. JX-1588 ("Phillips Report") ¶ 56 (citing *Chitty on Contracts* at [4-001] (35th ed. 2024); *accord Kuroda v. SPJS Hldgs.*, 971 A.2d 872, 883 (Del. Ch. 2009) (reciting the same elements for a claim of breach of contract under Delaware law)).

context to mean."[263] The goal is to "ascertain the objective meaning of the language which the parties have chosen to express their agreement."[264] The court employs "an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated."[265] But "[c]ommercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made."[266]

1. Paragraph 5(a)(i) – Funding Commitments

Rigmora argues that Rigmora has committed $2.45 billion on an aggregate basis as the Contingent Subscription and contributed $2.69 billion, and that the Capital Calls are thus necessarily "in excess of" the Contingent Subscription.[267] ATP argues that Rigmora made over $545.5 million in unfunded commitments to the pools and over $2.85 billion in total commitments across all pools, leaving head room for the Capital Calls. ATP also argues that Rigmora's $2.69 billion calculation double-counted pools of funds that were transferred or reallocated, such that Rigmora's

[263] Bloch Report ¶ 23 (quoting *Arnold v. Britton*, [2015] UKSC 36 at [15]).

[264] Bloch Report ¶ 23 (quoting *Wood v. Capita* [2017] UKSC 24 at [10]); Phillips Report ¶ 61 (same).

[265] Bloch Report ¶ 25 (citing *Wood*, [2017] UKSC 24 at [12]).

[266] Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]; *see also* Phillips Report ¶ 60 (also citing *Arnold*, [2015] UKSC at [15], [17]–[21]).

[267] *See* Rigmora Post-Trial Br. at 32, 38–40.

actual contribution is $2.3 billion. In all events, therefore, there is head room to meet the Capital Calls.[268]

The parties' dispute on the meaning and application of Paragraph 5(a)(i) thus raises three sub-issues: What is the Contingent Subscription amount, $2.425 billion as Rigmora contends or over $2.85 billion as ATP argues? What has Rigmora contributed to date, $2.65 billion as Rigmora contends or $2.3 billion as ATP argues? And do the Capital Calls of $101,103,759 fall within any delta between the Contingent Subscription and Rigmora's contributions?

a. Rigmora's Contingent Subscription is $2.425 billion.

The parties dispute both how to calculate the Contingent Subscription (in the aggregate by Limited Partner or pool-by-pool) and Rigmora's total commitments. The threshold issue concerning how to calculate the Contingent Subscription is largely beside the point because ATP has not proven that Rigmora committed over $2.85 billion.[269] ATP reaches the $2.85 billion by adding and deducting the amounts reflected in Amendment 20 to the $2.425 in subscription agreements.

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[268] ATP Post-Trial Opening Br. at 8–9, 54–58; ATP Post-Trial Reply Br. at 13–14.

[269] It bears noting that Amendment 13 to the LPA seems to mandate a pool-by-pool approach. Under the heading "Separate Pools," it provided that "all of the Partnership's assets and liabilities shall be divided into two separate pools" and "separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses *shall also be accounted on a Pool-by-Pool basis*." JX-15 ("LPA Am. 13") ¶ 17(a) (emphasis added). ATP satisfied its obligation to track the Contingent Subscription amount on a Pool-by-Pool basis by circulating a detailed "tracker" of funded and unfunded commitments each time it issued a capital call. *See, e.g.*, JX-230; *see also* Trial Tr. at 48:19–49:21 (Harrison).

Broken down by Pool, beginning with Pool IV, recall that the parties initially contributed $1.5 billion to Pool IV and Rigmora contributed $1.425 billion of that amount.[270] In Amendment 20, the parties agreed to reduce the Pool IV commitment to the amount already contributed, plus expenses.[271] By Amendment 20, Rigmora had contributed $1,299,840.047.14 to Pool IV.[272] The parties originally anticipated $20 million in expenses but ultimately incurred around $33,351,890.42.[273] Adding

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[270] *See* PTO ¶¶ 26–27; JX-212 at 19 (Blue Horizon $698,250,000 subscription); JX-213 at 19 (Ezbon $726,750,000); JX-216 at 18 (Harrison $75 million subscription); JX-1, Sch. D.

[271] LPA Am. 20 ¶ 24.

[272] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840.047.14).

[273] It was $33,351,890.42 and Rigmora's 99.6028% of that amount was $33,219,416.71. *See* JX-224 at 3 (capital call for $320,590 of expenses for Pool IV); JX-382, at 3 (capital call of 4,749,982.91 in expenses for Pool IV); JX-318, at 3 (capital call for $1,960,789.97 in expenses for Pool IV); JX-487 at 3 (capital call for $8,435,798.52 in expenses for Pool IV); JX-568 at 3 (capital call for $4,000,000 in expenses for Pool IV); JX-585 at 3 (capital call for $280,790.62 in expenses for Pool IV); JX-609 at 3 (capital call for $5,000,000 in expenses for Pool IV); JX-652 at 3 (capital call for $5,200,000 in expenses for Pool IV); JX-718 at 3 (capital call for $1,500,000 in expenses for Pool IV); JX-740 at 3 (capital call for $ 368,717.64 in expenses for Pool IV); JX-823 at 3 (capital call for $874,363.01 in expenses for Pool IV); JX-878 at 3 (capital call for $299,903.33 in expenses for Pool IV); JX-1185 at 3 (capital call for $24,533.02 in expenses for Pool IV). The limited partners also received two capital calls in December 2024 seeking funds relating to the ATLS Fee for the first half of 2025, partnership expenses for the second half of 2024, and the 2024 ATVM management fee. JX-1075 at 3; JX-1086 at 5. The calls sought $375,354.80 from Pool IV and about $15 million across all pools. *See id.* Rigmora initially refused to fund those calls. JX-1085. ATP later discovered that it overcharged the ATLS Fee due to an accounting error and it returned $599,225.46. JX-1172. It is unclear how that refund was allocated across the various pools, but later records indicate that the December calls were reconciled to $336,502.41 for Pool IV. *See* JX-1237, Tab "Pool V-4 Total," Cell E152.

Rigmora's share of the fee to the amount contributed by Rigmora equals $1,333,059,463.85.

Pools V-1 and V-2 are straightforward. Rigmora contributed $1,000,000,000 to Pools V-1 and V-2 in September 2020 in connection with Amendment 17.[274]

Pool V-3 requires some math. According to ATP, Rigmora contribute $310 million to Pool V-3 through Amendment 20. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that:

> ATP V-3 shall have capital commitments of $500,000,000, including without limitation (i) the $189,500,000 of capital deemed to have been contributed as provided below, (ii) the $70,853,399 of capital comprising the Prior Budgeted ATP V-3 Follow-on Investments and (iii) approximately $235,000,000 in investments anticipated to be made in new Portfolio Companies . . . .[275]

This language does not expressly reflect an additional $310 million capital commitment. To reach $310 million, ATP subtracts the "deemed" contributions of $189,544,660 from the total commitment of $500 million.[276] ATP ignores the $70,853,399 in previously approved unfunded budgets for Pool V-3 companies and $235 million, which add up to $305.9 million, not $310 million.

Last is Pool Braeburn. According to ATP, Rigmora contributed $189.9 million to Pool Braeburn through Amendment 20 and agreed to contribute capital sufficient

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[274] Trial Tr. at 29:1–19, 41:11–42:14 (Harrison); LPA Am. 17; JX-99; JX-101.

[275] LPA Am. 20 ¶ 22(b).

[276] *Id.* Here is the math: $500,000,000 – $189,544,660 = $310,455,340. Rigmora is responsible for 99.6028% of the capital contributions for Pool V-3. *See id.* So, Rigmora is responsible for $309,222,211.39 of the Pool V-3 commitments, which rounds up to $310 million.

to cover additional expenses, which Pool Braeburn ultimately incurred. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that Pool Braeburn includes "$189,900,000 in unfunded previously approved budgets," as well as "additional securities of Braeburn acquired by the Partnership after the date of Amendment 20," and management fees and expenses discussed in the Amendment.[277] ATP adjusts the $189.9 million based on later events—ATP acquired $30.6 million in additional securities and was allocated $9 million in expenses, bringing the total commitment to $229.5 million.[278] Through Amendment 22, ATP distributed to Rigmora the royalty held in Pool Braeburn and thus Rigmora "no longer had an obligation to fund the remaining amounts on the royalty purchase agreement," which was $21.3 million.[279] ATP therefore "reduced the obligation to Pool Braeburn by that amount, which netted out to a total obligation $208,355,000."[280]

In summary, in a snapshot, here is how ATP builds to the "over $2.85 billion" figure:

Pool	**Rigmora's Commitment**
Pool IV	1,333,059,463.85
Pools V-1/V-2	1,000,000,000
Pool V-3	309,222,211.39
Pool Braeburn	208,335,616.81
Total	2,850,617,292.05

[277] LPA Am. 20 ¶ 21(a).

[278] Engels Dep. Tr. at 94:3–10; JX-1565, Cell G8.

[279] Engels Dep. Tr. at 355:22–356:3, 355:16–355:21.

[280] Engels Dep. Tr. at 356:2–4; ATP Post-Trial Reply Br. at 11, although by the court's math, it nets out to $208,200.

Rigmora takes issue with ATP's interpretation of Amendment 20 as a capital commitment. Rigmora advances three main arguments to that effect: Rigmora first appeals to the commercial context. Rigmora next argues that interpreting Amendment 20 as a subscription agreement is inconsistent with ATP's contemporaneous representations.[281] Rigmora last contends that Amendment 20 does not read like a subscription agreement and is not sufficiently clear and convincing in its terms to be treated like one.[282]

Rigmora's first argument based on the commercial context of Amendment 20 is misguided. Rigmora argues that Amendment 20 "was entered into less than a year after the $1 billion increase in the LPs' Contingent Subscriptions, when the Fund had over $1 billion in uncalled Contingent Subscriptions remaining."[283] According to Rigmora, "there was no need to increase the capital commitment when Amendment 20 was executed, no reason to think the parties did so, and no reason to think they would have done so without following the same formalities used to increase the Contingent Subscriptions a few months earlier."[284]

Rigmora's commercial-context argument, however, ignores the plain text of Amendment 20. As discussed above, on its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, far more than the $2.425

[281] *Id.* at 35–36.

[282] *Id.* at 36–37.

[283] *Id.* at 37; *see* JX-1237 at 4 (schedule of capital activity).

[284] Rigmora Post-Trial Opening Br. at 37.

billion Rigmora conceded. This argument also ignores that biotech investment was booming in 2021 when the parties entered Amendment 20,[285] Rigmora had not yet entered what Bogdanov would later call a liquidity crisis,[286] Rybolovlev approved all of the budgets at issue in Amendment 20, and Rigmora was ATP's only source of capital.[287] If not Rigmora, who was expected to fund the approved budgets reflected in Amendment 20? This commercial context is *ATP's* strongest point.

Rigmora's second argument based on ATP's contemporaneous communications is neutral. Rigmora is correct that interpreting Amendment 20 as a subscription agreement runs contrary to many of ATP's contemporaneous representations.[288] Before the events that led to this litigation, ATP informed its banks, insurance companies, and portfolio-company landlords that its total committed capital was $2.5 billion, which is equal to Rigmora's $2.425 billion under their subscription agreements and Harrison and his family trust's $75 million.[289] And ATP's website for the Fund still lists its capital commitments as "$2.65 billion" as it has since 2020.[290] But other contemporaneous documents, like ATP's first post-Amendment 20

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[285] *See id.* at 7 ("[T]he biotech market peaked in 2020 and 2021, during the COVID pandemic[.]" (citing Trial Tr. at 402:20–22 (Ehlers))).

[286] *See* JX-446 at 1; Trial Tr. at 51:15–52:19 (Harrison).

[287] LPA Am. 20 ¶ 21.

[288] *See generally* Ehlers Dep. Tr. at 35:10–21.

[289] Trial Tr. at 460:12–461:3, 462:10–24, 463:13–464:16 (Engels); JX-834 (communicating to J.P. Morgan that "ATP has approximately $2.5 billion in committed capital").

[290] JX-128 (2020); JX-2128 (Sept. 8, 2025); *see also* About, Apple Tree Partners, https://www.appletreepartners.com/about (accessed Dec. 4, 2025).

capital call to the limited partners[291] and ATP's own accounting of capital contributions that it sent to Rigmora in March 2025,[292] suggests Rigmora did increase its Contingent Subscription through Amendment 20. These competing contemporaneous communications work neither for nor against either side. They suggest that ATP did not spend a lot of time worrying about the precise amount of Rigmora's total capital commitments in 2022. This is consistent with Harrison's testimony that the parties' enjoyed a collaborative relationship during that period.[293]

Rigmora's last argument based on the language of Amendment 20 is compelling. The parties did not execute any new or amended subscription

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[291] The first capital call issued shortly after the adoption of Amendment 20 shows unfunded capital commitments stood at $1,461,868,810 total across all limited partners and $1,460,556,241.39 for Rigmora alone. JX-224, at 3. This evidence supports ATP's position that Rigmora committed more capital through Amendment 20 as unfunded capital commitments immediately preceding Amendment 20 were $1.067 billion. *See supra* § I. D.

[292] *See* JX-1237; JX-1237, PX-513, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of 3,203,669,000.00). This accounting did not deduct deemed commitments from neither its contribution tabulations nor its tabulations on commitments, so they had no net effect on the limited partner's unfunded commitments. *See* JX-1237, PX-513, Tab "Pool V-3 Total," Cell B9 (including the $189,544,660 deemed contribution in Pool V-3's contributions); *id.*, Tab "Pool Braeburn Total," Cell B9 (including the $203,669,000 deemed contribution in Pool Braeburn's contribution's calculation); *id.*, Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (listing total capital commitments of $1,000,000,000 billion (Pools V-1 and V-2), $393,569,000 million (Pool Braeburn), $500,000,000 (Pool V-3), and $1,383,360,505.56 (Pool IV) for total commitments of $3,276,929,505.56 across all pools). The total commitments listed for Pools V-3 and Braeburn include the deemed commitments within Amendment 20, meaning their accounting in the capital contributions has no net effect on the amount of Rigmora's unfunded commitments. *See id.*, Tab "Amendment Summary," Cells N9, U11. Total commitments exceeding $3.2 billion indicates Amendment 20 increased Rigmora's Contingent Subscription.

[293] Trial Tr. at 51:21:52:4 (Harrison).

agreements with Amendment 20. And Amendment 20 does not expressly refer to the Contingent Subscriptions.[294] The absence of express language referencing Contingent Subscription stands in contrast to Amendments 17 and 18, which both explicitly refer to "Contingent Subscription."[295] This combination of factors is enough to suggest that the finer details of Rigmora's funding commitments were yet to be ironed out when the parties entered into Amendment 20.

Moreover, Amendment 20 does not make clear the amount of capital that Rigmora was to contribute. Amendment 20 does not expressly state that Rigmora commits to contributing its share of the $310 million to Pool V-3. Rather, ATP implies that number by deducting the "deemed contributions" from the contemplated $500 million.[296] Amendment 20 also does not state that Rigmora will contribute $208 million to Pool Braeburn. Rather, Amendment 20 states that Rigmora commits $189.9 million plus unspecified future expenses.[297]

In the end, ATP's interpretation of Amendment 20 leaves too much to interpretation. ATP must demonstrate the contractual terms that it seeks to specifically enforce by clear and convincing evidence.[298] ATP has not proven an overall Contingent Subscription amount of over $2.85 billion. Thus, regardless of

[294] LPA Am. 20.

[295] LPA Am. 17; LPA Am. 18.

[296] *See* ATP Post-Trial Opening Br. at 10, 13–14.

[297] LPA Am. 20 ¶ 21.

[298] *West*, 342 A.3d at 321.

whether calculated in the aggregate or on a pool-by-pool basis, ATP has proven that Rigmora committed no more than $2.425 billion.

b. Rigmora has contributed no more than $2.3 billion.

Ultimately, ATP need not rely on Amendment 20 to secure the relief it seeks. Rigmora claims to have contributed over $2.69 billion to date, well in excess of the $2.425 billion in undisputed commitments. But the $2.69 billion figure double counts $390 million in "deemed contributions" reallocated through Amendment 20 from Pool IV to Pool V-3 and Pool Braeburn.[299]

Double counting "deemed contributions" of Amendment 20 is inconsistent with the purpose of Amendment 20 as recounted by Rigmora. According Rigmora, the purpose of Amendment 20 was to "reallocat[e] . . . an *existing* commitment from a different pool[.]"[300] Amendment 20 was "not a new commitment."[301] Put differently, the deemed contributions were not new contributions. Moreover, counting the deemed contributions twice against Rigmora's $2.425 billion Contingent Subscription would result in Rigmora committing less than $2.425 billion to the Fund.[302] There is no evidence, either in Amendment 20 or elsewhere, that the parties intended to

[299] LPA Am. 20 ¶¶ 21(b) (stating initial deemed contributions for Pool Braeburn were $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660; *see also* Rigmora Post-Trial Answering Br. at 38 n. 277, Ex. 1 (Strebulaev) at 2.

[300] Rigmora Post-Trial Br. at 36 (emphasis added).

[301] *Id.*; *see also id.* at 6 ("Amendment 20 created two new pools . . ." and "allocated *existing assets* and liabilities to them . . . ." (emphasis added)).

[302] LPA Am. 20 ¶¶ 21(b), 22(b) (stating initial deemed contributions $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660 in deemed contributions total).

reduce the total amounts committed to the Fund through Amendment 20. As discussed above, the commercial context indicates the contrary.

Rigmora relies on a series of ATP communications documents to support its double counting theory.[303] Each of those documents were prepared for other purposes. Two of those documents show that ATP tabulated the limited partners' total capital commitments as more than $3.2 billion.[304] These are not figures that Rigmora stands behind.

Reducing Rigmora's $2.69 billion figure to eliminate double counting, Rigmora has contributed $2.3 billion to the Fund.

c. The Capital Calls do not exceed the difference between the Contingent Subscription and Rigmora's contributions.

ATP has proven that Rigmora committed $2.425 billion and contributed $2.3 billion. The difference is $125 million. Given Rigmora's overall contributions, there is sufficient room to fund the Capital Calls of totaling approximately $101.7 million.

2. Paragraph 5(a)(ii) – Funding Purposes

ATP issued the Capital Calls for ten portfolio companies: Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Red Queen, and Replicate of Pools V-1

[303] *See* Rigmora Post-Trial Br. at 39–40.

[304] JX-1237, PX-513, Tab "Amendment Summary," Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of $3,276,929,505.56), JX-2000, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (same).

and V-2, and Marengo and Ascidian of Pool V-3.[305] ATP issued these calls to provide six months of approved budget to carry forward research plans, partnership fees, and ATLS Fees.[306]

The LPA identifies partnership fees, ATLS Fees, and budgets expenses as appropriate purposes. Subsections 5(a)(ii)(A) through (C) state that "[u]nless otherwise approved by the holders of a majority of the Preferred Units in writing," the GP:

> may only call capital, as of any time, in amounts sufficient to enable the Partnership . . . to (A) pay Partnership . . . expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership . . . non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership . . . expenses and obligations incurred in the ordinary course of business, [and] (C) pay the Management Fee for the next 12-month period.[307]

Subsection 5(a)(ii)(E) authorizes the GP to call capital in amounts sufficient to "invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units."[308]

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[305] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* JX-1622.

[306] Trial Tr. at 109:1–110:24 (Harrison); *see also* LPA Am. 13 ¶ 17(d).

[307] LPA Am. 3 ¶ 5(a)(ii)

[308] *Id.* Amendment 3 originally provided for an ATC board of directors and made certain distinctions depending on whether a project was "being run through ATC" or not. *Id.* at 1–2. Amendment 14 excised ATC, and with it the ATC board of directors, from the LPA. JX-16 at 5 (LPA Am. 14).

Rigmora concedes that the stated purpose of the Capital Calls is proper under the LPA. Aside from Replicate, Rigmora does not dispute that it approved budgets for the calls at issue or that the calls were within the approved budgets. Nor does Rigmora dispute that partnership expenses and ATLS Fees are proper purposes for capital calls or that those expenses were improperly calculated.

Rigmora instead advances three arguments to avoid its payment obligation. First, Rigmora argues that ATP cannot call capital because ATP acted in bad faith.[309] Second, Rigmora argues that the approved budgets called for tranched funding conditioned on milestones set out in investment memoranda, which served as conditions to Rigmora's funding obligations, and which the projects did not achieve.[310] Third, as to Replicate, Rigmora argues that Replicate budget was subject to contingency set out in Amendment 22 that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty, which has not yet occurred.[311]

a. Bad Faith

Rigmora argues that ATP cannot call capital because it acted in bad faith when making the Capital Calls. The LPA permits the General Partner to call capital only for a purpose enumerated in Paragraph 5(a)(ii).[312] The Cayman Islands' Exempted Limited Partnership ("ELP") Act, as adopted by the LPA, requires the General

[309] Rigmora Post-Trial Br. at 44–47.

[310] *Id.* at 40–43.

[311] *Id.* at 43–44; LPA Am. 22 ¶ 26.

[312] LPA Am. 3 ¶ 5(a)(ii).

Partner to exercise its power to call capital in good faith in accordance with its fiduciary duties—which Cayman courts have held requires it to act in the interests of the Fund's limited partners.[313] Rigmora argues that, as a plaintiff seeking specific performance, ATP must prove by clear and convincing evidence that it satisfied the LPA's requirements for all calls and that they are consistent with the ATP's fiduciary duties under Cayman law.[314]

It is unclear whether Rigmora is correct in interpreting Cayman law to mean that a General Partner must prove fiduciary compliance as a condition to enforcing capital calls. Typically, a party relying on the absence of a condition to avoid a contractual obligation bears the burden of proving its absence.[315] But ATP did not challenge this legal assertion. And the accuracy of Rigmora's legal position does not alter the outcome in any event, because there is no factual basis to question ATP's good faith.

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[313] *See* JX-2019, ELP Act § 19(1) ("A general partner shall act at all times in good faith and . . . in the interests of the exempted limited partnership."); JX-1 at 2 (requiring parties to carry on the limited partnership "in accordance with the provisions of the" ELP Act); *id.* ¶ 18(g)(i) (LPA governed by ELP Act); JX-2073, *Kuwait Ports Authority v Port Link GP Ltd* [2023] 1 CILR 50 at [34(iii)]; JX-2074, *Re Aquapoint LP*, CICA (Civil) Appeal No. 0014 of 2022, [2023], at [67].

[314] Rigmora Post-Trial Opening Br. at 44–47; *see also* Bloch Report ¶ 83.

[315] *See generally S'holder Representative Servs. LLC v. Shire US Hldgs. Inc.*, 2020 WL 6018738, at *17 (Del. Ch. Oct. 12, 2020), *aff'd* 267 A.3d 370 (Del. 2021) (TABLE); *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *48–50 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Harrison testified that the Capital Calls were for the purpose of funding six months of operations.[316] ATP considered numerous scenarios, evaluating how much capital to call in order to continue funding operations.[317] Harrison ultimately based the size of the Capital Calls on the portfolio companies' research plans and the partnership's expenses.[318] He excluded his own Management Fee from the Capital Calls, so none of the money would be directed to him.[319] Harrison then realized that ATP overcalled capital for Replicate based on the approved budget and corrected that Capital Call on June 1.[320] Harrison's testimony was highly credible.

To argue bad faith, Rigmora states that ATP's "correspondence demonstrates that the capital calls were made at least in part to 'put pressure on' the [Limited Partners]."[321] Rigmora bases this assertion on a May 14, 2025 email among ATP's outside attorneys.[322] The email states: "The point of making the calls is to put pressure on [Rigmora], so let's put the pressure on [Rigmora]."[323] On its face, this statement is not alarming. Contractual rights can be a source of pressure. That does not mean exercising them is an act of bad faith. Moreover, a single line in a single email among outside counsel does not undermine the extensive evidence

[316] Trial Tr. at 110:12–16 (Harrison).

[317] *Id.* at 152:7–153:14 (Harrison).

[318] *Id.* at 110:17–24 (Harrison).

[319] *Id.* at 111:4–10 (Harrison).

[320] *Id.* at 109:24–110:5 (Harrison).

[321] *Id.* at 45.

[322] Dkt. 269 at 45 (citing JX-2155 at 2).

[323] JX-2155 at 2.

demonstrating Harrison's sincere concerns about the financial health of the portfolio companies.

Rigmora's grab-bag of other arguments similarly fail. Rigmora argues that ATP delayed capital calls to maximize its litigation position.[324] But the evidence does not point to that conclusion. ATP recognized the portfolio companies' urgent need for funding and knew that Rigmora would immediately file suit in the Cayman Islands as soon as ATP issued capital calls.[325] Rigmora describes the calls as improper because ATP did not intend to distribute all the capital called to portfolio companies as required under the LPA.[326] But ATP withheld some capital to ensure that the funds would not be subject to attachment by creditors leaving the companies without funding to pay severance to employees.[327] Rigmora emphasized in briefing how the anticipated amount of capital calls evolved leading up to this lawsuit.[328] But the evidence reflects that ATP ran scenarios and considered calling capital sufficient to fund ongoing work at the portfolio companies for periods of weeks, three months, six months, and the end of calendar year 2025-2026.[329] None of this supports a finding that ATP acted in bad faith.

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[324] Rigmora Post-Trial Opening Br. at 45.

[325] *See* JX-2138 at 1–2.

[326] Rigmora Post-Trial Opening Br. at 45; LPA Am. 3 ¶ 5(a)(ii)(E).

[327] Yanchik Dep. Tr. 218:23–219:22.

[328] Dkt. 269 at 45-47.

[329] Trial Tr. at 152:5–19 (Harrison).

b. Milestones

Rigmora argues that the milestones set out in investment memoranda served as conditions to Rigmora's obligations to fund capital calls. No evidence supports this assertion.

As discussed above,[330] no evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[331] Rigmora lacked the substantive expertise to set or track performance milestones.[332] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[333] The fact that certain of the Rigmora-approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda. And although the Series A agreements of five companies (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) originally contained milestone conditions, those conditions applied to the Fund's obligation to fund the companies, not the limited partners' obligation meet capital calls.[334]

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[330] *See supra* § I.B.

[331] *Id*. at 33:11–14 (Harrison).

[332] Bogdanov Dep. Tr. at 31:2–9, 45:23–46:10, 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–25.

[333] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[334] *See* JX-2201; Trial Tr. at 140:5–10 (Harrison); *see, e.g.*, JX-1329 at 64, 167, 441, 586.

Moreover, treating milestones in dated investment memoranda as a fixed condition to future funding misaligns the budgeting process with the commercial realities of biotech investing.[335] "[M]any very successful therapeutics have missed development milestones."[336] Apparent "misses" were often successful pivots that increased value. Deep Apple pivoted to obesity and secured a partnership worth up to $812 million with Novo Nordisk.[337] Apertor's pivot led to a "breakthrough publication" demonstrating "incredible" platform value, ultimately leading to delivering clinical candidates.[338] Information regarding portfolio companies' pivots were regularly reported to Rigmora in quarterly reports provided by ATP.[339]

Milestones were informative on many levels to Fund management. But Rigmora did not staff anyone with a scientific background. Rigmora went nearly thirteen years without requesting information about milestones.[340] Its interest in milestones surfaced as a defense strategy in this action, and an unsuccessful one. Rigmora cannot rely on the absence of milestone achievements to avoid its funding commitments.

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[335] Trial Tr. at 105:3–11 (Harrison); *see* JX-1583 ("Robbins Rebuttal") ¶ 26.

[336] Trial Tr. at 189:11–18 (Robbins).

[337] Robbins Rebuttal ¶ 27.

[338] Trial Tr. at 253:13–254:3 (Liras).

[339] *Id.* at 255:13–256:21, 257:2–259:1, 262:8–264:9 (Liras); *see, e.g.*, JX-0560.

[340] Trial Tr. at 332:1–333:2 (Bogdanov).

c. Replicate

Replicate is different. The Replicate budget was approved on February 12, 2025.[341] Replicate was one of the five companies addressed in Amendment 22. It is thus subject to the contingency set out in Amendment 22 stating that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty.[342] Neither event has occurred. So Rigmora need not meet the call.

ATP advances a factual response to this outcome, but it is somewhat convoluted. According to ATP, when the parties executed Amendment 22 in December 2024, they expected the then-current, unfunded budget amounts for each of the five projects listed in the new Paragraph 26—including Replicate—to last for a matter of weeks. In the case of Replicate, the parties anticipated that the budget would run out in February 2025. Paragraph 26 of Amendment 22 thus called for the discussion of a new budget sufficient to enable Replicate to operate for a period twelve months after that.[343] ATP portrays the financing condition as inconsistent with the dire circumstances under which the parties executed Amendment 22.[344]

But the language of Amendment 22 is plain. It conditions Royalty Financing on budget approval, providing that "[i]f any approval of a new budget is given by the Subject limited Partner, *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by the Subject Limited

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[341] JX-1192.

[342] LPA Am. 22 ¶ 26.

[343] *Id.*

[344] ATP Post-Trial Reply Br. at 27–28; *see also* ATP Post-Trial Opening Br. at 29–31

Partner on a sale or financing of its interest in ATP LLC."[345] At the time, Rigmora indicated that it would not be difficult to obtain the Royalty Financing, and ATP expected that Rigmora would "do and perform, or cause to be done and performed, all such further acts and things . . . to carry out the intent and accomplish the purposes of this Amendment . . . ," including securing Royalty Financing.[346] Whether Rigmora honored this commitment is not before the court. But there is not Royalty Financing, so the Replicate budget is not approved, and ATP may not enforce Capital Calls for Replicate.

3. Specific Performance

A grant of specific performance "is a specialized form of mandatory injunction that requires a party to fulfill its contractual obligations."[347] Specific performance is appropriate when (1) a valid contract exists, (2) the plaintiff is ready, willing, and able to perform, (3) money damages are inadequate, and (4) the balance of equities tips in the plaintiff's favor.[348] To obtain specific performance, a plaintiff must prove these conditions by clear and convincing evidence.[349]

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[345] LPA Am. 22 ¶ 26 (emphasis added).

[346] LPA Am. 22 ¶ Miscellaneous.

[347] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023); *see also supra* n.260 (explaining why this decision applies Delaware law on the request for specific performance).

[348] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010); *AbbVie Endocrine Inc. v. Takeda Pharm. Co. Ltd.*, 2021 WL 4059793, at *6 n.97 (Del. Ch. Sept. 7, 2021) ("It is elementary that the remedy of specific performance is designed to take care of situations where the assessment of money damages is impracticable[.]").

[349] *West*, 342 A.3d at 321.

As discussed above, ATP has proven by clear and convincing evidence that Rigmora must meet Capital Calls within approved portfolio company budgets and the Contingent Subscription with the exception of Replicate.[350] Rigmora must also fund calls issued for Fund expenses falling within those parameters.[351] Excluding Replicate, Rigmora's portion of those calls is $96,960,925.88. ATP also stands ready, willing, and able to perform.

Money damages are inadequate. The LPA sets out deadlines for meeting Capital Calls.[352] And timing matters. As discussed above, the negative impacts of a funding default for early-stage life sciences companies can be fatal.[353] The companies' research could ramp up again upon receipt of funding.[354] But they cannot stay in a holding pattern indefinitely.[355]

Further, a contractual provision stipulating the parties' preference of specific performance favors granting specific performance.[356] It is even more so when the agreement is between "sophisticated entities that bargained at arm's length."[357] In the LPA, sophisticated parties stipulated that damages for funding defaults "cannot

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[350] *See* JX-1 ¶ 5(a)(i).

[351] *See id*.

[352] LPA ¶ 5(a)(iii).

[353] Rao Report ¶ 67.

[354] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[355] *Id*. at 165:5–9, 166:6–167:2 (Yanchik).

[356] *See L-5 Healthcare P'rs, LLC v. Alphatec Hldgs., Inc.*, 2024 WL 3888696, at *7 (Del. Ch. Aug. 21, 2024).

[357] *See id*. (quoting *In re Cellular Tel. P'ship Litig.*, 2021 WL 4438046, at *72 (Del. Ch. Sept. 28, 2021)).

be estimated with reasonable accuracy."[358] This language supports a finding that damages would be inadequate.

Rigmora argues that ATP cannot seek specific performance of the capital calls for Ascidian, Aethon, Evercrisp, or Fund expenses because ATP has already used other Fund proceeds intended for other purposes to invest in the companies.[359] But rediverting funds to those companies was necessary to mitigate harm against them. The fact that ATP did so does not eliminate Rigmora's funding obligations.

On balance, the equities favor ATP. Rigmora has the funds available to meet the Capital Calls.[360] Moreover, the portfolio companies are developing treatments for serious medical conditions, including childhood blindness, various cancers, obesity, and neurodegenerative diseases. The public interest strongly favors preserving potentially life-saving research programs.[361]

For these reasons, ATP is entitled to specific performance of the Capital Calls excluding Replicate, or $96,960,925.88.

B. Budget Approvals

ATP claims that Rigmora breached its implied duties of good faith, honesty, and rationality when reviewing and denying the budgets circulated on December 24

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[358] JX-0001 at 25 (LPA ¶ 5(c)).

[359] Rigmora Post-Trial Br. at 47 (citing JX-2130 ¶¶ 17, 25 (listing payments for Ascidian, Aethon, Replicate, Evercrisp, and Fund expenses); PTO ¶ 64).

[360] Trial Tr. at 473:1–6 (Yakovlev).

[361] *Cf. Morabito v. Harris*, 2002 WL 550117, at *2 (Del. Ch. Mar. 26, 2002); *Bernard Pers. Consultants, Inc. v. Mazarella*, 1990 WL 124969, at *3 (Del. Ch. Aug. 28, 1990).

and for Marengo.[362] ATP does not root its claim in fiduciary obligations, nor could it. Section 19(2) of the ELP Act eliminated any fiduciary obligations, so Rigmora does not owe fiduciary obligations to the Fund.[363]

Rather, ATP's claim is based in contract law. Under English and Cayman common law, which govern this analysis,[364] a court may imply contract terms in one of two scenarios: when "the term must be necessary either to spell out what is so obvious that it goes without saying [the obviousness test] or to give business efficacy to the contract [the business-efficacy test]."[365]

ATP seeks to imply a specific set of obligations—to act honestly, rationally, and in good faith.[366] These implied duties, referred to as "*Braganza* duties" after the

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[362] ATP's claim first identified budgets for Marengo, Ascidian, and Aulos but it has since shifted to the budgets for Marengo, Aulos, Replicate, and Nine Square. *Compare* Compl. ¶ 179, *with* ATP Post-Trial Opening Br. at 66, 73.

[363] ELP Act § 19(2).

[364] LPA ¶ 18(g)(1) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands, and Cayman law governs ATP's claim of breach"); PTO ¶ 25. Cayman courts view English cases as persuasive authority when Cayman law does not provide direct guidance. Phillips Report ¶¶ 19–20. Because no Cayman court has decided this issue, this opinion relies upon English authority when available.

[365] *USDAW v. Tesco Stores*, [2024] UKSC 28 at [102], available in the record as JX-2116; *see also Marks & Spencer v. BNP Paribas*, [2015] UKSC 72 at [20], available in the record as JX-2042; *Primeo Fund (In Official Liquidation) v. Bank of Bermuda (Cayman) Ltd.*, [2017] CILR 334 at [211], available in the record as JX-2056; *Cayman Shores v. Registrar of Lands*, [2021] (2) CILR 1 at [65]–[66], available in the record as JX-2120; Bloch Report ¶ 29.

[366] Phillips Report ¶ 75.

eponymous case, apply in certain circumstances when a party exercises a unilaterally conferred discretionary power under a contract.[367]

Braganza involved an employment contract between BP Shipping Ltd. and an employee who died mysteriously on one of its ships.[368] If the employee died by suicide, then BP Shipping had the discretion under the employment contract to deny his widow a contractual death benefit.[369] The company denied the widow the death benefit, and the widow sued for breach of an implied contractual term. The Supreme Court of the United Kingdom held that a party exercising a discretionary control of another's rights has an obligation to act "rationally (as well as in good faith) and consistently with its contractual purpose"[370] when a conflict of interest arises due to that control.[371] The court emphasized that the "conflict is heightened where there is a significant imbalance of power between the contracting parties."[372] To prevent abuse of discretion, the court will ensure the power is exercised in good faith and not arbitrarily, capriciously, or perversely.[373]

According to ATP, a court should imply *Braganza* duties when three factors are present: (1) the existence of a discretionary power granted to one party; (2) that

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[367] *Braganza v. BP Shipping Ltd.*, [2015] UKSC 17, at Headnote, [18]–[19], available in the record as JX-2102.

[368] *Id.*

[369] *Id.* at Headnote, [10]–[11].

[370] *Id.* at Headnote, [30].

[371] *Id.* at Headnote, [18].

[372] *Id.*

[373] *Id.* at Headnote, [30]–[31].

power's potential to harm the other party's interests; and (3) a conflict of interest where the decision-maker could exercise the power to benefit themselves at the other party's expense.[374] It is unclear whether English or Cayman courts apply the three-factor *Braganza* test for which ATP advocates. The case law supplied by the parties does not frame *Braganza* in this manner, nor does either side's expert in Cayman law. And the parties do not join issue on the precise requirements for implying contractual terms generally or *Braganza* duties specifically.[375]

It is clear, however, that contractual context matters in the analysis of whether to imply contractual terms.[376] In an effort to shortcut the analysis, Rigmora argues that a court can never imply *Braganza* duties in this specific context—on a limited partner of a Cayman exempted limited partnership.[377]

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[374] *Id.* at [18], [30].

[375] *See generally* ATP Post-trial Opening Br. at 66-76, Rigmora Post-Trial Br. at 48–60.

[376] *Braganza*, [2015] UKSC 17, at Headnote [31] ("But whatever term may be implied will depend on the terms and the context of the particular contract involved.").

[377] Rigmora Post-Trial Br. at 50–51 (citing *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061). *Torchlight* is remarkable in a few ways. Justice Robin McMillan issued the decision *after* the parties settled the case. JX-2061.0002. He noted that "the Court was invited . . . to withdraw the Petition" in light of the settlement but had "independent discretion to decide whether to deliver its Judgment or not." *Id.* The Justice determined to deliver his Judgment in part because he believed that the two directors of the General Partner were improperly maligned by the allegations, which "the public is entitled to know." *Id.* He viewed issuing his determination a matter of "human rights as much as . . . as matter of commercial law." *Id.* He then issued a 366 page decision.

Rigmora's primary authority does not support a categorical exclusion. Rigmora relies primarily on *Torchlight Fund LP*, where a limited partner of a Cayman exempted limited partnership alleged the general partner owed *Braganza* duties when exercising a discretionary right to send a default notice to the limited partner without first consulting the limited partner.[378] In a brief discussion toward the end of a lengthy analysis, the Cayman court declined to impose *Braganza* duties.[379] The court first noted the relevance of Section 25(1) of the ELP Act, which limits court interference with remedies under partnership agreements.[380] Next, referencing Section 25(1), the court reasoned that:

> It is the view of this Court that those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be. Not only are they bound in this case by the LPA but that LPA itself is further grounded in this instance by an express statutory provision [i.e., Section 25(1) of the ELP Act]. Therefore, taking into account the terms and context of this particular contract, the Court rules that the standard of review adopted in the judicial review of administration action [i.e., the implied duty] *does not apply nor does it have any relevance*.[381]

Rigmora interprets this passage to mean that a court can never imply a contractual duty of good faith under Cayman law where an express statutory

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[378] *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061.

[379] *Id.* at [1180], [1182].

[380] *Id.* at [1188].

[381] *Id.* at [1189] (emphasis added).

provision already governs.[382] And that is a fair interpretation of *Torchlight*. But, unlike *Torchlight*, no express provision of the ELP Act governs here. Section 19(2) of the ELP Act eliminates general fiduciary obligations generally.[383] It does not eliminate implied contractual obligations. And the parties cite no statutory provision that governs a limited partner's discretion in approving budgets. *Torchlight*, thus, does not categorically prohibit this court from implying contractual duties of good faith into the LPA.

Torchlight, however, supports Rigmora's position in a more limited way. Fairly read, *Torchlight* stands for the proposition that a court will be reticent to imply *Braganza* duties in the ELP context because the power disparities that motivated *Braganza*—the power's potential to harm the other party's interest—are less present. *Braganza* involved a discretionary right wielded by a large multi-national corporation against its late employee's widow.[384] Other cases implying *Braganza* duties involve discretionary rights wielded by an insurance corporation against an insured.[385] The power disparities between the parties existed both at the time of contracting and at the time the counterparty exercised its discretionary right.[386]

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[382] Rigmora Post-Trial Br. at 51.

[383] ELP Act § 19(2).

[384] *Braganza*, [2015] UKSC 17 at [1189].

[385] *Equitas Ins. Ltd v Municipal Mut. Ins. Ltd* [2019] EWCA Civ [114]–[118], available in the record as JX-2047 (implying a term between insurers).

[386] *Braganza* does not provide clarity on the timing of when a court should assess these factors, and the parties did not specifically address this issue. Generally, "[t]he test for the implication of a *Braganza* duty is one of necessity[.]" *Horlick v Cavaco*, [2022] EWHC 2935 (KB) at [175] (citing *Equitas Ins. Ltd v. Municipal Mut. Ins. Ltd*,

The ELP context is different. As the *Torchlight* court observed: "those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be."[387] And that is factually true here—both Rigmora and ATP are highly sophisticated, and the LPA was heavily negotiated. Moreover, the parties cite to no case in which applicable authorities have implied *Braganza* duties in the ELP context. And if a court is unwilling to impose implied contractual obligations on a general partner as in *Torchlight*, then it will be an exceptional case that the court imposes implied obligations on a limited partner.

This case is not the exception. Of the three *Braganza* factors identified by ATP, only two of the three are met. The LPA grants Rigmora the discretion to approve budgets. But the presence of other factors suggests that one cannot imply *Brananza* duties due to the existence of a discretionary right alone. And Rigmora's ability to reject budgets can impede ATP's right to call capital and operate the Fund. But it would be weird to describe the parties as conflicted concerning whether to call capital. It is true that Rigmora's liquidity issues changed its investment strategy. And a need for liquidity can provide a source of conflict in certain circumstances. But at the end

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[2019] EWCA Civ 718 at [150]–[151]). The tests for necessity are the business efficacy and obviousness tests. To satisfy those tests, a court will imply a term "in the way that the parties must have intended or reasonably expected it to work." *Equitas Ins. Ltd*, [2019] EWCA at [151]. This suggests that the court analyzes the *Braganza* factors ex ante. *See also* Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]) (explaining a court should interpret a contract "as at the date that the contract was made"). But, again, it is unclear. In this analysis, it does not matter.

[387] *Id.*

of the day, Rigmora owns over 98% of the Fund. Rigmora is thus highly interested in the success of its portfolio companies. And Rybolovlev's family-pharma goal, and desire to replicate his success at Uralkali, meant that he would ultimately consolidate funds behind only some of the portfolio companies and successful therapies. Rigmora's liquidity needs might have hastened that process. This, however, does not seem to be the type of conflict motivating *Braganza* duties.

Because the circumstances do not warrant implying *Braganza* duties, the analysis could end here. But, again, the parties did not neatly join issue on the relevant legal framework, and ATP analyzes the business efficacy and obviousness tests as well the *Braganza* factors. For completeness, so too does this decision.

In *USDAW v. Tesco Stores*, Lord Leggatt expounded on the business-efficacy and obviousness tests.[388] The business-efficacy test involves two steps. The court must first identify the relevant contractual purpose.[389] The court must then ask "whether the implication of a term is necessary to give effect to that purpose and prevent it from being defeated."[390] The implied term cannot conflict with existing provisions, and it must be "strictly necessary."[391]

Under the obviousness test, a court only implies a term if it is "so obvious it goes without saying."[392] The court must assess what reasonable people in the

[388] [2024] UKSC 28 at [106].

[389] *Id.*

[390] *Id.*

[391] *Id.*

[392] *Id.* at [102].

positions of the parties at the time would have agreed.[393] Actual intent does not matter.[394] Regarding detailed commercial contracts, "[a] term should not be implied . . . merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them . . . [it] is a stringent test."[395]

Neither test is satisfied. Starting with the first step of the business-efficacy test, the LPA's purpose is facilitating investment in "in pharmaceutical medical device and other medically-related companies and business projects."[396] ATP seeks to imply a "good faith, honestly, and rationally" modifier to Rigmora's discretion to approve budgets.[397] Inserting that term, however, is not strictly necessary for effectuating the LPA's purpose because ATP and Rigmora share economic incentives to approve budgets. They relied on the existing provision for years, approving budgets without issue, and the Fund operated without incident. No implication is needed.

The obviousness test also fails. At the time of contracting, Rigmora contributed nearly all the Fund's capital. It thus makes sense that Rigmora secured the absolute discretion to reject budgets and negotiated for the ability to preserve its capital by blocking budgets. It is not so obvious or goes without saying that a reasonable

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[393] *Yoo Design Services v Iliv Realty Pte*, [2021] EWCA Civ 560 at [51], available in the record as JX-2113.

[394] *Id.*

[395] *Id.*

[396] LPA Am. 1 ¶ 1(c).

[397] ATP Post-trial Opening Br. at 66.

potential limited partner would have agreed to constrain its discretion to approve budgets.

Ultimately, none of the relevant tests support implying a good faith term. Because Rigmora had no implied duty to breach, ATP's claim fails.

C. Declaratory Relief

ATP also seeks two forms of declaratory relief: a declaration that ATP's filing of this action does not violate the Exculpation Provision and is consistent with the Discretionary-Action Provision of the LPA, and a declaration that parties have not amended the Global Default Provision.[398]

Declaratory relief "is appropriate only if there is an actual controversy between the parties."[399] The Delaware Supreme Court has articulated four prerequisites for to an "actual controversy":

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.[400]

On the fourth factor specified by the high court, "[a] ripeness determination requires a commonsense assessment of whether the interests of the party seeking immediate

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[398] PTO ¶ 74(f); Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[399] *Dana Corp. v. LTV Corp.*, 668 A.2d 752, 755 (Del. Ch. 1995).

[400] *XL Specialty Ins. Co. v. WMI Liquid. Tr.*, 93 A.3d 1208, 1217 (Del. 2014) (quoting *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479–80 (Del. 1989)).

relief outweigh the concerns of the court in postponing review until the question arises in some more concrete and final form."[401] A dispute is ripe if "litigation sooner or later appears to be unavoidable" and "the material facts are static."[402] Ultimately, Delaware's approach to declaratory relief and ripeness leaves the determination to the discretion of the court.[403] "The [c]ourt may . . . properly decline to entertain a declaratory judgment claim where another remedy is available and would be more 'effective or efficient.'"[404]

1. The Exculpation And Discretionary-Action Provisions

ATP seeks a declaratory judgment that ATP's filing of this action was in good faith, falls within the Exculpation Provision, and was authorized under the

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[401] *XL Specialty*, 93 A.3d at 1217 (citation modified); *see also Nask4Innovation Sp. Z.o.o. v. Sellers*, 2022 WL 4127621, at *4 (Del. Ch. Sept. 12, 2022) ("In determining whether a dispute is ripe, the Court must take a practical view of all relevant facts and make a common-sense determination of whether adjudicating a dispute at present is a prudent use of judicial resources.").

[402] *XL Specialty*, 93 A.3d at 1217 (quoting *Julian v. Julian*, 2009 WL 29371212, at *3 (Del. Ch. Sept. 9, 2009)) (citation modified).

[403] *See Stroud v. Milliken Enters., Inc.*, 552 A.2d at 480 ("The reasons for not rendering a hypothetical opinion must be weighed against the benefits to be derived from the rendering of a declaratory judgment. This weighing process requires "the exercise of judicial discretion[.]"); *Horizon Pers. Commc'ns, Inc. v. Sprint Corp.*, 2006 WL 2337592, at *17 (Del. Ch. Aug. 4, 2006) ("The ripeness of a dispute is a matter entrusted to the discretion of the trial court." (quoting *UbiquiTel Inc. v. Sprint Corp.*, 2006 WL 44424, at *2 (Del. Ch. Jan. 4, 2006))) (citation modified).

[404] *Walton v. Walton*, 2025 WL 2555839, at *8 (Del. Ch. Sept. 2, 2025) (quoting *Reylek v. Albence*, 2023 WL 4633411, at *6 (Del. Super. July 19, 2023)); *see also Markusic v. Blum*, 2021 WL 2456637, at *4–5 (Del. Ch. June 16, 2021), *aff'd*, 284 A.3d 1017 (Del. 2022) (declining to issue declaratory judgment where concurrent litigation in another court would sufficiently address the controversy); *Burris v. Cross*, 583 A.2d 1364, 1370–76 (Del. Super. Ct. 1990) (same).

Discretionary-Action Provision.[405] ATP seeks this declaration in part because Rigmora argues in the Cayman Litigation that ATP filed this action in breach of its fiduciary duties.

Rigmora argues that ATP's claim under the Exculpatory Provision is unusual. Exculpatory provisions shield a covered person from liability for covered claims. And there is no ripe claim here, because Rigmora does not argue in this dispute that ATP breached its fiduciary duties.[406]

Rigmora has the better of the argument here; ATP's request for declaratory judgment is not suitable for resolution in this forum. Delaware law governs a gross negligence standard in the Exculpation Provision; but otherwise, Cayman law governs both the Exculpatory Provision and the Discretionary-Action Provision. Further, the underlying dispute around whether ATP's filing of this action constitutes

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[405] Compl. ¶ 196; PTO ¶ 74(f); LPA ¶ 2(g) ("To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability . . . provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner[.]"; LPA ¶ 18(g)(iv) ("In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion . . . . To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.").

[406] Rigmora Post-Trial Br. at 61–62.

a breach of its fiduciary duties is central to Rigmora's Winding Up Petition in the Cayman Litigation.[407] As a commonsense matter, this court has little reason to resolve the issue, which was not a core dispute in this litigation.[408] The factual findings in this decision speak for themselves. And Cayman court is well positioned to assess their implications under Cayman law. Commonsense dictates reserving judgment on both of ATP's requests for declaratory relief concerning the Exculpatory and Discretionary-Action Provisions.

2. Global Default Provisions

ATP seeks a declaratory judgment concerning the Global Default Provision, although the nature of the ATP's requested declaration has evolved over the course of this litigation.

In its Complaint, ATP requested a declaration that Rigmora is "in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner."[409] ATP requested similar relief in the Pre-Trial Order.[410] The Writ Injunction, however, prohibits ATP from "taking any steps against [Rigmora] to enforce any purported default provisions" related to the May 30 and June 1 capital calls.[411] At trial, therefore, ATP withdrew any request contrary to the Writ

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[407] JX-1417 ¶ 26; ATP Post-Trial Reply Br. at 44.

[408] *See id.*

[409] *Markusic*, 2021 WL 2456637, at *5.

[410] PTO ¶ 74(a)(iv) (requesting a declaration that Rigmora "breached [its] obligations under the LPA to fund and approve budgets sufficient to qualify as a Defaulting Partner").

[411] JX-1434 ¶ 1. *Compare* Compl. ¶ 183–92, *with* PTO ¶ 74(a)(iv).

Injunction.[412] In post-trial briefing, ATP seeks a far more limited declaration, asking for "an order declaring that the Global Default provision[,]" Paragraph 5(c) of the LPA, "governs defaults" and "ha[s] not been altered or amended."[413]

As currently framed, ATP's request is so narrow as to be undisputed, as Rigmora does not deny that the Global Default Provisions have never been amended.[414] Because there is not dispute between the parties on this point, there is no actual controversy. ATP's request for declaratory relief is not ripe. For that reason, it is dismissed.

D. Attorney's Fees

ATP requested attorney's fees under the "loser pays" principles of Cayman Island laws and the Common Law in the Complaint and in the Pre-Trial Order.[415] The Pre-Trial Order referred the court to ATP's pre-trial brief for a discussion of disputed issues, but ATP's pre-trial brief did not address the issue.[416] Rigmora addressed this issue directly in pre-trial briefing, arguing that the American rule under Delaware law governs the issue of attorney's fees.[417] ATP's post-trial opening brief made no mention of attorneys' fees. ATP did not address this issue until its post-trial reply brief and then did so in a cursory fashion.

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[412] ATP Pre-Trial Br. at 56 n.22.

[413] ATP Post-Trial Opening Br. at 82; Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[414] *See* Rigmora Post-Trial Br. at 60.

[415] PTO ¶ 74(g).

[416] *See generally* ATP Post-Trial Opening Br.

[417] Rigmora Post-Trial Br. at 62.

Whether a party has waived an argument by failing to raise it in briefing is a procedural matter, so Delaware law governs whether ATP's request for attorneys' fees has been waived.[418] "It is settled Delaware law that a party waives an argument by not including it in its brief."[419] "[A]n issue not raised in post-trial briefing has been waived, even if it was properly raised pre-trial."[420]

ATP's failure to meaningfully brief the issue of its entitlement to fees under Cayman law until its post-trial reply brief constituted waiver. Thus, to the extent that Cayman law supports awarding ATP its attorney's fees and expenses, which this decision does not address, the claim is denied.

III. CONCLUSION

Excluding the Capital Call for Replicate, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls. ATP is not entitled to specific performance relating to the budgeting approvals. ATP's request for a declaratory judgment concerning the Exculpatory Provision or the Discretionary-Action Provision are held in abeyance. ATP's request for a declaratory judgment concerning the Global

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[418] *See Wheeler v. Wheeler*, 636 A.2d 888, 891 (Del. 1993); *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) (Berger, J., concurring) (unanimously holding that "the motion for reargument is procedurally barred under Delaware law, because the issue raised on reargument was not fully and fairly presented in the Defendants' opening briefs"); *Chaplake Hldgs., LTD. v. Chrysler Corp.*, 766 A.2d 1, 6 (Del. 2001).

[419] *Emerald P'rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003), *aff'd*, 840 A.2d 641 (Del. 2003).

[420] *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 502 n.77 (Del. 2019); *see also In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 62 (Del. Ch. 2001).

Default Provision is dismissed. ATP is noted entitled to its attorney's fees under the Cayman law's loser-pays rule. The parties are ordered to submit a form of order or competing forms of order implementing this decision within three business days.

EXHIBIT I

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Thursday, October 16, 2025
9:15 a.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

REDACTED TRIAL TRANSCRIPT - VOLUME I

APPEARANCES:

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SHANNON M. DOUGHTY, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
ANDREW M. BERDON, ESQ.
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Appearances Cont'd ...

APPEARANCES CONT'D:

BLAKE K. ROHRBACHER, ESQ.
DANIEL E. KAPROW, ESQ.
CHRISTINE J. CHEN, ESQ.
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NATHANIEL QUIGLEY, ESQ.
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of the New York Bar
Debevoise & Plimpton LLP
for Defendants

ALSO PRESENT:

STEVE LAGUTIN, Russian Interpreter

- - -

THE COURT: Good morning.

ATTORNEY BARLOW: Your Honor, good morning. Mike Barlow on behalf of plaintiff, ATP III GP. I rise for a brief set of introductions. I'd like to introduce just a few people right now. We'll have a larger cast of characters throughout the day.

THE COURT: It seems like we have a large cast of characters today.

ATTORNEY BARLOW: To keep it all straight, we'll start with Mr. Andrew Berdon, Rachel Epstein. And of course the Court knows Garrett Moritz.

ATTORNEY MORITZ: Good morning, Your Honor.

ATTORNEY BARLOW: Point of order, would you like us to break at 10:45 today under the typical schedule?

THE COURT: Yes. So I owe you time over the course of the next couple of days. And I was going to propose that we go 15 minutes late today -- if our court reporters allow it -- and start 15 minutes early tomorrow. And that will give us some flexibility at the end of the day.

As you may be aware, I had a

preexisting commitment beginning at noon tomorrow, and I'll have to break at noon tomorrow. But I think we can make the time up easy enough.

ATTORNEY BARLOW: Thank you, Your Honor.

THE COURT: Thank you.

ATTORNEY ROHRBACHER: Good morning, Your Honor. Blake Rohrbacher, Richards Layton & Finger, for the Rigmora defendants. I'll start with introductions at the counsel table. Shannon Selden from Debevoise & Plimpton, Zach Saltzman, Lucy Sundelson. Back table as well, William Taft, Natascha Born, Sarah Wolf from Debevoise & Plimpton. And, Your Honor, Leslie Trzonkowski and Daniel White from my office. Our corporate designee Alexey Yakovlev is here.

And one housekeeping matter. The interpreter, Steve Lagutin, is here. We don't anticipate needing his services for the morning session, but we will need to figure out where he sits because we will need a microphone for him.

So that can be an after-lunch problem, but I wanted to raise it, and we can sort that out.

THE COURT: Thank you for raising it.

We'll figure it out between now and then.

ATTORNEY ROHRBACHER: Thank you.

THE COURT: Are there any housekeeping matters we should attend to?

ATTORNEY BERDON: Thank you, Your Honor. Andrew Berdon for ATP III GP, Limited, as general partner of ATP Life Science Ventures.

Your Honor, there's a pending motion to maintain the status quo. We served our opening brief September 19th, I believe. And the defendants served an opposition on October 3. In the interim, we've tried to reach an agreement, both as to the language of an interim order here, as well as to obviate the need for a motion for PLs in the Cayman Islands.

Yesterday afternoon, our proposal to appoint a special manager to oversee and work with ATP in the interim period was rejected. And so we would propose to put in our reply brief perhaps Sunday evening. So we'll have that fully briefed, and we can deal with any need for an argument for that next week.

THE COURT: Any objection?

ATTORNEY SELDEN: No, Your Honor. Sunday evening works for the reply for us.

THE COURT: All right. That's the plan. Thank you.

Shall we call our first witness?

ATTORNEY BERDON: Yes, Your Honor. The plaintiffs call Dr. Seth Harrison.

SETH HARRISON, having first been duly affirmed, was examined and testified as follows:

ATTORNEY BERDON: May it please the Court.

THE COURT: Yes.

DIRECT EXAMINATION

BY ATTORNEY BERDON:

Q. Good morning. Would you please introduce yourself to the Court.

A. My name is Seth Harrison. I'm managing general partner of Apple Tree Partners.

Q. And what is Apple Tree Partners?

A. Apple Tree Partners is a life sciences venture capital firm.

Q. And where is ATP based?

A. In New York, Boston, and the Bay Area.

Q. Can you briefly describe your educational background for the Court.

A. Yes. I went to Princeton, then

Columbia medical school. I did a year of surgery at the Presbyterian Hospital in New York City. And then I have an MBA from the Columbia Graduate School of Business.

Q. What was your work experience after you left medicine?

A. Business school.

Q. Your work experience after business school.

A. Yes. I started work immediately in a venture fund. I did a brief internship at Merck, learned that I preferred startups and founding companies. And I went to a larger venture fund as a venture partner, founded companies, they were successful. I became a general partner at Oak Investment Partners.

Into the late '90s I decided to do nothing but internet. I spun out my life sciences portfolio in 1999 in the first synthetic secondary with institutional backers to form Apple Tree Partners I.

Q. Who were your first institutional backers for Apple Tree Partners I?

A. Landmark Partners, Goldman Sachs,

Liechtenstein Global Trust, VenCap, an insurance company. I forget all of them.

Q. And what is your role at ATP?

A. I'm a managing partner.

Q. Did there come a time in your time at ATP where you were introduced to Dr. Dmitry Rybolovlev?

A. Yes.

Q. What were the circumstances of that?

A. It was 2010, in the late summer, and a major biotech analyst on Wall Street, I think he worked for Merrill Lynch at the time. He sent an email saying one of the oligarchs would like to learn about biotech, would you be interested?

Q. Did you and Dr. Rybolovlev reach an agreement where you would manage money for him?

A. Yes. We met first in October of that year, and then we had multiple meetings afterwards, long meetings. And, yes, we did come to such an agreement.

Q. And what was the first amount that you were asked to manage for Dr. Rybolovlev?

A. 100 million, U.S.

Q. And did that amount of capital get

increased at some point?

A. Yes. Originally he was interested in my managing a billion and a half dollars for him. I preferred to walk before we ran, and suggested the 100 million. And after about eight or nine months, we met again, and I suggested -- we agreed that we roll the 100 million into a larger facility. The 100 million was in a fund called Apple Tree III, and the larger facility became Apple Tree Partners IV, L.P.

Q. And when you increased the amount of the investment to $1.5 billion, was there a change to the agreements between yourself and Dr. Rybolovlev?

A. Yes, there was a new LPA.

ATTORNEY BERDON: Marco, can you please pull up JX 0001.

Q. If you could turn in your binder, Doctor, or you can look at the screen.

Dr. Harrison, do you recognize what's been marked as JX 1?

A. Yes. That's the ATP IV LPA, the first page.

Q. And when this document was first executed, what was the form of Dr. Rybolovlev's

representation in the L.P.?

A. Form of his ...

Q. Withdrawn.

What were the names of the investors who contributed on behalf of Dr. Rybolovlev?

A. He had two BVI investors called Ezbon and Blue Horizon.

Q. And were they limited partners?

A. Yes.

Q. Were there other limited partners of the fund?

A. Yes.

Q. Who else was a limited partner of the fund at the time of its initiation?

A. Myself.

Q. And did you contribute capital to the fund?

A. Yes.

Q. How much?

A. 54 million.

Q. And are you still a limited partner of the fund?

A. Yes.

Q. And do you still own 100 percent of

that 54 million contribution?

A. No.

Q. Who does?

A. I gifted approximately 55 percent of that to a trust for my children called Les Pommes.

Q. Who negotiated the limited partnership agreement, the LPA, on behalf of ATP?

A. Myself and Dan Finkelman, who is now or general counsel, who was at the time in the fund's practice at Proskauer.

Q. And who negotiated on behalf of Dr. Rybolovlev?

A. Dmitry himself, and his CIO at the time, named Mikhail Sazonov.

Q. Generally speaking, how does the LPA work in terms of making investments?

A. We have a concept called budgets, which I suggested. The reason I suggested it is that I understood that if I were going to give someone a billion and a half dollars, I wouldn't want to give it as an entire lump sum. I'd want some control over it. And yet, my going-in fundamental concern was to be able to remain autonomous as an entrepreneur.

So I suggested to Dmitry that we

create budgets for every project. And he could approve any budget he wanted, any project he wanted. But once a budget was approved to fund a project within that envelope of money, I would call like a GP.

Q. When you say "call like a GP," what does that mean?

A. Call capital discretionarily within a budget approved for a given project.

Q. And based on your understanding under the terms of the LPA, who controls the actual business of the fund and its investments?

A. The general partner.

ATTORNEY BERDON: Marco, can we pull up Section 2(b). Thank you.

Q. Dr. Harrison, do you recognize the portion of the LPA that's in front of you?

A. Yes.

Q. And is this the section of the LPA that you understand to vest control of the business of the fund with the GP?

A. Yes.

Q. So, Dr. Harrison, can you just explain the process by which budgets are presented and perhaps approved.

A. Yes. Typically, I and my team would develop an interest or an idea for a new project that would generally take the form of a new company eventually. We would vet it internally. After a certain point, it would come to a level where we were interested enough so that I would bring it up in a Zoom call or an in-person meeting -- which, there were many with Dmitry -- and we would discuss it briefly and give him a heads-up that in some two to three months' time, at our next meeting, we would talk about it in depth seeking his approval.

Q. We'll come back to the actual execution of particular budgets later.

But who participated in the substantive discussions with Dr. Rybolovlev about the founding of the companies that we're here to speak about today?

A. It was myself, Dmitry, his then-CIO. The CIOs changed over the years. Initially it was Mikhail Sazonov, then it was Anna Batarina, then it was Anna Kolonchina. Typically that was it. On rare occasions we would have members from the ATP management team there. But I believe it was not typically to discuss budget proposals.

Q. Does the LPA have a set of provisions that you understand control when capital can be called?

A. Yes.

Q. And do you have a general recollection of what part of the LPA governs the ability to call capital?

A. Section 5, is it?

Q. Do you know, was Section 5 amended during the course of the parties' dealings together?

A. I believe so.

Q. And would you understand -- do you recall which amendment has the changes that currently govern?

A. Is it 3?

Q. Let's take a look.

ATTORNEY BERDON: Can we pull up JX 4, please. And, Marco, can we take a look at the full first page, please.

Q. Dr. Harrison, taking a look at the first page of Amendment 3, does that refresh your recollection as to whether --

A. Yes.

Q. -- it amended Section 5?

A. Yes, it does.

ATTORNEY BERDON: And let's turn to the next page, Marco. And can we blow up -- yes.

Q. Dr. Harrison, is, to the best of your understanding, paragraph 5(a)(ii), as set forth in Amendment 3, the most recent iteration of Section 5?

A. Yes, with the exception that certain entities have -- are no longer in existence that are referred to in the paragraph.

Q. Okay. So let's just briefly talk about that.

What's the name of that entity that is out?

A. ATC, which stands for -- or stood for Apple Tree Consolidated.

Q. At the time of Amendment 3, what was the function of ATC supposed to be?

A. The function of ATC had been to be the holding company through which the fund made all project investments. Because Dmitry's original goal, and a goal that remained intact until our most recent meetings, was to build a family-owned pharma company using a venture capital frame or apparatus.

Q. So were references to ATC subsequently

removed from the contract by amendment?

A. Yes, I believe so.

Q. Was ATC ever formed?

A. No, it wasn't.

Q. Was there ever a board comprised of representatives of Rigmora and representatives of ATP that controlled the budgeting process?

A. There was a board called for, but it was never constituted and never met.

Q. And so can you explain to me how, in practice, capital got called by ATP.

A. Well, there would be an approved budget, and then we would send a capital call and the capital call would be paid. There was a certain formalization in how the capital calls were written and laid out. But that was generally how it worked.

Q. And, categorically, what types of subject matter could be the subject of a call that would require financing?

A. There would be calls for approved budgets, projects that were approved in budgets. There would be calls for management fees. And there were two management companies -- or are two management companies, Apple Tree Venture Management and Apple

Tree Life Sciences, Inc. There were calls for fund costs, all laid out in the LPA. And there were calls for incubation expenses. And there may have been one or two other categories.

Q. But those are generally set forth in Section 5, as amended?

A. Yes, they are.

Q. Were provisions built in to the LPA to deal with the situation where a limited partner defaulted on a capital call?

A. Yes.

Q. And, generally speaking, do you know where those were dealt with in the agreement?

A. I don't recall the exact paragraph, no. I'm sorry.

Q. You think it was in Section 5, though?

A. Yes.

ATTORNEY BERDON: Marco, can we pull up section -- well, JX 1 at 23, please.

Q. Dr. Harrison, I'm showing you on the screen here Section 5(c) of the LPA.

Do you recognize it?

A. I do, yes.

Q. And is this at least a portion of the

section of the LPA that deals with defaults on contributions?

A. Yes.

ATTORNEY BERDON: Marco, can we go down to (iv), please.

Q. Dr. Harrison, what are the GP's rights, to the best of your understanding, in the event of a default on a capital call by an LP?

A. Well, they are listed here. The GP might impose a default charge. The GP might help the defaulting partner in selling its interest to potentially a substitute limited partner. The GP might accept a late contribution at his discretion. And the GP has essentially the right to sue.

Q. And did you and Dr. Rybolovlev specifically discuss and negotiate the default provisions that we're talking about?

A. Yes.

Q. And, in particular, do you recall which parts of the default provisions you talked about with him?

A. The entirety of the default provision.

Q. Including the ability of the general partner to impose a default charge?

A. Yes, absolutely. I would say that would have been -- that was his focus, and we discussed that explicitly.

Q. And did you have a position that you expressed to Dr. Rybolovlev about the importance of that provision to you?

A. Yes.

Q. And why was the ability of the general partner to have certain enumerated rights in the event of a default important to you?

A. I explained to Dmitry that we were about to embark upon a fund that would be funded essentially for the most part by a single LP, single-point financing. And this introduced a structural risk that I appreciated but that, more importantly, any counterparty that the fund would ever deal with would appreciate -- every founder, every CEO, every hire at the fund, any counterparty.

And that we just couldn't do business. It would be highly unlikely that we would be able to even start business unless we had such a remedy -- which, of course, we would hope we would never use, but needed to be structurally in place. And, in fact, was typical for every venture fund that I've ever been

associated with or that I know of.

Q. Was there a limitation imposed on the size of the default charge that could be imposed?

A. Well, it has to be discretionary and it has to be proportionate to the default. But I think the limit is 50 percent.

Q. In addition to Amendment 3, has the LPA been amended by the parties?

A. Yes.

Q. Including Amendment 3, how many times?

A. 22.

Q. During the course of the negotiation and execution of those 22 amendments, were the default provisions of the agreement ever changed?

A. No.

Q. In addition to the rights enumerated in Section 5, is there another effect if a default is -- if a partner is found to be a defaulting partner under the agreement?

ATTORNEY SELDEN: Objection, Your Honor. It calls for a legal conclusion.

THE COURT: You can testify to your understanding of this agreement that you negotiated, if you have one.

THE WITNESS: Thank you.

ATTORNEY BERDON: I'll make my questions to that effect.

BY ATTORNEY BERDON:

Q. To the best of your understanding, Dr. Harrison, is there another effect if a limited partner is declared to be a defaulting partner?

A. Yes. The defaulting partner loses its votes to direct anything in the partnership per the LPA. And this was critical because the entire point of the partnership, the fund, is to fund its portfolio. And if there were a default, particularly from a single source, funding source, it would be imperative and an emergency that we find substitute capital.

So having full control to do so was what the entirety of the default provisions allowed and what we negotiated for.

Q. And is there a specific section of the agreement, to the best of your understanding, that deals with voting rights?

A. Yes, but I'm afraid I don't know the number.

Q. Let's see if we can refresh your

recollection.

ATTORNEY BERDON: Can we go to, Marco, JX 1 at 74, please.

Q. Taking a look at what's before you, Dr. Harrison, does it refresh your recollection?

A. Yes.

Q. And is this the provision that you are talking about that discusses voting rights?

A. Yes, it is.

Q. Taking a look at the last sentence -- and it's got two parts -- can you explain to the Court your understanding of what that means.

A. My understanding of what that means is that if a partner is declared a defaulting partner, they have no control over the fund.

Q. Dr. Harrison, at the time of the execution of the LPA, was there a subscription agreement also signed at that point?

A. Yes.

Q. And to the best of your recollection, what was the sum total of the subscriptions that were executed by Rigmora?

A. By -- approximately 1.425 billion.

ATTORNEY BERDON: I'd like to pull up

JX 212, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 212?

A. Yes.

Q. And what is that?

A. It's a subscription agreement.

Q. And taking a look at the execution page of that agreement, which I believe appears at 19, can you explain to the Court what we're looking at here.

A. I don't see the execution date, I'm sorry. But it's a signature page from one of the two investors that Dmitry used to fund the fund that was called Blue Horizon Enterprise, or Blue Horizon for short. And it's signed by Mikhail Sazonov, who was the CIO of Dmitry's Family Office, and witnessed by Andrey Milkov, another member of the Family Office.

Q. In the amount as indicated there, that's Blue Horizon's share of the initial investment in ATP?

A. Yes.

Q. Was there a counterpart for Ezbon?

A. Yes.

ATTORNEY BERDON: Let's just take a

look at JX 213, please.

Q. This appears to be the same subscription agreement; correct?

A. Yes.

Q. Let's take a look at the signature page, the limited partner signature page.

Does that reflect the amount of the subscription by Ezbon International?

A. Yes, it does.

Q. And your understanding is Ezbon International is affiliated with Dr. Rybolovlev's Family Office?

A. Ezbon and Blue Horizon were investors incorporated in the BVI investor entities that were funded by Scorpios Trust, as I understand it, which is a trust in Cyprus for Dmitry's daughters, as I understand it.

Q. So as between Blue Horizon and Ezbon, back at the time of the execution of this subscription agreement, what was the sum total? Was it 1 point --

A. 1.425 between Ezbon and Blue Horizon, 1.425 billion.

Q. And what was to become of the other 75 million out of the 1.5 billion that you described?

A. That was my limited partnership interest funded by a loan from Dmitry -- or Ezbon, I believe.

Q. And did your participation, limited partnership participation, ever increase to the $75 million level?

A. No. It reduced to 54 million.

Q. And that was by agreement between yourself and Dr. Rybolovlev?

A. Essentially, yes.

Q. The documents in this case, Dr. Harrison, talk about the establishment and the presence of things called "pools."

Can you explain to the Court what a "pool" is in the context of ATP.

A. A pool is a subdivision of the fund which -- of a fund, but a fund that became Apple Tree Life Sciences Ventures, Inc. -- a master fund, if you will -- that contained different groupings of investment based upon vintage, dwell time, the teams that have put them together, the high watermarks of the different aggregated companies in each pool. They were essentially accounting devices.

Q. And why were pools necessary from the

point of view of the limited partners of ATP?

ATTORNEY SELDEN: Objection. Calls for hearsay, I believe.

ATTORNEY BERDON: Okay.

Q. Did you participate in the discussions with the Family Office about the establishment of pools?

A. Yes.

Q. What did the Family Office and you -- withdrawn.

What did you believe the utility of the pool would be?

A. It was multipart. I just described the utility sort of from a technical perspective because we had old teams and a new team coming in that would found new deals. So we needed to segregate their deals in a pool out of fairness.

There was the fact that the new money for a new fund, essentially -- or a new commitment was coming from Dmitry in the amount of $1 billion on top of the billion and a half. And there were concerns from the Family Office about KYC issues and that the establishment of a new fund would be difficult.

So we all agreed that pools would be

the correct way to go, the most efficient way, the simplest way.

Q. And the first time the pools were established, was there an amendment to the LPA that was signed between the parties?

A. Yes.

Q. Do you remember which amendment that was?

A. I think it was Amendment 13.

ATTORNEY BERDON: Marco, can we pull up JX 15, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 15?

A. Amendment 13 to the LPA.

Q. And taking a look at Section (a) there, "Separate Pools," is this what you were discussing in terms of the first embodiment of pools?

A. Yes.

Q. Were those embodiments subsequently changed by amendment executed between the parties?

A. Yes.

Q. And were the names of pools changed?

A. Yes, the names of those pools were changed, and new pools were established.

Q. You made reference just a minute ago to a transition to a new $1 billion commitment and a new team, I believe. Can you tell the Court how it came about that the Family Office made a new billion-dollar commitment to the fund.

A. Yes. We had had quite some success in our investment programs. Not everything was a success, but it was a very successful run. And Dmitry was very excited to invest in more companies of a particular type. And there were also some issues with the prior team that, despite their successes, they were much more focused on investing than they were on operating.

So the idea became to hire a top team of pharmaceutical, R&D entrepreneurs who were ready to jump into venture capital, use their networks and their formidable skills and backgrounds to found deals and actually manage them themselves. So that's what we did.

Q. Very briefly, can you just tell the Court when you speak about these experienced executives, who are you talking about?

A. We hired Paul Eisenberg, who was a chief medical officer of Amgen, one of the top

regulatory professionals in the world. We hired Mike Ehlers, who was the head of R&D of Biogen and before that ran neuroscience at Pfizer. We hired Spiros Liras, who was a top medicinal chemist for 25 years at Pfizer and had been at Biogen for one year, didn't like it. We hired Paul Jardine, who is a top brain in medicinal chemistry, also at Pfizer for 25 years, I believe. And others.

Q. Did you discuss these hires with Dr. Rybolovlev?

A. Absolutely.

Q. And was the addition of this talent part of the process of deciding how the new billion-dollar commitment would be invested?

A. Yes. He followed it very closely. When we hired Mike Ehlers, he needed to be told immediately by a Signal call. It was something he was very enthusiastic about.

Q. How did you and the team vet new investments?

A. As I told you, in my experience, typically to find a good deal, you need to find somebody who has come out of a system where they're seeing everything related to that deal. So you hire a

graduate student in immunology to find a great immunology deal. And we did that, and we had a great immunology deal with an exit called Syntimmune.

In the case of hiring these pharma executives, typically they know exactly the deals they want to do, and they have great relationships in academia, but their companies squelched them. So that theory proved out. When we interviewed people, there were a ton of really interesting ideas, great network, and obviously they knew how to manage projects.

So we just followed through on that thesis. And that was the basis on hiring the team, and that was the basis on bringing in the new crop of deals.

Q. And what was the general process that you then had to get those deals to be approved and budgets for those deals to be approved with Dr. Rybolovlev?

A. Well, first, we would talk about them internally. We would have meetings where we would basically beat each other up. We would kick the deals apart, put them back together. We would decide what we liked. I would, in the end, adjudicate what was a worthwhile investment. And then I would begin to talk

about it with Dmitry. And we would agree, as I said earlier, to discuss that deal in depth at an in-person meeting in the near future. There were many in-person meetings, so that was easy enough to do.

Q. And, generally, was Dr. Rybolovlev's approval of sort of a go on a deal arrived at at one of those meetings?

A. Oh, yes, absolutely. From the very beginning he would agree to something, and it would happen. So although there was a formalization that came afterwards, I came to trust in his word, and that was how it worked.

So we would eventually present the deal -- or I would present the deal. We would talk about it at whatever length he wanted. We would talk about the amount of the initial commitment in the budget. He would nod yes, and then we would go and formalize the deal.

Q. And tell me what the formalization involved.

A. The formalization involved finishing the business plan, finishing the term sheets with the source of the starting technology or IP or founders, and then putting together an investment memorandum, a

budget, something called a CFIUS memorandum in a budget request, and then sending all to the Family Office in an email of transmittal. And that was the formal process of getting a budget approved.

Q. Now, was the amount of the initial investment agreed to before the Family Office received the investment memo?

A. Yes, in the meeting with Dmitry. It was usually on the boat or in his apartment or somewhere, and it was agreed.

Q. Were specific milestones ever the subject of negotiation between yourself and Dr. Rybolovlev?

A. Never.

Q. Did you and Dr. Rybolovlev ever talk about there being conditions to your ability to pull down tranches of funding once a budget had been approved?

A. Only in two budgets did that ever occur in the entire history of our relationship.

Q. And what were the two times that that occurred?

A. There was something called the Braeburn RPA, royalty purchase agreement, which had

specific milestones, and we all agreed to them. And the most recent and last budget approval before all this trouble, and that was for a company called Replicate. And that had one milestone that Dmitry and Yuri wanted to put in.

Q. Once the budget was approved and formalized, of what use internally at ATP were any milestones that had been discussed in the original investment memo?

A. Very little.

Q. And why is that?

A. Because managing research is an iterative process. You are conducting experiments and evaluating their results, and you are then taking the next step. And it's completely a contingent and pragmatic enterprise. And that's what a good research scientist or a good manager of research or a good VC does.

Q. Well, you talked about formalizing arrangements with the people who had the technology and founders. What type of agreements did you execute with those folks at the initiation of a new project?

A. There would be multiple agreements. But I think the most important would tend to be the

Series A, because it usually was a Series A round, a Series A stock purchase agreement.

Q. And in any cases did those Series A stock purchase agreements contain milestones related to release of tranches of funding?

A. In some cases, yes.

Q. And in those cases, what was the utility of having tranches describing the funding associated with milestones?

A. To give the funds control.

Q. What do you mean by that?

A. Well, typically a milestone is developed between a founder or investing company and a venture capitalist based upon the best foreseeable business plan or research plan at the time that that round closes. And a round will typically run for two years, let's say, or three years.

And things change. And they always change. There are so many contingencies that come up in biotech: research, clinical, toxicity, formulation, regulatory certainly, manufacturing. They always come up. And the whole point is how you deal with them.

And those tend to perturb your initial milestone set. They always do. And VCs and boards

are used to dealing with that and constantly modifying and modulating them. And very few people really adhere to a milestone set because the idea is to continue to build the company working with the teams.

So for us, knowing that, being of that world, of that practice, whenever we put in hard milestones, it was just to have a bit more control in case we should ever want to stop funding.

Q. In your experience, was a missed milestone in and of itself a reason to terminate funding under a Series A agreement?

A. No, as I said.

Q. Have you ever decided to shut down a company that was in the ATP portfolio?

A. Yes.

Q. Can you give us any examples?

A. There was a company called Adendra, there was a company called Kynos, there was a company called Rox. There was a company called Vytronus. There were multiple. It doesn't always work.

Q. How did you adjudicate whether or not to terminate funding of those companies?

A. It depended on the case. There could be a catastrophic failure in the clinic. There could

be a safety signal. There could be just a bald execution problem that you saw and you realized this project should not be continued.

I believe that was the case in Adendra, because there was supposed to be a certain kind of antibody produced and it just simply wasn't produced and we said this isn't worth it.

There could be other problems. But you reach the ability -- in a long career you reach the ability to judge when to shut something down. You're not always right, but you try to get there and you turn things off.

Q. Are there any companies in the current ATP portfolio that you believe should be shut down?

A. No.

Q. And have you participated in conversations about the current status of research going on at each of the companies in the ATP portfolio?

A. Yes.

Q. And from time to time were there disagreements among your management team about the relative benefits of going forward with one company versus another?

A. Yes, absolutely. That's a healthy management team. We are always discussing quite vigorously the pros and cons of any given deal at any time.

Q. Given the availability of funding, would you continue to pursue research for each and every one of the companies that are currently in the ATP portfolio?

A. Yes. In some cases in a more focused way, but yes.

Q. I'd like to direct your attention back to the subject of pools and the new contribution.

Was there an amendment executed between the parties that implemented that new billion-dollar commitment?

A. Yes.

ATTORNEY SELDEN: Objection. Calls for a legal conclusion.

THE COURT: You can answer the question, if you have an understanding of whether there was an agreement you executed for that purpose.

A. Amendment 17 to the LPA.

Q. Thank you.

ATTORNEY BERDON: Marco, can you bring

up JX 89, please. And, Marco, can you just show the first page. Thank you.

Q. Taking a look at what's up on your screen as JX 89, do you recognize it, sir?

A. Yes. That's Amendment 17.

Q. And it was executed in September 2020?

A. Yes.

Q. At the time of the execution of Amendment 17, what, to your understanding, was its purpose?

A. Its purpose was to establish the contribution of a new billion dollars or an additional billion dollars to ATP IV LP.

ATTORNEY BERDON: And can we do the call-out, please, Marco, on -- thank you.

Q. Dr. Harrison, do you have an understanding as to whether this Section "20. Pools A, B and C" was something that you negotiated to effectuate that change?

A. Yes.

Q. Dr. Harrison, can you explain to the Court the different categories of what was stratified in Pools C, B, and A, as they appear in interest, in sequence here?

A. Yeah. Well, we started to bring on this new team in 2018. So they were already doing deals. And so we desired to segregate the deals that they were doing in a new pool.

And it's all called differently now, so I think that was Pool C. Is that right? Right. So that was essentially for new deals formed by the new team. And that was going to be the focus of the billion dollars.

And then Pool B contained some deals that had already been done. And there was a mix between old team and new team in Pool B.

And then Pool A was essentially all the old deals in -- that took up much of the initial billion-and-a-half-dollar commitment.

Q. And were the names of those pools subsequently changed?

A. Yes.

Q. What are the pools called that have the new deals, as you referred to them?

A. It's a little complicated. The new deals are now in Pools V-1 and V-2, Roman numeral V, referring to ATP V, and Pools 1 and 2, V-1 and V-2.

Q. Is there something called Pool V-3?

A. Yes.

Q. What's in Pool V-3?

A. It's older deals that had not quite made it across the finish line that we founded with the prior team and which we felt had potential but needed work. And we thought who better to do that work but this fantastic team of pharma R&D professionals that we just brought in. So we segregated those deals in a separate pool called Pool V-3.

Q. At the time of the execution of Amendment 17, was there also an amended subscription agreement signed?

A. I believe so.

ATTORNEY BERDON: Marco, can we go to JX 99, please.

Q. Dr. Harrison, do you recognize this agreement?

A. Yes. That's the subscription agreement to which you were just referring to.

Q. Is that for both of the Rigmora LPs or just one?

A. Just one.

Q. Was there one -- so this one says

"Blue Horizon." Was there one also executed for Ezbon?

A. Yes.

ATTORNEY BERDON: Can we scroll down to the Ezbon.

Q. Take a look at JX 101.

Do you recognize that?

A. Yes.

Q. Is that the amended subscription agreement from 2020 for Ezbon?

A. Yes.

Q. Cumulatively, what was the amount of that new subscription?

A. $1 billion.

Q. After the execution of Amendment 17 and this amended subscription agreement, was there another significant contribution of capital agreed to between the parties?

ATTORNEY SELDEN: Objection. Calls for a legal conclusion.

THE COURT: Tease that out for me. How does this factual question call for a legal conclusion?

ATTORNEY SELDEN: I believe Mr. Berdon

is calling for a legal conclusion as to whether there is, in fact, another contractual agreement for capital. If it is a factual question as to Dr. Harrison's understanding, I have no objection. But to the extent Mr. Berdon is seeking a legal conclusion as to whether there is an another contract governing the commitment of capital, I object to that.

THE COURT: I'm interested in this witness as a fact witness. And it's a fair question to ask, whether he thinks he entered into an agreement.

So why don't you ask the question.

ATTORNEY SELDEN: Thank you.

BY ATTORNEY BERDON:

Q. Dr. Harrison, did you and the Rigmora entities talk about there being a substantial increase in their investment after the execution of the billion dollars?

A. Yes.

Q. And did you consider at least part of that investment to be an agreement to contribute new capital?

A. Yes, absolutely.

Q. And did you believe that you were

entering into an agreement that would be binding and increase the level of their subscription commitment in that agreement?

A. Yes.

Q. And what was that agreement called?

A. Amendment 20.

ATTORNEY BERDON: Can we please pull up JX 1061.

Q. Do you recognize what's been marked as JX 1061?

A. Yes. Amendment 20 to the LPA.

Q. When was that executed?

A. June of 2021.

Q. It says here that in numbered paragraph 21 -- it's labeled "Braeburn Inc." Can you tell the Court what Braeburn is.

A. Braeburn is a pharmaceutical company that we founded in 2012 that now -- and we founded it as a Phase 1 company and it now markets a drug for opioid addiction and should have a $300 million sales revenue year this year.

Q. And what was the purpose of creating a separate pool, Braeburn, at the time that Amendment 20 was put into place?

A. To segregate the investment in Braeburn.

Q. Did that have an effect on high-water mark?

A. Yes. Braeburn was a very capital-intensive deal and it was considered fair to move it out of the other pools and give it its own pool. We changed economics, carry economics in favor of Dmitry in exchange for the lower high-water mark, and there were certain other features of Pool Braeburn that were put into the amendment.

Q. Did Amendment 20 also discuss the contribution of new capital?

A. Yes.

ATTORNEY BERDON: Can we go to, please, Section 22, Marco.

Q. Was there an agreement in connection with the establishment of Pool Braeburn that involved the contribution of -- or the valuing of capital that had already been contributed into the fund?

A. Well, to form the pool from ATP IV, or whichever Pool Braeburn had been in at that time, that there was a contribution to the new pool, which at that time of the formation of Pool Braeburn

constituted its capital. And that was 204 million, approximately, which was the valuation of Braeburn at that time.

Q. Taking a look at page 6, additional paragraph 22.

Can you tell the Court what your understanding is of the role of ATP Pool V-3 in Amendment 20.

A. Yes. I referred to it before, the setting up of a pool, in which companies that had been founded by a prior team but hadn't quite made it, that would be managed by the members of our new team, the pharma R&D executives. And that was Pool V-3. And in this paragraph, the companies that we wanted them to work on and that we put in that pool are called out.

ATTORNEY BERDON: Can you go to page 7, Marco.

Q. Is there a discussion there of capital -- new capital commitments?

A. Yes.

Q. What was the new cash, if any, that was to be provided under paragraph 22(b) relating to Pool V-3?

A. There were already existing budgets in

the amount of 71 million, you can see it in the paragraph, for these companies. And there was an agreement for committed capital of an additional 235 million, which you can also see in the paragraph. And the companies themselves were valued at approximately 190 million. And those were contributed to the new pool from the old pool. And the total of those three numbers was 500 million, which was the capitalization of Pool V-3.

Q. After the execution of Amendment 20, did ATP start to call capital on the amounts it had agreed to in Amendments 17 and 20?

A. Yes.

ATTORNEY BERDON: Taking a look at JX 230, please.

Q. Dr. Harrison, take a look at what's been marked as JX 230. What is it?

A. It's an email transmitting a capital call.

Q. Can you just introduce the Court essentially to who Anna Batarina is.

A. Anna Batarina is a partner in the fund. She started out as a member of Dmitry's Family Office. She was the CIO, as I understand it, for one

year and then was put at ATP by Dmitry as a kind of liaison, and eventually we made her a partner and a part of the team.

Q. Did Anna Batarina have to talk to you before she was allowed to talk to Dr. Rybolovlev in the chain of command?

A. Oh, no.

Q. And why do you say that?

A. Anna had a fluid dialogue with Dmitry. They talked quite often. I mean, I don't know how often. But whenever we were together, Dmitry would call her, she would call Dmitry. It was a full communication. I actually talked with her and said I think, from a GP perspective, we should really discuss what information gets communicated because some information is just not mature. And she felt that all information needed to be communicated. So that's how it was done.

Q. Did it become the practice at ATP to keep track of the drawdowns against agreed capital contributions whenever capital was called?

A. Yes.

Q. And how was that tracked internally?

A. Oh, internally we had a CFO.

Unfortunately, he resigned due to the defaults. But Bill would track these things meticulously, his finance team would. Of course we have audited financials, we have quarterly reports. So these were, of course, tracked.

Q. And did you provide updates to Rigmora about the accounting that you had on hand?

A. Yes.

Q. And how often were those updates provided?

A. With every single capital call.

ATTORNEY BERDON: Can we please pull up page 4 of JX 230.

Q. Dr. Harrison, do you recognize this form?

A. Yes, I do.

Q. And what is it?

A. It is the exhibit that you just referred to, which gives the Family Office a then-current statement of their funded and unfunded commitments across all the pools in the fund.

Q. And it shows commitments for ATP IV; yes?

A. Yes.

Q. And can you explain to the Court, what was left in ATP IV as of June of 2021?

A. After Amendment 20, we created a Pool ATP IV, and that contained the residuals of the prior exited deals. There were milestones that would pay out and that sort of thing from companies that had been sold.

Q. And at that point, what was the intention for Pools V-1 and V-2? Were those for the new deals?

A. Yes.

Q. And you talked about Pool V-3 previously. Cumulatively, what was the capital commitment that you communicated to Rigmora in June of 2021?

A. In this capital call -- the total unfunded commitment as of this capital call after the call was about 1.5 billion.

Q. Do you know if Anna Kolonchina, the recipient of JX 230, ever got in contact with Rigmora -- withdrawn.

Do you know if Anna Kolonchina on behalf of Rigmora ever got in touch with ATP to object to the accounting that was provided here?

A. Not that I'm aware of.

Q. How many capital calls do you believe were made and paid in the three years between 2021 and 2024?

A. I think it's four years, but scores. I don't have a number.

Q. Somewhere close to a hundred?

A. I don't know. I'm sorry. I mean, we could check, certainly, but many, many, many.

Q. Any time during that period of time before October of 2024 that Rigmora indicated a disagreement with the running total that had been provided by ATP attached to one of its capital calls?

A. There was never a time.

Q. I'd like to direct your attention to the fall of 2022. Did you have conversations with Dr. Rybolovlev over the summer of 2022 about his views towards future investment and founding of new deals?

A. Yes.

Q. What were those conversations?

A. Well, they evolved. They started out with the same idea that we had had in forming the pools that would take the new capital commitment because we had this great team and they had many, many

deals in their network. And no matter how we tried to beat them back, they kept coming up. And the team had some very many great deals to do. So there was a push/pull.

Dmitry was concerned about the Ukraine, concerned about liquidity on his behalf, but he really wanted the new team to be able to be capitalized to do deals. So we went from, I think, six new deals to three new deals to eventually late in the year -- and I know I get ahead of your question -- but just to complete the idea, only one new deal, and barely that.

And during that summer, he indicated that he had wished that he had not taken on the commitment to invest in new deals. And he told me that if he could default on a pool or on pools, it would be on V-1 and V-2. And there were several other features of the landscape at that time that were quite troubling.

Q. So let's go to the first time that you recall Dr. Rybolovlev saying that he regretted the investments in pools V-1 and V-2.

Was that in a face-to-face meeting?

A. Yes.

Q. Do you recall where that meeting took place?

A. I believe it was in Monaco.

Q. Can you place it in what month?

A. June or July.

Q. Did you end up writing a memo to Anna Kolonchina giving a chronology of events?

A. Yes. That was a memo at the end of November, because much had happened from the start of that summer through near the end of that year.

Q. Would reviewing that memo perhaps refresh your recollection as to the timing of meetings?

A. It might. I remember that there were -- there was a very long set of meetings with Dmitry in his apartment in New York in October, and we met multiple times. And much of this information came out in those meetings.

ATTORNEY BERDON: Marco, can we please pull up JX 969.

Q. Dr. Harrison, do you recognize what's been marked as 969?

A. Yes.

Q. And what is it?

A. It's an email from Anna Kolonchina to me dated December 12. And then it's responding to a long email that I sent her dated November 29.

ATTORNEY BERDON: Taking a look at the top bullets on page 3, please, Marco. I'm sorry, the bottom of page 2.

Q. Taking a look at those bullets -- and you don't have to read them out loud -- I'm just going to ask whether they help refresh your recollection as to the timing and location of meetings?

A. Yes.

Q. When do you believe the Monaco meeting took place?

A. I'm sorry. Yes, the -- so the meeting where Dmitry discussed with me the idea of reducing commitments both to new deals in V-1 and V-2 and calling less capital per unit time for approved budgets in V-1 and V-2, that took place in Monaco in late September .

Q. The word "austerity" is here in quotes. What do you recall about anyone's use of the word "austerity" in those meetings?

A. I recall that Anna Kolonchina used the word first, and it was the word she used to describe

this idea of calling less capital per unit time.

Q. And at the follow-up set of meetings, do you recall Dr. Rybolovlev drawing a distinction between his view of funding pools V-1 and V-2 versus V-3?

A. Yes, those are the New York meetings in October. And he basically told me, as I interpreted it, that was contemplating a selective default on pools V-1 and V-2.

Q. And at that point were the companies in Pool V-3 companies that had products in active clinical development?

A. No.

Q. What was the basis -- did he explain to you why Pool V-3 was preferred to him over Pools V-1 and V-2?

ATTORNEY SELDEN: Objection. Calls for hearsay.

ATTORNEY BERDON: By a party opponent?

THE COURT: Overruled.

BY ATTORNEY BERDON:

Q. Did he tell you why he favored Pools V-1 and V-2 over V-3?

A. Though they were earlier deals, I

believe he understood them better. We talked about them a lot. And they were ostensibly going to reach the clinic sooner than the deals in Pools V-1 and V-2. That's actually not what occurred. But that was the perception at the time.

Q. And at the time that Dr. Rybolovlev spoke to you about his desire to focus on Pool V-3 over deals in Pools V-1 and V-2, did he talk about the possibility of a default?

A. Yes.

Q. And did he express to you his view as to the consequences of a default if he defaulted not just on deals in Pools V-1 and V-2?

A. He told me that he believed there was a pool-by-pool default, not a global default. And then at one of the meetings when I -- I said that's -- I disagree. And then he asked me to agree in a subsequent meeting.

Q. Just to be clear, Dr. Rybolovlev asked you to reach an agreement that there were provisions -- that there would be provisions for pool-by-pool default; is that right?

A. Yes.

Q. Did you agree to make that change?

A. On the spot I told him -- it was often on the spot. I told him I would consider it because I was very, very eager to cooperate and try to work with him. I respected him. He provided an enormous amount of capital and we were doing a lot of good together. But I went home and I thought about it and I realized I couldn't agree to it.

Q. Did you ever reach agreement to modify the LPA to approve a pool-by-pool default structure?

A. Absolutely not.

Q. Did you do anything in terms of the administration of the fund or the portfolio or capital calls in response to the information that you had been given about liquidity or cash flow issues with Rigmora?

A. Yes, absolutely. As I said, we were always trying to accommodate them and trying to work with them. I couldn't agree to a global default, but I could certainly agree to calling capital at a lower rate. And so we went back to the teams and the companies and said, look, can you make due with less? In this quarter, can we call this amount and not that amount? Can we reduce the scope of the projects that the companies are working on? Those sorts of things.

And I would get pushback. And it would be, wow, yeah, but you know that means we're not going to reach the clinic.

And I would say it's okay if it takes another six months or even a year. It's better to have lower capital calls. It's what Dmitry needs.

And everyone would agree, and we would slow the companies down or drop some programs and call less capital.

Q. If you made those types of changes, would that have an impact on the company's ability to reach milestones that might have been described in the original investment memoranda?

A. Yes, in theory. But as I said, those milestones in an IM are rapidly obsoleted by the developments in the companies. But to the extent that there was one that was still being worked on, yes, absolutely. Any program that was being worked on when we slowed down the capital was going to get wherever it would go slower.

Q. And did you ever discuss with Dr. Rybolovlev the effect of reduction in the amount or pace of infusions of capital on the progress of these companies?

A. Yes. We said we can do it, but it's going to slow things down. And we said okay.

Q. While you were administering this belt-tightening, were you concerned that Dr. Rybolovlev would actually default on his commitments?

A. No. I had faith in the pillar of the partnership, at least my opinion of it, which I told him at the very beginning, and I maintain, and that is that he would not default because of the global default, if necessary, as a deterrent. Also because I thought he was honorable and believed in the companies.

The problem was that I had -- once we started to slow down the flow of capital, I had many, many people coming to me, worried in the constant -- the refrain was, okay, I understand liquidity constraints and slowing things down, that's okay. But do you think that the Family Office will meet its obligations for the entire Series A? Should I worry about that?

And my answer was always no, absolutely not.

Q. Just to be clear, your answer to those

folks was that ultimately you believed that the Series A funding would be there?

A. Yes, that the approved budgets would be met and the approved budgets matched the size of the Series A financings per company.

Q. In parallel with this, were you also doing some thinking about what would happen in the event of a default?

A. Yes.

Q. What did that look like generically, without disclosing the contents of any specific conversations?

A. When your largest LP tells you he's thinking about defaulting, honestly, you pick up the phone and call your lawyers and say, what does this mean? Can we look at the LPA? I need to understand this. I've never been in this situation before. And so we did.

Q. What would the consequences be of a funding default in Pools V-1 and V-2 to the folks associated with the portfolio companies, in your estimation at that time?

A. They would lose their jobs, they would lose the value of their equity. Projects wouldn't be

funded that we committed to academic institutions. And extremely well-known scientific founders with many, many options as to where they could go, other venture funds -- and they had chosen us -- who had had long conversations with me about the existence of the global default, those commitments wouldn't be honored. Each company has employees, has contracts for various kinds of leases, funded research back to founder labs. All of it would cease, and indeed in the current default has.

Q. There's a bit of contention in this case that perhaps some of the portfolio companies were wasteful or inefficient with their spending of capital.

Are you aware of that?

A. Yes.

Q. And did you or your management team ever take a look at the relative efficiency of one of your portfolio companies versus a set of peers?

A. Yes.

Q. Do you remember which company you looked at in that case?

A. That happened to be Ascidian.

ATTORNEY BERDON: Can we take a look

at JX 874, please, Marco. Let's start at page 1.

Q. So who is Dan Rosan?

A. He's the chief financial officer and chief business officer of Ascidian.

Q. And what was being sent to you and Ms. Batarina and Mr. Ehlers here?

A. It looks like a board pack from May of 2024.

Q. Turning to page 42 of that deck.

A. It also includes the Roche deal, definitive agreement.

Q. I'm sorry. Can you just tell the Court what you mean when you say "the Roche deal."

A. Ascidian did a big corporate partnership with Roche, and I believe it had just closed at that time.

Q. What type of financial relationship was put into place between Roche and Ascidian; do you recall?

A. It's a typical BV deal where Roche committed to develop three what are called targets, starting points, in the biology that Ascidian is exploring to create drugs. Those happened to be in the neurodegenerative disease space. For those three

targets, they agreed to an upfront fee of nondilutive cash on signing of 15 million per target, so 45 million.

And then there typically are some R&D milestones, early milestones that the company covers the R&D that takes place at its labs for those targets. And then there are milestones that are paid in the course of the work on the project starting with as early as one year after the commencement of the work for research milestones all the way out to post sales, reaching a certain plateau in revenue. And there's a royalty.

Q. Taking a look at what is in front of you as page 42 of that board deck, is this the comparison of efficiency that you mentioned earlier?

A. Yes. I was actually surprised.

Q. And how do you interpret the information on this slide?

A. Well, this is a list of competitors in what's called the RNA editing space or DNA editing space. And I will not go into detail unless asked. But these are companies that were founded to do something close to what Ascidian does.

And you can see -- and it measures how

much equity funding had been required until the company got its first project into the clinic.

And you can see that while some of them have greater pipelines and one has more than one clinical project, they have massively more equity financing than Ascidian. Ascidian took $78 million to get a very important product into the clinic for Stargardt's disease, which is the most common hereditary blindness, and it has a pipeline of seven programs. Not bad on 80 million.

You see what others have done for -- I don't know. The closest is three times more or something. No, that -- the closest that got into the clinic with one product was 361 million.

Q. Thank you, Dr. Harrison.

I'd like to just turn your attention back for a minute to Braeburn.

You mentioned that Braeburn is a pharmaceutical company that has a product on the market now. Has it been valued recently?

A. Yes.

Q. And what was the equity valuation at that time?

A. $2.2 billion.

Q. And was there also a DCF valuation done at that time?

A. Yes. It was 2.9 billion.

Q. Why is there a difference between the equity value and the DCF value, to your understanding?

A. The delta is made up by a royalty that ATP owned entirely, which was valued at the time of distribution at about 700 million and has a total face value of around 900 million. And that was distributed into a pass-through entity that is owned by the two partners in Pool Braeburn, myself and Anna Batarina, and the Family Office.

Q. Putting the royalty agreement aside, was Braeburn on firm financial footing in 2021, 2022?

A. No.

Q. And did ATP enter into any financial arrangements to address that in addition to the royalty agreement?

A. No -- oh, I'm -- in 2021?

Q. No. 2022 or 2023.

A. Oh, yes, we did, yes.

Q. What arrangements did Braeburn enter into?

A. We worked with Braeburn to put in

place a launch debt with Hercules Capital.

Q. Before putting the Hercules facility in place, who was going to be responsible for paying for the launch of Braeburn?

A. It would have been paid entirely out of the royalty purchase agreement, which was from capital provided by the Family Office.

Q. And did the Family Office have financial obligations to contribute capital for the purpose of funding the Braeburn launch?

A. Yes. The RPA required a budget commitment of $200 million, which they signed.

Q. Was there a rate of return that was agreed to in return for that $220 million commitment?

A. Yes. It was a 40 percent royalty but contingent on several things. It was capped at five times whatever amount would have been invested in the RPA, the royalty purchase agreement.

Q. Did Rigmora originally support the idea of the Hercules financing?

A. Yes, they asked us to do it.

Q. And did they stay constant in that support?

A. It was a bit schizophrenic. In -- so

we set up this launch debt with two different debt providers, and there were KYC problems, and they withdrew their term sheets.

Fortunately, ATP had a relationship with Hercules through another portfolio company that was public. So we called Hercules and asked them if they would do a deal, and they did. They did a very good deal with us.

Right at that time, the Family Office called for the distribution of Braeburn under Amendment 20 of the LPA. It's a distribution provision that entitled the Family Office to call Braeburn out of Pool Braeburn but subject to several conditions. The conditions weren't met, but more importantly, Hercules put conditions on providing their launch debt, which was that Braeburn be controlled by ATP and also that the securities of Braeburn -- namely, the equity and the royalty purchase agreement, and there was also a convertible note -- be essentially subject to their lien to secure the note. So calling, distributing those securities would have resulted in obliterating that deal.

Q. So the Family Office and ATP reached agreement to move forward with the Hercules financing

and put the distribution of Pool Braeburn aside at that point?

A. Yes, essentially.

Q. Did the issue of the distribution of Pool Braeburn come up again?

A. Yes.

Q. When was that?

A. July -- late July of 2024.

Q. And did that lead to a disagreement?

A. Yes.

Q. Did that disagreement become public?

A. Yes.

Q. How?

A. They sued us in Cayman.

Q. In connection with that lawsuit, did ATP assert any counterclaims?

A. No.

Q. Did ATP run into court here in Delaware to assert claims against Rigmora after being sued in Cayman?

A. No.

Q. What happened to that disagreement and lawsuit in Cayman?

A. I flew to Monaco and I suggested to

Dmitry that the best thing would be to settle. We had a couple of days of meetings and we agreed to the basic outline of a settlement in order to continue to work together.

Q. And during the time between the commencement of that lawsuit and the ultimate agreement to settle it, what was going on in terms of funding Pools V-1 and V-2?

A. We were calling capital, and the Family Office was meeting the capital calls.

Q. Did the Family Office's position change with respect to any aspect of its obligations to meet capital calls?

A. Did their position change?

Q. Yes.

A. Yes.

Q. And what changed?

A. Bizarrely, in October of that year, we started to receive the capital calls with a disclaimer that the Family Office viewed them as voluntary.

Q. And did the Family Office at that time explain to you why they felt it was voluntary?

A. No.

Q. Not in any conversations between

yourself and the folks at Rigmora did they explain it to you?

A. There weren't open, fulsome conversations at that time because, don't forget, we were in litigation and we were trying to settle it. So the conversations were constrained to initially the legal exchanges in the suit and then the settlement discussions.

ATTORNEY BERDON: Can we pull up JX 998, please.

Q. Dr. Harrison, looking at Exhibit 998, do you recognize it?

A. Yes.

Q. And what is it?

A. It's one of those disclaimer emails.

Q. And it's from Anna Kolonchina?

A. Yes.

Q. Now, she refers to an affidavit in that email.

Do you know what she is referring to there?

A. I believe it would be an affidavit that she would have made in their Cayman lawsuit.

Q. And did this language or language

referring to it ever appear again in correspondence from Rigmora?

A. Yes. It became a feature of their correspondence related to incoming capital calls.

Q. And how did the Braeburn litigation resolve?

A. It resolved in a settlement, which took the form of Amendment 22 to the limited partnership that I believe was signed December 20, 2024.

Q. Thank you.

ATTORNEY BERDON: Your Honor, I think we're up close to the time you wanted to take a break.

THE COURT: We are. We can do that. Thank you.

Let's take 15 minutes.

(Court in recess at 10:45 a.m.)

(Resumed at 11:00 a.m.)

THE COURT: Please be seated.

ATTORNEY BERDON: May it please the Court.

BY ATTORNEY BERDON:

Q. Dr. Harrison, just before the break we had talked about the execution of Amendment 22.

During the time that the Cayman litigation was pending, were there portfolio companies at ATP that were nearing the end of their Series A commitments?

A. Yes.

Q. Were there initial budgets?

A. Yes, their budgets at that time.

Q. And were there discussions between yourself and Dr. Rybolovlev about new budgets while the litigation was ongoing?

A. Yes, they were part of the settlement discussion.

Q. And were there -- can you explain to the Court the issues that you were facing in terms of certain companies coming to the end of their financing, initial financing commitments and initial budgets?

A. Well, the issues were that the companies in question in most cases were projected to run out of cash by certain dates. In one case, there was a company, Ascidian in particular, that would get to the middle of that Stargardt disease trial and then run out of funding to conclude it in the proper way with what's called a pediatric cohort. And that required additional capitalization in the form of equity and a new budget commitment. This was not news. This was an ongoing discussion.

Q. And, as you said, those discussions became part of the settlement discussion; is that correct?

A. Yes.

Q. Did they become part of the settlement agreement?

A. Yes.

ATTORNEY BERDON: Can we please have JX 1068.

Q. Dr. Harrison, do you recognize what's been marked as Exhibit 1068?

A. Yes.

Q. What is it?

A. Amendment 22 to the LPA.

Q. Do you recall there being a specific section that was called out to discuss about budgets?

A. Yes.

Q. Off the top of your head, do you recall what that was?

A. I happen to. It's paragraph 26.

ATTORNEY BERDON: Can we go to page 4, please, Marco.

Q. So I don't want to spend too much time on this, Dr. Harrison, but can you tell me an overview of what's discussed here in terms of the cash-out dates for these various companies.

A. They're four companies with projected cash-out dates: Aulos, which is developing a cancer drug in the middle of a clinical trial; Nereid and Nine Square, which are neurodegenerative disease companies that have very promising preclinical projects; and Replicate Bioscience, which is an RNA vaccine company with several promising projects and a clinical project.

Q. And is it fair to say that paragraph 26 here actually gives estimates of their cash-out dates as of the time it was executed?

A. Yes.

Q. In your view, was it clear to the Family Office and Dr. Rybolovlev that these companies were running out of cash in the near term as of December 20 of 2024?

A. Yeah, it wasn't news. We had discussed the need for new budgets -- had been discussing the need for new budgets prior to the commencement of their suit, their lawsuit.

Q. And I note that there's a proviso here that talks about "twelve months" budgets, a period of 12 months after the remaining unfunded amounts.

What was the significance at that time of the "twelve months" language?

A. Well, when I went to Monaco and proposed to Dmitry that we settle, I told him that, look, we've come a long way, we've been working together since 2011, we've had some great successes. But we've yet to build the pharma company that you wanted to build. It turns out that in the portfolio right now, Dmitry, there are projects that, at least to my mind, represent the formative aspects of that company. And we could take those pieces and really figure out how best to organize them in such a company.

And he said that's what he wanted to do. And that was the basis of the settlement.

But I said that it will take awhile to figure that out. That's a very complicated plan. We have the team, able to do it, but it will take some time. And I proposed that we put in place holding budgets so that the companies that were running out of money could continue for a 12-month period during which time we at ATP would work diligently on creating that plan and also work collaboratively with the Family Office and Dmitry.

Q. Turning your attention to the last sentence of paragraph 26. Can you tell the Court your understanding of the meaning of that last sentence.

A. That they would reasonably consider the new budgets and work diligently, and we would work with them, to create a loan facility that would be secured by the pass-through entity that had received the Braeburn royalty purchase agreement or the Braeburn royalty.

Q. And that was targeted to raise a certain amount of money?

A. About 300 million. He said he would use that 300 million to build pharma.

Q. And what was your understanding at the time of the availability of that type of financing?

A. Very available.

Q. And why do you say that?

A. Because the original idea of doing a royalty financing based on the royalty came from us. About a year prior, understanding there were liquidity issues -- this is before the suit in Cayman -- I started to sort of approach my network, which includes financial groups that do nothing but finance royalties. You sell them a royalty that you own and they pay you back something less than the total cash flow that you project it will have.

And we had worked out a deal where this $900 million-phase royalty would generate approximately 700 million for the Family Office. And we brought it to them, and we sort of didn't hear about it for awhile. And then they came back and said, oh, we have a better deal, we're going to take it on ourselves.

And that disappeared. That was sometime in the early summer of '24. And then the lawsuit. So when we emerged from the lawsuit via the settlement agreement, I thought we were going to

collaborate on the royalty financing, but they wanted to do it themselves. And after several months they failed.

Q. Do you believe that Rigmora was reasonable in trying to pursue that equity financing on their own?

A. I can't comment on that. I think it -- they certainly didn't use a resource that was right in front of them — us. We tried, but they wouldn't accept our help.

Q. Did Rigmora hire a financial advisor to try and help them?

A. Yes.

Q. And to the best of your understanding, does that financial advisor have a presence in the market for royalty finance?

A. I don't know that they particularly do or not. I think there's somewhat of a general shop based in the UK. I know that the group that we were working with does nothing but royalty deals.

Q. Have any of the companies listed in paragraph 26 been given additional financing by Rigmora?

A. Yes.

Q. Which?
A. Replicate.
Q. At the time of the execution of Amendment 20, what was Replicate's target out-of-cash date?
A. At the time of the execution of Amendment 22?
Q. 22. Forgive me.
A. February of 2025.
Q. Do you recall the date on which Amendment 22 was executed?
A. December 20th of 2024.
Q. And did ATP submit new budget requests to the Family Office after the execution of amendment 22?
A. Yes.
Q. When?
A. December 24th.
ATTORNEY BERDON: I'd like to put up Exhibit 1079, please, Marco.
Can you scroll down do the bottom email, please.
Q. Dr. Harrison, except for the fact that this appears to have been taken from Rigmora's files,

do you recognize the email that's highlighted in front of you?

A. Yes. It's my email of transmittal contained in the email to the -- the attachments were the budget requests.

Q. And in particular, did you have materials there for Replicate?

A. Yes.

ATTORNEY BERDON: Can we go to page 3, please, Marco.

Q. Do you recognize what's on the screen now?

A. Yes.

Q. What is it?

A. It's an investment memorandum we prepared for the $11 million funding extension for Replicate.

Q. Was it typical for ATP to prepare a whole new investment memo for an $11 million budget extension?

A. No.

Q. Why did you prepare it?

A. We were coming out of a lawsuit. We wanted to be really buttoned up. We wanted to make

sure that we did absolutely everything we could to make certain that the budgets were going to be approved. And we actually thought it was unnecessary in a normal operating environment. But we weren't sure what that operating environment would be after the settlement agreement, so we had our teams prepare a lot of materials.

Q. And I'm not going to walk you through it today because it's pretty technical. But did you believe it was adequate for the purpose?

A. More than adequate.

Q. Did you hear back quickly from the Family Office in response to your request for the $11 million budget extension for Replicate?

A. Not really quickly.

Q. Well, do you recall any response?

A. Yes.

Q. And what do you recall?

A. Yuri Bogdanov, who had recently become the head of the Family Office, sent us a very curious diligence request email.

ATTORNEY BERDON: Can we pull up JX 1107, please.

Q. Dr. Harrison, do you recognize what's

been marked as JX 1107?

A. Yes, I do.

Q. And taking a look at the email, what is it?

A. That's an email from me to Yuri saying that it's essential that we fund Replicate. We agreed to fund 12 budgets to the companies that we know are running out of cash, Replicate among them. Replicate is running out of cash on schedule, which would then be two weeks from the date of the email.

ATTORNEY BERDON: Can you scroll to the top. There you go.

Q. Do you recall receiving this response from Mr. Bogdanov?

A. Yes.

Q. And did Mr. Bogdanov have an attachment to this email that posed some questions?

A. Yes.

ATTORNEY BERDON: Can we get the next page, 3, please.

Q. Dr. Harrison, what's wrong with this set of questions?

A. It's bizarre. I mean, first of all, this is a company that we founded I think in 2021 and

on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with Dmitry.

And typically when you know a deal and you're just funding specific programs that you know and you understand the technology and you understand management and everything, providing an additional relatively small amount of capital shouldn't require much diligence at all.

Questions are, of course, fair. And reasonable questions are more than fair. And we're not only prepared to answer any questions, but we had already talked about Replicate, and then in the investment memo addressed all of their issues involved in what the company was going to do at that time with that $11 million.

What we have here, if you look at the first bullet point, Yuri is asking for all the board minutes and board materials since inception. That's just not a reasonable diligence request. It has no meaning for what the company is going to do with $11 million aliquot going forward in a specific couple of projects. That's the kind of diligence request that might come in an M&A transaction at the very end

of the transaction from a corporate buyer's legal department.

Then there's other features of this. The second one is also very strange. It's asking for a bring-down of all the company's spending, essentially, since inception, categorized by certain categories. I've actually never seen this before in any diligence effort in which I've ever been involved, either as the diligence doer or the diligence receiver, ever. So entirely make-work.

And then there were questions that were kind of unsettling because they referred back to the original Replicate investment memo. But not only were we clear that investment memo milestones don't travel with a development of the company, in Replicate's particular case we had pivoted away from the original investment memo milestones via an approved budget extension that the Family Office knew about and approved.

So Yuri here is asking about this pivot as if it's news. And that pivot was from cancer vaccines to infectious disease vaccines, which we did during COVID. And he's asking to justify the pivot and what does it mean about the company in a quite

negative framing.

And it goes on in that way that made us realize that this was anything but reasonable consideration of a new budget. It was, in fact, a kind of blockade.

Q. And just so the Court understands, when you talk about a "pivot," can you briefly talk about the significance of a pivot from a technology point of view and from the perspective of a venture capital manager.

A. Well, these projects are like organisms. You're always measuring them and figuring out what they're doing and then adapting your plan to what they produce in experimental results. You're also factoring what's going on in the environment, in the world, and you're understanding what you can do with a capital that you have in your budget or your Series A round or committed capital from another source.

In the case of Replicate, the RNA technology that it has really does have the potential to create a certain kind of cancer vaccine that would be great. The problem with that is that it would take three years to read out in a clinical trial. And we

already knew that it was problematic, from that perspective, when we founded the company.

And then when we were facing syndication issues, not related to companies, and COVID happened, we were intrigued by the idea of doing a different kind of a project in infectious disease that would read out, achieve its clinical proof of concept sooner. And that turned out to be a rabies vaccine. And so -- and that required moving from a $40 million Series A budget approval to a $53 million Series A budget approval, i.e., a $13 million extension.

And we talked about that with the Family Office and sent in that budget extension request with no IM, with no fanfare at all. They approved it, and we got on to doing the business of the pivot. The rabies vaccine, by the way, succeeded very well.

Q. Did the Family Office end up approving an extension of the budget for Replicate in early 2025?

A. Yes.

Q. How much did you ask for?

A. 11 million.

Q. And how much did they end up approving?

A. 18 million in two $9 million pieces.

Q. Was there any other condition that the Family Office placed on its willingness to fund those amounts?

A. Inside the budget, no, there was -- we agreed there would be -- this was the only budget aside from the Braeburn royalty purchase agreement, $200 million commitment, where there was a milestone inserted at the request of the Family Office. And that milestone request language is actually in the LPA. They can request and we reasonably do allow, but it only happened once. It was in this budget.

And the milestone was that Replicate conclude a Latin American deal with a pharma company in Latin America for the rabies vaccine.

Q. Do you recall receiving an email from Patrik Blöchlinger regarding the Replicate budget approval?

A. Yes, it was also quite strange. We sent the -- yes.

ATTORNEY BERDON: Can we pull up JX 1192, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 1192?

A. Yes.

Q. Does this refresh your recollection as to any other conditions to the payment that the Family Office made with respect to the two $9 million tranches?

A. Well, we agreed when we were sitting down in Monaco in January -- and actually brought Replicate's CEO over to present to Dmitry and Yuri -- that we would put in this $9 million milestone inside the budget. Indeed, the budget that we sent, which is attached, in which they signed only has that milestone. And there it is.

But in the email of transmittal, outside the budget, Patrik Blöchlinger, the general counsel of Rigmora, adds this condition, which was news to us. And we didn't regard it as legal because it's what they want post facto, and they signed the budget.

Q. Did the Family Office ever approve new budgets that had been requested for Ascidian?

A. No.

Q. Aulos?

A. No.
Q. Nereid?
A. No.
Q. Nine Square?
A. No.
Q. So you testified a little earlier that the capital commitment at inception for Pools V-1 and V-2 was a billion dollars.
Do you recall that?
A. A billion dollars, yes.
Q. Was there any formal delineation between Pools V-1 and V-2 financially?
A. No.
Q. Do you know whether Rigmora has made contributions to those pools?
A. Yes.
ATTORNEY BERDON: I'd like to pull up PDX 1, please.
Q. Dr. Harrison, have you reviewed the source material that was used to compile the amounts set forth here?
A. Yes.
Q. Were they voluminous?
A. Yes.

Q. Were you able to commit them to memory?

A. No.

Q. So based on what we have here in front of you, can you tell the Court what the columns for "Approved Budget" and "Amount Contributed" mean?

A. Yeah. On the far left you see the list of the portfolio companies in Pools V-1 and V-2. You see Replicate in the bottom. And then you see in the fourth column over the approved budget for each company, the total budget, if there were multiple budget approvals.

And then in the next column over you see the amount that has been paid in on each of the budgets. And then you see in the final column the amount that remains of each budget that has not been called or contributed.

Q. So as of May 30th, 2025, was there about $178 million in budgeted but as-yet-uncalled capital for Pools V-1 and V-2?

A. Yes.

ATTORNEY BERDON: Taking the -- scroll down, please.

Q. Dr. Harrison, does the chart at the

bottom of this table contain information regarding Pool V-3?

A. Yes.

Q. And for Ascidian and Marengo, can you explain to the Court what that information is.

A. It's the same sort of information. You have the companies that have approved budgets remaining in Pool V-3, that's Ascidian and Marengo; the total amount of budgets approved in the fourth column over for each company; the amount that's been paid in on each budget in the next column; and then the remaining amount to be called on each budget.

Q. And if one were to sum the amount remaining on Pool V-3 with the amount remaining in Pools V-1 and V-2, did that sum to about $218 million?

A. Yes.

Q. And are you pretty confident in that math from the position of the general partner, not to the dollar, but you're confident in that math?

A. Yes.

Q. Do you also keep track of remaining budgets across pools to govern the capital calling process?

A. Yes.

ATTORNEY BERDON: Can we go to PDX 1 at page 3, please.

Q. Dr. Harrison, can you explain to the Court what this indicates in terms of budget remaining for each of those companies.

A. This is the total of the companies in Pools V-1, V-2, and V-3 listed. And the "Budget Remaining" column contains the budgets for each company that have been approved but not yet called.

Q. So putting that all together, we have about $214 million in budget remaining?

A. Yes. You said 218 before, but I think it sums to 214.

Q. I stand corrected. Thank you.

So did you have meetings in Monaco in March of 2025 to discuss the budget approval request for Aulos, Ascidian, and Marengo?

A. Yes.

Q. And what was the nature of those meetings?

A. We had had meetings in Monaco in January discussing why the budgets weren't approved, why there was no reasonable consideration of the budgets, Yuri's odd diligence request. Basically a

relationship reset meeting.

At that meeting, we also called in Nathaniel Wang, the CEO of Replicate, to scramble from the west coast of the US to Monaco to present, which he did. That was a successful process. And we all agreed that the management from each of Ascidian, Marengo, and Aulos would come at our next face-to-face meeting, and we scheduled that for March.

Q. Were their presentation materials prepared for those meetings?

A. Yes.

Q. And was there a data room opened that Rigmora could access in advance of those meetings?

A. Yes.

Q. And what was the nature of the data room?

A. Well, a data room is something you typically open for a pharmaceutical company to do due diligence, to complete a deal on a new target or something. And it contains all the IP, all the experimental data, every conceivable corporate document that you could imagine, every technical document.

And then you can regulate who enters a

data room, and you see who enters it, and it's a standard feature of getting a deal done in our space.

ATTORNEY BERDON: And just for completion, can we pull up JX 122 -- I'm sorry, 1222.

Q. Dr. Harrison, do you recognize Joint Exhibit 1222?

A. Yes.

Q. And what was it?

A. It was sending Yuri and Dmitry's assistant -- which was our way of communicating via email to Dmitry or with Dmitry -- the materials for those March meetings in advance of the meetings themselves.

Q. And were those presentation materials, in your view, highly detailed?

A. Oh, yes.

Q. Detailed enough for a reasonable person to make some decisions?

A. Yes. I would say detailed enough for an external due diligence, certainly a company with a data room. But if it's a company you own already and you know extremely well, where you've had multiple management meetings, this wasn't the first, this was a lot.

Q. And in addition to these written materials in the data room, you testified that management actually appeared?

A. Yes. We flew them to Monaco.

Q. And did that group include just employees?

A. Well, it included the senior management from each of the companies. And at the time we were also doing a review of oncology projects in the portfolio. And to do that we hired a consultant named Bill Grossman, who had been the head of oncology at Novartis and then became the head of oncology at Gilead. I knew him. He's very smart, highly qualified.

And so he was looking at our portfolio. And we offered to bring Bill to Monaco, be it just to make sure that if Yuri and Dmitry had any questions, they could ask them.

Q. And were questions asked of Mr. Grossman?

A. Yes.

Q. And did he express --

A. Dr. Grossman.

Q. Dr. Grossman. Did he express views

that could be perceived as critical of one or more of the companies?

A. Yes.

Q. What was that?

A. He was critical of the way that Aulos management had conducted the clinical trial.

Q. And did he say that those problems were irremediable?

A. No. Dmitry fastened on it and decided we needed to fire the chief medical officer. We thought that was a bit extreme, and we wanted to focus on what the actual problem was, which we did when we got back.

Q. After focusing on that problem, did you and your senior management at ATP eventually come to a path that you thought was appropriate to move forward with the funding of Aulos?

A. Yes. It was very interesting. We actually talked with -- it's a melanoma trial for treatment of melanoma that's failed everything else. And the company is doing extremely well. And the question is making sure that the criteria for recruiting the patients is correct. It was very interesting to talk to these melanoma experts and

really tighten the criteria and work with management to make sure that those became the inclusion and exclusion criteria in their clinical trial.

Q. Did you discuss that progress with Dr. Rybolovlev?

A. I tried to.

Q. And what did he say to you about his views of your ability to manage that problem on a going-forward basis?

A. In the meeting where I tried to discuss it, it was a Zoom meeting, he brushed it off. Then in a subsequent meeting, he brought up Aulos and he said, I trust your judgment, you've made me a lot of money; I understand that you want to do Aulos and we should do Aulos.

Q. Coming out of those March meetings, were budgets approved for Aulos, Ascidian, or Marengo?

A. No.

Q. After waiting a period or working on this for a period, did you actually make a proposal to the Family Office on how the existing budgets might be reallocated?

A. Yes.

Q. What prompted that?

A. It became clear to me by April -- we had submitted these budgets in December. The Replicate budget process was the only one that had gone through, and it was not normal. And there was no budgets that were being -- there were no budgets being approved.

It was clear to me -- also that the royalty financing that they were trying to do was not going to work out. They were proposing a very different structure that would involve encumbering Braeburn, the company, in a way that would not likely be acceptable.

So I looked at that and I just said, you know, I think the only capital that we're going to have, Dmitry, is the capital in the approved budgets. Why don't we just work within that and figure out how to move some of the clinical projects along to where they need to go so we'd have the definition of whether or not these should be the starting materials for the pharma company.

Q. And under that proposal, what would you be taking away from in order to direct that capital towards the clinical companies?

A. It was a reallocation of some of the

budgets from the preclinical companies to the clinical companies.

Q. Did you end up reaching agreement with the Family Office on a reallocation proposal?

A. Ultimately no. I thought we had but we did not.

Q. And from your perspective, why not?

A. Well, this -- what happened was that we had a Zoom call with Yuri and Dmitry and Anna Batarina and myself, I think it was on May 9th at this point, where I was to present the reallocation proposal. And I sort of led off with a 10-minute introduction of what it would accomplish, and then I was prepared to share screen with a spreadsheet, showing it.

And Dmitry and Yuri said no, that won't be necessary. This is moving in the right direction. Now we meet with the lawyers.

I said, that's strange. Why would we be meeting with lawyers?

Oh, we should just meet with lawyers.

I said, but usually when we do a deal like this -- and there were many -- we form some sort of a term sheet that will then become an amendment to

the fund or a side letter or some such thing. And we didn't need outside lawyers to do that. People might have that reviewed by outside lawyers, but it wasn't a necessary process.

Oh, no, no, this is very important; we need a lawyer call.

And we scheduled it for that Tuesday the 12th. I had sent several emails to Yuri and Dmitry in the interim, saying what is this lawyer call? Shouldn't we just try to do this in a normal way?

And we actually had Dan Finkelman, our GC, create basically a term sheet that would serve as the basis for what would become that reallocation amendment, or whatever you want to call it. So we wound up having this lawyer call, and I think that was sort of the beginning of the end.

Q. What about the lawyer call, from your perspective, got in the way of completion of a reallocation deal?

A. It was an ambush, literally. We got on the Zoom in good faith. We had one of our outside counsel, just to balance the fact that they were going to have outside counsel. But we didn't think anything

-- we were more curious than anything else.

Dmitry, Yuri, Patrik Blöchlinger and Anna Batarina, myself, and Mark Gordon from Wachtell and four lawyers from Latham & Watkins -- who I had never seen before, and I don't even think we made introductions -- where they just lit into me, the lawyers from Latham, saying it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation. If they're worthless, why don't you shut them down? All of these crazy mischaracterizations.

I was shocked. Mark Gordon tried to throttle this very aggressive partner from Latham, but it was still the same thing.

And I just put up a wall. I did not say that. Those were not my words, et cetera. And it didn't go very well.

Q. So from your perspective, what was the value of the preclinical companies at that point and why were you willing to allocate budget money away from them to the clinical companies?

A. We've had a very successful translational track record, meaning we start early and

build through to clinical proof of concept. And looking at these projects that are the very projects that are created by this top-quality pharma team in the preclinical companies, they're just very strong projects, first stage. So what should happen is full budgets for the preclinical companies and full budgets for the clinical companies.

But pragmatically it was obvious that wasn't going to happen. So I did the next best thing, which is to say, look, at this stage, it would be better to advance the clinical projects, focus in on only selected preclinical projects, and bring them with a relatively small amount of money to the -- to the go/no-go decision to bring them into the clinic, which is where the real spend starts.

Q. Okay. After that lawyers call, did you end up getting some correspondence from Mr. Bogdanov?

A. Yes.

Q. And do you recall the date you received it?

A. May 15th.

ATTORNEY BERDON: Can we pull up JX 1336, please.

Q. Do you recognize --

ATTORNEY BERDON: Sorry. Can you go to the bottom email of the chain, please.

Q. Do you recognize what's been highlighted in the bottom email on the chain?

A. I recognize the email. It's an email that Yuri sent instructing us to kill the early-stage companies. And if we killed the early-stage companies, then they might consider providing budgets for the clinical companies.

Q. Well, let's just briefly take a look at the first sentence of the full text paragraph there. "The SLPs see no way for a path to commercial success for these Early-Stage Companies ...."

What was your reaction when you read that?

A. It was certainly a problematic statement, and I disagreed with it.

Q. Why did you disagree with it?

A. First of all, it was problematic because we started these companies as preclinical entities and the idea that if by "commercial success" you meant sales, it's impossible and known that they're nowhere near sales.

But commercial success for a company at this stage is a thing. It exists. You can do a corporate deal, which we have many in the portfolio. Ironically, one on this list and one that's not on this list, which have actually occurred subsequent to this email -- you can do an M&A of a company like this, and these happen. And there are many examples of early-stage companies getting bought for a fair amount of money. You can do an equity financing from the outside, which could eventually lead to a mezzanine round and an IPO for an early-stage company. And we've done those.

And in our case, if the idea is to build a pharma company with a pipeline, you could choose to fund some of these things yourself because there's value in each of these companies.

So I totally disagree.

Q. He also says that one of the reasons -- he says, "because: they have failed to meet [] milestones set out in the investment memoranda on which SLP's initial funding was premised ...."

SLP, what do you understand that to be?

A. Subject limited partner. It was a

term that Rigmora, for some reason, liked to use in legal correspondence.

Q. Did you agree that the preclinical companies' path to commercial success was hampered by their failure to meet milestones set out in an initial investment memoranda?

A. No. On the contrary. The whole point of having a team like we have is to develop the companies from the start that's represented in the investment memoranda to wherever they need to go based upon what the research programs tell them.

Q. It also says here, "there is no third party interest to invest in these Early-Stage Companies ...."

Do you agree with that?

A. No. It's not true.

Q. What type of third-party interest were you aware of at that time with respect to these companies generally?

A. There were negotiations going on with big pharma companies to do corporate deals along the lines that I've discussed, one of which has closed -- two of which have closed actually. And there has been a lot of interest from the VC market in these deals

but which has never eventuated in a financing due to the KY issues that we have faced, particularly post Ukraine.

Q. Two issues. Number one, which of the companies on this list has done a corporate deal that you're aware of?

A. Deep Apple did a corporate deal recently.

Q. And who was that with?

A. Novo.

Q. And when it was announced, was there a potential total value of that deal announced?

A. I think it was over $800 million.

Q. And going, then, to the point that you just made about KY issues. Can you be specific.

First of all, is that KYC?

A. Yes, know your client.

Q. Can you be specific about the nature of those KYC issues that have come up in discussions with potential equity investors?

A. Yes. It's plagued us and we've really tried to neutralize it in the market for years. After the Ukraine was attacked and the sanctions of Russian individuals became prevalent, we did a lot of work and

worrying with Dmitry about whether or not he would be sanctioned. He wasn't. He was correct about that. He was sanctioned by the Ukraine, but no one took that seriously. He wasn't sanctioned in the U.S. and the EU.

This didn't stop the market, namely the equity markets in the U.S., from not investing with a fund that was controlled by Dmitry's entities. And every time that we -- and we had done a lot of analysis on Dmitry. I won't go into it, but we understood that he was not going to be sanctioned.

And we would try to explain this, and the compliance departments would just shut it down. And we had term sheets that were yanked. We had financings that looked like they were about to close that were -- blew up. We had many, many discussions across the market. And it was pretty clear that we were locked in due to this problem.

Q. Another question for you -- down further in the text here it says, "The SLP's position is therefore that further funding of those Early-Stage Companies will waste the ATP Fund's assets. We understand that you hold a similar view ...."

Was that true?

A. Neither statement is true. And that was the problem in that lawyer call. They were putting words into my mouth. I didn't hold that view. I never held that view. I didn't express that view. It was their idea for me to swallow, which I wasn't having.

Q. After receiving what's been marked as -- forgive me -- JX 1336, what did you do?

A. Well, I wrote Yuri a reply saying I disagreed with everything, and here it is. And at that point, obviously, we were having serious conversations about what to do, given what was apparently a quite hostile position of the Family Office to the fund.

Q. Just for clarity's sake, you're referring to your email on JX 1336 at the top dated May 19th?

A. Well, what would you like -- I'm sorry?

Q. You talked about responding.

A. Yes, this is that email.

Q. You talked about the email that's on the top of Exhibit 1336?

A. Yes.

Q. Did you issue capital calls for funding of certain clinical and preclinical companies on May 30th, 2025?

A. Yes.

Q. Why did you issue the May 30th capital calls?

A. Fund the companies.

Q. What companies in particular?

A. I don't have the full list in my mind. But it was time to fund the portfolio.

ATTORNEY BERDON: Taking a look at JX 1622.

Forgive me for just one second.

Can we go up to JX 1622, please, and let's go to page 10.

Q. Dr. Harrison, do you recall -- taking a look at this list that starts at 5/30 with Deep Apple. Can you describe for the Court the companies that you sought capital for by calling capital on May 30th?

A. The ones that are dated May 30th. So Deep Apple, Aethon, Evercrisp, Red Queen, Apertor, Initial, and Marlinspike.

Q. And Replicate, there's one indicated

for June 1st. Was that related to the May 30th capital calls?

A. Yes. We had overcalled in error on May 30th, so we retracted that May 30th call and replaced it with a June 1st correct call.

ATTORNEY BERDON: And let's go to page 13, please.

Q. So, Dr. Harrison, does this chart represent how those capital calls compared to the remaining approved budgets as of the time?

A. Yes.

Q. How did you set the amount of capital to call for each of these companies?

A. We based it on the companies having six-month budgets from the presumptive date of the receipt of those calls.

Q. And what were you projecting could be accomplished within those six months at each of these companies? What was the goal?

A. In each case, following forward on their research plans.

Q. And on May 30th, did you also call capital for partnership expenses?

A. Yes.

Q. And did you call capital for a fee that was chargeable on a semi-yearly basis for ATLS?

A. Yes.

Q. Interesting, did you call your own management fee on May 30th?

A. No.

Q. So for any of the money that you called on May 30th, was any of that to be directed into your pocket?

A. No.

Q. At the same time as you called capital on May 30th, did you also file this lawsuit?

A. Yes.

Q. And why did you file the lawsuit?

A. After the May 15th letter from Yuri, Anna Batarina contacted me and said she had spoken with Dmitry and Yuri and she wanted to tell me something.

I said, what's that?

And she said, if you call capital, it's treason, and they will sue you.

And I said, oh. And I knew that at that point, there was no possibility of a reproachment. No possibility of any kind of

agreement.

Q. Did you believe that you had the right under the LPA to bring a lawsuit against an LP who had breached the LPA?

A. Yes, absolutely. It's in the LPA.

ATTORNEY BERDON: Can we please pull up JX 1 at 74, 75, Marco.

Q. Taking a look at what's next to (iv), here. Do you recognize this language, Dr. Harrison?

A. Yes.

Q. And what do you understand it to mean?

A. It gives me right to sue a partner who defaults.

Q. And taking a look at (iv) at the bottom, "To the fullest extent permitted by law ...." Can you just read that to the Court.

A. "To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of

the remedies permitted under this Agreement or applicable law."

Q. Did the LPs pay the capital calls that were served on May 30th?

A. No.

Q. And did ATP, to your understanding, issue notices saying that the LPs were in breach of their agreement to contribute capital in response to those calls?

A. Yes.

Q. And are you seeking a finding that the LPs are in breach of that agreement?

A. Yes.

Q. What's the current status of the preclinical companies, Dr. Harrison?

A. They are in desperate condition. We've had to do massive layoffs. We've had to move companies to -- out of facilities, heavy negotiations with landlords, sales of capital equipment, consolidations, reduction of research programs.

In one case we kept a program that bloomed from a platform technology, but we had to cede that technology back to the source institution. Very difficult relationships with founders. You know, a

mess.

Q. If funding were to be made available to you, for example, by the end of the year, would you be able to reconstruct those companies?

A. Yes. We've managed to keep alive the critical projects that we thought were valuable, even at the beginning of the reallocation proposal, in the form of key employees in most of the companies that retained the knowledge. In some cases, there's tiny amounts of research that are ongoing. And so, yes, absolutely, they can be readily reconstituted. I don't know for how long, but yes.

ATTORNEY BERDON: I pass the witness.

ATTORNEY SELDEN: Good morning, Your Honor. Shannon Selden of Debevoise & Plimpton. We have some binders for the Court and the witness. May we approach the bench and hand out those binders?

THE WITNESS: May I ask a question? Are they also going to be on the screen, or do I use the binder?

ATTORNEY SELDEN: We will show them both on the screen. But you can use the binder, if that's more convenient for you.

THE WITNESS: Thank you.

ATTORNEY SELDEN: Your Honor, am I correct in thinking that we'll take a break for lunch at 12:30?

THE COURT: Correct.

CROSS-EXAMINATION

BY ATTORNEY SELDEN:

Q. I was going to say good morning, Dr. Harrison, but I see it's afternoon.

Good afternoon, Dr. Harrison.

A. Good afternoon.

Q. Do you recall Mr. Berdon showed you a demonstrative with budgets and commitments broken down by pool?

A. Yes.

Q. Setting aside the math for a moment, that demonstrative was based on your understanding of the LPA and its references to pools, wasn't it?

A. It was based upon my understanding of the budget commitments that have been signed in, which we keep records of in that ATP.

Q. The demonstrative that you looked at with Mr. Berdon is based on your understanding of the LPA, its amendments, and the budget requests and commitments; is that correct?

A. Yes.

Q. Dr. Harrison, you understood that there was a limit to the amount of capital that had been committed to the fund; correct?

A. Yes.

Q. You understood that the fund could not invest more capital than it had committed to it; correct?

A. Correct.

Q. As of May of 2023, you knew that Dr. Rybolovlev and the Family Office intended to cap their investment in the fund at $2.5 billion; correct?

A. Dmitry had informed me that that was his wish, but that is not reflected in the agreements that had been signed.

ATTORNEY SELDEN: Could you please play clip 96 from Day 3 of Dr. Harrison's deposition at page 243, lines 11 to 15.

(A video clip was played as follows:)

Question: Does that refresh your recollection that in May of 2023 Dr. Rybolovlev and the Family Office informed you that they intended to cap the investment at $2.5 billion?

Answer: Yes.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. At that point in May of 2023, you didn't do anything to assess the amount by which the fund's commitments to invest in its portfolio companies exceeded $2.5 billion; correct?

A. I think when Dmitry informed me that he wished that it be capped at 2.5 billion as opposed to the 2.9 or so that it actually summed to, we were very interested in, as usual, creating accommodations. So we did go back and try to figure out, is there any way to shoehorn everything we're doing into something like 2 1/2 billion dollars? I think I remember that I couldn't possibly get it down to less than 2.7. We kept trying and trying. And we talked about that.

ATTORNEY SELDEN: Could you please play clip 70 from Day 3, page 244, line 22, to page 245, line 1.

(A video clip was played as follows:)

Question: Did you do anything to assess the amount by which the fund's commitments to invest in its portfolio companies exceeded $2.5 billion?

Answer: No. Not specifically, no.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. Dr. Harrison, you don't recall calculating the difference in dollars between 2.5 billion and the amount of dollars that the fund had committed to invest in its portfolio companies as of May 2023; correct?

A. The specific answer to your question is no, because I was calculating something else.

Q. And you didn't do that calculation at any other point in time; correct?

A. Could you clarify the calculation that you mean?

Q. Dr. Harrison, you do not recall calculating the difference in dollars between the $2.5 billion cap that Dr. Rybolovlev informed you of and the amount of dollars that the fund had committed to invest in its portfolio companies; correct?

A. We calculated the aggregate of commitments and approved budgets and tried to bring them within range of what Dmitry said he wanted, but we were unable to do so.

ATTORNEY SELDEN: Could you please play clip 71, which is from Day 3, page 247, line 25,

to 248, line 4.

(A video clip was played as follows:)

Question: Did you calculate the difference in dollars between $2.5 billion and the amount of dollars that the fund had committed to invest in its portfolio companies as of May of 2023?

Answer: I don't recall.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. And you didn't do that calculation at any other point in time, did you, Dr. Harrison?

A. I honestly don't recall what -- doing exactly what you're asking. But I repeat that we struggled with Dmitry's request over months, over multiple discussions, to attempt to fit everything into 2 1/2 billion, and it was impossible.

Q. Dr. Harrison, I'm afraid we have limited time today, and I'm asking you yes/no questions. So I'd ask you to listen to my question and answer that question. And if you have other testimony to give, I'm sure Mr. Burden will have an opportunity to redirect. But I am sensitive to the clock.

Dr. Harrison, as of last week you

didn't know the total amount of money that the fund had contractually committed to invest in its portfolio companies; correct?

A. I don't keep that as a running sum in my head.

Q. In October 2023, ATP's general counsel, Dan Finkelman, wrote you an email discussing the fund's unfunded commitments to its portfolio companies; correct?

A. I'm sorry. When was that?

Q. October of 2023.

A. I don't know. I don't remember.

ATTORNEY BERDON: Your Honor, as Your Honor knows, there's been a roll-off production of otherwise documents that were claimed as privileged. And we would ask that they be treated as highly confidential in this proceeding because, even if used in this proceeding among the parties, they will still retain privilege in Cayman under Cayman law as long as they are not disclosed to the public.

So we would ask that the courtroom be sealed during any questioning relating to otherwise privileged information that was in the roll-off production.

ATTORNEY SELDEN: Your Honor, paragraph 25 of the pretrial order governs the use of confidential or highly confidential information in this proceeding. It requires the parties to meet and confer in advance of trial, which defendants attempted to do. We asked plaintiffs to de-designate this material by letter dated September 29, by letter dated October 8, and by chaser email dated October 12.

Plaintiffs have declined to engage with us with respect to the reduction in designation of that material, and did not raise this concern about closing the courtroom in advance.

Paragraph 25 of the pretrial order further provides that if the parties are unable to reach agreement -- which we had very much hoped to do -- the parties seeking to maintain highly confidential information throughout trial should seek an order from the Court, which plaintiffs have not done in advance of trial.

So we would ask, including for the interest of time, to be able to use this information, which we understand is subject to a privilege waiver publicly and with the witness.

ATTORNEY BERDON: Your Honor, just for

completeness of the record, we did ask for a meet-and-confer on Monday in a letter that was sent, and I don't believe that one was made available to us.

THE COURT: So I understand Mr. Berdon's request made just now to be in the motion that was contemplated in the pretrial order. Is that wrong?

ATTORNEY SELDEN: We had expected, Your Honor, that if plaintiffs were going to raise the objection and seek to close the courtroom, that they would have raised that in response to one of the three letters that we had sent them prior to October 12th, or at the very latest going into this hearing.

I think there has been a privilege waiver with respect to these documents. They have been used in depositions. They have been produced. They are among the rest of the joint exhibits on the list. And we think it's appropriate to use them in this proceeding.

I also think, given the limited time again, Your Honor, and the number of issues and, frankly, the amounts and nature of the claims at stake, it would be appropriate if we could use them with the witness and move quickly through them.

THE COURT: I don't think he's objecting to your use. I think he's objecting to using them publicly in a way that would undermine the privilege objections or privilege assertions in other proceedings.

What is your response to that?

ATTORNEY SELDEN: My response to that, Your Honor, is perhaps we could stipulate that we will use the documents in open court in this trial proceeding. And the effect of that use in this proceeding, to the extent that it has an implication on the Cayman privilege waivers or evidentiary rules in the Cayman court, I think the Cayman court can adjudicate that if and when those issues arise, and Your Honor should leave that to the Cayman judge and let the documents come in here. I think we can --

THE COURT: So I hear you saying that you want to stipulate that the Cayman court will resolve privilege issues there.

ATTORNEY SELDEN: Yes, that the Cayman court decide Cayman privilege issues.

THE COURT: You don't need to stipulate to that. The Cayman court will resolve Cayman privilege issues.

The question is whether the use of those documents here will affect their arguments as to privilege in Cayman. I hear Mr. Berdon saying it will. And his solution is that we close the courtroom when you want to use them.

What is your response to that?

ATTORNEY SELDEN: My response to that is that there has been a privilege waiver with respect to these documents and they should be used in open court like any other nonprivileged document. That they were -- many of them -- improperly designated as highly confidential in the first instance, improperly designated as privileged in the second instance. And those improper designations should not now be a bar to their use in this public proceeding.

THE COURT: Correct me, it's been awhile. I thought that the argument you made as to these documents was that your client was within the scope of privilege?

ATTORNEY SELDEN: Yes, I think there are a number of arguments that we made with respect to these documents, Your Honor. One of which is that our client is within the scope of the privilege and so they shouldn't have been designated privileged in the

first instance.

Secondly, that there were over-designations of material that was not privileged at all as to anyone.

And third, that there are documents designated "Highly Confidential" which ought not to be highly confidential.

So I think there are layers of objection to many of these documents, none of which, frankly, Your Honor, I think require sealing the courtroom. The documents that we propose to use relate to a dispute between these parties that is many years in the making. The document I am about to show Dr. Harrison, for example, is from October of 2023. I don't think that is relevant to or prejudices any ongoing business concern or the companies or the other kinds of sensitive, live, trade secret, business decision, public information.

THE COURT: That doesn't speak to whether they're privileged. So if a document -- if the reason why -- if there is an argument that the reason why your client received the document in discovery here is because your client's within the scope of privilege, that doesn't eliminate the

protections of that document to the rest of the world. Right? It means that your client can see it. But there is a risk that disclosing it in open court could undermine arguments that the privileged information your client's entitled to see is no longer confidential and, thus, no longer privileged.

So I see the concern here. I don't know whether the document you're discussing now or about to show the witness falls into that category. But if it does, I think the solution is to seal the courtroom and for you all to identify who in the courtroom is within the scope of privilege so that showing it doesn't blow privilege. So I'm not sure how we do that now. Maybe you want to talk a break and do it, or maybe you want to talk about it over the lunch break. Either way, I'm open to.

ATTORNEY SELDEN: Thank you, Your Honor.

I would suggest that, in the interest of time, we skip ahead and I'll proceed with questions that don't implicate those documents, and then we can discuss during the lunch break whether and how to seal the courtroom and who's within the scope of privilege.

Would that be acceptable, Your Honor?

THE COURT: That works, yes.

ATTORNEY SELDEN: Thank you, Your Honor.

BY ATTORNEY SELDEN:

Q. Dr. Harrison, on your direct with Mr. Berdon, you discussed Rigmora's obligation to discuss budgets in good faith following the entry of Amendment 22; correct?

A. Correct.

Q. And following Amendment 22, on Christmas Eve or December 24, 2024, you sent Dr. Rybolovlev a budget request for four companies; is that right?

A. Correct.

Q. And it's fair to say that since those companies had been founded, the fund had contributed tens of millions of dollars to them; is that right?

A. Yes.

Q. And when sending the budget request, you informed Rigmora that you had set up data rooms for them to access; is that right?

A. Yes.

Q. You expected Rigmora to review the information provided in the data rooms and ask

questions; right?

A. No.

Q. You set up data rooms containing supportive materials with the new budgets that you did not expect Rigmora to access?

A. I doubted very highly whether they would review them. We did it to make sure they understood that after the settlement agreement we were being radically transparent.

ATTORNEY SELDEN: Let's put up JX 1107, if you will.

Q. This was the response that Mr. Bogdanov sent to your December 24, 2024, budget request; correct?

A. Yes, for Replicate.

Q. Mr. Bogdanov replied on January 5th after the holidays; is that right?

A. Yes.

Q. Dr. Harrison, do you recall that you testified that Replicate had pivoted from oncology to a rabies vaccine over the course of the fund's investment in that company?

A. Yes.

Q. It's not bizarre for an investor to

have questions about that change in strategy from oncology to rabies, is it?

A. It's bizarre if the investor already knew about it and approved the budget that enabled it, in my opinion.

ATTORNEY SELDEN: If we could turn to page 3 of Exhibit 1107.

Q. That's the list of questions regarding Replicate; correct?

A. Correct.

Q. It's your position that these questions didn't constitute a bona fide diligence request; correct?

A. Correct.

Q. And it's your position that Mr. Bogdanov's questions did not have any diligence logic in assessing the merits of the companies; correct?

A. Essentially, yes.

Q. Let's look at that list of questions.

At paragraph 5 in the third sentence, Mr. Bogdanov asks, "After four years, could you please outline the main reasons for shifting RBI-4000 and RBI-5000 from oncology to infectious disease

indications?"

Do you see that?

A. Yes.

Q. In question number 6, Mr. Bogdanov asked, "In the 2021 Replicate memo, the team stated: 'The profile of Replicate's first product is highly differentiated ....'"

Then later he goes to to ask, "Currently, the company has a substantial share of indications related to infectious diseases: [] Does this suggest that the company has lost its differentiation and is now operating in a more competitive environment, as was suggested in 2021?"

In 6.3 he asks, "How has the company's technology evolved over the past four years compared to its main peers?"

Do you see those questions?

A. Yes.

ATTORNEY BERDON: Object to the form to the extent that the next question is going to be lumping, compound.

THE COURT: We'll see what the next question is. Please continue.

BY ATTORNEY SELDEN:

Q. The next question is, Dr. Harrison, in your view, these questions from Mr. Bogdanov constituted an obstructionist tactic; is that correct?

A. The totality of these diligence questions did, yes.

Q. In your view, the diligence questions were sent to prevent and avoid funding a company that the Rigmora LPs, in good faith, were obligated to consider a budget for; is that right?

A. Yes.

Q. But Rigmora, in fact, agreed to provide bridge funding for Replicate before receiving answers to any of Mr. Bogdanov's diligence questions; correct?

A. Yes, that was an emergency effort. We suggested that Replicate would go out of business while we were resolving the issue of these diligence questions. And we suggested a million-and-a-half bridge, to which the Rigmora LPs agreed.

Q. And then a month later, Rigmora approved an $18 million budget increase for Replicate; correct?

A. Correct.

Q. And the $18 million budget increase

that Rigmora approved was more than the $11 million you had initially requested on December 24th, wasn't it?

A. Technically correct.

Q. Let's talk for a moment about what information ATP provided to the Rigmora LPs in connection with their request to make an investment.

Prior to approval of a portfolio company deal by the fund, a primary deal sponsor from ATP was responsible for preparing a thorough investment memorandum; is that right?

A. Yes.

Q. Your view was that the investment memorandum should include an operating plan for the portfolio company; correct?

A. Yes.

Q. Another thing the GP provided to the Family Office was the background and precedent for their approach to any particular company; correct?

A. Yes.

Q. The investment memoranda provided for a tranche investment scheme gated by milestones; correct?

A. The investment memoranda provided for

a tranched investment scheme, and the then-current thinking on what the company would achieve over time.

Q. One of the purposes of that tranched investment scheme was to derisk ATP's investment; correct?

A. All tranched investment schemes do that, or intend to.

Q. Including the tranched investment schemes included in the investment memorandas for the portfolio companies that ATP sought funding for; correct?

A. May I answer the question in my way, or do you just want a yes or no?

Q. I'd like a yes or no.

A. Yes, correct.

Q. After the fund's initial investment, you frequently pivoted away from the plans for the portfolio companies that had been presented in their investment memoranda; correct?

A. Technically correct. It's not that we tried to pivot. It's that the companies had research programs that suggested to us that the best way to manage them was to make changes.

Q. When that happened and the company

departed from the plans presented in its investment memoranda, you didn't update the investment memoranda provided to the Family Office; correct?

A. No, we did not.

Q. In fact, you've repeatedly said that how the evolution of a project relates to its business plan or its investment memorandum is irrelevant; right?

A. I wouldn't call it irrelevant; I would call it a starting point. But where it is in the middle of its investment cycle, it can't be predicted at the time of the investment memo. It's the look at that time, the view at that time.

ATTORNEY SELDEN: Could you please play clip 106, Day 3, page 282, line 17, to 283, line 23.

(A video clip was played as follows:)

Question: You were uncomfortable going to founders and companies and reminding them that in their SPAs there were milestones that had to be achieved before funding would be released?

Answer: As I have said over many hours with you, Shannon, that is simply not how it works in this market where you're developing drugs

from new technologies working with teams of scientists of various stripes. It is simply not how it's done.

You work in a way that is enabling and that understands that research brings forward different results, and you work with them and attempt to push things forward.

And as I've said repeatedly, based upon experience, often a project can look like it's not going well, and you look at it differently and you change things and it's going well. And as I've said repeatedly, how that evolution relates to a business plan or an investment memo that occurred at the outset of that company's life is irrelevant.

(End of video clip.)

ATTORNEY SELDEN: We have stopped that testimony in the middle of Dr. Harrison's answer, but -- to avoid raising any issues with respect to confidentiality or privilege.

Your Honor, I would suggest that we break a minute or two early for lunch and take up the sealing issues after that. I think that likely the most efficient thing will be to simply seal the courtroom for the balance of Dr. Harrison's testimony after lunch. But let me consult with my team, if

that's acceptable to Your Honor.

THE COURT: Sure. We'll resume at 1:30. Thank you.

(Lunch recess taken at 12:25 p.m.)

(Resumed at 1:30 p.m.)

THE COURT: Please be seated. Thank you.

So what did you work out?

ATTORNEY SELDEN: Good afternoon, Your Honor. We have consulted with plaintiff's counsel. We are happy to seal the courtroom. I apologize for any confusion. I didn't know plaintiff's counsel had wanted to do that before this morning, but we are happy to seal the courtroom.

We have asked from our team anyone outside the privilege to leave. So they shouldn't be here, but we'll pause for a moment.

THE COURT: Yeah, so there's a lot of people in the courtroom. Is everyone in the courtroom within the scope of privilege?

ATTORNEY SELDEN: For defendants, Your Honor, I can say that we are. There are indeed a number of lawyers here, I'm afraid. But everyone here has been checked and is within the scope of privilege. And I've consulted with Mr. Berdon as to that question.

Your Honor, while plaintiff's counsel caucuses, I would just note the interpreter is here.

I believe the interpreter is authorized.

THE COURT: Yes.

THE INTERPRETER: Your Honor, I'm a certified court interpreter with the State of Delaware and I'm considered to be a court officer.

THE COURT: Yes. He's allowed.

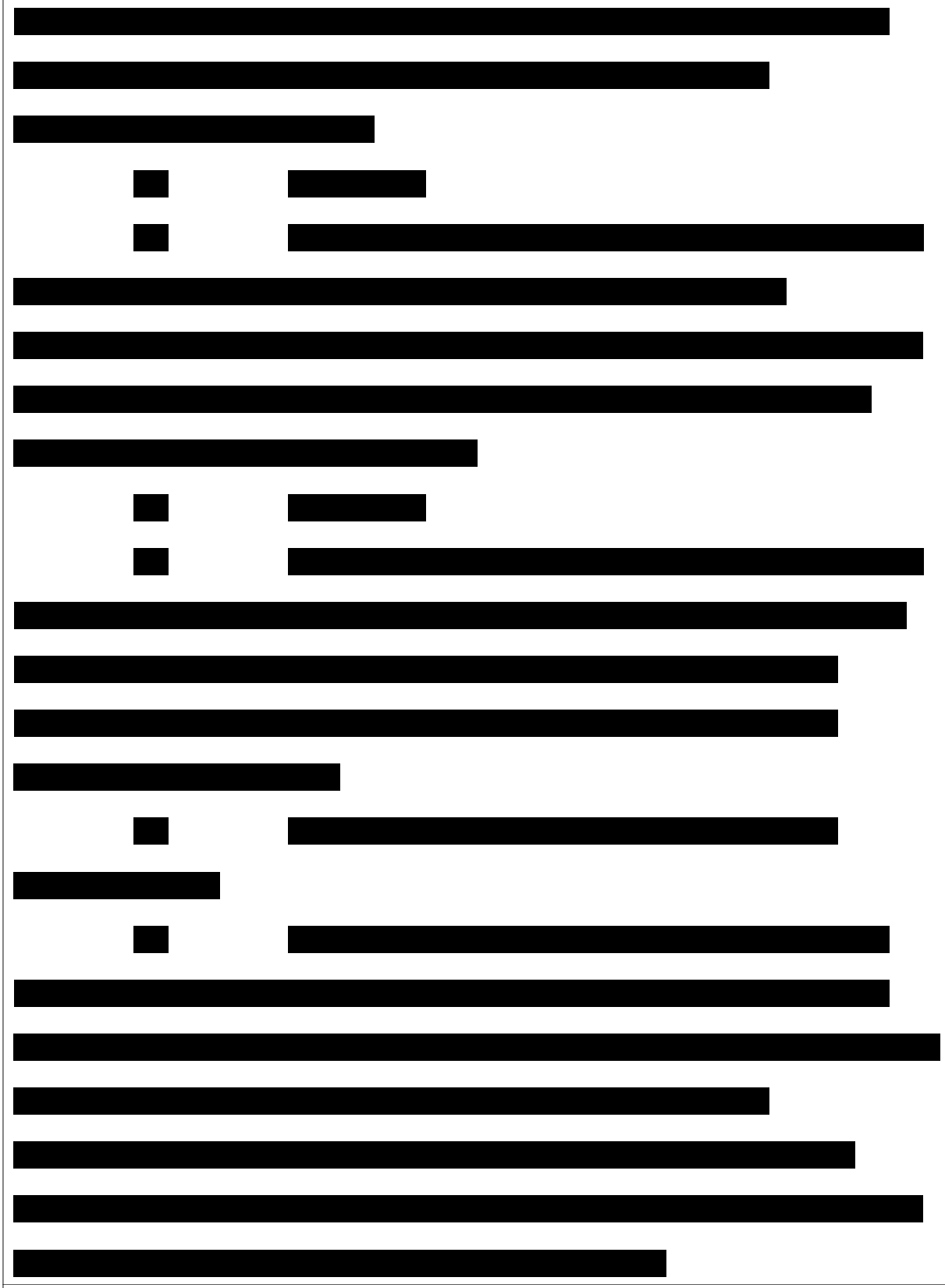
ATTORNEY SELDEN: Great. Thank you.

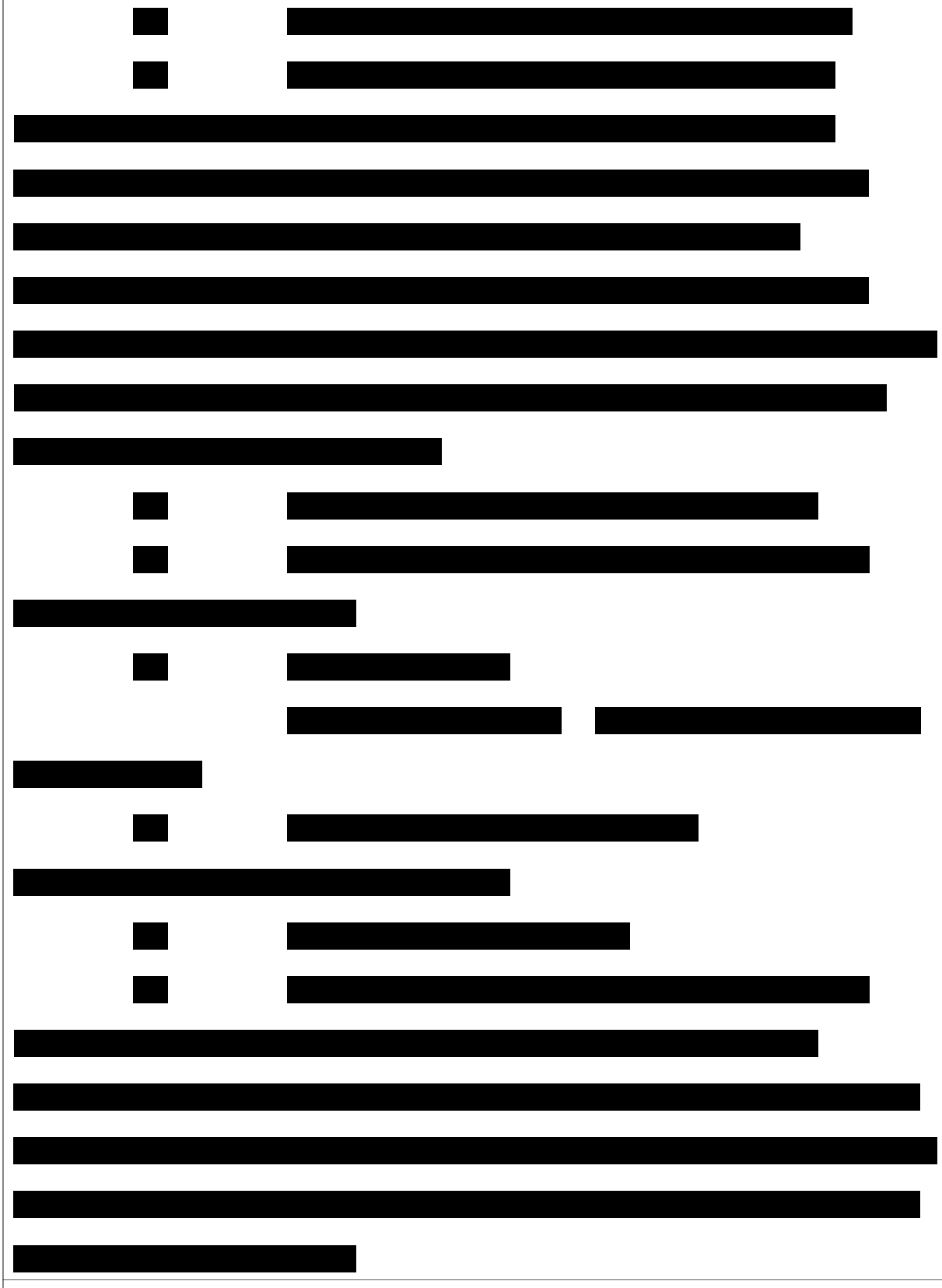
THE COURT: Shall we proceed?

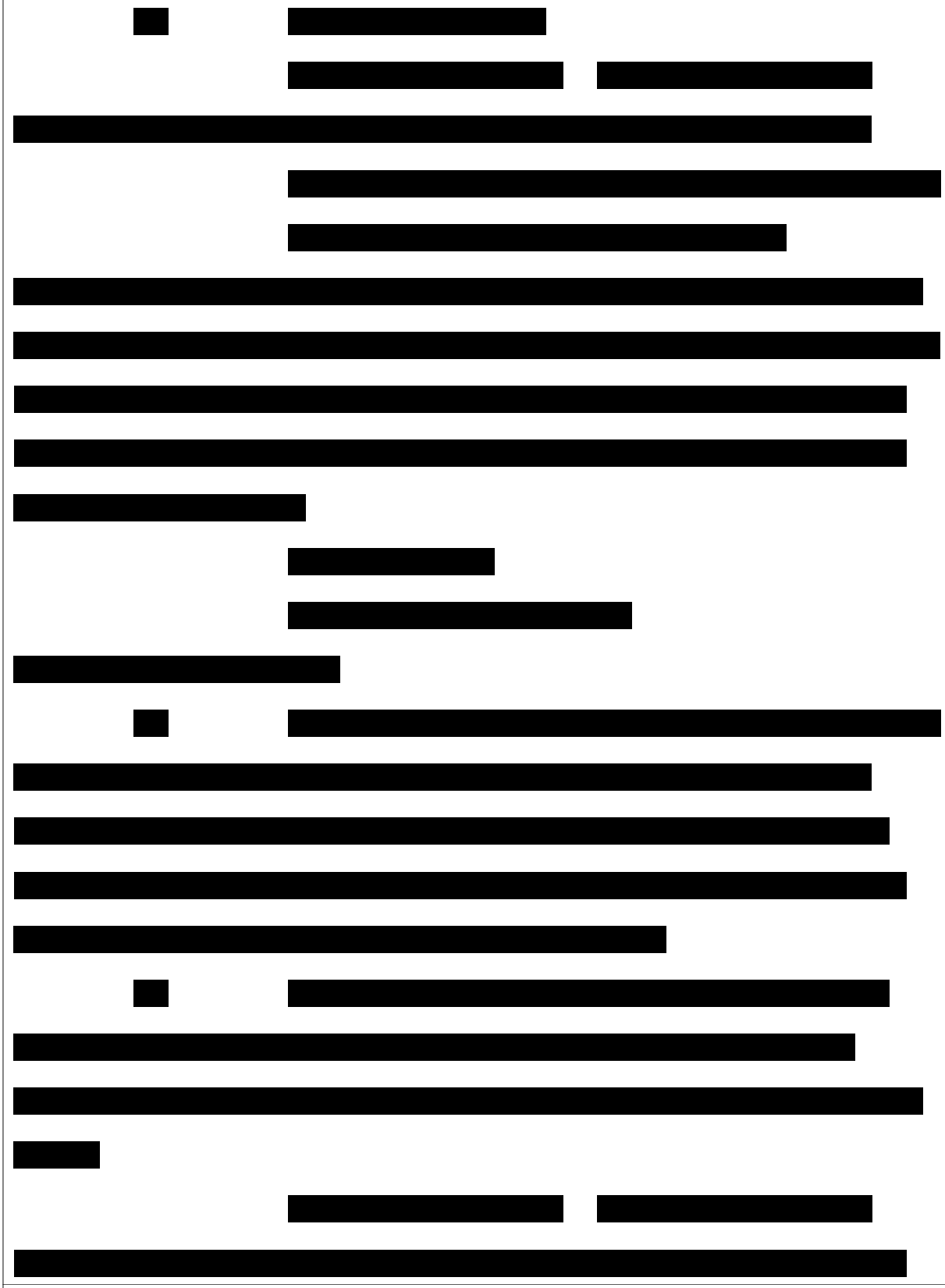
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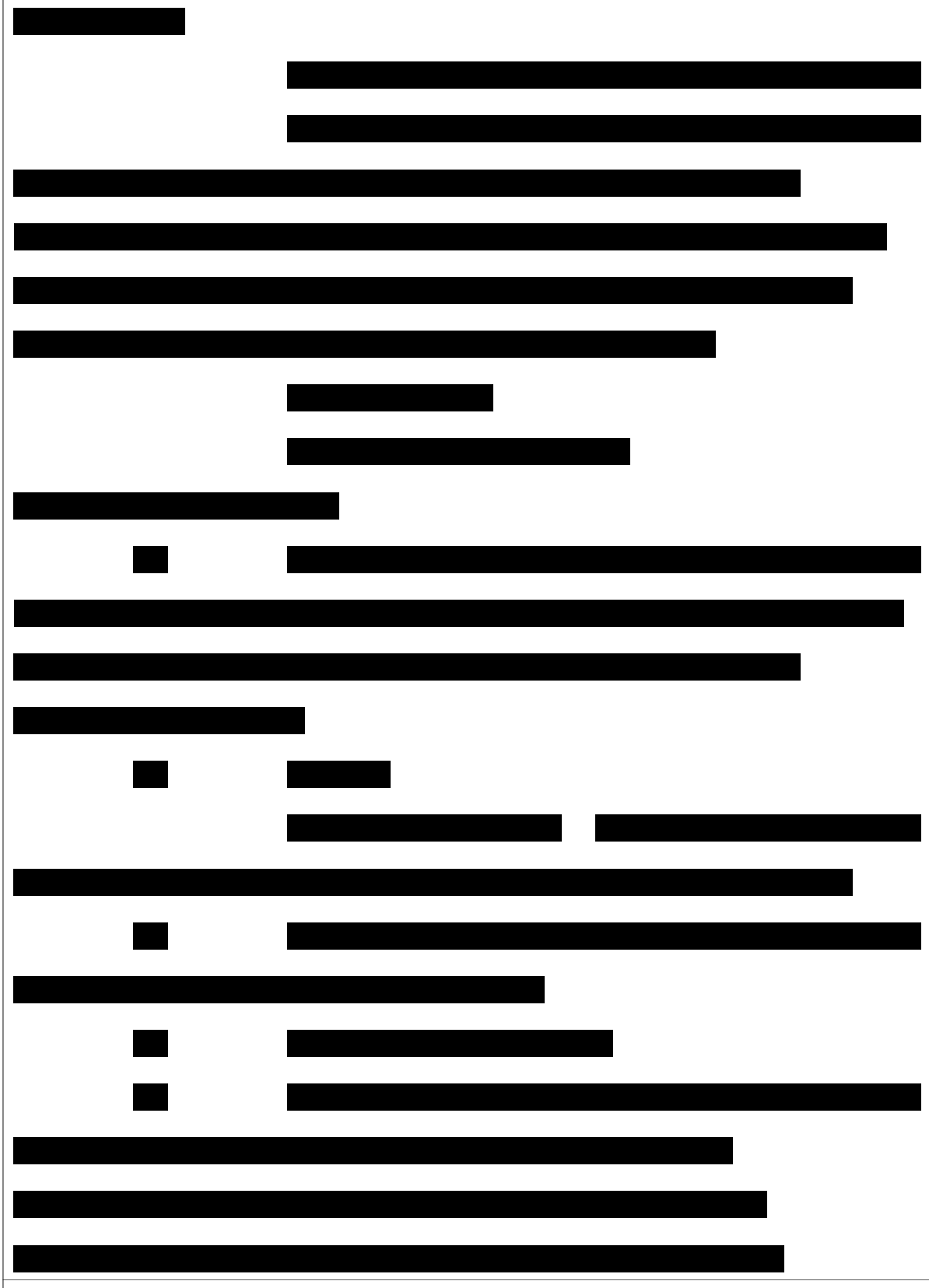
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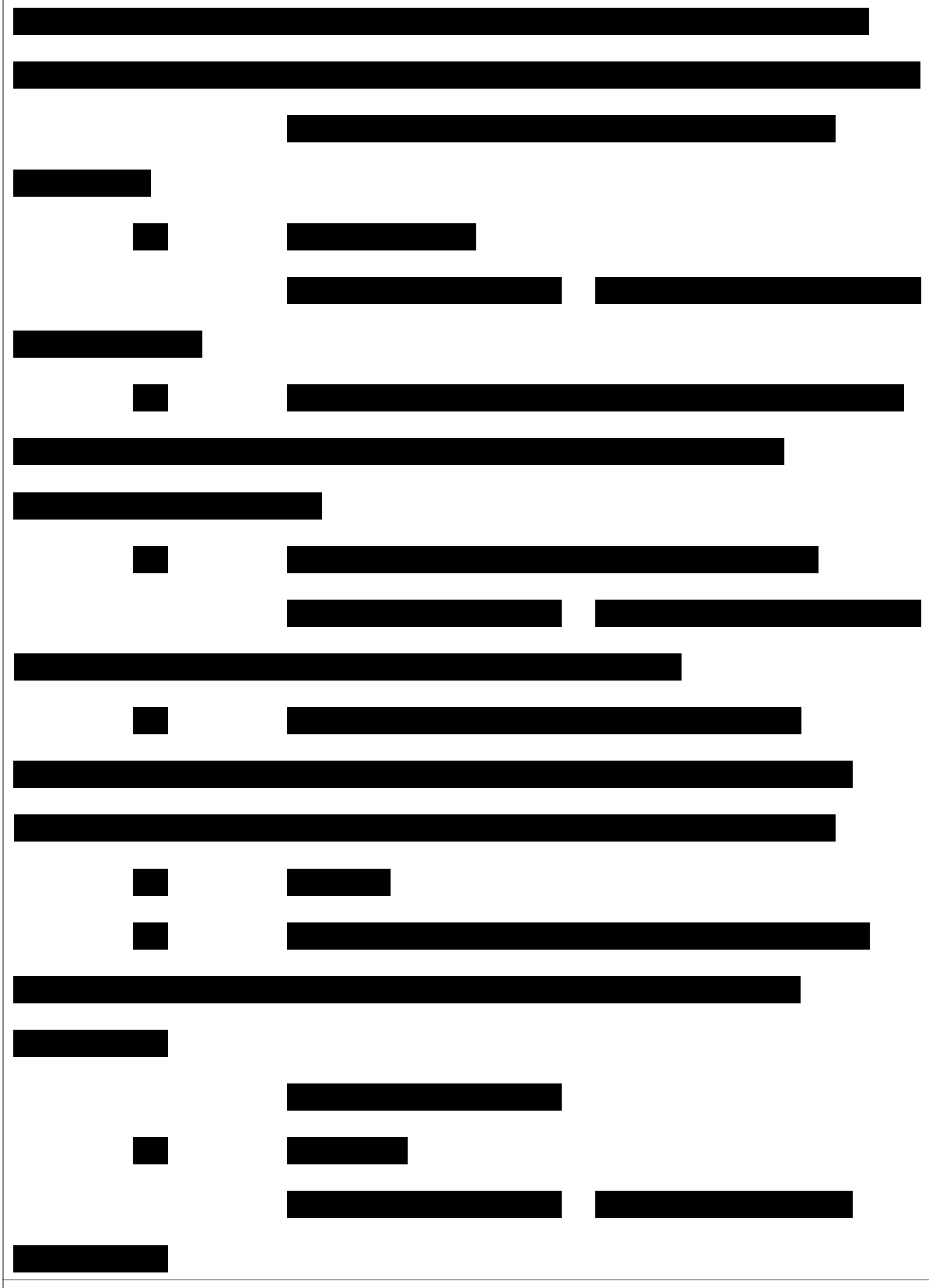


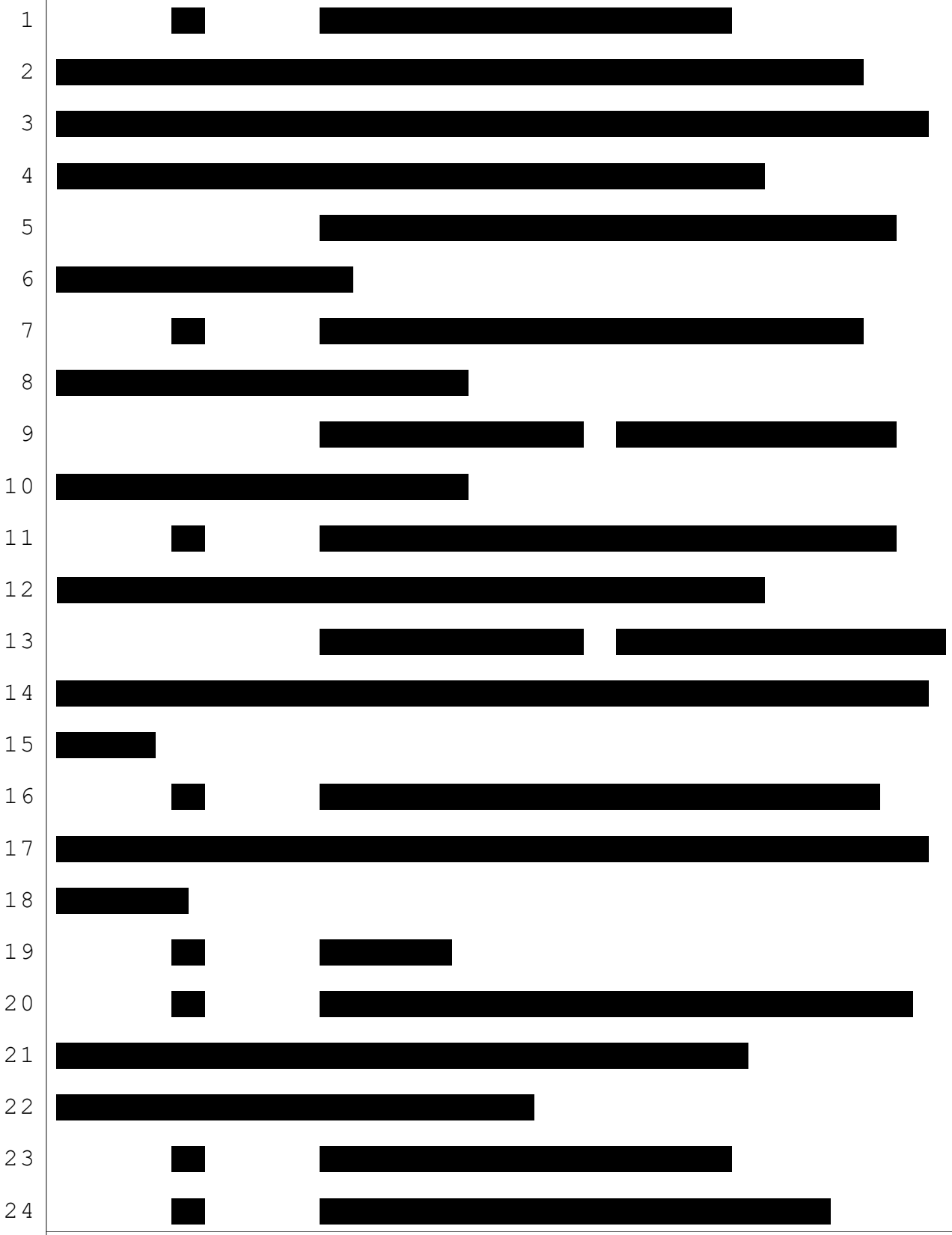


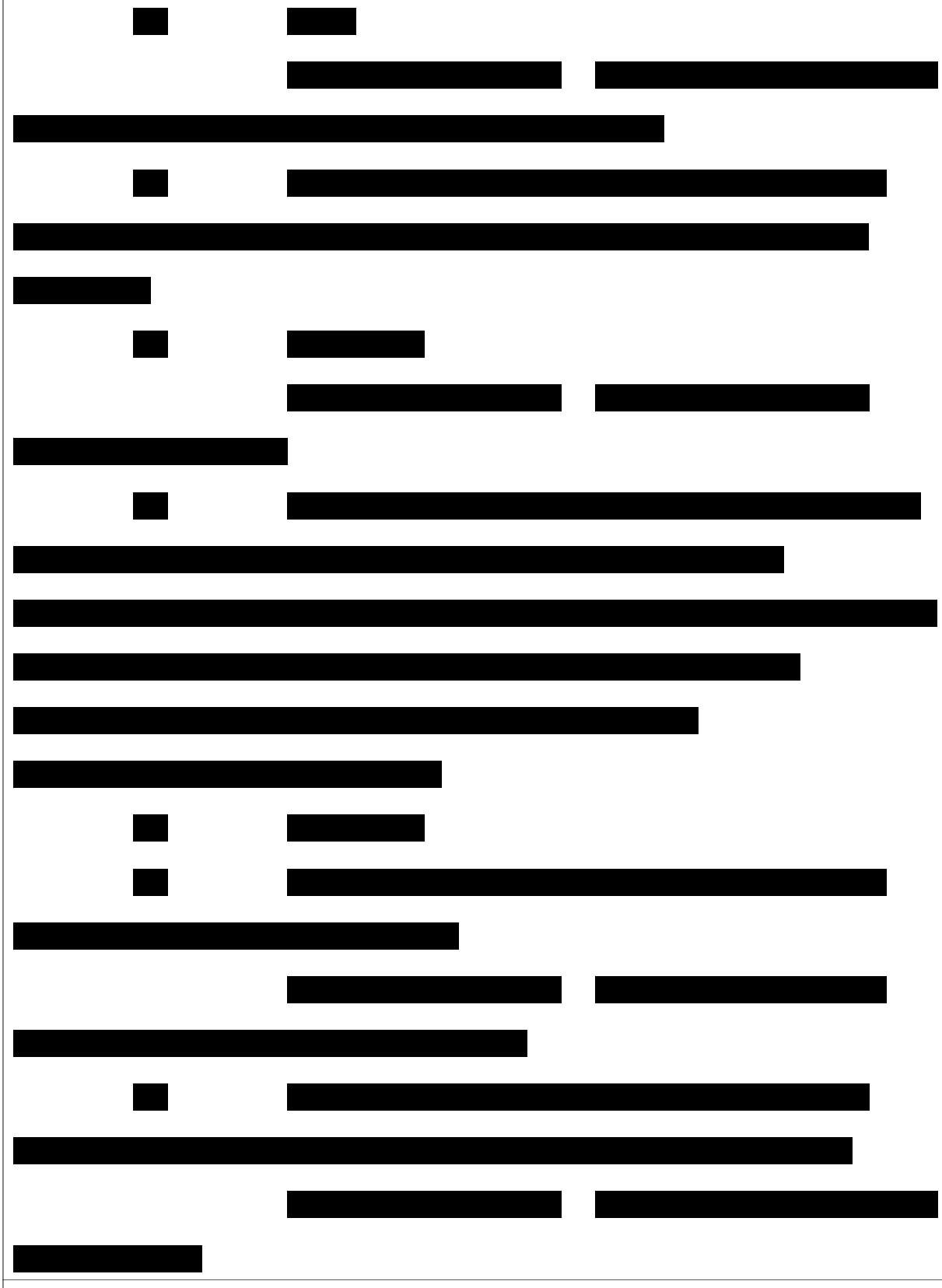


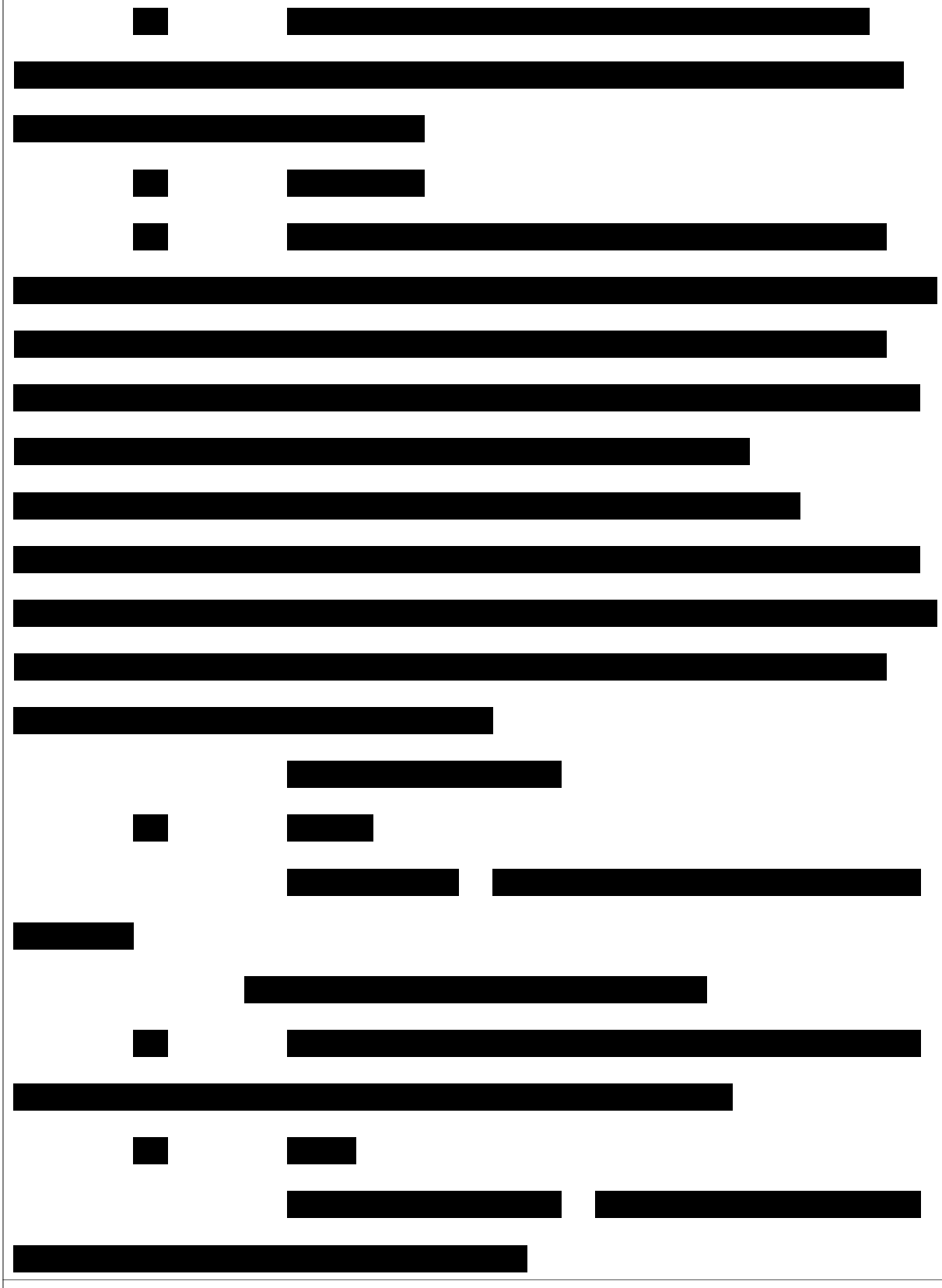


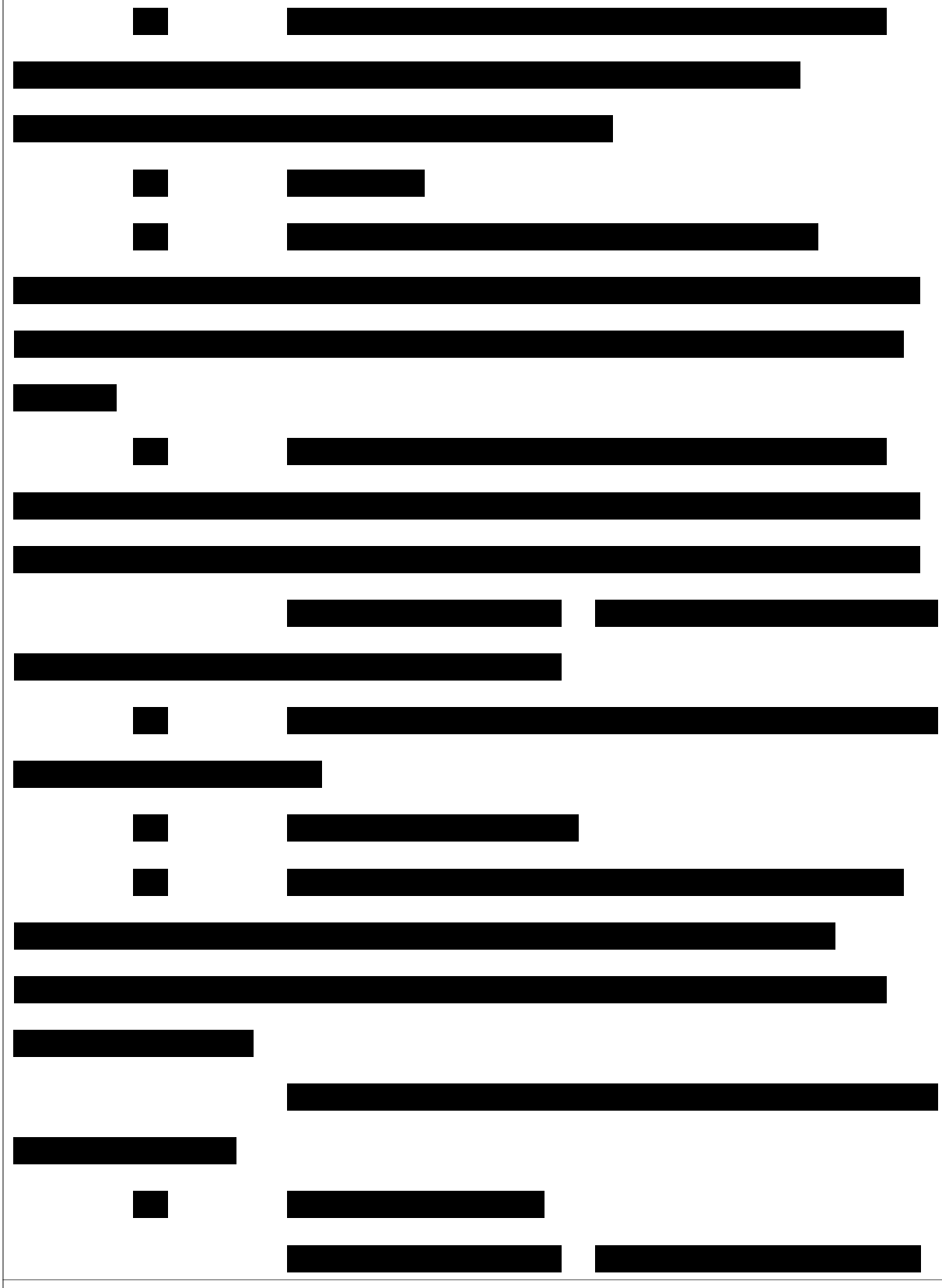


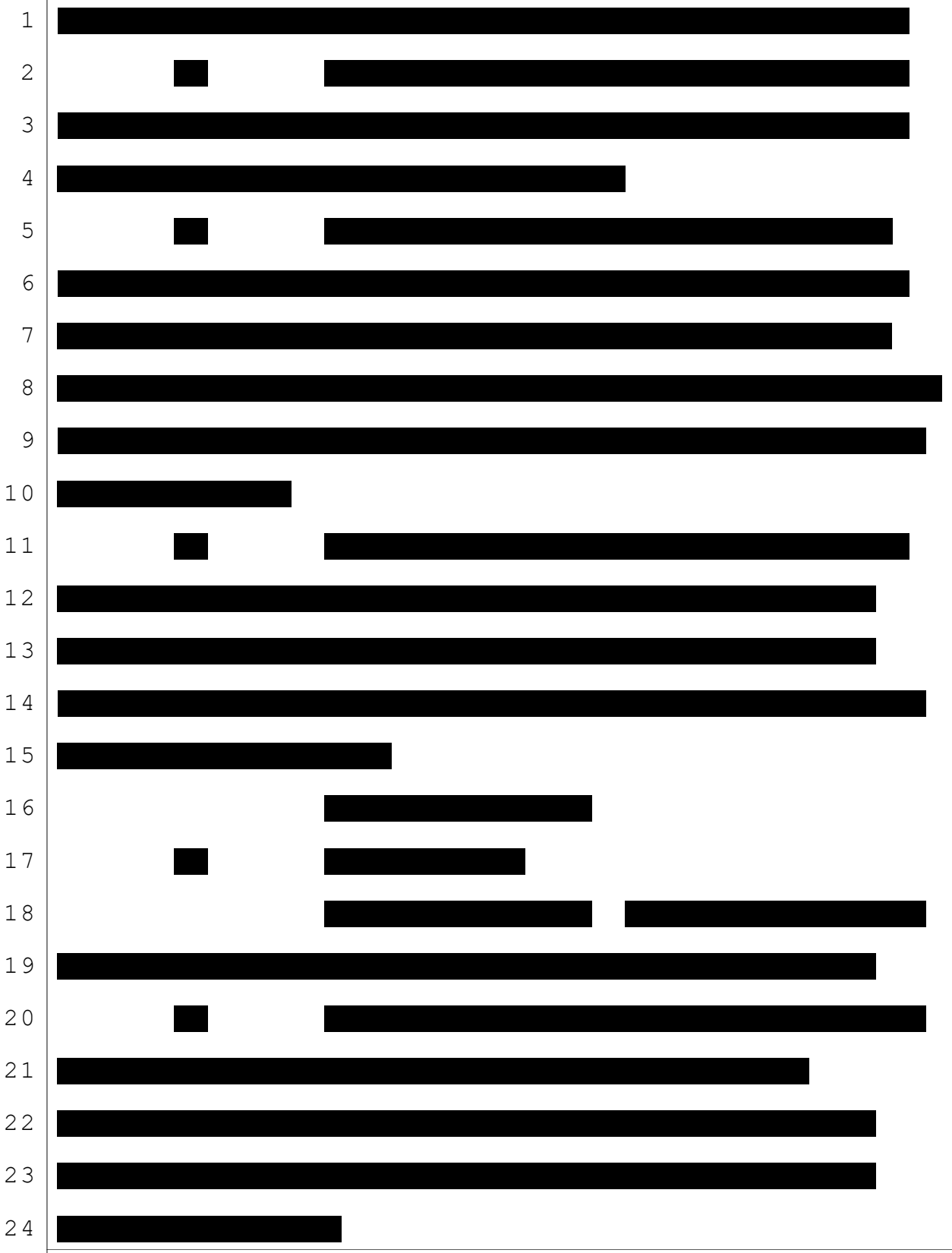


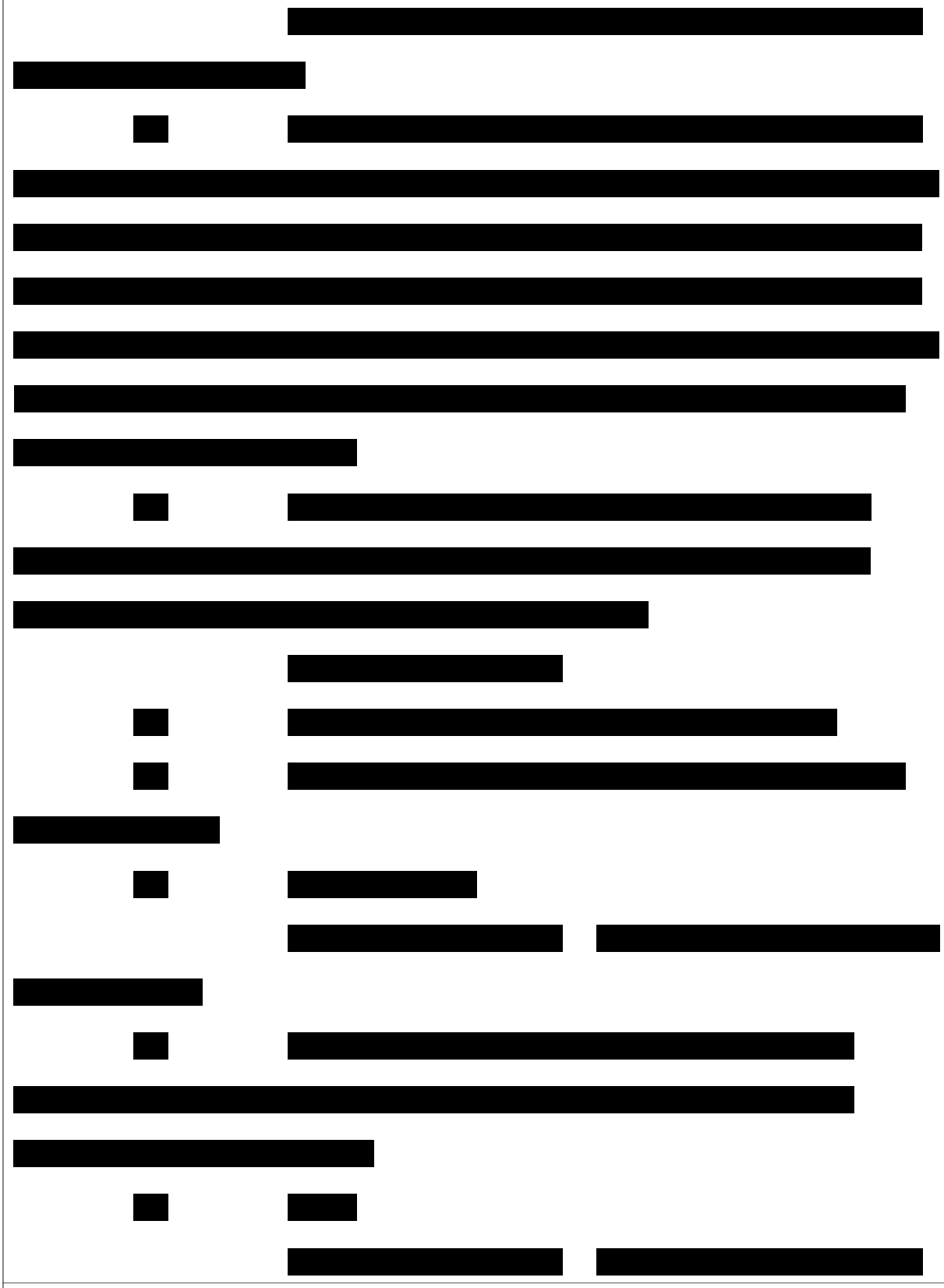


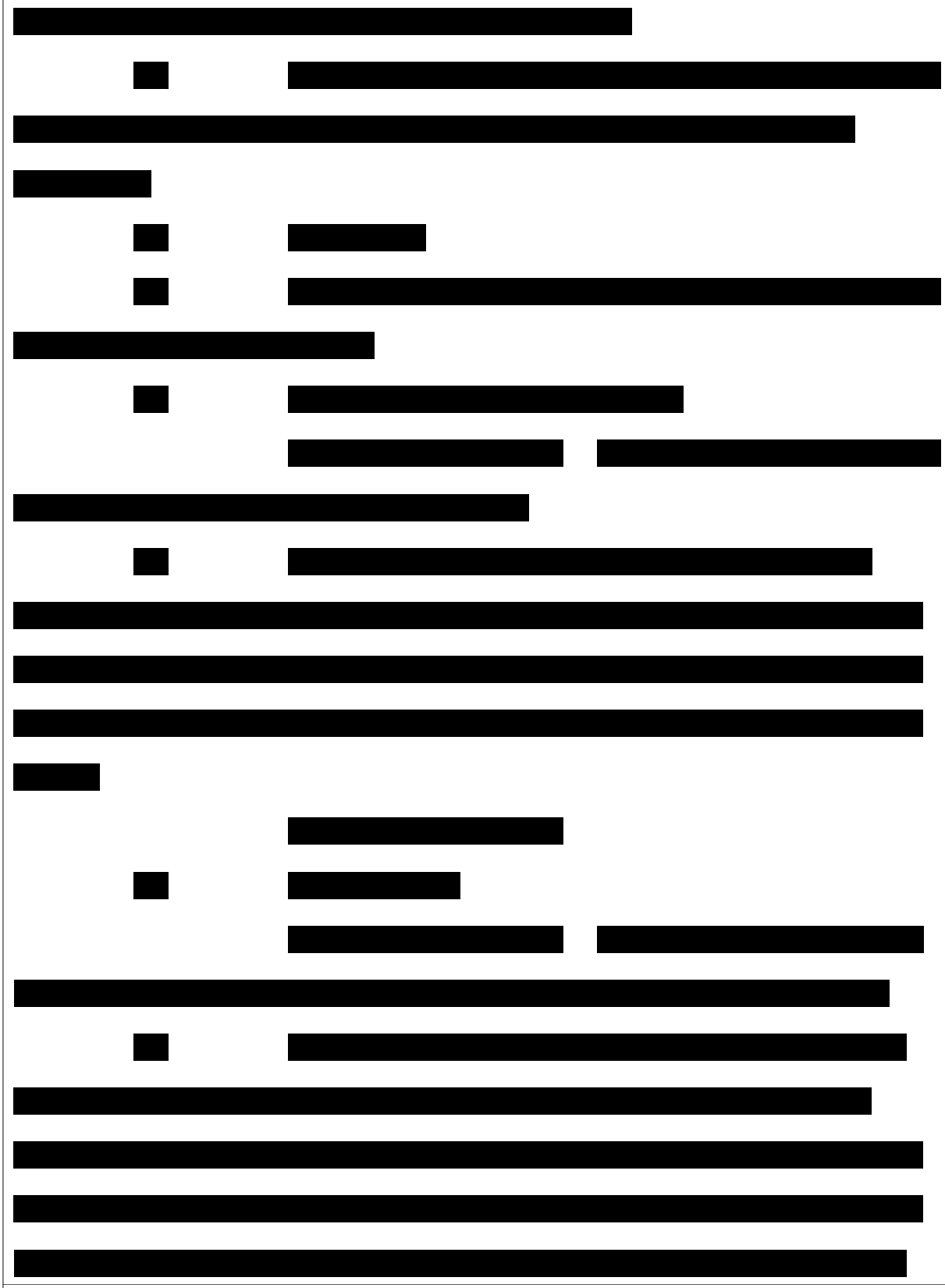


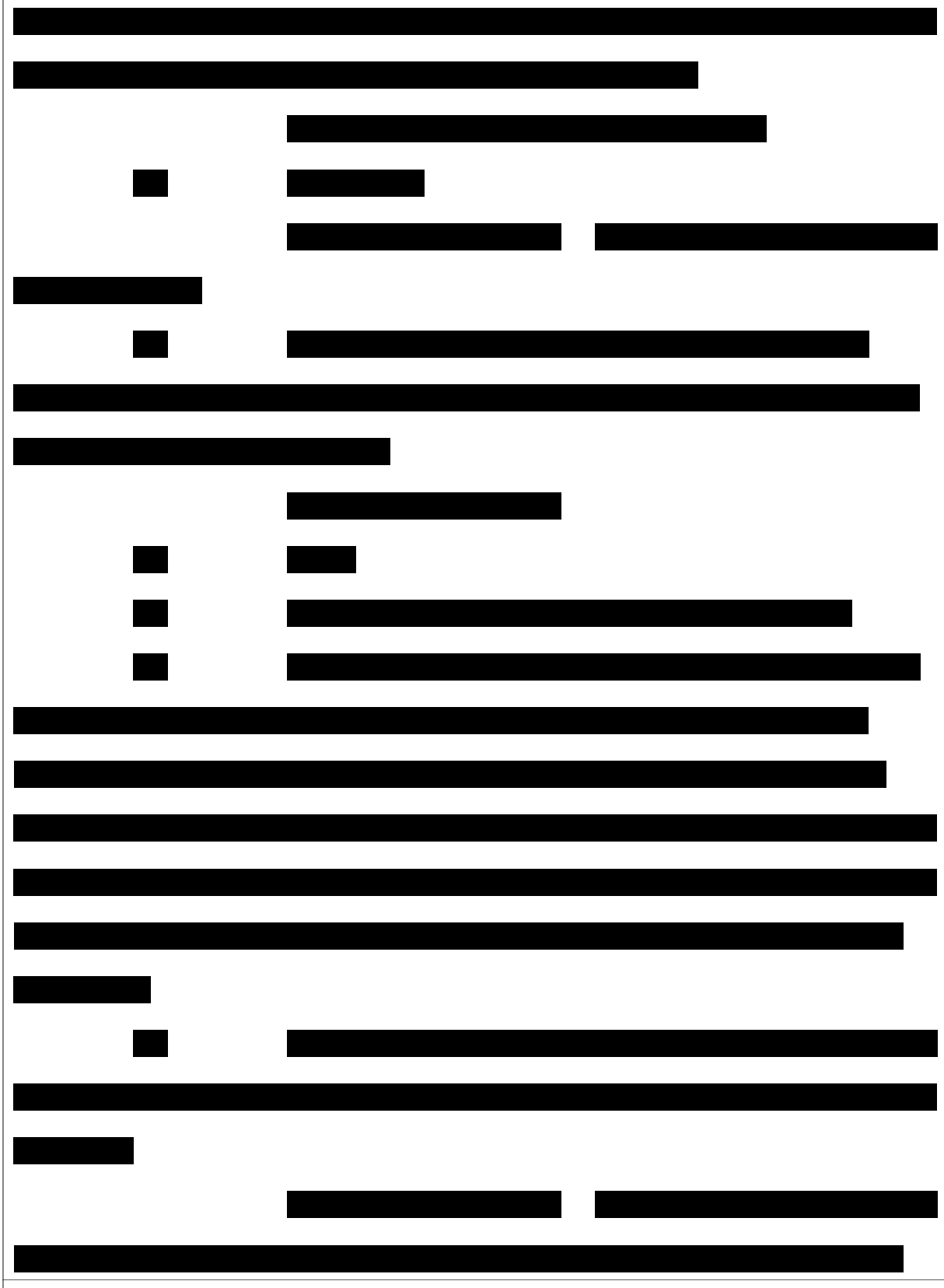


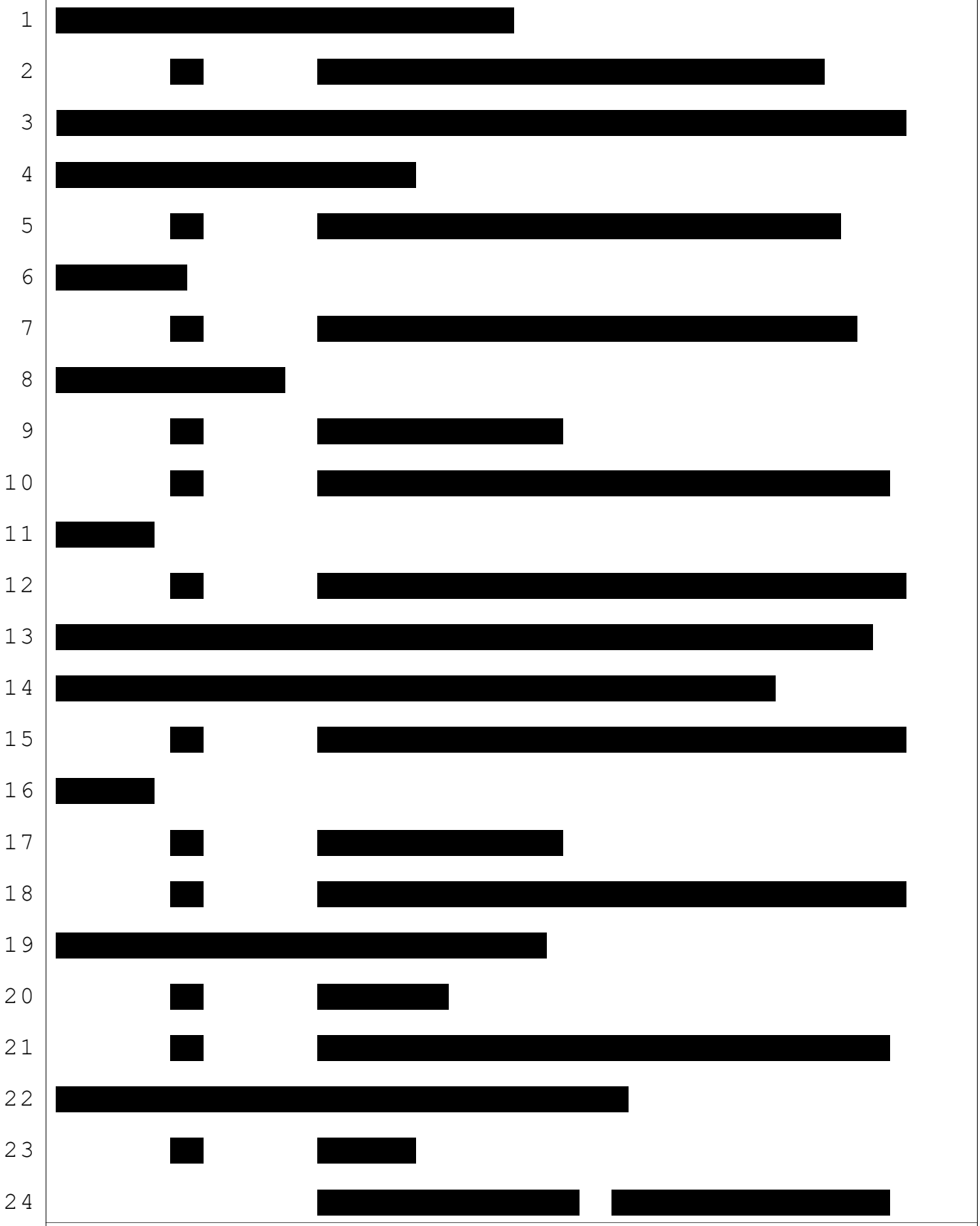


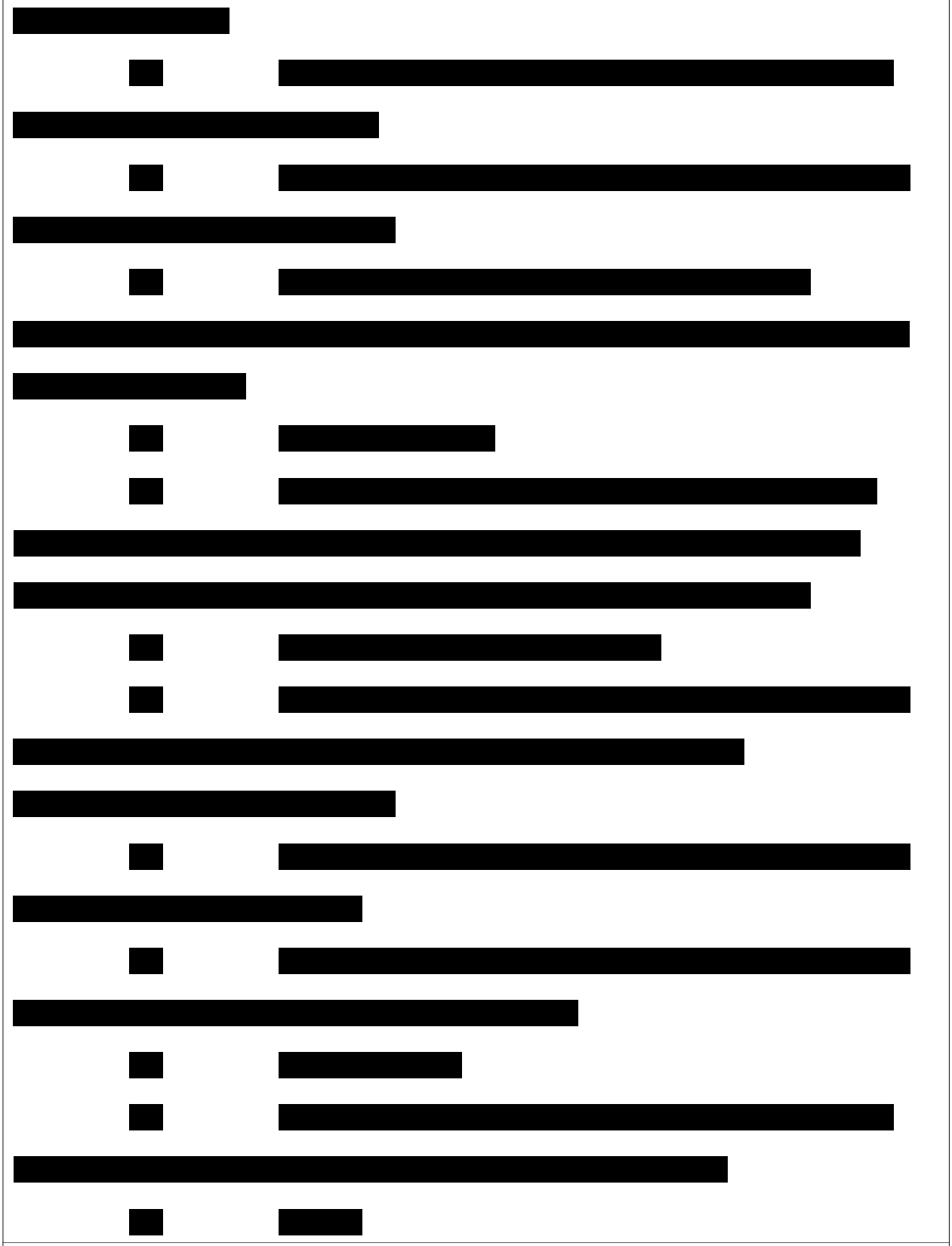


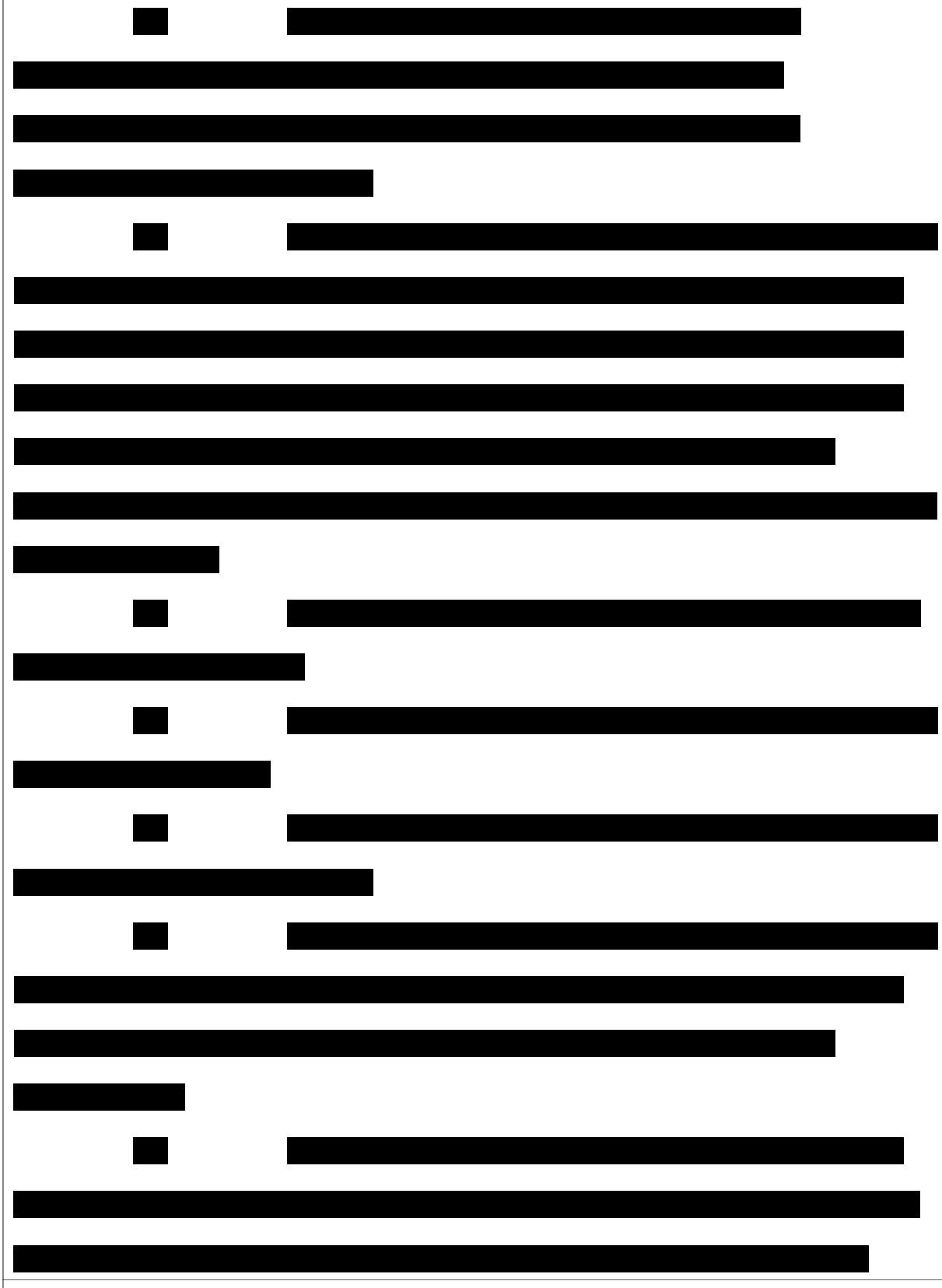












[redacted]

(Witness excused.)

THE COURT: Do you want to let everyone know that they can come back in.

(The courtroom was reopened to the public.)

ATTORNEY BARLOW: Your Honor, the plaintiffs call Joe Yanchik.

ATTORNEY EPSTEIN: Good afternoon, Your Honor. Rachel Epstein from Quinn Emanuel. While we wait for Mr. Yanchik, I thought maybe one issue of

housekeeping, which is we have the Cayman experts from both sides, Mr. Phillips and Mr. Bloch. We brought them here in case Your Honor has questions. But I think absent that, we'll submit them on the papers.

THE COURT: Any objection?

ATTORNEY TAFT: No objection, Your Honor.

JOSEPH YANCHIK, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY EPSTEIN:

Q. Good afternoon, Mr. Yanchik. Can you introduce yourself to the Court?

A. Joseph Yanchik, currently a venture partner at Apple Tree Partners.

THE COURT: If you could bring the microphone a little closer.

Q. Mr. Yanchik, how long have you been a venture partner at ATP?

A. I've been at ATP for 20 years now in different capacities. I started as a venture partner back in 2005. Did that for two years, and then started two companies in that role. I joined those companies full time. I was CEO of both. Eventually,

as they both grew, I opted to be full-time CEO in one of the companies, Aileron Therapeutics, and remained on the board of the first one.

Q. And what happened to Aileron?

A. Aileron we took public. We actually ended up taking both of them public. We raised close to a half a billion dollars into those two companies. Aileron went into the clinic, and then it eventually merged with another company.

Q. When did you leave Aileron?

A. I was there for 12 years, so I would have left around 2018. I reengaged with Apple Tree around 2019, end of 2019 as a consultant. And then at that point I took a full-time role back as a venture partner at the beginning of 2020, and I've been doing that since.

Q. Prior to joining ATP the first time, what was your background?

A. I started in '93 as a lawyer in Cahill Gordon in New York. I was a corporate lawyer, working primarily on typical transactions, mergers and acquisitions, high-yield debt, public offerings. I did that for four years, and then I was recruited to an outfit on Sand Hill Road in Silicon Valley, where I

worked exclusively on startup biotech companies. I spent half of my time representing the companies; half my time representing VCs.

After that, I started a dot-com. Shortly after that, I started a gene therapy company out of Stanford. That was eventually acquired by an incubator in the Bay Area.

One of the partners at that point asked me to join his company, which was an ag bio company. He asked me to help them restructure the company. They had a longstanding relationship with Monsanto that he wanted to see if we could renegotiate. So I did that. We did that successfully.

And around that time I met Seth Harrison and he made me an offer to join Apple Tree in Boston around, as I said, 2005.

Q. So overall how long have you been in the biopharmaceutical industry?

A. As a lawyer and as an operator, about 30 years.

Q. And are you the only venture partner at ATP?

A. No, I'm not. There are multiple

venture partners in the fund.

Q. Do all of the venture partners at ATP have similar backgrounds to yours?

A. No, they don't. We have a variety of backgrounds. Most of the venture partners have scientific drug development research backgrounds. I'm a little bit unique in my background with law and finance, as well as an operator. I'm one of the few who have raised capital into companies and run a public biotech company.

Q. So as a venture partner, generally what were your responsibilities at ATP?

A. Initially they were fairly typical to the venture partners. We had three to five companies at any given point in time where we might sit on the board that we were primarily responsible for. We would help them recruiting, developing their plans, as well as financing plans. And that's what I did for most of the time. Most of my time was spent on Braeburn, Marengo, Replicate. I also helped to set up Aulos, where I was on the board for a bit. I helped to set up Ascidian, where I maintained regular contacts with the management team.

So I had my three or four, but I would

also help on an as-needed and as-requested basis across the portfolio.

Q. So do you still have responsibility for those three or four?

A. I do.

Q. Do you have responsibility for any additional companies at this point?

A. I do. My job evolved fairly significantly after the first of the year. Initially I was asked to assist Rigmora, give some opinions on a royalty financing deal that they were working on, which I was happy to do.

After that, we started to work on various modeling exercises and whatnot, cross-portfolio, which is a little bit new for me. It was my understanding at the time we were creating these to present Rigmora with various investment options. We were looking at consolidations. We were looking at reprioritizing.

By the time we got to around, I would say, late April, end of May, it started to become clear that the companies were running out of money and we were approaching an insolvency period. Given my background, I started to take a more formal role in

terms of helping these companies start to navigate a process where we might be pre-bankruptcy. So I started to have a cross-portfolio role in particular with the preclinical companies.

Q. And can you describe for the Court a bit the process that you undertook in late April or early May.

A. Yes. Well, we were -- as a natural outgrowth of the modeling exercises we were doing -- as I said, once we started to become concerned that the companies were running low on cash, we started to dig in very deeply and build very precise models of what the cash was, what their liabilities were, what the management contracts were, leases, just a very detailed view, because we knew we were approaching a point in time where these companies might start to run out of money.

By the time we got to early May, some of the boards were independently starting to act because they were concerned with personal liability. So I started to, once again, be the primary go-between with creditors, the boards.

At that point we were forced to terminate approximately 70 percent of the employees

across all the companies. So I was responsible for that, including senior management that I was responsible for. And then just talking to -- as the primary vocal mouthpiece for the companies when we're dealing with creditors, landlords, prospective partners, et cetera.

Q. Since the filing of this suit at the end of May, have you continued in this process?

A. Yes. We're still in the middle of it. Most of the liabilities that the companies had at the time, back in April, are still on the books. We've asked the various creditors and landlords to hold tight if they could, explaining as transparently as we could what was going on with this process.

So, yes, we've still got quite a bit of work ahead of us to work that out.

Q. Currently, at a high level, what is the status, in your view, of these various companies?

A. They are in a form of, as I would call it, stasis.

So what we tried to do was reduce the burn rate of the companies as drastically as we could without completely destroying them.

And so the first part of the process

was who are the three or four people, in particular scientists, that we needed to try and retain.

The second was who are the creditors who are likely to give us the biggest problems.

And third, how could we secure the various IP, biologic materials and whatnot, with the goal of being able to restart them later.

So right now they are in stasis and dealing on an ad hoc basis with various creditor issues as they arise.

Q. And are you aware that in May of this year, the general partner called capital from the Rigmora entities?

A. Yes, I am.

Q. Do you have a general understanding of the quantum of those capital calls?

A. Yes, I do.

Q. In your view, if the portfolio companies were to receive that cash, how would it affect them?

A. Well, today I believe we could reconstitute them. That was how we set it up. The employees so far are hanging on. I believe that's a finite period of time that that opportunity will exist

for us. If we get the cash right now, we can pay off the debts, we could retain the employees, possibly even rehire some, and continue the research, which we've been planning in terms of how to ramp that up.

Q. And you said it's a finite period of time, in your view. Why is that?

A. Well, whenever you stop a research organization, it starts to deteriorate. So if we take more time, we will start to lose employees. They've been gracious to stay as long as they have, and we have not put any retention packages in for them, which has been amazing that they have stuck it out. But they believe in the science, I think.

Also, we are in a very competitive market. People will pass us. We work in valuable areas. We're aware of competitors. They are passing.

And then the creditors. So far they've held off. I don't believe they will hold off for much longer, and then they can force us into bankruptcy. And then we are likely to lose the assets.

Q. Switching topics a little bit, are you aware of some actions in the Cayman Islands brought by the Rigmora LPs against the GP?

A. Yes, I am.

Q. And are you aware that one of the requests that has been made is for provisional liquidators?

A. Yes, I am.

Q. Do you have a view on whether or not that will affect the companies?

A. It will affect the companies. I believe it will end the companies. You know, as the primary person who has been talking to the creditors and the employees, it's my understanding that these would be provisional liquidators. I think once you take anyone with the role that says "liquidation" on there and put them into the current situation, it will be a signal that we are done. I believe the employees will leave. I believe the creditors will move to protect their positions.

Secondly, the reason we've been able to hold it together is because Apple Tree has had success with some of these creditors, many of these employees. We've been able to build companies. So far they've been willing to take us on our word. Once we're out, they are going to assume that we lost and the build is gone. And once again, that will be a

signal, I believe. So I just -- I don't see how we survive that.

Q. So putting aside the factors that you've just mentioned, do you think that if, for example, the provisional liquidators had a scientific background, that would help mitigate some of the concerns?

ATTORNEY TAFT: Objection. Leading.

THE COURT: You can ask leading questions, but it's hard for me to assess the credibility of the witness when you do that. So try not to.

ATTORNEY EPSTEIN: Fair enough. I can withdraw it.

BY ATTORNEY EPSTEIN:

Q. Other than the concerns you've just raised, do you have any other concerns?

A. Well, it's the role that we play. We have spent, in most cases, three, four, five years growing up with these companies, watching the science, recruiting the executives, building out the financing plans. And you have to -- to do this successfully, you have to develop an independent view from the management team. And you need to partner with them in

that regard with that independent view.

I don't see how that would be replaced. I don't see how anyone would be able to come in, even with a scientific background, and replace the understanding we've developed around the teams and the technologies and the markets.

Q. Are there any other concerns regarding provisional liquidators that you believe the Court should know about?

A. No. That would state it.

ATTORNEY EPSTEIN: Pass the witness.

CROSS-EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Mr. Yanchik. Will Taft, Debevoise & Plimpton, for the defendants.

Mr. Yanchik, you are a lawyer, but you are not a Cayman law lawyer; correct?

A. That's correct.

Q. And you mentioned your work on the reallocation process in the spring of this year. The goal of that reallocation plan was to optimize the number of milestones that could be achieved across the fund; correct?

A. That's not how I would state it, no.

ATTORNEY TAFT: Can we play clip 39, Yanchik 1, 258, 18 to 22.

(A video clip was played as follows:)

Question: So you're looking for a way to optimize the number of milestones achieved across the fund; correct?

Answer: That was the goal of the reallocation plan.

(End of video clip.)

BY ATTORNEY TAFT:

Q. Do you agree that optimizing the number of milestones achieved across the fund would be a reasonable objective?

A. It was -- to be clear, it was one goal, but it was also trying to deal within certain parameters of diminishing capital.

ATTORNEY TAFT: Can we play Yanchik clip 57. That's Volume I, 258:23 to 259, line 1.

(A video clip was played as follows:)

Question: And was that a reasonable objective in your assessment?

Answer: To try to optimize the -- I think that's always a reasonable objective.

(End of video clip.)

BY ATTORNEY TAFT:

Q. Mr. Yanchik, you began thinking about a restructuring plan for certain companies in late April, early May of this year; correct?

A. I would not call it a restructuring plan. Once again, we were trying to develop multiple options that we believed Rigmora wanted to see to engage with the portfolio in a variety of ways.

So restructuring was one component. Restructuring was certainly one of the things that we were considering at the company level, at the fund level. But you continue to say "the goal," and there were multiple goals at this point in time.

Q. You mentioned that there were reductions in force --

A. That's correct.

Q. -- in May of this year; correct?

A. May, June. That's correct.

Q. And some of those happened before May 30; correct?

A. I don't recall the precise dates, but it was right around that time. It was handled on a company-by-company basis. So they did it when they thought that they were prepared.

Q. But capital wasn't called for most of these companies until May 30; correct?

A. At that point in time, that's my recollection, yes.

Q. Do you recall in connection with proposed restructuring that you were advising counsel that ATP intended to close down up to five of the portfolio companies?

A. I don't recall that. Advising that we would just shut them down outright and get rid of the assets, I do not recall that.

ATTORNEY TAFT: Can we bring up JX 2143. And if you can go to the second email on this chain on the first page.

Q. It is an email dated May 2.

Do you recognize this email?

A. I do.

Q. And here you are advising counsel that "As you can see, we are cash out in a couple weeks at some of the companies, so decisions are being finalized this weekend .... This has not been communicated to the companies or employees as of yet."

ATTORNEY TAFT: And we can go to the next paragraph, fourth paragraph.

Q. Do you see it says, "We intend to close down 4 or 5 of the remaining companies depending on final budget and other considerations"?

Do you see that?

A. I do.

Q. And do you recall that of those four or five companies, there was only one of them that ATP really wanted to salvage the IP from?

A. No, I disagree with that.

ATTORNEY TAFT: Can you look further down to the next -- the fifth paragraph. Thank you.

Q. Do you see where it says, "Of the shuttered companies, Nine Square is the one we really want to keep the assets but needs to be shuttered quickly"?

A. That one is referring to needing to move quickly on Nine Square. But I do not believe the intention ever was to get rid of all the assets. As a matter of fact, every one of my activities from February until very recently is trying to find ways to maintain all of the assets, whether or not we felt the liabilities of various companies made the corporate entity potentially problematic.

Remember, at this point we're

speculating as to how fast the creditors were going to come in and how things were going to deteriorate. But it was never our intention to get rid of all the assets.

But what I said earlier -- it would be helpful to be able to see the whole email here. What I said earlier was depending on the final budgets and what happened. So we were dealing with quite a few contingencies at that time.

ATTORNEY EPSTEIN: I'm sorry, Your Honor. Do we have paper copies for the witness?

ATTORNEY TAFT: Do we have a binder?

May I approach?

A. Can you tell me what tab, Counsel?

Q. It was JX 2143.

ATTORNEY TAFT: You can take down the slide.

A. I think what's important here is that the first sentence, it discusses how -- at this point in time there was an attachment to this email that indicated the various companies and the liabilities. At this point in time, at the beginning of May, we were speculating as to what was retrievable and what wasn't with regard to the companies. But the goal

always was to try to maintain as many assets as we could, whether or not we could develop them, depending on how much capital came in.

Q. Mr. Yanchik, changing topics, do you recall a communication with Dr. Ehlers in which you suggested that the Russia factor may be an excuse for other challenges that ATP presents?

A. I do recall that.

ATTORNEY EPSTEIN: I'm just going to object as being outside the scope.

THE COURT: You can continue. Overruled.

ATTORNEY TAFT: I have no further questions.

THE COURT: Thank you.

Anything further?

ATTORNEY EPSTEIN: Nothing further, Your Honor.

THE COURT: Thank you. You can be excused.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs call Mark Robbins. And my colleague, Ms. Jessica Reese will be handling the questioning.

THE COURT: Thank you.

MARK ROBBINS, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY REESE:

Q. Good afternoon, Dr. Robbins.

A. Good afternoon.

Q. Would you please introduce yourself to the Court.

A. I am Mark Robbins. I'm the president and chief executive officer of Kodiak Strategic Consultants.

Q. Did you prepare a slide deck to accompany your testimony this afternoon?

A. Yes, I did.

Q. Is this the presentation that you prepared?

A. Yes.

Q. Dr. Robbins, what is the business of Kodiak Strategic Solutions?

A. Kodiak Strategic Consultants.

Q. Consultants.

A. It provides clinical, regulatory, business development, consultation strategies for

pharmaceutical and biotech companies.

Q. And prior to becoming a consultant, what was your experience in the life sciences industry?

A. I have over 30 years of experience working at pharmaceutical biotech companies doing preclinical, clinical, regulatory affairs, and business development activities.

Q. What degrees do you hold?

A. I have a doctorate degree from the University of Minnesota Medical School and a law degree from St. Louis University.

Q. Dr. Robbins, do you have any experience with preclinical or early-stage life science companies in investing?

A. Yes, I do.

Q. Could you tell us about some of that experience.

A. I work with a lot of early-stage companies helping them to develop plans, strategic plans, investment portfolios, raising money, talking to different potential investors, making presentations. And I also personally evaluate startup companies and I personally invest in some early-stage

companies.

Q. In your consulting work, have you assisted companies in trying to obtain funding for preclinical research and development activities?

A. I have.

Q. Approximately how many companies have you assisted with?

A. Over a dozen.

ATTORNEY REESE: I ask the Court to qualify Dr. Robbins as an expert in biotechnology funding, research and development, and investment.

THE COURT: Any objection?

ATTORNEY TAFT: No objection.

THE COURT: Thank you.

BY ATTORNEY REESE:

Q. Dr. Robbins, what was your initial assignment in this matter?

A. My initial assignment was to assess whether Rigmora's 2025 decision to defund these preclinical studies was reasonable from an investment standpoint.

Q. Did you prepare a report on these topics?

A. Yes, I did.

Q. Is this the slide that you prepared summarizing the opinions in your opening report?

A. It is.

Q. Briefly, what did you conclude?

A. I concluded that Rigmora's decision to halt all funding of these preclinical studies was not how a reasonable investor would act trying to get a return on investment. By defunding the companies, they were essentially diminishing value.

In coming to that assessment, I used a multifactor framework to evaluate each of the companies within the portfolio, and I wrapped those up into an overall portfolio to make an assessment to make a continued investment.

Q. Did you also prepare a rebuttal report in this matter?

A. I did.

Q. And what were you asked to evaluate in your rebuttal report?

A. I was asked to look at Dr. Rimm's opinion that it was -- defunding of these seven companies because they missed the milestones from the investment memorandum was reasonable from an investment standpoint.

Q. I'm looking to Slide 7. What opinions did you form in preparing your rebuttal report?

A. I found that Dr. Rimm's focus was too narrow when she just looked at the milestones in the investment. And as Dr. Harrison testified, once you start doing research, those milestones readily change.

Investors in R&D in biotech companies understand that as you get data, milestones will shift. And they have to shift. And so I looked also at these companies to see were they really developing assets that were worthwhile and had a potential for getting returns. So those were key factors.

Q. Dr. Robbins, turning back to your opening report, how did you go about assessing the reasonableness of Rigmora's across-the-board decision to defund the portfolio companies in May 2025?

A. I looked at each of the companies individually, and then I rolled them up into the portfolio. And the way I looked at each of the companies was through a multifactor analysis that typically is used when you are looking at investing in companies and assessing companies.

Q. If we could turn to Slide 8. Is this a slide you prepared summarizing that multifactor

framework?

A. It is.

Q. What types of factors are included in this framework?

A. You evaluate the experience of the management team, the scientific research, what development progress has been made, what development progress can you expect to have, what the intellectual property protections are.

You also look to see is it breakthrough therapy that's meeting an unmet need. That's absolutely critical, that there has to be a need for product.

You look at third-party interest to see is this an area of interest to people outside of the company to understand what the landscape is.

Q. Did you design this multifactor framework yourself?

A. No. This framework is informed by my work in the industry from doing business development over 30 years, putting together presentations. Also, as an investor, these are the things I look at when I do that. This is also, from an industry standpoint, pretty much a standard when you are making

presentations to VCs. It also fits into the same realm -- an investment memorandum that ATP was putting together. And it's supported by academic and industry publications that this general framework is used.

Q. I want to talk a little bit more about some of these factors. Why is third-party interest important to assess?

A. Third-party interest helps validate the area for which you are going for. You want to see if there's an unmet need, is it realistic, and also if there is, from a third-party interest, potential business development opportunities. A lot of these early-stage companies, their goal is not to commercialize it themself, but to license them out and do core development or development with large biotech and pharmaceutical companies. So that's also important.

Q. You mentioned business development deals. For an early-stage company that's nearing or at the conclusion of its Series A funding, would an investor be looking for finalized deals exclusively?

A. The finalized deals are great, if you have them. But it takes a long time to get a business development deal. You are doing development all

along. It's prudent to have conversations early on with companies so they are aware of what you are doing, follow up as data gets generated. But actually, signed deals can take several years in process. So it's not unusual. You just want to see what's being tracked.

Q. Stepping back, does any one of the factors outlined here determine whether a company is worth investing in?

A. All these factors are critical in making that assessment. You want to make sure that there's a good management team, there is scientific validity, that it's a very strong portfolio. So you want to make all those assessments. All these factors count.

Q. And would you expect the factors to be weighted similarly for companies with assets in the same stage of development?

A. No. Each early-stage company is unique. And so sometimes certain factors will weight more than other factors.

For instance, if you have a person who is a Nobel Prize Laureate who has a great idea, that's going to be highly weighted. If you have something

that has a huge unmet need, that can be highly weighted. IP -- so you look at each individual company, early-stage company uniquely.

Q. And for this assignment, did you evaluate each individual portfolio company individually?

A. I did.

Q. Turning to Slide 9. Is this a slide that you prepared summarizing your findings?

A. Yes.

Q. Could you briefly walk through what you found.

A. So I looked at the seven companies on the slide and I found for each of the companies, that they had had significant preclinical or clinical development progress. They were all working towards getting an IND in place. They had leadership teams that were composed of world-renowned experts in the area they were working in. They all had breakthrough technologies, very novel. And they were in discussions -- some of them had partnerships with large biotech companies or they were in discussions with large pharmaceutical biotech companies.

Q. And so based on all of the materials

that you reviewed, do you believe a reasonable investor would have across the board refused further funding for the preclinical companies in May of 2025?

A. In my opinion, a reasonable investor wouldn't do that because the portfolio had a lot of potential value to it. And by halting funding and asking the companies to be wound down and liquidated, it's destroying value; whereas a reasonable investor wants to increase value and get a return on their investment. There's no basis to want to destroy value.

Q. Dr. Robbins, are you aware that Rigmora's expert, Dr. Rimm, reached a different opinion regarding the reasonableness of Rigmora's decision in May of 2025?

A. I am.

Q. And what do you understand her opinion to be?

A. I prepared a slide. I can say it. Dr. Rimm's opinion was that to -- it was reasonable to defund these companies because the milestones that were laid out in the initial memorandum four to five years before, those milestones had been missed. And therefore, because those milestones had been missed,

it was reasonable to defund all the companies.

Q. And what do you mean when you say "those milestones had been missed"?

A. The time that was in the initial investment memorandum for the milestones maybe were not achieved in that time frame. That's common in pharmaceutical development, though, because you have to follow the research and development and adjust your time limits based upon the data that's coming out.

Q. And did you consider development progress when you were evaluating the preclinical companies?

A. I absolutely did.

Q. How did your consideration of development progress differ from Dr. Rimm's consideration?

A. I took a more holistic approach. I didn't rely upon the initial investment memorandum for the timelines. I looked to see what was actually being done at the companies, what work had been completed, where they were in development at that time when they were cut off from funding. I looked at that. I looked at was unmet need still there. I looked at was the technology still promising. I also

looked at the management teams.

Q. Is this Slide 11 a slide that you prepared summarizing some of the progress you observed amongst the preclinical companies?

A. It is.

Q. Just briefly focusing, first, on development progress, could you describe what you observed about the preclinical companies.

A. All the preclinical companies had made significant development progress. Two of the companies were already in IND-enabling studies. They were getting a place to file IND in the next year or so. IND is necessary to be able to initiate clinical trial. They had gone through candidate selection of some of these companies. So they were all going through the normal development process, and they were hitting milestones.

Q. What about third-party partnerships or collaborations, what did you observe amongst the preclinical companies?

A. They all were in good negotiations for partnerships. As was testified before, Aethon had started a partnership with Revolution Medicine. That had a potential value of up to 940 million that had

already been executed.

At the time of the defunding decision, Deep Apple was in discussions with Novo Nordisk. And, actually, they executed a license agreement shortly after the defunding decision was made in June 2025. They had a value up to $812 million.

In addition to that, all the other companies were in discussions with large pharmaceutical biotech companies.

Q. Did you also evaluate the preclinical companies' leadership and management teams?

A. I did.

Q. Turning to Slide 12, does this slide summarize some of what you observed regarding the companies' leadership and management teams?

A. It is.

Q. Could you briefly describe what you observed.

A. Well, with Evercrisp, the co-founder was Dr. Jennifer Doudna. She is a Nobel Prize winner who is the preeminent scientist in gene modification. She came up with the CRISPR/Cas technology. She's won a Nobel Prize for that. So she was involved, and they have top science in that company.

I looked at Apertor. You have Dr. Jay Keasling in charge of that. He's done 12 startup companies, raised over $2 billion.

You have excellent oversight of these companies by ATP with Dr. Paul Da Silva Jardine, Dr. Spiros Liras, where they have many years of experience working at Pfizer, Biogen, large pharmaceutical companies. They know the drug development process very well, and they are overseeing these companies. So you have great management team and excellent science.

Q. Did you undertake any review of the commercial potential of the preclinical companies as part of your assignment?

A. I did not.

Q. Why not?

A. I didn't find it particularly relevant. The commercial aspects are many years out.

In R&D, in development, there's lots of pivots. And typically as an investor, you are not looking for necessarily the full valuation from a financial standpoint. You are looking at the opportunity for advancing the technology far enough to either get license deals in place, to exit by company

merger, acquisition, additional investment coming on where you can partially exit, or going public.

So there are lots of ways to have value well before you take on the commercial risk. So I didn't find the commercial assessment critical.

Q. Now, turning back to development progress, in your opinion, can a company that has missed a milestone date set early on in an investment memorandum still represent a promising scientific and clinical opportunity?

A. Absolutely. Many very successful therapeutics have missed development milestones. I can't think of anybody developing a drug, even in large companies, that meet all the timelines that -- from initiation of the project until the product is commercialized. There's research and development that starts out, and it's really hard to tie it to the time frame you have to follow the data.

Q. And what might prompt a preclinical company to pivot?

A. You want to be able to pivot -- and pivot is where you're changing the direction slightly. You want to be able to pivot because you might find the mechanism of action of the drug is better suited

for a different indication or your lead molecule isn't the best lead molecule and you have something else that would be much more substantial. So you want to pivot to that. Or you have a platform technology that is developing different drug molecules and you'll find a pivot is going to be better in order to go into a different therapeutic area.

There was discussion of that today. I believe it was Replicate, where they pivoted from an oncology vaccine and they went to a rabies vaccine and actually are on the market for that product. Those are successful pivots.

Q. And in your experience, are companies that pivot -- strike that.

How do these pivots impact the scientific and clinical potential of an asset?

A. They typically improve it. They can partially delay the timeline of that. But usually when you pivot, it increases the likelihood of success. It's no one's interest to go down a path that's not going to be successful. So to pivot to something that looks more promising increases the valuation. You want a flexible management that knows when to pivot.

Q. In your experience, how common is it for a preclinical biotech or pharmaceutical company to pivot?

A. Very common.

Q. Turning to Slide 14, and stepping back, based on your experience, do you believe it is appropriate for Dr. Rimm to assess the preclinical companies based solely on their progress as compared to timelines that were set several years ago in investment memoranda?

A. No. Those timelines and investment memoranda are optimistic of the time the investment is going to be made, realizing that once you start research and development work, those timelines are going to be modified.

Q. And are you aware of any academic literature supporting this milestone-centric approach that Dr. Rimm employs?

A. No.

Q. In your opinion, would it be reasonable for an investor in Rigmora's position to base its funding decisions in May of 2025 solely on progress as compared to investment memoranda from several years prior?

A. Absolutely not, because as a sophisticated investor in the pharmaceutical biotech arena, you know those timelines are subject to change.

ATTORNEY REESE: Thank you very much.

ATTORNEY TAFT: Your Honor, may we approach with some binders for you.

Will Taft for the defendants.

CROSS-EXAMINATION

BY ATTORNEY TAFT:

Q. Dr. Robbins, your report assesses 13 portfolio companies owned by the fund; correct?

A. That's correct.

Q. And, in your opinion, continued investment in at least part of that portfolio would have been warranted in May of 2025; correct?

A. That's correct.

Q. But a reasonable investor might decide to invest in fewer than all of those portfolio companies; correct?

A. I believe that's a correct statement. I looked at it from a portfolio view, looked at each company individually, and then wrapped up the portfolio. I didn't make a determination on individual companies.

ATTORNEY TAFT: Can we play clip 30 that is Robbins transcript 70, lines 4 to 11.

(A video clip was played as follows:)

Question: So a reasonable investor might invest in fewer than all of them; correct?

Answer: Potentially. Like I said, it's hard to pick which ones are going to be the winners and losers there. But to defund all of them I don't think is reasonable.

(End of video clip.)

BY ATTORNEY TAFT:

Q. So, Dr. Robbins, you did not conclude that all 13 portfolio companies merited continued funding; correct?

A. I didn't make that assessment.

Q. Now, you agree, and I think you just stated on direct, that a reasonable investor seeks a return on investment; correct?

A. Yes.

Q. And in performing your analysis, you mentioned under questioning that you didn't consider the portfolio's commercial potential; correct?

A. I did not do a financial analysis of it. I looked at their unmet therapeutic need they

were looking to treat. And from that perspective, I recognized there was a need for the product. But I did not do a financial assessment, that's correct.

Q. So your analysis does not consider the financial potential of any portfolio company; correct?

A. That's correct.

Q. So you didn't review the balance sheets for any portfolio company; correct?

A. No. But the balance sheets weren't particularly relevant because the balance sheets were being controlled by the fund. So balance sheets were what they were.

Q. And you didn't assess the value of any of the portfolio companies; correct?

A. That is correct.

Q. And you didn't provide any opinion as to the likelihood that any of these portfolio companies would actually develop -- succeed in developing an approved therapeutic product; correct?

A. That's correct. But for being successful, they don't have to develop an approved therapeutic. They can license out. There's always risk in pharmaceutical development.

Q. And you didn't assess the amount of

money that would be required by any portfolio company to achieve a potential exit for the investor; correct?

A. That's correct.

Q. And you expressed no opinions in your report about how much funding any of the preclinical companies merited; correct?

A. That's correct.

Q. You discussed Dr. Rimm's opinions right now and in your rebuttal report; correct?

A. Correct.

Q. You don't dispute Dr. Rimm's conclusion that by mid -- by first quarter 2025, all of the early-stage companies had missed investment memorandum milestones; correct?

A. I don't dispute that. I don't think that's a -- I think that's a flawed analysis, but I don't dispute that.

ATTORNEY TAFT: No further questions. Thank you.

THE COURT: Thank you. You can be excused.

(Witness excused.)

ATTORNEY TAFT: Your Honor, by agreement of the parties, we've agreed to take

defendants' expert, Dr. Strebulaev, out of order. I would therefore call Professor Strebulaev to the stand.

We will be distributing some binders. May I approach?

THE COURT: Yes.

ILYA STREBULAEV, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Dr. Strebulaev.

A. Good afternoon.

Q. Could you please introduce yourself to the Court.

A. My name is Ilya Strebulaev. I'm a professor at the Stanford University Graduate School of Business.

ATTORNEY TAFT: Could we please pull up Slide 1.

Q. Dr. Strebulaev, would you take a few moments to describe your background and qualifications with respect to venture capital investing.

A. Of course. First of all, my educational background, I did my BA in economics at

Moscow State University, then my MA in economics at the New Economic School, and then my M.Phil and Ph.D. in finance at the London Business School.

And upon completion of my Ph.D., I joined Stanford Graduate School of Business in 2004. And I am now there, the David S. Lobel, professor of private equity and professor of finance.

My expertise is venture capital and private equity. In terms of teaching, I teach a range of capital classes that students at Stanford take to become either venture capitalists or founders of venture capital-backed companies.

In terms of research, I founded and had our venture capital initiative that produces a lot of research.

Just an example, one of our -- my research pieces with my colleagues where we surveyed venture capitalists in the United States that represent the majority of assets under management. And I'm proud to say that academic paper has been the most cited paper in the field of venture capital research in the past five years.

ATTORNEY TAFT: Your Honor, defendants offer Dr. Strebulaev as an expert on venture capital

investing.

THE COURT: Any objection?

ATTORNEY JONES: No objection.

ATTORNEY TAFT: If we could pull up the next slide.

BY ATTORNEY TAFT:

Q. Dr. Strebulaev, could you please describe this analysis for the Court.

A. Of course. As a part of my assignment in this case, I was asked to review the capital contributions by Rigmora to the ATP fund on the cumulative basis through the end of May of 2025. And as I understand, there may be a dispute whether certain deemed capital contributions should be considered against the capital contribution -- capital commitments of Rigmora against subscription agreements.

And so what I show here is -- the black line shows the total cumulative capital contributions by Rigmora, taking into account those deemed capital contributions under dispute. And the orange one, excluding those capital contributions.

Q. And I see a vertical green line going down on the right-hand side. What does that

represent?

A. That represents the start of the Russian-Ukrainian war in February of 2022. As I understand, there are allegations in the complaint that after the start of the war, Rigmora, sorry to say, lost enthusiasm for honoring its capital commitments and tried to stop providing funds to ATP.

What I think this chart clearly shows is that the capital contributions by Rigmora continued more or less at the same pace both before and after the start of the war.

ATTORNEY TAFT: We can take that slide down.

Q. Dr. Strebulaev, as part of your work on this case, did you consider whether it was consistent with reasonable investor behavior for Rigmora to condition the discussion of additional budgets for certain companies in the portfolio on the general partner agreeing to wind down the early-stage companies?

A. Yes, I did consider this, and I concluded that it was reasonable.

To start with, let me point out that any investor doesn't have an unlimited budget, an

unlimited capital. And therefore, what a reasonable investor does is tries to -- it tries to allocate its limited capital towards the best investment opportunities that are available to that investor.

For example, one of the factors in this case is that I understand Dr. Rimm concluded that each of the early-stage companies in the matter missed milestones that were in the original investment memoranda, the Series A funding. And in my experience in the venture capital space, the milestones constitute one of the very important factors for venture capital investors because effectively they allow investors to evaluate the progress the company is making relative to the original expectations.

Q. Other than performance against milestones, what other factors does your research indicate a reasonable investor would have contemplated in considering further investment in the early-stage companies?

A. Well, of course there are many factors. But among those many factors, some of the factors would be the recent performance of the venture fund, interest or lack of interest by third-party investors. And also I think an important factor is

the potential conflict of interest that the general partner or whoever manages the venture fund may have.

Q. And as part of your opinions in this matter, did you analyze the fund's recent performance?

A. I did.

ATTORNEY TAFT: Could we pull up the third slide, please.

Q. Dr. Strebulaev, how does this slide relate to the opinions in your case?

A. Well, this is the result of my investigation that I did on the recent performance of ATP fund relative to the comparable sample of early-stage biotech funds.

So let me try to explain. First of all, I concentrate on two financial metrics that are very commonly used in the venture capital industry. The first metric up top is "Net IRR," where IRR stands for the internal rate of return. And the bottom panel shows "TVPI," which stands for the total value to paid-in investments. The fact to think about TVPI is how many dollars you get for one dollar of investment in the venture fund.

Q. Where did you get the data for ATP's net IRR and TVPI?

A. Well, first of all, the ATP data is for ATP Pools V-1, V-2, and V-3. And this is the data that ATP reports itself in its statements to the limited partner. And also what the red bar shows is this performance -- the most recent performance available to me as of December, end of December 2024. And maybe I should mention that Pools V-1, V-2, and V-3 are recent investments. Those pools started between 2019 and 2021 and really the only actively managed investments by ATP.

Now, what you see in blue is the performance of the comparable -- a comparable sample. And I show three metrics here both for net IRR and TVPI: the median performance, the average performance, and the top quartile. And let me also mention, importantly, that in the venture capital industry, investors care a lot about the top quartile because this is risky investments. And investors try to invest in the top-performing managers. That is commonly understood as to be in the top quartile of performance.

So to -- I think this chart clearly shows that ATP Pools V-1, V-2, and V-3 performed poorly. Their performance was below the median, below

the average, and I would say dramatically below the top quartile.

Q. And how would that affect a reasonable investor's assessment of the decision whether to invest additional funds in these pools?

A. Well, as I already mentioned, reasonable investors try to allocate their limited capital to the best possible opportunities. So this analysis would cause a reasonable investor to have a lot of concerns about the poor performance of the fund, and as a result of -- the reasonable investor's result of this would consider whether to continue funding any of the companies within those pools.

Q. Now, as part of your work on this case, did you also assess the third-party interest in the fund's portfolio companies, in the early-stage companies?

A. Yes, I did, specifically the equity interest by third-party investors, which, in my experience and my research, is one of the critical considerations by -- in the venture capital industry.

ATTORNEY TAFT: Can we please pull up the next slide.

Q. How does this slide relate to your

opinions?

A. This was the result of my investigation. Let me try to explain briefly. What I did is I compared seven early-stage companies and ATP Pools V-1 and V-2 -- and they are shown in the red -- with a sample of the comparable early-stage biotech companies, retraced their initial funding rounds to approximately the same size as the early-stage companies in the matter.

And what I looked at is the timing, which is how quickly that comparable companies raised subsequent funding, went public, or did what I would describe as successful M&A, which is with at least twice the amount invested. So I would describe those kind of companies in blue here as successful or potentially successful.

What the chart shows is that the median company raised its subsequent round of follow-on foreign investment within approximately 1.5 years.

If you look at the 75th percentile, it means that 75 percent of the comparable companies raised their follow-on investment at 2.18 years.

If we compare this to the early-stage

companies, none of the early-stage companies in the matter had any follow-on investment for at least 2.18 years, so well beyond the timing of typical comparable biotech companies. And the timing is, as of May 15, 2025, between 2.35 and 4.83 years plus since their initial funding without any subsequent follow-on investment.

Q. And did you also hear Dr. Robbins testify regarding third-party interest in the early-stage portfolio companies?

A. I did hear he testified about it right now.

Q. And did any of that testimony change your opinions in this case?

A. No, it did not, for a number of reasons. One reason is that he had a slide where in the last column he showed what he called third-party interest. And none of those examples that he showed were from investors.

Second is that the examples that he showed, many of those were stale. For example, the very first example he had, I believe, was a company called Evercrisp. And he said the discussion with potential pharmaceutical companies, which is not

equity interest -- in progress or in discussions he said. Well, that is information from, I believe, 2023.

In my review of the most recent reports from ATP, those discussions are not mentioned. And if we go down, there will be more examples like that.

Q. What conclusions do you draw regarding whether -- how a reasonable investor would assess the level of third-party interest in these companies?

A. Maybe I should also mention that as a part of my investigation, I also looked into whether it is common for a single -- for companies to have only single investor in a follow-on financing. And I found out that if you look at the comparable companies, it is very uncommon. It happens only in 4 percent of cases, meaning that for the overwhelming majority of successful or potentially successful comparable early-stage biotech companies who had more than one investor.

So taking this together, the conclusion I draw is that a reasonable investor would be concerned about the lack of third-party interest, investor interest, and will be concerned about the

timing of the -- so the timing by which this -- none of these companies has been able to raise any follow-on financing.

Q. Dr. Strebulaev, among the factors that you said a reasonable investor would consider -- at the beginning, you also mentioned potential conflicts of interest. Did you analyze that as part of your opinion in this case?

A. I did.

ATTORNEY TAFT: Could we pull up the next slide, please.

Q. How does this slide relate to your opinions?

A. Well, so first of all, as I understand, Dr. Harrison really controls ATP. So he's both a limited partner in ATP, in various pools of ATP fund, and he also would get carry if those pools are successful.

And, first of all, let me explain that carry is very commonly used, universally used, I would say, in the venture capital industry. And the idea behind carry is straightforward. You would like to incentivize the fund manager to find and manage companies to achieve profitable exits because what

carry is is the participation in the upside profit of the fund. So after all the initial contributed capital returned to the limited partners, carry means that if there is any profit remains, you would get a fraction of that.

Now, while carry is universal in the venture capital industry, in this specific case, there are at least two factors that would lead to the very specific conflict of interest. Let me try to explain.

So, first of all -- and I show this on the slide. And I concentrate on Pools V-1 and V-2 simply because those are the pools that contain all the early-stage companies in this proceedings.

So for those pools, first of all, Dr. Harrison's capital contribution is zero, meaning that Dr. Harrison has no financial risk with respect to those pools. So that if all of those capital is lost, Dr. Harrison will not lose anything.

Second, as you see, Dr. Harrison at the same time has 7.5 percent carry. And again, what it means is that for every hundred dollars of profit, if there's any profit, Dr. Harrison will get $7.5.

Now, the second reason why it leads in this specific case to a higher than usual, very

specific conflict of interest is because carry can lead to conflict of interest if the companies in question are not performing well.

So if the companies, let's say, have a negative net present value, which means that we should not really proceed funding them any further, but the fund manager has no financial risk and, at the same time -- just on the outlier possibility that one of these companies can be successful, the fund manager will generate potentially substantial profit.

So this asymmetry leads to potentially very large conflict of interest that would make Dr. Harrison's --

THE COURT: We're going to take our 15-minute break.

(Court in recess at 3:04 p.m.)

(Resumed at 3:18 p.m.)

THE COURT: Please be seated. We'll go until 5:00. Please begin.

ATTORNEY TAFT: Thank you, Your Honor. Again, Will Taft for defendants.

BY ATTORNEY TAFT:

Q. Dr. Strebulaev, have you reviewed the reports submitted by Dr. Rao, the plaintiff's expert in this case?

A. I did.

Q. And did you review his opinion that it would generally not be economically rational for an investor who was already in one of the early-stage biotech companies to stop providing additional funding barring circumstances like a scientific roadblock or failure of a drug candidate?

A. I did.

Q. Do you agree with that opinion?

A. I do not agree. In fact, Dr. Rao makes a basic mistake. He violates basic principles of economics. And it is such an important principle that the economists even have a name for it. It is called the "sunk-cost fallacy."

Economists generally agree that the

investment's already made in the past, and this what we call sunk costs, should not be considered when we decide on making future investment decisions.

What matters for the future investment decisions is the potential future additional cash flows that the project can generate in expectation on top of the cash flows that that project should have generated anyway if we provide additional capital.

Q. So a reasonable investor in May of 2025 would have been focused on the potential return on investment of incremental dollars that they're putting in; correct?

A. That is absolutely correct. And doing anything else would be an example of sunk-cost fallacy.

Q. Thank you.

Dr. Strebulaev, do you have an opinion as to whether Rigmora's decision to condition the discussion of additional budgets for certain portfolio companies on ATP winding down the early-stage companies was consistent with reasonable investor behavior in a venture capital context?

A. The answer is yes. And I would look at the factors that are reviewed: missed milestones,

poor performance of the fund recently, lack of third-party investor interest, substantial potential for a conflict of interest. I think take -- combine all of this together, a reasonable investor would be justified in raising very serious concerns.

And I think as a result of this, Rigmora was justified in considering whether to reallocate funds away or to stop providing additional funding to these early-stage companies.

ATTORNEY TAFT: Thank you. I turn over the witness.

ATTORNEY JONES: We have some binders. Can we approach with those?

THE COURT: Sure.

CROSS-EXAMINATION

BY ATTORNEY JONES:

Q. Good afternoon, Doctor. Taylor Jones from Quinn Emanuel for plaintiff.

How are you?

A. Good afternoon.

Q. Doctor, you don't have a medical degree; right?

A. I don't.

Q. You don't have a biomedical

engineering degree?

A. That is correct, I don't.

Q. You've not earned any degrees in the life sciences; right?

A. That is correct.

Q. And none of the courses that you've taught in venture capital investing are specific to the biopharmaceutical industry; correct?

A. If you say specifically, then yes. Of course, the venture capital class I teach cover all the venture capital investments. That would also include healthcare, life sciences, biotech, but not specifically.

Q. Understood.

Biotechnology has never been a specific research area of yours either; right?

A. That is correct. Again, if we understand the specific in the way I already described.

Q. So you're not an expert in biotechnology specifically; correct?

A. No.

ATTORNEY JONES: Let's pull up JX 1318, please. And this is in your binder behind

the tab that says JX 1318, if you'd like to turn there in the paper version, Doctor.

Q. You reviewed this email in preparing your report; correct?

A. That is correct.

Q. This is Mr. Bogdanov's May 15th, 2025, email to Dr. Harrison and others at ATP.

A. That is correct.

Q. And this email is the focus of Section V of your opening report, I believe; is that correct?

A. I don't remember the section number right now, but I believe so.

Q. You, in fact, quote from it in paragraph 57 of your report; correct?

A. Presumably so.

Q. Why don't we turn to your report. That's JX 1576. That's also behind a tab in the binder if you'd like to turn there with me. I'm specifically looking at page 24, that's where you can find paragraph 57.

You quote here from this May 15th, 2025, email, here in your report; correct?

A. That is correct.

Q. And you conclude in your report that a reasonable investor would share some of the concerns that are expressed in this email; right?

A. At least some. I'm not really sure about some or all, but yes, would share concerns, yes, that is correct.

Q. I'd like to look at the first sentence of paragraph 58. You write, "As explained in its May 15, 2025 email to ATP, Rigmora believed that the Early Stage Companies had failed to meet milestones as set forth in their investment memoranda and there was no third-party interest to invest in them."

Did I read that correctly?

A. Correct.

Q. You didn't interview anyone at Rigmora before submitting your reports; right?

A. I did not.

Q. And so the support you cite for this statement regarding what Rigmora believed is in footnote 84 of your report; right?

A. That is correct.

Q. And that cites to paragraph 134 of the complaint, and complaint Exhibit 10; right?

A. That is correct.

Q. Do you remember what paragraph 134 of the complaint is?

A. Not sitting here right now.

Q. Let's turn to tab 1400, JX 1400 in your notebook, please. Paragraph 134 starts on 62 of the complaint. Let me know when you're there.

A. Yes, I do see paragraph 134.

Q. Paragraph 134 is a long quote of the May 15th, 2025, email; right?

A. That is correct.

Q. Let's also turn to Exhibit 10 to the complaint. You'll find that at the back of this same tab. Are you there with me?

A. Yes.

Q. And that is the May 15, 2025, email itself; right?

A. That is correct.

Q. So you don't cite anything else in your report to support an assertion regarding what Rigmora believed; right?

A. That is correct.

Q. You also don't offer an opinion in this case regarding whether Rigmora or Mr. Bogdanov or anyone else at Rigmora were, in fact, reasonable in

their actions; right?

A. I do not. I was not asked to reach such an opinion, one way or the other.

Q. Let's turn back to JX 1318, the May 15th email itself, please. And are you there, Doctor?

A. Yes.

Q. I am looking at the first paragraph after the bullets, the first sentence. "The SLP see no way for a path to commercial success for these Early-Stage Companies, *inter alia*, because: they have failed to meet the milestones set out in the investment memoranda on which SLP's initial funding was premised, the remaining budgets are not sufficient to achieve them, there is no third party interest to invest in these Early-Stage Companies, and any further capital calls would not be in accordance with the milestones and business plans set out in the agreed budgets for the Early-Stage Companies (and the SLP have not consented to these budgets being changed)."

Did I read that correctly?

A. Yes, you did.

Q. And you opine in Part V of your opening report that the early-stage companies raised

issues "That Would Make a Reasonable Investor Concerned About Continuing to Fund Them." Correct?

A. That is correct. I'm not really sure what you mean by Part V. I think maybe Section V.

Q. I should have said Section V, that's right. Thank you.

Now, missed milestones, that's an issue that's mentioned in Mr. Bogdanov's May 15 email that we just read; right?

A. That is correct.

Q. You also discuss it in your opening report?

A. That is correct.

Q. And the May 15th email also states that the remaining budgets are insufficient to achieve the milestones; right?

A. That is correct.

Q. But you don't consider in your reports whether the remaining budgets were sufficient to achieve the milestones; right?

A. That is correct. I was not asked to do it.

Q. Struggling to raise funding from third parties, that issue is also mentioned in the May 15th

email?

A. That is correct.

Q. You do discuss that in your opening report; right?

A. That is correct. I also discuss it in my rebuttal report as well.

Q. Section V(A) of your opening report, that's the section that focuses on whether the preclinical companies missed milestones; correct?

A. I do discuss in my opening report. I don't remember the section number right now. Apologies.

Q. That's not a problem at all. We can turn there if you like. It's -- 1576, again, is the tab. And that section of your report starts on page 25.

So this is the section of your report where you discuss your finding that "The Early Stage Companies Missed Milestones." Right?

A. That is correct.

Q. Now, you opine here that it's "common to require that portfolio companies [hit] milestones to progress to the next round of funding." Right?

A. That is correct.

Q. But you can't give an opinion here on whether the portfolio companies at issue here were required to meet milestones in order to progress to the next round of funding; right?

A. I don't believe so. It seems a legal question to me.

Q. And you're not a lawyer; right?

A. I'm definitely not a lawyer. I'm not qualified to render any legal opinion, only an opinion as an economist.

Q. Thank you.

Paragraph 61 of your report on the next page here, you opine that "a reasonable investor would be concerned about the failure of portfolio companies to meet their predetermined milestones." Right?

A. That is correct.

Q. You didn't determine whether ATP had, in fact, missed milestones; correct?

A. Do you mean ATP or the portfolio companies of ATP, Counsel?

Q. I'll accept that correction. The portfolio companies. You didn't determine whether they had, in fact, missed milestones; right?

A. I did not. I was not asked to do it.

Q. You relied on the lawyers from Debevoise to tell you that the portfolio companies had missed milestones; isn't that right?

A. Well, what I understood is that, from counsel, is that there's another expert, Dr. Ilonna Rimm, who was asked to -- by a technology expert to opine or to investigate whether milestones were missed or were not missed. And that she reached an opinion.

Q. You also don't opine on which milestones were missed; right?

A. That is correct.

Q. And you don't opine on the reasons that preclinical companies may have missed certain milestones; is that right?

A. You mean specific companies at the issue in this matter?

Q. Correct?

A. That is correct, I do not.

Q. You would agree, wouldn't you, Doctor, that a reasonable investor would want to know why the portfolio companies missed milestones?

A. I would say that it depends. Typically, yes. But, of course, as I mentioned, there

are many factors that a reasonable investor would consider, in addition to -- sorry, in addition to missed milestones. A missed milestone definitely would raise, I think, a substantial red flag for any reasonable investor. But then there are other factors at play.

Q. Do you recall providing deposition testimony in this case on August 26, 2025?

A. I do.

Q. I'd like for you to turn to your deposition transcript, which you should have in front of you. I'm going to turn to page 101.

A. I can also look at the --

Q. That works for me. Whatever you would like to do.

A. Thank you. I will look at the screen, if that's okay.

Q. Starting on line 20.

"Question: Okay. Dr. Strebulaev, are you intending to testify that a portfolio company's meeting of milestones that were presented in an investment memo were a prerequisite to the release of funding within the Series A round?"

Mr. Taft objects to form to the extent

it calls for a legal conclusion.

"Answer: I think, Counsel, some words that you use such as 'prerequisite' seems legal to me. But I do intend to testify of course only if asked and called upon that a reasonable investor would review at all times, including in connection with a continuous funding in a Series A round, about how the -- annually the portfolio company is progressing. And that would include whether the company is able to reach its milestones, whether it missed milestones; and if it missed, why it missed milestones."

Did I read that correctly, Doctor?

A. You did.

ATTORNEY TAFT: Your Honor, the full answer was not read.

THE COURT: You can read it during redirect.

BY ATTORNEY JONES:

Q. Now, the second issue you identify in Section V of your report is that there was "no third party interest to invest" in the preclinical companies; right?

A. That is correct.

Q. In paragraph 62 of your report, you

give an opinion as to the reason the preclinical companies were unable to obtain third-party funding; isn't that right?

A. Again, Counsel, I need to see paragraph 62, but I believe that's correct.

Q. Of course. Let's go there. That is on page [sic] 62 of JX 1576. I'm going to try and join you in reading the screen here.

Are you with me there?

A. I am.

Q. In paragraph 62, you write, "If potential new investors had thought that the Early Stage Companies were viable investments, these companies would likely have been able to obtain funding from third parties. Based on my review of the evidence, this was not the case."

Did I read that correctly?

A. You did.

Q. So you're opining here that the reason third parties did not invest is because they didn't think the early-stage companies were viable investments; correct?

A. I was not asked to evaluate whether the investments were viable. But I was asked to opine

how -- in the venture capital industry, what are the indicators that the companies are potentially viable. And one important indicator is the third-party equity interest, which means that if the market, the venture capital market, considered those companies to be of interest, there would be interest from third-party equity investors that would materialize.

And upon the review of the evidence, I have not seen such materialized interest.

Q. And when you say "review of the evidence," you mean emails and deposition testimony in this case; correct?

A. Well, the entirety of the evidence I think that was given me. But that would include depositions and emails I believe, yes.

Q. Let's look at pages 26 to 27 of your opening report. I'm at paragraph 63.

So here, you write, "I have reviewed documents suggesting that ATP tried to find third-party investors and partners in the Early Stage Companies and was unable to do so. ATP's document production includes emails regarding its business development attempts with regard to the Portfolio Companies that show outreach to many pharmaceutical

companies, where the update to those attempts was mostly 'awaiting feedback.' Review of these emails indicates an unwillingness to fund the Early Stage Companies from third-parties. For example, they mention that potential investors and partners were interested in Aethon, Apertor, and Evercrisp but ultimately concluded that it was 'too early' to engage."

Did I read that correctly?

A. You did.

Q. You quote from one of these emails, right, in paragraph 63 to your report?

A. That is correct as well.

Q. And that's this block quote here that I'll read from now.

"I am a fan of the technology and appreciate its potential. The challenge we have had is finding a target that the company sees as commercially viable. As I explained in my email last September, with Sanofi signing a strategic deal for exclusive US over-the-counter rights to Tamiflu® in Flu Care, they are currently unwilling to consider another antiviral for flu. They also aren't sure about the commercial potential of an antiviral for

coronavirus, PIV3 or RSV."

Did I read that right?

A. Yes, but you said it's a quotation from the email. And I think, Counsel, you also read the last sentence, which is not a quotation, if I'm not mistaken. But it's part of my report.

Q. Well, let's go to the email and see. So this is behind JX 0811 in your binder. And I believe the email that you're quoting from is on the page ending in Bates stamp 533, about halfway down the page.

Let me know when you're there.

A. I am with you, Counsel.

Q. And that's the email that you quote in paragraph 63 of your report; is that correct?

A. Is it a question? I'm sorry, Counsel.

Q. This is the email that you quote from in paragraph 63 of your report; correct?

A. I do, with the proviso that if you look at the footnote, footnote 92 of my opening report, this is just one of the emails I quote. I also quote an internal email, and I also quote the deposition of Mr. Jardine as well.

Q. Thank you.

The first sentence of this email, on the page ending in Bates 533, says, "It is great to hear from you. I would certainly appreciate a preview of the data and you are correct our CDA is good until 2028."

You omitted that from paragraph 63 of your report; correct?

A. No. I cited the entirety of the email in -- well, I cited this as footnote 92. I said, "Emails between ATP and Red Queen, March 2024," and then I gave the Bates stamp number. I did not omit the first sentence. I just did not quote from the email --

Q. Got it.

A. -- directly.

Q. So that's exactly what I meant. You didn't quote the two sentences that I just read; right?

A. That is correct.

Q. And you indicate that omission with ellipses; right?

A. I'm sorry, Counsel. I'm not really following you.

Q. Go back to paragraph 63 of your

report.

A. I am there.

Q. You have ellipses at the beginning of this block quote; right?

A. Yes.

Q. And that indicates this omission, doesn't it?

A. Yes. I think really it is -- and apologies if I did not do it correctly, but I think this is the document. And then I say this email that I am quoting in footnote 92 starts at page 553.

Q. Understood.

A. So from this point of view, I think I -- I did not quote the sentence for the space constraints, but I did mean, I think, I believe that email, the entirety of that email.

Q. Got it. Okay. Let's go back to the email again behind Tab 811.

The last sentence here, once you get there, the last sentence here says, "I do think clinical data showing that is having a positive impact in people infected with those pathogens might be able to change opinions."

You left that out too; right?

A. Again, Counsel, I'm not really sure if I left out. Yes, I did not cite anything -- sorry. I did not cite the specific text of the email in my report. I reference to it in my footnote 92. That would include the yellow sentence that you indicated.

That also -- I also did not include the middle sentences as well that, for example, say, and I'm going to quote, "The challenge we have had is finding a target that the company sees as commercially viable." And I think what was important for me is in this email and in the previous --

Q. Let me stop you for a second. I believe you did include that in your paragraph 63; right?

A. I'm sorry?

Q. You did quote that in your paragraph 63.

We can move on, Doctor. It's not important.

You did not use ellipses to indicate that last omission; correct?

A. Sorry. Again, Counsel? I'm not really sure I follow.

Q. That's okay. We can move on.

A. I believe the way I used ellipses is to indicate where you can find that email.

Q. That's fine. Let's move on, Doctor.

Let's turn to JX 786. Here, I'm looking at the page ending in 003. And this is a document that you reviewed during your deposition; right?

A. That is correct.

Q. And I'm looking at the email in the middle of the page. It says, "Dear Seth and Anna, Given the latest news re syndications where various funds expressed sanctions concerns toward[] assets ownership structure, we have requested memorandum from Debe clarifying this matter as per US sanction laws. We have explicitly asked for a Memo that can be shared with the Fund and its advisors so that we can share it with you. Kind regards, Anna Kolonchina."

Ms. Kolonchina was an employer of Rigmora; right?

A. That is correct, I believe.

Q. Now, in reaching your conclusion in Part V(B) that third parties would have invested if they thought the preclinical companies were viable investments, you didn't consider that third parties

might be concerned about investing because of U.S. sanctions against Dmitry Rybolovlev; correct?

A. I did not, and I have not seen any evidence in the record from third-party investors that indicated that concern.

Q. You conclude in your report that the performance of the pools containing the preclinical companies was "below its peers, and substantially below top performing comparable funds." Right?

A. That is correct.

Q. The May 15 email doesn't discuss the performance of the pools containing the preclinical companies as compared to its peers; right?

A. I believe that's the case.

Q. You prepared that analysis of comparable companies solely for this litigation; correct?

A. Well, yes, I was retained as an expert witness for this litigation. That is correct.

Q. In roughly June 2025?

A. Well, while my work was done roughly in June, August -- June, July 2025, the information that I used was as of December 2024. The exact details are explained in my methodology that I used to

prepare the comparison in my report.

Q. You don't claim anywhere in your reports that Rigmora conducted this analysis before sending the May 15 email; right?

A. I do not.

Q. You also read the LPA as part of your work for this case; isn't that right?

A. I did, of course, as an economist.

Q. And there's nothing in the LPA that says capital commitments depend on whether the portfolio companies are performing in the top quartile; right?

A. I think that might call for a legal conclusion.

THE WITNESS: Your Honor, if I may, I will answer.

A. I don't remember seeing this.

Q. Two out of three of your principal conclusions involve a concept that you call a "reasonable investor." Right?

A. Two out of three? I'm not really sure what you mean by three, Counsel.

Q. You discussed the concept of a reasonable investor in your report; correct?

A. That is correct.

Q. A reasonable investor, would you agree, has access to information an investor would want to make a decision?

A. That depends.

Q. Turn back to your deposition, please. I'm on page 32, starting with line 19.

ATTORNEY JONES: Marco, do we have that?

Q. "Question: What is your definition of 'reasonable investor' as you have used it in your report that's been marked as Exhibit 1?

"Answer: A reasonable investor is an investor who is a rational economic agent and will be making decisions in light of all [] the information that an investor possesses, so information an investor would like to possess to make a decision."

So the investor has access to all the information the investor would want to make a decision; right?

A. No, that is not correct, Counsel. So what I said is that "all of the information that an investor possesses." Sometimes the investor would find it -- a reasonable investor would find it in that

investor's interest to delegate decision-making to some others.

So, therefore, to make a decision you don't need to try to get more information. But yes, if you already have this information, then you typically would utilize it.

Q. You're not aware of Rigmora retaining any biotech consultants before it sent the May 15 email; right?

A. I don't know one way or the other.

Q. Now, you have this opinion that I believe you testified about a moment ago, in Section III(D) of your report, that a GP's interest can diverge from an LP's interest in relation "to providing additional rounds of funding." Right?

A. That is correct.

Q. And that can create a conflict of interest that can also be a concern to a reasonable investor; correct?

A. That is correct.

Q. But you would agree that this risk can be mitigated; correct?

A. To some extent, yes, that risk can be mitigated. And one way to mitigate it is by the

general partner, by the fund manager, to provide a substantial capital contribution --

Q. Another way that it can --

A. -- as a limited partner.

Q. Another way that it can be mitigated is to give the LP the right to approve budgets for the portfolio companies; right?

A. So that typically is not what's done. I think this is more or less --

Q. Typically. But that's one way they can be mitigated; right?

ATTORNEY TAFT: Your Honor, if the witness can finish the question without being cut off.

THE COURT: I think the court reporter would appreciate that as well.

But I encourage you to listen to the questions as well.

THE WITNESS: Thank you.

ATTORNEY JONES: Apologies. I'll slow down.

THE WITNESS: Would you repeat the question, Counsel. I apologize.

BY ATTORNEY JONES:

Q. One of the ways that that conflict can

be mitigated is by giving the LP the right to approve budgets for portfolio companies; right?

A. So in the cases where there is one major LP, that could be one of the ways. But I would not say it's mitigated. I would say this is one of the factors that should be taken into account. This does not eliminate the potential conflict of interest, especially if some or all of the companies are underperforming.

Q. In this case, Rigmora did have the right to approve budgets for portfolio companies; right?

A. I believe that is the case.

ATTORNEY JONES: Can we just pull up Slide 5 to your demonstrative again.

I'm sorry. The very last slide is what I'm looking at. That's it. Thank you.

Q. This slide doesn't account for the fact that Rigmora has to recover the full amount of its capital contributions before Dr. Harrison receives any carry; right?

A. That is correct, which is the, as I mentioned, the idea of the carry, is that limited partners first recover the capital contributed to the

fund, and then the carry is shared, or the profits are shared, rather, between the limited partner and the fund manager; in this case, Dr. Harrison.

Q. And this slide also doesn't account for the fact that Rigmora receives over 90 percent of the profits in Pools V-1 and V-2; right?

A. I'm not really sure what you mean by that. Of course it does account because, as I understand, there's really only two beneficiaries here, which is Rigmora and Dr. Harrison. So Dr. Harrison receives 7.5 percent of carry. Rigmora does not receive carry because Rigmora is a limited partner.

So carry is received only and only by Dr. Harrison and his trusts.

Q. And you understand that Dr. Harrison does contribute capital to Pool V-3; right?

A. That is correct. I believe that he contributes around .3 percent. I may be mistaken on the number. But his carry in Pool V-3 is also larger. It's about 11.2 or 11.3 percent.

Q. Pool V-3 is not on this slide; right?

A. I did not include it on this slide because it does not include -- because none of the --

as I understand, none of the early-stage companies in the matter are included in Pool V-3.

Having said that, if you include Pool V-3 on the slide, my opinion would not change.

ATTORNEY JONES: No further questions. Thank you.

ATTORNEY TAFT: No further questions, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thanks so much.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs are going to call Spiros Liras.

SPIROS LIRAS, having first been duly affirmed, was examined and testified as follows:

ATTORNEY BONACORSI: Good afternoon, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY BONACORSI:

Q. Good afternoon, Dr. Liras. Can you please introduce yourself.

A. Yes. I'm Spiros Liras. I'm a drug discovery and development professional. I've been working in the business for about 30 years. I have a

Ph.D. in organic chemistry.

I started my career at Pfizer, where I was at for 24 years. I was vice president of research at Pfizer, leading programs in multiple disease areas spanning from neuroscience to cardiovascular-metabolic diseases and rare diseases. I was fortunate to have led teams that deliver nearly 50 compounds into clinical development.

Q. How long have you been at ATP?

A. I left Pfizer in 2018. I joined Biogen for a very brief period of time, about 15 months, where I established the external portfolio innovation unit. Reason of this was to basically promote entrepreneurship.

And while I was at Biogen, I was recruited by ATP. It was a compelling opportunity for many reasons, in part because ATP had a fantastic reputation in terms of actually going and building companies from scratch, from very nascent research, which is where I lived in for all my life, really, professionally, to a great success in terms of turnovers by exits and other measurements.

At the time that I was hired, our managing director, Seth Harrison, was building an

exceptional team of expertise with other partners. Some of them I had tremendous respect for and I always looked forward to working with.

And I think the last and most important thing is that Seth had a tremendous respect, hopefully still has, for chemists. I'm a chemist, and I really appreciated that as an added advantage.

Q. Are you a venture partner with ATP?

A. I am.

Q. And what do your responsibilities include as venture parter of ATP?

A. Predominantly to select projects, to liase with the external environment, identify compelling opportunities.

Subsequent to this, sort of like invest my time in terms of building a coherent and convincing investment thesis, which is then approved by the ATP investment team, which encompasses all venture partners. Ultimately, the decision to fund is Dr. Harrison's.

Once a company is funded, we compile a pretty thorough investment memo which kind of serves as a roadmap from the implementation of a project all the way to the delivery of value as measured by exits.

That's a pretty complicated and comprehensive document, which includes an investment thesis, the rationale, which is the foundation, the quality of our founders, several sections that relate to what we call milestones, which are forecasts and projections that measure progress against stated goals. We also have risk mitigation strategies that appear in the investment memo. We do comparables to assist how novel the science is and how potentially valuable it will be to patients and investors.

Q. And in addition to your role as a venture partner with ATP, do you have any roles within the portfolio companies?

A. Yes. I am a CEO of a company called Deep Apple Therapeutics. I was a funding CEO for a number of companies, which I thought it was an extraordinarily attractive aspect of my job at ATP because in addition to selecting and funding a project, we spent a great deal of our time building teams. And that's quite fantastic because we work with some of the smartest people on earth. Quite frankly, all of our founders at ATP have been members of national academies of medicine, science, winners of breakthrough prizes, Nobel Prizes, amongst other

things. It's an exceptional opportunity to really engage with a cohort of people that shape the science as we know it today.

Q. And was this dynamic between ATP and its portfolio companies one the factors that caused you to join ATP?

A. Yes.

Q. At a high level, how would you describe your responsibilities within the portfolio companies, to the extent you have a role?

A. Yeah, early on, it's about team building and about guiding the scientific progress of the portfolio. For a specific company we select team members, we hire people. It actually has a pretty wide breath of scope.

For example, we even explore real estate opportunities for best fit for the companies that we create. But some of them had specific needs.

Progressively, as the company advances and matures, we hire people that are more relevant to the needs at time, meaning that we will hire translational biologists when we have something to translate. We will hire chemists when we have something to produce and evaluate to work to enable

the journey of the company.

One of the things that I would like to highlight for companies of ATP, certainly the ones that I was involved in, is that they're extraordinarily efficiently managed financially. Most of them actually for the tenure of five years had less or just about 20 people, for the most part, with the exception of one.

Q. Okay. And you just mentioned investment memorandum. Did you help prepare investment memorandum for the portfolio companies you were involved in?

A. I did. I was a co-author.

Q. Could you describe, at a high level, the purpose of the investment memorandum.

A. It's basically to capture all aspects that justify the spend, from strategy all the way to operation and execution, and also a pretty diligent time-bound, obviously, effort to understand the marketplace and how this company fits and differentiates.

Q. I think you may have mentioned this earlier, do the investment memorandum contain what's known as milestones?

A. It did in the title.

Q. And what is the purpose of the milestones within the investment memorandum?

A. For us, the milestones were basically forecasts of a time and point in which we had credible data to guide three decisions: One is we continue as planned. The other was there's compelling data to pivot and change the direction of the company. And the other, obviously, always in scope was whether there was enough data to convince us to exit the investment. That's kind of the comprehensive purpose of what we called milestones.

Q. And do you understand the milestones to be a static requirement to receive additional funding for the portfolio companies?

A. No. And they shouldn't be because this is early research, and it changes quite rapidly.

Q. And were you ever told by anyone at ATP that milestones had to be hit to receive additional funding?

A. No.

ATTORNEY BORN: Objection, calls for hearsay.

THE COURT: Overruled.

BY ATTORNEY BONACORSI:

Q. Dr. Liras, when you were working at Pfizer, did they take the same approach with respect to milestones?

A. Every time. We build what we called project operating plans. I had forecasts and projections for key delivery, and we defended those either on a quarterly basis or biannually in front of senior leadership in presentation.

Q. And did you understand the milestones to be substantive decision points with respect to research and development?

A. Yes.

Q. And not related to requirements to receive funding?

A. Absolutely.

Q. And in your experience at ATP, have there been circumstances when a company pivoted from the milestones set forth in the original investment memorandum?

A. Many times. For good reason.

Q. Can you provide a few examples.

A. Sure. Apertor Pharmaceuticals is one of our companies where we originally conceived the

possibility of delivering a vaccine enhancement product. As many of us remember, that was 2021, 2022. It was the thick of the pandemic. We were encouraged by our SAB to do so. We found the clinical candidate. I met the objectives.

We went through a thorough commercial and clinical evaluation analysis and convinced ourselves that clinical development at the time of the pandemic with immunocompromised people was not going to be productive. So we pivoted from that.

We knew we had a very valuable platform in synthetic biology. And we discovered that that could be deployed against oncology targets with high medical need with not really a lot of availability of frontline cases, treatments of patients.

Q. In your opinion, is a pivot like that one that indicates positive development for the portfolio company?

A. Yes, in this particular one and in many other cases.

Q. And would you describe this flexibility with respect to milestones as a benefit of ATP's model?

A. I do, because in the way that we construct our thinking about companies, we not only spell out what aspirational may be possible, but also what may not and where the risks are. And we contemplate those risks in an effective way to actually mitigate and preserve the investment and actually enhance the value of the investment.

Q. And thinking about your experience in biotech more generally, is pivoting something that exists outside of ATP?

A. I would argue that most successful companies in the history of biotech have pivoted. I can offer one fantastic example. There's a company called Gilead in South San Francisco. Gilead is a known antiviral company these days. They started as an oligonucleotide company completely irrelevant to the current mission.

In the early '90s, as everybody recalls in San Francisco, there was different pandemic, HIV. A lot of people were losing their lives. Gilead, as a courageous company, decided to dedicate their resources to solve antivirals, and they did this multiple times. In fact, they have produced hepatitis C, small molecule treatments that are

curable. Now people no longer have to go through liver transplants. And I think this is one example where a company listened to actually what was the -- an immense and incredibly urgent social need as well as followed an opportunity for breakthrough science.

As part of the story, actually, Gilead outlicensed its oligonucleotide platform to a company called Ionis, which in itself is the most -- one of the most actually revered companies for the liver in early oligonucleotide therapeutics. So it was a win-win for everybody.

Q. Pivoting back to Apertor -- and that's one of the preclinical companies you're responsible for?

A. That's correct.

ATTORNEY BONACORSI: Can we pull up JX 095, please.

Q. Do you recognize this document as the investment memorandum for Apertor?

A. Yes. This is the investment thesis, the executive summary, which basically contemplates -- it's a summary of the rest of the investment memo presented in a more strategic fashion. It has all the key elements that we described subsequently in more

detail.

Q. Okay. And did you draft this memorandum?

A. I did.

Q. And turning to page ending 0002, do you see the subheading here "Investment Thesis"?

A. Yes.

Q. And what is the purpose of this paragraph?

A. It's to lay out actually what would be not only the first indication that will create value for patients, but also subsequently ways to build on the breakthrough science that the company delivers to expand and build and accelerate investment and success basically.

Q. And this section is informed by the scientists and chemists working at the portfolio company?

A. Yeah, this is -- and many in the ATP cohort, actually.

Q. Can we turn to page ending 0027. And is this -- this section here refers to milestones. Is that what you were mentioning earlier?

A. Yes.

Q. And these were set out before the company was ever funded?

A. These were set up before the company -- before the company was funded. In fact, that memo somewhat precedes that decision. And they are underpinned by no data, to be fair, because this is breakthrough science. So what we do there is we apply our knowledge of reasonable transitions, where we can deliver a body of data that will convince us about and support the three points that I raised earlier, which is continue, pivot, or discontinue.

Q. And do you see in front of you there's Tranches 1, 2, 3, 4, 5?

A. Yes.

Q. And could you describe Apertor's progress with respect to Tranches 1 through 3.

A. Even if you take those tranches literally -- and some of them are diagnostics. For example, just to point out your attention to Tranche 1, there's no reason to actually count how many compounds you make at a company. You don't judge a company by how many compounds they've made. Be that as it may, the company exceeded by a long shot the number of compounds that were specified.

Importance is to focus on milestones that represent hard currency, in my opinion. Those are INDs and development candidates. Especially INDs, which are regulatory documents. We submit those to the regulators.

If you actually look at Apertor's delivery when you add up that investment memo to $33 million, which is a completion of Tranche 4, we were expected to have delivered an IND and a development candidate. What we delivered -- two development candidates with an investment as of May 29th of $29 million. So, in fact, we never were actually funded to achieve the delivery of this full tranche.

Having said that, as we model it subsequently, it would have taken us $1.5 million more of an investment to get to a full delivery of this milestone, which was aligned with our forecast. But we were not given that opportunity.

Q. And in your opinion, would you say that the company overperformed vis-à-vis the funding they had received up to that point?

ATTORNEY BORN: Objection. Leading. I've been letting this go, but ...

THE COURT: The same instruction applies, Counsel. And you have been leading the witness. And that's fine, but it's hard for me to assess the credibility of the witness if you do so.

ATTORNEY BONACORSI: Understood, Your Honor.

BY ATTORNEY BONACORSI:

Q. Dr. Liras, you mentioned earlier Apertor had a period where there was a pivot?

A. Yes.

Q. Looking at these tranches, could you explain at what point the pivot occurred?

A. I would say the pivot occurred right about -- definitely by the completion of Tranche 3 and in the beginning of Tranche 4. In fact, I remember vividly that the investment that we made at the time was about $24 million, if not 25.

Seth, myself, Paul Da Silva Jardine had an exchange by email and other discussions where we actually put all options on the table, including shutting down the company. A breakthrough publication came out at this point of time that told us that the value of the synthetic biology platform was incredible. We deployed that based on that

publication. We extended a very small tranche of $2 million to explore that concept, and this is what ultimately delivered the clinical candidates.

Q. What did this pivot mean for the remaining milestones in the investment memorandum?

A. In a sense, the remaining milestones, again, in a forecasted way, in my opinion, could be achieved had we received the whole investment of the Series A.

Q. And do the investment memorandum also contain a section regarding risk?

A. It does.

Q. And can you turn to pages ending 003, 004.

Can you describe the purpose of this section.

A. Yeah. This is to identify risks based on our state of the knowledge at the moment of incorporating -- or actually at the moment of drafting the investment memo. This is entirely actually aligned with what happened. And it kind of, again, demonstrates the rigor and depth of the ATP team.

We predicted that we could identify compounds, but we predicted that there could be some

ambiguity as to whether -- which indications would make most sense, and we labeled this as a medium risk.

Once we actually decided that because of clinical complexity and commercial reasons adjunctive theory for vaccine enhancement wasn't the way that we wanted to go, we spent the time more thinking and less spending to think what would be the next potential valuable indications. And now we have a couple of indications for targeting renal cell carcinoma and non-small cell carcinoma that are basically guided by genetics, which facilitate patient selection of the clinic, which is a big ask.

Q. Were you involved in providing updates regarding portfolio company progress to ATP?

A. All the time with various means. We had -- obviously, we had board decks that were shared with ATP. We also had quarterly reports that are fact-based in terms of capturing things along progress or along opportunities to pivot. Those were supplied every quarter. And we also had, you know, direct and spontaneous dialogue within the team, as well as the justifications for calling additional tranches.

Q. Okay. Could you describe some of those dialogues.

A. The dialogue that -- the dialogue that I referred between myself and Paul Da Silva Jardine, one of my colleagues, was whether we should actually consider promoting shutting down the company. We went through a very thorough debate about this, analyzed the literature, and decided that that wasn't really a desired path. We presented the case to Seth. We agreed that we would get a small investment, it was $2 million, to actually prove the new hypothesis. And that was pretty material to the progress of the company subsequently.

Q. And do you know whether any of the updates went to Rigmora?

A. Through the quarterly reports I think they did.

Q. And did you assist with drafting or drafting portions of those quarterly reports?

A. All the time. I received direct feedback from scientists about specific scientific facts, but I authored the final version which was submitted to ATP.

Q. And do you recall receiving outreach from Rigmora about the progress of the portfolio companies?

A. Not ever.

Q. And can we turn to JX 560, please.

You see this is an email from an Anna Batarina to Anna Kolonchina and others at Rigmora, attaching the first quarter 2023 quarterly report?

A. Yes.

Q. Flipping to the next page, do you recognize this as "First Quarter 2023 Report"?

A. I do.

Q. And you testified earlier that you drafted the updates in this report for the companies that you were involved in?

A. That's correct.

Q. And can we turn to the bottom of 0011, please.

Dr. Liras, is this the update for Apertor?

A. Yes, it is.

Q. Can you summarize for the Court the purpose of this update and what you're describing here.

A. Yeah. Essentially, this follows one decision to pivot. And therein we state that we performed comprehensive analysis by basically engaging

all aspects of ATP's colleagues, including commercial assessment as well as medical assessment. And we concluded that oncology in renal cell carcinoma will be one of the most productive ways to go and also identified evergreen opportunities in research areas outside of oncology.

Q. And could you read the paragraph starting "With key data" at the bottom.

A. That's right. There we -- we typically socialize companies as they come closer to delivery of a developing candidate or an IND. And we actually anticipated -- we made a schedule basically to accelerate the research and also accelerate the presentations and the content of the presentation so we can meet and have productive interactions with business partners. That's something that we do as par for the course across all companies.

Q. And is it your understanding that Rigmora received these quarterly reports?

A. Yes.

Q. And do you recall whether after receiving this Q1 2023 quarterly report, Rigmora provided additional funding to Apertor at a point in time?

A. Yes.

Q. And pivoting subjects here a little bit, are you familiar with stock purchase agreements between the portfolio companies and ATP?

A. I am.

Q. And did you have any role in drafting those?

A. I read and signed the documents as a representative of the company.

Q. And could we pull up JX 1329, please.

And do you recognize this document, Dr. Liras?

A. Yeah. This is a Deep Apple Therapeutics SPA.

Q. What is the purpose of this document?

A. It basically -- it's a legal contract between the purchaser and the company to sell stock, and it's essentially a legal agreement to do so.

Q. Can we turn to the page 0038, please. And do you see this, Dr. Liras, here? This is section 1.3(d).

A. I do.

Q. Could you please read the first sentence of this clause.

A. "Notwithstanding the foregoing, the Purchaser shall have the option, at any time, and upon at least three [] business days' notice to [] Company, to accelerate its obligation to purchase all or a portion of the Additional Shares (at a [] share price equal to the Purchase Price), notwithstanding [the] Milestone has not occurred."

Q. And do you have an understanding as to what this sentence means?

A. It means that the buyer can choose to buy stock independent of success of said milestones.

Q. And the buyer here is who?

A. ATP.

Q. And do you recall testifying a few moments ago that Deep Apple is another company that had a pivot with respect to the milestones?

A. I did.

Q. And could you describe the pivot with Deep Apple.

A. Yes. So we built Deep Apple on the basis of a fairly broad research platform. There, we identified targets that spanned a number of disease areas from psychotherapeutics and neurogeneration to oncology, inflammation, immunology, and genetic

obesity. Those were targets that were actually included in the initial investment memo.

Shortly thereafter -- I should also mention that Deep Apple has scientific leadership that probably adds up to 100 years in experience in cardiometabolic diseases. If not that, pretty close to that.

We engaged with KOLs. Because of our genetic obesity target, we were told that this was the time to move in, all-in, in obesity. Obviously this was supported by the clinical success and commercial success of medicines like GLP-1.

So we basically substituted 80 percent of that portfolio, kept only two targets, and rebuilt a portfolio of obesity, which now is yielding several clinical candidates, one of which -- one of the programs, an early program I might say, served as a basis of a very lucrative, strategic partnership with Novo Nordisk valued at $812 million. Novo Nordisk is potentially one of the two most recognizable names in the treatment of diabetes and obesity these days.

Q. Did you keep ATP updated on the progress of potential business development deals?

A. Yes, in a very progressive manner. We

started talking about discussions under CDA in our quarterly reports. We escalated that description to include description about the progress of the CDAs.

For example, I recall that we put in that with Roche we were in a co-creation of research plan, which is a necessary next step after people like what they see under confidentiality.

Then we proceeded to build term sheets. Deep Apple was fortunate to have term sheets from four or five companies, the who's who actually, because it was a company that was highly visible by that time. We negotiated that in good faith with three potentials, and we settled with Novo Nordisk on June 11th of 2025.

Q. And were these negotiations or the status of those discussions reflected in the quarterly reports?

A. Yes. And in fact, in our board decks, we also displayed all the term sheets with all financials.

ATTORNEY BONACORSI: Could we pull up JX 824, please.

Q. And, Dr. Liras, is this an email from Anna Batarina to Anna Kolonchina attaching the 2024

first quarter quarterly report?

A. Yes.

Q. Turning to page ending 002, do you recognize this document as that quarterly report?

A. I do.

ATTORNEY BONACORSI: And could we turn to 0014, please.

Q. Does this appear to be the summary you drafted on Deep Apple?

A. That's correct.

Q. And could you read the third paragraph please?

A. "Given the intense interest in obesity, the company is in active and confidential discussions with major venture groups including Atlas Ventures, Foresite Capital, Orbimed, Vida Ventures, Alpha Wave, and Blue Owl. Similarly, the company is exploring in parallel strategic partnerships with pharma including Roche, Novo Nordisk, Lilly, Pfizer, and Merck for obesity, and AbbVie, Argenx, Blueprint, and Otsuka for MRGPRX2," which is our inflammatory candidate.

Q. Were these discussions what led to the eventual deal with Novo Nordisk?

A. They did. And like I said before, it was a very competitive process because we had parallel term sheets from Roche and Amgen.

Q. This quarterly report was provided to Rigmora?

A. Yes.

Q. And did you receive any questions from Rigmora about these discussions?

A. No.

Q. And switching gears a little bit. With respect to your management oversight of the portfolio companies, how did you build the teams of personnel that worked with you in those companies?

A. Within the portfolio specifically?

Q. Or any of the portfolio companies.

A. Yeah, any of the companies.

So in the beginning, we basically, as the company is in an embryonic state, we hire people from founders labs that bring a lot of know-how. And progressively, as we built programs that need specific resources, for example, chemistry, we hire a small chemistry team.

Deep Apple is unique because we invested a good deal of our human resource in machine

learning and computational and cyclical studies because it's really a hot topic in AI and machine learning and drug discovery. So we did that fairly early.

And then, you know, we built -- successfully we hired the head of drug discovery and a head of translational biology as the company began to get closer to clinical development.

Q. And when you were hiring for your portfolio companies, do you face competition in the hiring process from other companies in the biotech space?

A. We always do. And I think a tribute to most of our competence is that we were able to extract people from notable companies, especially in south San Francisco, which is a hotbed for biotechnology.

Q. And how has the lack of funding for the portfolio companies over the last few months impacted the ability of these companies to retain the talent?

A. It's been devastating. On June 17, I had to go to San Francisco for 31 hours to oversee the layoff of about 75 people across four companies.

Q. And if funding resumes, do you believe you'll be able to resume operations at a normal level?

A. I believe that there is a good chance because we have exceptional founders and we have outstanding science. Though the companies at this point in time are obviously operating with skeletal crew.

Having said that, one remarkable thing that is worth sharing is that our company, Nine Square, which now has three scientific employees and one operating officer, just recently secured a term sheet, nonbinding, by a major pharmaceutical company for half a billion dollars in a research collaboration.

And I think that's a tribute to the company, to the resilience of the staff, as well as the visibility and exceptional quality of the science we produced.

ATTORNEY BONACORSI: No further questions. Thank you, Dr. Liras.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY ATTORNEY BORN:

Q. Good afternoon, Your Honor. Natascha

Born for the defendants.

Good afternoon, Dr. Liras.

A. Hello.

Q. Dr. Liras, in your view, it's not unreasonable to prioritize clinical companies over preclinical companies; correct?

A. It happens quite frequently in pharma and biotech.

Q. In fact, you saw the prioritization of clinical companies over preclinical companies plenty of times when you were working at Pfizer; correct?

A. I did not see that. I saw the prioritization of clinical substrate over preclinical projects.

ATTORNEY BORN: Thank you. No further questions.

ATTORNEY BONACORSI: No further questions.

THE COURT: Thank you, Doctor. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs call Yuri Bogdanov. Rigmora will begin on

the questioning.

ATTORNEY BORN: Where should we put the translator? Mr. Bogdanov's English is quite good, but occasionally he needs help with a particular term.

THE COURT: Are the mics at counsel table on?

THE INTERPRETER: Permission if I could sit here.

ATTORNEY BORN: You want to move my chair. Can you sit there? Does that work for people?

THE COURT: Let's swear in witness. We'll deal with the logistical issue. I think it would be better if the translator was miked, but go ahead.

STEVEN LAGUTIN, having first been duly affirmed, interpreted between Russian and English as follows:

THE COURT: Is that okay, that positioning?

THE INTERPRETER: I'd rather be here, but it's okay.

THE COURT: All right.

ATTORNEY BORN: We don't need translation for everything, just if he has a question

about a specific term, we'd like you to be on hand.

THE COURT: Why don't you state and spell your name.

THE WITNESS: Yuri Bogdanov, Y-U-R-I, B-O-G-D-A-N-O-V.

YURI BOGDANOV, having first been duly affirmed, was examined and testified as follows:

THE COURT: Give me one second here.

You can understand English fairly well?

THE WITNESS: Yes.

THE COURT: So if you need translation, you are going to ask counsel for a translation; is that correct?

THE WITNESS: That's correct.

THE COURT: Thank you.

DIRECT EXAMINATION

BY ATTORNEY BORN:

Q. Mr. Bogdanov, could you please introduce yourself for the Court.

A. Well, I'm Yuri Bogdanov.

Q. Do you hold any graduate degrees, Mr. Bogdanov?

A. Yes. I graduated from the Moscow

Finance University.

Q. And what discipline is your degree in?

A. Business and real estate valuation.

Q. When did you receive that degree?

A. In 2002.

Q. Are you currently employed?

A. Yes. I'm employed by Rigmora Holdings Limited.

Q. If I just refer to that as "Rigmora," you'll know what I mean?

A. Yes.

Q. What is Rigmora?

A. Well, Rigmora is the special advisory body for the trustees of the trust, and also the investment vehicle which holds a number of important investments.

Q. You just mentioned the trust. What do you mean by that?

A. It's the Scorpios trust created for the three generations of the Rybolovlev family.

Q. Does Rigmora invest in the biotech industry?

A. Yes.

Q. How so?

A. Well, Rigmora, through the special purpose vehicle, the BVI companies, holds the limited partners' stake in the Apple Tree Partners.

Q. If I refer to Apple Tree Partners as the fund or ATP, will you know what I mean?

A. Yes.

Q. And do you understand those limited partner entities to be the defendants in this case?

A. That's correct. I do.

Q. If I refer to those as the Rigmora LPs or just the LPs, will you know what I mean?

A. Yes.

Q. Do you know where the capital that the Rigmora LPs invest in ATP comes from?

A. It comes from the trust's assets.

Q. And did the Rybolovlev family trust have investments beyond its indirect investment in ATP through the Rigmora LPs?

A. Yeah, the trust has significant investments and assets outside of ATP that included the real estate, other businesses, hedge funds, private equity funds, liquidity positions for many of them.

Q. What is your current position at

Rigmora?

A. I'm co-CEO and chief investment officer.

Q. And how long have you held that position?

A. Since last October, since October of 2024.

Q. And did you have a role at Rigmora before you became the co-CEO and chief investment officer last October?

A. Yes. I held numerous executive positions. But last three or four years, I worked as the special advisor.

Q. And what did you understand your role to be while you held the title of special advisor?

A. Well, to advise the trustees and the management of Rigmora on various matters, including the investments, and act as kind of like the second opinion and sometimes like, if they don't like the content, to challenge the management decisions.

Q. While you held the role of special advisor, did you have any responsibility for managing the Rigmora LPs' investments in the ATP fund?

A. No.

Q. When you were promoted to co-CEO and CIO of Rigmora in October 2024, did that involve any new responsibilities?

A. Yes, obviously. And I, like, began responsible for overseeing a large portfolio of assets and investments and advising trustees on the various matters, including the ATP-related, yeah.

Q. Did you do anything to familiarize yourself with Rigmora's investments when you became CEO?

A. Yes. I reviewed a number of documents, contracts or reports, presentations, yeah, covering those topics.

Q. Did you familiarize yourself with the Rigmora LPs' investment in the ATP fund specifically?

A. Yes, I did. Like, briefly reviewed a number of documents. But, again, at that time, you may know, we had an open litigation, so that was also another focus of my work.

Q. And you mentioned the Rybolovlev family earlier. Do you know Dr. Rybolovlev personally?

A. Yes, I do. I know him for more than two decades. I worked for Uralkali, the business

which belongs to the family trust, in Russia.

Q. Have you ever spoken to Dr. Rybolovlev about the Rigmora LPs' investment in the fund?

A. Yes, I did. Many times.

Q. What impressions, if any, did you form about how Dr. Rybolovlev viewed the Rigmora LPs' investment in the ATP fund?

A. Well, he took them very seriously. And, you know, he has a medical background. He started as a doctor, and he was really very passionate about those investments. It's not just investments. It's like his attempt to do something good for the people.

Q. You mentioned earlier that there was litigation pending when you came in as CEO in October 2024; is that right?

A. That's correct.

Q. What was that litigation about?

A. It was the litigation about the limited partner's right to call the distribution of the particular asset, the Braeburn, and the GP refusal.

Q. Do you know what the outcome of that litigation was?

A. The parties agreed to settle the case.

Q. And did you play any role in the settlement process?

A. Yes. I was the lead negotiator on the Trust side.

Q. Could you outline the settlement for me at a high level?

A. Well, the parties agreed -- well, first, to set certain rules and principles on how the Braeburn will be distributed. The parties agreed to distribute in kind the royalty subsidiary, the special purpose vehicle which holds the royalty, the right to receive the royalty from the Braeburn for the very material amount. And, finally, the parties agreed to discuss certain budgets of five of the portfolio companies.

Q. And was there an amendment to the LPA in connection with the settlement discussions?

A. That's correct. The parties signed the Amendment 22 which is, like, summary of the settlement terms.

Q. Let's turn to JX 1068, which should be the first tab in your binder.

A. Yes, I'm on it.

Q. Is this Amendment 22 that you were just referencing?

A. Yes.

Q. And can you tell me the date of this amendment?

A. It's 20th of December, 2024.

Q. Let's take a look at paragraph 26, which is on page 4.

A. I'm on it.

Q. And we're going to start by looking at the first sentence.

Can you tell me your understanding of what this sentence required the parties to do with respect to budgets?

A. Well, the sentence requires the parties to discuss the new budgets for five portfolio companies in accordance with the process set in the LPA. And those companies are Ascidian, Aulos, Nereid, Nine Square, and Replicate. I used just short names of the companies.

Q. And as the lead negotiator for Amendment 22 on the Rigmora side, why were you willing to commit the Rigmora LPs to discuss budgets for these five companies?

A. Just because it's our investments and our businesses. That's what we usually did. And that's what we planned to continue, to discuss the budgets and analyze the projects and understand the businesses in our investment pool.

Q. Turning to the final sentence of this paragraph, it says that "If any approval of a new budget is given by the [SLP]," and then it refers to "such approval" of a new budget being "contingent upon at least $300 million being realized" by the Rigmora LPs "on a sale or financing of [their] interest in ATP LLC."

Do you see that?

A. That's correct. Yeah.

Q. What, if anything, was your understanding of this provision?

A. Well, the provision introduced the condition for the execution of any budget approval. And that condition was the realization of either a sale of part of the royalty agreement I referred earlier or the refinancing.

Q. When Amendment 22 was executed, were you planning on waiting to discuss any new budget proposals you received from Dr. Harrison until the

Rigmora LPs had $300 million in hand?

A. No. No.

Q. When Amendment 22 was executed, were you planning on waiting to seriously consider any budget increases until the Rigmora LPs had these $300 million in hand?

A. No. Of course not.

Q. At the time this amendment was executed, did you care whether the Rigmora LPs obtained the $300 million financing or not?

A. Of course I did. And I think we started the process even before the amendment was signed. We hired the broker, the professional investment broker, to help us with this transaction.

Q. Could you tell me a little bit more about the process that you were just referring to.

A. Well, it was, again as I said, quite a process. We engaged the Greenhill. It's a broker. It's a part of the Mizuho Group. And I think we started in November, unless I'm mistaken.

And we created a data room. We worked with the broker on the presentation of the case. And we agreed on a long list of potential bidders. We sent more than 60 -- yeah, more than 60 invitations to

bid. And we signed, I think, around 50 of nondisclosure agreements with potential creators. And, again, that was quite a process.

And then when we have short list of candidates, we started the direct discussions of the terms.

Q. And was there any interest in providing the royalty financing?

A. Yes. There was certain interest. And we received, I think, the first bids around February or March, yeah.

Q. What came of that?

A. Say again, please.

Q. What came of that? What happened next?

A. Oh, well, it took longer -- well, for many reasons. Like, in the middle of the process, partially thanks to the new administration steps, the company -- I mean the Braeburn -- started to revisit its forecast. And it was revised significantly. I think that we got some years off by almost 50 or 60 percent.

And we were in the negotiations and discussions with the bidders. But it took quite -- it

took quite some time for them just to understand what is going on with the market. And that's why the process was a little bit delayed.

Q. Have you been able to secure any royalty financing in connection with Braeburn?

A. We haven't yet done it, but we're still working.

Q. After Amendment 22 was signed -- and we can set Amendment 22 aside.

After Amendment 22 was signed, do you recall whether Dr. Harrison got in touch with you about potential budget increases for the five portfolio companies referenced in the amendment?

A. Yes. Shortly after the amendment date.

Q. Let's pull up JX 1079, please.

A. Could you please say again the last digit.

Q. 1079. Sorry. It should just be the next tab.

A. Okay.

Q. Let's start with the bottom email. Is this the email from Dr. Harrison that you were just referencing?

A. That's correct.

Q. And what's the date on this email?

A. 24th of December. It's Christmas night.

Q. Do you remember where you were when you received this email?

A. Yes. I was with my family on a holiday trip in the middle of nowhere in Argentina on the salt flats, is that the right term, yes, in the camp tent.

Q. Is Christmas an important holiday for your family?

A. Yes, of course. Like, they raise certain protests when I just work on that night. Not as important, where Russians has the Orthodox Christmas and New Year, but also important one.

Q. And so you mentioned that you worked on this night. It sounds like you did not wait until after the holidays to review the information Dr. Harrison sent?

A. No. I -- like, well, first I read those materials, and I forwarded them to my team and asked them to start work.

Q. What was the work that you and your

team did?

A. Well, we analyzed the materials, we reviewed some other documents, including the original investment memorandum -- memoranda -- and we started drafting a list of the questions, follow-up diligence questions.

Q. There's a reference in this email to D-rooms containing supporting materials. Do you know what Seth Harrison meant by "D-room"?

A. I think it refers to the virtual data room with some supporting documents.

Q. And did you and your team review the documents in the D-room?

A. I personally struggled to get in access, but I think that my team members finally got the access, or it took like few days. There were some IT issues I remember.

Q. What did Dr. Harrison propose with respect to Nereid in his December 24 email?

A. I'm just trying to find it. Okay. So on the Nereid, Dr. Harrison proposed what he called a synergistic merger with another portfolio company, Marlinspike.

Q. And did you discuss Dr. Harrison's

proposal for merging Nereid and Marlinspike with Dr. Harrison?

A. Yes, I recall we had a follow-up Zoom call, I think in early February.

Q. Do you recall what the Rigmora LPs' position was on that call?

A. Well, we, in principle, agreed with the proposal. But we understood that Dr. Harrison would require some further investigation on some tax and legal aspects of that merger.

Q. Did you hear anything further from the GP about the proposal for a Nereid-Marlinspike merger?

A. I think no, up till the very end of April, early May when he mentioned that.

Q. What did he mention?

A. He said that he stopped the merger because of certain legal issues and apparently a very expensive lease that they wanted to cancel. And apparently they were considering a different way for the bankruptcy, or Chapter 5, if I'm not mistaken.

Q. Was that the last you heard from the GP about its proposal concerning Nereid and Marlinspike merging?

A. That's correct.

Q. After Dr. Harrison's December 24 email, did you ever receive a budget request for Nereid that did not involve a proposed merger with Marlinspike?

A. No, to the best of my recollection, we didn't receive it.

Q. Looking back at Dr. Harrison's email, what did he propose with respect to Nine Square?

A. On the Nine Square, he proposed to increase the budget for another 15 million.

Q. Did you engage with the GP about discussions for a potential budget increase for Nine Square?

A. I think that we, probably in February, I don't remember the months, we agreed to discuss the Nine Square budgets once we have the royalty financing done.

Q. Did the GP ever follow-up on the potential budget increase for Nine Square after that call?

A. No.

ATTORNEY BORN: I'm just conscious that we have about five minutes left. We're about to get into a longer chunk, it might make sense to --

THE COURT: To break for the day?

ATTORNEY BORN: Yeah.

THE COURT: So we resume at 9:00 a.m. tomorrow.

And I'll have my assistant email Mr. Barlow and Mr. Rohrbacher to confirm the timing of the day so you-all know what to expect.

With that, we are adjourned. Thank you.

(Court adjourned at 4:54 p.m.)

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, October 17, 2025
9:00 a.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

TRIAL TRANSCRIPT - VOLUME II

APPEARANCES:

MICHAEL A. BARLOW, ESQ.
SHANNON M. DOUGHTY, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
ANDREW M. BERDON, ESQ.
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GARRETT B. MORITZ, ESQ.
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Appearances Cont'd ...

APPEARANCES CONT'D:

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DANIEL E. KAPROW, ESQ.
CHRISTINE J. CHEN, ESQ.
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NATHANIEL QUIGLEY, ESQ.
ADRIANNA FINGER, ESQ.
of the New York Bar
Debevoise & Plimpton LLP
for Defendants

ALSO PRESENT:

STEVE LAGUTIN, Russian Interpreter

- - -

THE COURT: Good morning.

ATTORNEY BORN: Good morning, Your Honor.

THE COURT: Anything else we need to attend to before we begin or resume witness examination?

ATTORNEY BORN: I don't believe so, not on our end.

ATTORNEY BERDON: Not from plaintiff, Your Honor.

THE COURT: Let's proceed.

YURI BOGDANOV, having been previously affirmed, resumed and testified as follows:

DIRECT EXAMINATION (Cont'd)

BY ATTORNEY BORN:

Q. Good morning, Mr. Bogdanov.

A. Good morning.

Q. I'd like to pick up with JX 1079, which is the second tab in your binder.

A. I'm on it.

Q. You remember yesterday we talked about the discussions concerning Nereid?

A. That's correct.

Q. And you remember yesterday we talked

about the discussions concerning Nine Square?

A. Yes.

Q. I would like to turn to the third company referenced in this email, which is Replicate. What did Dr. Harrison propose with respect to Replicate in his December 24 email?

A. He proposed to consider another budget increase for 11 million.

Q. Did he say anything else about Replicate in that email?

A. Yes. He noted that Replicate would run out of the cash by the third week of January.

Q. Did you take any action based on that part of the email?

A. Yes. We set Replicate budget as our priority and worked for the holidays.

Q. What did that work look like?

A. As I said, we analyzed the materials, we drafted the list of the follow-up diligence questions.

Q. And did you send those questions to Dr. Harrison?

A. Yes, shortly after the new year, I sent an email with those questions.

Q. Do you recall what questions you had for Dr. Harrison about Replicate?

A. Yes, I do. It's kind of like basic diligence questions on the company's past performance, on how the company executed its original plan, some questions on the progress on their clinical programs, and some questions on the economics of the partnership deals the company was considering at the time.

Q. Why were you interested in understanding how Replicate had performed in the past?

A. Well, it's one of the, like, most important indicators before you make any decision on the new budget to see how the team and the company performed against their original programs, to see whether they can deliver.

Q. Let's turn to JX 1107.

A. Could you say again the number?

Q. 1107. I think it's two tabs down.

A. Uh-huh.

Q. Is this an email from you to Dr. Harrison dated January 5?

A. That's correct.

Q. And does this attach the list of questions you were just discussing?

A. That's correct.

Q. You can set that document aside.

Did you have any meetings concerning the Replicate budget with the GP?

A. Yes. We had an in-person meeting in Monaco in mid-January.

Q. And who attended that meeting?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina. Well, actually, it was a series of meetings in a couple days. Then we were joined by the Replicate COO.

Q. Can you describe the meeting with Replicate's CEO for me?

A. Well, he presented the company's case, he explained what they were proposing to us. We asked a number of questions, partially addressing those questions I sent to Dr. Harrison earlier, and we discussed the budget needs of the company for the 2025.

Q. Was the meeting with the Replicate CEO helpful to you as you assessed Dr. Harrison's request for a budget increase?

A. Yes, it was pretty helpful. It helped us to just finally make a conclusion on that.

Q. Do you recall whether Dr. Harrison asked the Rigmora LPs to provide any capital for Replicate while you were considering the proposed budget increase?

A. Yes. Dr. Harrison proposed to consider bridge financing, and we did it in a matter of days.

Q. Do you recall whether the Rigmora LPs approved the $11 million budget for Replicate that Dr. Harrison had proposed on December 24th?

A. We approved finally an even bigger budget of 18 million, and I think we did it in the very beginning of February, right.

Q. Let's pull up JX 1193.

Is this the Rigmora LPs' email approving the budget for Replicate and the attached budget approval?

A. That's correct.

Q. Do you recall whether the Rigmora LPs placed any conditions on the approval of the budget?

A. Well, there was an existing condition introduced by them in '22, the completion of the royalty financing. And on half of the budget there was another condition added, the completion, the

closing of the Latin deal the company was considering at the moment.

Q. Do you recall whether the Rigmora LPs provided any capital pursuant to this budget after it was approved?

A. Yes. We made another capital call of $5 million.

Q. And at the time that the Rigmora LPs paid that capital call, did you have a view as to whether either of the conditions on the approval of the Replicate budget were satisfied?

A. They were not satisfied.

Q. Why did the Rigmora LPs fund the capital call for Replicate, despite your view that the conditions on the approval had not been satisfied?

A. Because it's our company, it's our investment. We did care about the company's progress. That's why we decided to pay it.

Q. Let's turn back to JX 1079, which is the second tab.

A. I'm on it.

Q. This is the December 24 email from Dr. Harrison again?

A. Wait. I opened the wrong tab. Yeah,

I'm on it.

Q. What did Dr. Harrison propose for Aulos?

A. For Aulos he proposed to support the management recommendation and approve the additional budget of 28 million.

Q. Did you have any in-person meetings with Dr. Harrison concerning a potential budget increase for Aulos?

A. Yes. I think we had the meeting in March, mid-March in Monaco.

Q. And who attended those meetings?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina, I -- and, for the first half, we also had the external consultant who made their review of the company's program. And then we were joined by the Aulos management.

Q. Did you do anything to prepare for the meeting in advance?

A. Yes. We received the materials 24 hours before the scheduled meeting. We tried to analyze them and draft a list of the questions we were going to ask.

Q. You mentioned a moment ago that an

independent consultant attended that meeting about Aulos. What did you mean by independent consultant?

A. There was like a retired executive, I believe he worked for Gilead before in one of the senior positions, and he was retained by the partnership to assess two oncology programs of the fund, namely Aulos and Marengo.

Q. What was your reaction to the independent consultant's presentation about Aulos?

A. Well, it was kind of like unpleasant news. We learned that apparently the management made kind of like a fundamental mistake in designing the clinical trials, and that mistake could cost us additional budget and potentially delays in the delivery of the clinical program.

Q. Turning back to Dr. Harrison's December 24, 2024, email, which is JX 1079.

A. It's the same tab; right? Yeah.

Q. What did Dr. Harrison propose with respect to Ascidian?

A. On Ascidian he wrote that they're still considering multiple scenarios, and it would require more discussion and time to understand what variables would emerge as reality by the mid-2025.

Q. Did Dr. Harrison propose a specific dollar amount increase in the budget for Ascidian at this time?

A. At that time, no.

Q. Did you have any meetings with Dr. Harrison to discuss a potential budget increase for Ascidian?

A. Yes. I think it was the same date in March when we met to discuss Aulos.

Q. And who was present for that meeting?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina and I. On Ascidian we were joined by two people from the management of the company.

Q. And did you do anything to prepare for that meeting in advance?

A. The same answer. We received the materials 24 hours before the meeting, and we analyzed them and drafted a list of the questions.

Q. Do you recall whether Ascidian's management presented financial projections during the meeting?

A. Yes. They presented three scenarios, as far as I remember.

Q. Do you recall whether those

projections included the time that Ascidian anticipated receiving additional capital from the fund under the existing budget?

A. Yes. I recall that in one or two scenarios, they expected additional funding in Q4, this year; and one or two, I don't remember what was their implication, even later. So I think that they expected the remaining budget to be paid in 2026.

Q. And do you recall when you, in fact, received the next capital call for Ascidian from the GP?

A. Yes. It was -- well, it was Saturday morning, Monaco time, 31st of May. They were sent on May 30.

Q. And did that surprise you?

A. Of course.

Q. How come?

A. Just because it was different from what the company told us. It was different from what general partner told us in late April when he shared two forecasts on Ascidian and both forecasts provided for the capital call payment in 2026.

Q. Did there come a time when Dr. Harrison proposed to reallocate funding from

certain of the fund's portfolio companies to other portfolio companies?

A. Yes. I think it was late March this year, right, late March, when we had a Zoom call and he first time introduced this idea to us.

Q. What did you understand his idea to be?

A. The idea was just to move the capital from more risky companies towards more advanced clinical-stage companies of the fund.

Q. How did you react to that proposal?

A. Well, generally positively. We welcome and appreciate any ideas which would improve the risk profile of our investments and increase the return on the investments.

Q. Did you hear anything further from Dr. Harrison concerning the proposal for reallocating funding from the early-stage companies to the clinical companies?

A. Well, yes. He, in the same call, said that he would need more time to develop this proposal in greater details, and then he scheduled another call in late April to discuss the reallocation proposal.

Q. What did you understand the

reallocation proposal to be following the late April call?

A. Could you please rephrase? I don't understand the question.

Q. Yes. You said that you discussed the reallocation again in late April I think?

A. Yes. Right.

Q. What did you understand him to be proposing at that time?

A. Well, the proposal was just to move significant budget from the early-stage companies keeping probably around 40, 50 million for those companies, decreasing, effectively, almost three times the budget for the early-stage companies, and increase the budgets for clinical-stage companies.

Q. Could we pull up JX 1282.

This is an email from Dr. Harrison to you dated April 29, 2025; is that right?

A. That's correct.

Q. And did Dr. Harrison send this following the call?

A. That's correct. On the call he showed us the Excel spreadsheet, and I asked him to send the Excel after the call.

Q. You can put that document away.

By early May of this year, had you formed any conclusions about the fund's investments in early-stage portfolio companies separately from Dr. Harrison's reallocation proposals?

A. Yes, we did. We started our own analysis of the performance of the early-stage companies I think in March, and in March and April we came to certain conclusions, and obviously we realized that many of those companies failed to hit the milestones their investment memoranda provided.

Q. Do you recall how you assessed whether the early-stage companies had met their milestones?

A. Yes. We compared the investment memoranda milestones with the available information in the fund's quarterly digests or sometimes the company's websites or at the FDA database.

Q. Did you feel that you were able to accurately evaluate whether the early-stage companies had hit the milestones?

A. Yes.

So the milestones I designed, to let the investor make an informed decision -- and usually it's kind of like binary events you can easily assess.

Like not in all cases, but the majority of the cases you can do that.

Q. Can you give me an example of a milestone you thought you could assess whether it had been achieved or not.

A. Well, for instance, IND, Investigational New Drug Application. So it's either done or not.

Q. Did you do anything to evaluate whether the early-stage companies that you thought had missed their milestones had pivoted to new projects that could be a commercial success?

A. Well, apparently they pivoted to the new projects; but in order to assess that, you need to review the new investment memorandum that gives you an understanding what would be the new budget for that project and what would be the risks. Obviously we never received the new investment memorandum.

Q. Did you ever receive a formal proposal from Dr. Harrison concerning reallocation of funding from early-stage portfolio companies to clinical companies?

A. Yes. We received it in early May, I think around 10 or 11th of May.

Q. Can we turn to JX 1307.

A. I'm on it.

Q. This is an email dated May 11, 2025, from Dr. Harrison to you and others. Does this attach the proposal you just mentioned?

A. That's correct.

Q. And can you explain to me what you understood Dr. Harrison to be proposing.

A. He proposed to reduce certain budgets for the early-stage companies, dramatically reduce, and increase certain budgets for the clinical-stage companies, namely Aulos, Ascidian, Marengo, and Replicate.

Q. What was your reaction?

A. Well, in general it was in line with our expectations, but with certain changes which looked unacceptable to us.

Q. Could you tell me about the things that looked unacceptable to you?

A. Well, it provided for the, like, waiving of our rights under the LP to review, consider, and approve or not approve budgets, and it gave the full discretion to the general partner.

Q. Did you speak to Dr. Harrison about

this proposal?

A. Yes. We scheduled a call shortly after the date we received that proposal, and I invited my deal lawyers to attend the call.

Q. As far as you can recall, what did Dr. Harrison say on that call?

A. I have really bad recollection because it was very emotional and heated call. It was a short one. I think that we first started with, like, an introduction, saying that we support the idea of moving the capital from the early-stage companies to the clinical-stage companies, but we believed that it should be done in accordance with LP terms and we should consider the new budgets, we should discuss them, and that's it.

And very quickly the call became emotional, heated. The parties started to talk, like, simultaneously. I recall general counsel of ATP was yelling "dollar for dollar, dollar for dollar." And finally Dr. Harrison said, I withdraw the proposal.

Q. Did it surprise you that Dr. Harrison withdrew the proposal?

A. Yes, of course, just because I believed that both parties agreed that it would be in

the best interest of the partnership to move that capital. That came as a very unpleasant surprise.

Q. Did you take any action following that call?

A. Yes, I did. I sent an email just confirming our position on the reallocation proposal and informing the general partner that we were of the opinion that the further funding of the early-stage companies is not in the interest of the partnership.

Q. Did you ask him for any information about the early-stage companies?

A. Yes, of course. We asked him to share with us any proposals that could help to salvage value from the early-stage companies.

Q. And what did you mean by salvaging value from the early-stage companies?

A. Well, we were open to consider old proposal; for example, the proposals to secure funding through the business development deals for the partnerships with other companies or new projects or potentially sale of certain companies, mergers.

Q. Did you address the clinical companies in that email?

A. I think yes. I think I said that we

are still willing to consider the budgets for the clinical-stage companies.

Q. And do you recall when you sent that email?

A. Yes. May 15.

Q. What were you hoping to get from Dr. Harrison in response to your email?

A. Well, I expected that he would engage in discussions with us and to counter us with proposals on the, as I said, like, salvaging the values from the early-stage companies. I expected some cooperation.

Q. Did you ever get the information you were hoping to receive?

A. No.

Q. We discussed earlier today the potential budget increase for Aulos. Did you discuss with the GP the potential budget increase for Aulos after May 15, 2025?

A. Yes, we did.

Q. What do you mean?

A. We sent a list of the questions on the Aulos, and we asked general partner to provide us with, like, the answers to those questions and also

with an update on the company's progress since we met with Aulos management in early March, and it was late May.

Q. Could we take a look at JX 1360.

Is this the email with the questions you had for Dr. Harrison about the potential budget increase for Aulos?

A. That's correct.

Q. And when was that?

A. It was May 22 this year.

Q. Did you receive answers to these questions?

A. No.

Q. Turning to Ascidian, did you discuss with the GP a potential budget increase for Ascidian after May 15, 2025?

A. Yes, I did.

Q. And what do you mean by that?

A. Well, I drafted the list of the questions on the company's new budget and sent it to the general partner.

Q. Can we take a look at JX 1361, please.

A. Could you please say again the last two digits.

Q. 1361.

Are these the questions that you sent Dr. Harrison about Ascidian?

A. That's correct.

Q. And when was this?

A. The same date. May 22.

Q. Did you receive answers to these questions?

A. No.

Q. Did you ever follow up with the GP about your questions regarding Aulos and Ascidian?

A. Yes. I followed up -- sorry.

I followed up I think in a matter of a week and I sent another reminder.

Q. Can we take a look at JX 1375, please.

A. Yes.

Q. Is this the follow-up email?

A. Yes.

Q. And what's the date on this?

A. 28th of May.

Q. Have you heard back?

A. No.

Q. Mr. Bogdanov, do you recall whether the GP issued capital calls on May 30?

A. Yes.

Q. And were you surprised by those capital calls?

A. I was astonished to see this.

Q. How come?

A. Just because all the forecasts the general partner shared with us, and the most recent was dated, like, 28th of April, in two scenarios provided for the calls in the second quarter were in a range of 15 to 20 million, and we received calls for more than 100 million in one night.

Q. Before the GP issued the capital calls on May 30, are you aware of any occasion where the Rigmora LPs did not pay a capital call for an ATP portfolio company?

A. Not a single case. We always paid.

Q. Do you recall whether the Rigmora LPs paid any capital calls after May 15 and before May 30?

A. Yes. We paid two capital calls for two portfolio companies.

Q. Do you recall which companies?

A. One was Initial. I forget the name of the other one.

Q. Let's take a looking at JX 1339. It's

a couple tabs in the other direction.

A. Say again last two digits, please.

Q. 1339.

A. Yes. Initial and Apertor, right.

Q. And this is the email from Rigmora to Dr. Harrison approving the capital calls?

A. That's correct.

Q. And what's the date on this email?

A. May 20th.

ATTORNEY BORN: No further questions.

CROSS-EXAMINATION

BY ATTORNEY BERDON:

Q. Good morning. Andrew Berdon for the plaintiffs.

Good morning, Mr. Bogdanov.

A. Good morning.

Q. Mr. Bogdanov, I'd like to turn your attention first to the capital call that you just testified about. Can you pull up JX 1339, please.

Dr. Bogdanov, taking a look at the last sentence of the email, can you read it, please, out loud, on the record.

A. The last paragraph, right.

Q. Actually, I'll withdraw the question.

It says, "Funding on this basis is acceptable on the SLP as it will enable the orderly wind-down of these companies which is in everyone's interest."

Is that right?

A. That's correct.

Q. So when you told the Court that you had approved a capital call for Initial and Apertor, you didn't mention that you had only approved the money for wind-down costs, did you?

A. We approved the capital call.

Q. You didn't approve a capital call for the purpose of funding research, did you?

A. That's what my email says, right.

Q. Mr. Bogdanov, taking a look at JX 1361.

You said that you had sent a letter to Dr. Harrison offering to provide additional discussions on Ascidian. Under the word "Subject" there's two words there, "Without Prejudice." Without prejudice, why did you put that on this piece of correspondence?

A. I think we responded to the "Without Prejudice" email from the ATP employees.

Q. Did you put it on there so that ATP couldn't cite it against you in any litigation?

A. I'm not a lawyer. I was advised by my counsel.

Q. But you're using it here in this litigation to try and beat ATP's claim; correct?

A. Could you please rephrase the question. I'm not understanding.

Q. You're relying on JX 1361 in this litigation to defend against ATP's claim; right?

A. I rely on this document, right, and on the exchange.

ATTORNEY BERDON: Let's pull up JX 1360, please.

Q. In JX 1360, Mr. Bogdanov --

A. Wait. I'm not on that.

Q. JX 1360 you also have the "Without Prejudice" legend on that piece of correspondence as well?

A. That's correct.

ATTORNEY BERDON: Let's turn to Exhibit 1307.

Q. Mr. Bogdanov, I'd like to direct your attention to the page at the bottom that says 0003.

A. Yes.

Q. You testified that -- in essence, that you objected to this proposal because it would usurp the authority of the limited partner to approve budgets; is that right?

A. I'm not sure I just would put it in this way. I said that we believe that proposal was acceptable, but the proposal should follow the LP -- the existing LP terms. That's what I said.

Q. Well, you understood that there were timing issues here that made certain decisions time sensitive; correct?

A. Probably, yes.

Q. And it was pretty clear in No. 1 that the general partner at (d) told you exactly how they intended to make decisions about the allocation of money among the clinical companies.

They requested discretion, though; correct?

A. They requested discretion, of course.

Q. But they made it clear how they intended to deploy the capital; correct?

A. No, because to make it clear how the general partner intends to deploy the capital, you

should provide your limited partner with a set of the basic investment documents, including the investment memorandum, which I requested and didn't receive.

Q. But the general partner here proposed language that would say, "The General Partner currently anticipates that if Marengo Therapeutics achieves Phase 2 data for invikafusp [] that [it] is deemed by its board of directors to be suitable for [] Breakthrough Designation, most or all of such additional $56.00 million will be allocated to Marengo ...."

They're willing to say that in writing in an agreement with you; right?

A. I'm sorry. Could you please --

Q. I withdraw the question.

Taking a look at Nos. 2 and 3 below, did you ask the general partner why it was important that they retain some discretion to allocate money among the different companies in Pools V-1 and V-2?

A. We didn't have a chance to ask. The proposal was withdrawn too fast.

Q. Well, isn't it true that they had proposed grouping the projects among the companies without necessarily following the exact corporate

form? Didn't they explain that to you?

A. He mentioned on the call, I think on the April or May call, I don't remember which one it was when we discussed that, that, yes, he would probably look at the early-stage companies as kind of like portfolio of assets rather than the companies, but he didn't give, like, detailed explanation of what it may have meant.

Q. But you understood also that there was a time sensitivity to getting these decisions made because these companies faced out-of-cash dates that were all within the next three to six months; correct?

A. I'm not sure he mentioned that they would have the cash-out dates shortly, but we understood that it was in our interest to consider those decisions pretty quickly.

Q. So, Mr. Bogdanov, currently you're the senior-most person at Rigmora with responsibility overseeing Rigmora's investments at ATP?

A. That's correct.

Q. And you came into that role in October of 2024?

A. Yes.

Q. And prior to October 2024, you didn't

have any involvement whatsoever in the approval of any budget for an ATP portfolio company; correct?

A. That's correct. Probably like ten years ago, I had some involvement, but not --

Q. Not in the prior ten years?

A. No.

Q. And before you became involved in that process, an executive named Anna Kolonchina was in charge of it?

A. That's correct.

Q. Your educational background is in business valuation; correct?

A. That's correct.

Q. And you haven't taken any courses in any bioscience in your educational career; correct?

A. That's correct.

Q. And before joining Rigmora, you worked as an auditor and a consultant; correct?

A. Right.

Q. And none of your work in your audit or consulting practice involved preclinical or clinical stage development of new drugs; correct?

A. As I said, I had two clients in the biotech industry in Russia, yes, but it was more than

20 years ago, so you are right.

Q. Mr. Bogdanov, isn't it true that starting as early as 2022, Rigmora faced a liquidity crisis?

A. That's how I framed that in my correspondence, yeah.

ATTORNEY BERDON: Can we pull up JX 444, please.

I'm sorry. Let's go to 446, please.

ATTORNEY BORN: If we're turning to documents that weren't in our binder, could we get a binder, and could the witness have a binder?

THE COURT: You should have a binder on the shelf.

ATTORNEY BERDON: I apologize.

THE WITNESS: I don't have a binder.

THE COURT: The binder is coming, everyone.

BY ATTORNEY BERDON:

Q. Let's go again to 463.

A. Could you please say again the number.

Q. We're going to JX 463, please.

THE COURT: Before the binder break, you had said 446.

ATTORNEY BERDON: I understand.

THE COURT: Now we're skipping it?

ATTORNEY BERDON: I'm skipping ahead, yes, Your Honor.

THE WITNESS: 4316?

Q. 0463.

A. 04 -- yes, I'm on it.

Q. Mr. Bogdanov, looking at the first page, do you recognize this as an email that you sent?

A. Yes.

Q. And you sent it to Dmitriy Chechkin?

A. That's correct.

Q. Dmitriy Chechkin is another senior official at Rigmora; correct?

A. That's right.

Q. Let's go to the next page, please. You said, "We are in a liquidity crisis, the primary task is obviously to provide [the] funding need for the next 2-3 years." Correct?

A. That's correct.

Q. And you said that -- taking a look at No. 2, you said that there had been a previous crisis at Rigmora with similar characteristics that was resolved by liquidating the private equity portfolio;

correct?

A. That's correct.

Q. And you said in No. 3 that, "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture." Correct?

A. That's correct.

Q. And was ATP Rigmora's biotech investment at that time?

A. Not only biotech investment, but yes.

Q. And you said that the structure -- in No. 4, "the structure of our assets with predominance of venture projects (biotech [and] gaming) carries [the] same risks that had led to the current crisis: poorly predictable money inflows (divestments) and massive outflows (capital calls)."

You said that?

A. I said that.

Q. And you observed that you would "remain []in the same logic of shifting money from less risky (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time." Correct?

A. That's what I wrote.

Q. And No. 11, you said, "Hence, priority number one is to create [a] cash buffer (all free money should go there), then work on creating a 'cash cow'"; correct?

A. Right.

Q. The paragraph below that, it says, "How do we go about creating the cash buffer." You say, "The only way in this situation to start moving towards the cash buffer is to drastically reduce ATP payments." Have I read that correctly?

A. Right, through attracting the new investors into the fund.

Q. And taking a look at the "Summary" at the end, take a look at No. 4. "The first priority in this case is to put a 'plug' on expenses (no new projects, reducing investment expenses), the tasks of creating [a] cash buffer and finding new business can be solved in parallel."

That does not discuss bringing in new investors. That discusses putting a plug on expenses; am I right?

A. It referred to the plug on the new projects.

Q. Mr. Bogdanov, you mentioned that

Rigmora acts as an advisor to the trustees of the trust. Do you recall that testimony?

A. Right.

Q. And does the trust report to -- withdrawn.

Does Rigmora report to the trustees on a periodic basis?

A. Rigmora reports to the trustees of the trust, right.

Q. Let's pull up JX 0526, please.

A. Yes.

Q. Taking a look at what's been marked as Exhibit 526, what is that?

A. Let me read first.

Q. We are pressed for time, so I'm going to ask you a question and you can tell me if I'm right.

Is this an email that you sent containing trustee materials from March of 2023, Mr. Bogdanov?

A. I think that yeah, I just forwarded that email to my own address, yes. It was originally sent by Anna Kolonchina, as I see on the page.

Q. And it was sent to Elias Neocleous?

A. Elias Neocleous; right.

Q. And who is he?

A. He's the managing partner of Elias Neocleous law firm, and he's also the trustee.

Q. Taking a look at the page bearing the number 0007, do you recognize that?

A. Yes, I do recognize.

Q. And that's a cash flow statement for the Rigmora trust; correct?

A. That's correct.

Q. And if you look at the right-hand side at the bottom, "Net Cashflow[s] for the period," you will see that your 2022 plan was for $170 million deficit; correct?

A. That's correct.

Q. Your '22 actuals at that point was for $126 million deficit?

A. There was a net decrease in cash position.

Q. And your 2023 forecast was for $184 million deficit; correct?

A. That's correct.

Q. And the projected cash at the end of 2023, according to this forecast, was going to be

$38 million?

A. That's correct.

Q. Rigmora funded its investments in ATP, at least in part, through the sale of other assets; isn't that true?

A. Partially, yes.

Q. Let's turn to page 9.

Isn't it true, Mr. Bogdanov, that Rigmora was debanked by several banks in the EU in 2023?

A. Was what? Sorry. I don't know the word.

Q. Taking a look at the highlighted bullet point, isn't it true that in 2023 you reported to the trustees that several banks decided to close relationships with the group, namely Credit Suisse, UBS, and Bank of Cyprus?

A. That's correct.

Q. And that was because their compliance teams forced those changes; correct?

A. Most likely, yes.

Q. And let's take a look at JX 0681, please.

Take a look at JX 0681, Mr. Bogdanov.

Let's take a look, then, down to page 7 titled, "Cashflow 2023-Comments." Under "Financing," isn't it true that bank -- you had a credit line -- had asked that its guarantee of Swiss [francs] 120 million required additional cash collateral of $48 million at that time?

A. Could you please refer to the page.

Q. I'm on page 7 of JX 681, "Cashflow 2023-Comments," under the heading "Financing."

A. It's marked as page 8 in my binder. Okay. Sorry.

THE COURT: It shouldn't be. If you look on the screen, it's right in front of you.

THE WITNESS: It's 8 here.

Q. Isn't it true that you reported to the trustee that a bank guarantee required additional cash collateral because of the sale of two positions in stock where ATP had done exits and taken two companies public?

A. The bank guarantee required additional cash collateral, that's correct.

Q. Let's turn back to page 6, please.

And this contains similar data as the last report, but it has an updated forecast for 2023

and actuals for the first nine months of 2023; correct?

A. Apparently I'm on the wrong tab. Could you please say again the tab number.

Q. We are at Exhibit 681, and we're on page 6.

A. Thank you.

Q. Let's take a look at the "Net Cashflow for the period" --

A. Yes.

Q. -- on the right-hand side.

The plan was to be negative 185 for 2022. The nine-month actuals had already hit negative 147, and the updated forecast was for negative 202 million in negative cash flow; is that right?

A. That's correct.

Q. And instead of forecasting $38 million to be cash on hand at the end of 2023, the new forecast was down to $11 million; correct?

A. That's correct.

Q. And out of that money, it required distributions to beneficiaries of at least $10 million; correct?

A. That's correct.

Q. And it also provided for the sale of assets in order to fund Rigmora's overall expenditures; correct?

A. That's correct.

Q. Turning to page -- Exhibit 698. Isn't it true, Mr. Bogdanov, that --

A. Wait. What exhibit?

Q. 698.

Isn't it true, Mr. Bogdanov, that in March -- forgive me.

Isn't it true, Mr. Bogdanov, that in March of 2025 you had a text with Zufar Iskhakov that's set forth in Exhibit 698?

THE COURT: Do you have that exhibit?

A. It's 698. I have it in front of me.

Q. Withdrawn.

Mr. Bogdanov, in November of 2023 Rigmora entered into an agreement with ATP to reduce the amount that ATP would be able to call in capital for the year 2024; isn't that true?

A. Yes.

Q. And taking a looking at paragraph 3, it says, "As of the date set forth above, the aggregate amount of unfunded budget commitments for

the Portfolio Companies in ATP V-1 equals []63.33 million and in Pool ATP V-2 [it] equals $292[] million." It says that?

A. That's what the agreement says.

Q. Let's turn to the last page. Was it signed on behalf of Ezbon?

A. That's correct.

Q. Was it signed on behalf of Blue Horizon?

A. That's correct.

Q. Turning just quickly to Replicate. Isn't it true that you learned in late 2024 that the original budget for Replicate had been approved based on oral conversations?

A. That was my guess. I'm not sure I received a confirmation of my guess.

Q. And when you sent that list of 19 questions to Replicate, you didn't know one way or the other whether it was even possible for those questions to be answered in a reasonable amount of time; isn't that true?

A. I didn't know. I expected that all these questions can be easily answered by the company, but if they don't have the answers, well, that would

be, like, a surprise.

Q. Did you ask any biotech consulting firm for help in diligencing these new budget requests?

A. No.

Q. Does anyone at Rigmora have a background in biotech investing specifically outside of ATP?

A. We do have investment background, yes.

Q. Does anyone at Rigmora currently have a background in biotechnology science?

A. No.

Q. Has anyone at Rigmora worked specifically as an analyst in the biotechnology sector?

A. No.

Q. Turning to the subject matter of investment memoranda. I'd like to take a look at Exhibit 0267, please. 267, Mr. Bogdanov.

Do you recognize this document as a budget approval form for Red Queen?

A. Right.

Q. And it says Red Queen proposed budget, 55 million?

A. That's what this document says, right.

Q. "Intended Use of Proceeds: General working capital requirements." Correct?

A. Right.

Q. There's no discussion there of it only being made available in tranches?

A. I probably already said that we received bundle of documents. It was almost always the investment memoranda in this cover form, right.

Q. It did not include in the budget approval a list of any tranches; right?

A. Right. They're included in the investment memoranda.

Q. It wasn't included in the budget, was it?

A. No.

Q. Let's take a look at -- just for completeness, it doesn't say, "and for purposes included in the investment memoranda," does it? It didn't include that on the face of the form, did it?

A. You are right.

ATTORNEY BERDON: And let's take a look briefly at Exhibit 267. 267, please.

316, please. Apologize.

And let's go to page 3, please.

Q. So when Rigmora wanted to put more information in a budget approval, it could; correct?

A. I think this is like the additional follow-on 10 million on top of the original investment memoranda for Replicate, which was 40 or 44 million. I don't remember the exact number.

Q. Well, it says here Replicate current budget, 40, right?

A. 40, right.

Q. And it says proposed budget 53; correct?

A. Yes.

Q. This is for a $13 million increase?

A. That's correct.

Q. And it says, "Intended Use of Proceeds: Research and Development, IND and PoC."

A. That's correct. It's an additional program to be added to the investment memorandum of Replicate.

Q. Well, does it say anything about adding to the investment memorandum here?

A. No. It's just what I'm explaining.

Q. But it provides for a specific

intended use of proceeds; right?

A. Right.

Q. And PoC stands for proof of concept; correct?

A. That's correct.

Q. Are you familiar generally with the process that was used at Rigmora for reviewing capital calls before October of 2024?

A. In general, yes.

Q. Are you aware of anyone at Rigmora prior to May of 2025 checking to see the status of the program against investment memos before funding capital in response to a capital call on an approved budget?

A. We believed that that was the work which was done by the general partner.

Q. So the answer is the limited partner, Rigmora, did not do that check itself; correct?

A. Yes. We relied on the general partner.

Q. And it was not Rigmora's policy before 2025 to ask for copies of the Series A funding agreements that were executed by ATP with the portfolio companies; correct?

A. It's hard to comment for me what was my predecessors did.

Q. You worked there for ten years; correct?

A. Yes, but I was not involved in ATP matters up to October 2024.

Q. You mentioned earlier that when you received requests for new budgets and you were talking about new budgets for the early-stage companies, you went back and checked against milestones and that those companies had missed milestones.

Do you recall that testimony?

A. Yes. That was like our conclusion.

Q. Had all the companies missed milestones?

A. At the moment we didn't know for sure, but we realized that many of them missed milestones. In some instances, we missed information to assess their performance.

Q. Let's pull up JX 1285, please.

Do you recognize this as an email from your colleague, Mr. Iskhakov to yourself, Andrey Milkov, and Alexey Yakovlev?

A. Yakovlev, right.

Q. And let's take a look at the chart that appears in color.

ATTORNEY BERDON: Can we blow that up, please, Marco.

Q. Isn't it true that your colleague, Mr. Iskhakov, reported to you that Red Queen and Marlinspike had actually achieved and were in line with their investment memo milestones at that point?

A. That was his guess at the moment, right.

Q. So it was his guess?

A. Yes.

Q. So he was -- it wasn't binary whether or not looking at the investment memoranda and the quarterly reports would clearly demonstrate whether milestones had been hit?

A. Zufar is a junior analyst, and we just started that work, and it was work in progress. We, I think, made a number of iterations of that exercise later that month.

Q. Are you aware of any document that actually states that Red Queen or Marlinspike had missed milestones?

A. I'm not sure to what document you're

referring.

Q. Exactly. Are you aware of any time that you contradicted Mr. Iskhakov's conclusion with respect to Red Queen or Marlinspike and their meeting milestones?

A. Could you please rephrase. I'm not sure I really follow.

Q. Did you ever find a mistake in this chart and find out that, in fact, Red Queen and Marlinspike were behind on their milestones?

A. Sitting here, I don't remember, but I remember --

Q. That didn't happen, did it?

A. Say again.

Q. That didn't happen, did it?

A. I'm not sure. I think that we came to the conclusion that almost all of them missed milestones by the time we sent the email.

Q. You have seven companies; right?

A. Seven companies, right.

Q. At least two right here you're being told that they weren't behind on milestones; right?

A. Yes. It's like not the final document.

ATTORNEY BERDON: Let's go to 1242, please.

Q. As of April, you had Mr. Iskhakov check the amounts of remaining approved budgets for ATP; is that right?

A. That's correct.

Q. This was just a little over a month before your May 15 email; right?

A. That's correct.

Q. And you had received some new capital calls from ATP; correct?

A. That's correct.

Q. And Mr. Iskhakov says that "The new capital calls are reflected in our records. All are within [] budget." Correct?

A. That's correct.

Q. You didn't ask Mr. Iskhakov to check the progress against milestones of Nine Square or any of the other companies with capital calls to make sure that they were within the investment memoranda criteria before funding that capital call, did you?

A. Yes, I think we started that work analyzing of their performance later that month.

Q. You did it later in the month. You

didn't have it done for this capital call; right?

A. I think, yes.

Q. Let's just take a look at the chart there. Do you have any reason to believe that the figures here that were compiled by Mr. Iskhakov were incorrect at the time that you received the email on April 4?

A. I think they were correct.

Q. You had no reason to believe that Mr. Iskhakov was being sloppy or inaccurate; right?

A. No. He's pretty accurate.

Q. One of the issues that you raised in your May 15 email was that there was a lack of third-party interest in the portfolio companies; correct?

A. Yes.

Q. And one of the issues that we discussed with Dr. Harrison was third-party funding available from business development deals.

A. I referred to the equity investors.

Q. I understand. And I realize you weren't in the courtroom for Dr. Harrison's testimony.

Dr. Harrison talked to us about business development deals that provide nondilutive

funding for research and development projects.

Are you aware of those types of relationships?

A. Yes, I'm aware.

Q. And were you aware at the time that you wrote the May 15 email that there were ongoing discussions with BD partners among the portfolio companies?

A. Yes, I'm aware.

Q. And are you aware that in June, just three weeks after you sent your May 15 email saying essentially that Deep Apple was worthless, Deep Apple signed a deal with Novo Nordisk that would provide up to $812 million in funding?

A. Well, first, I never said that those companies are worthless. Second, we were aware that Deep Apple is considering the new project. That's why the general partner didn't include in his plans, on capital call plans, any capital to be called for Deep Apple in Q2. Yes, we were aware.

Q. You instructed that Deep Apple be shut down in your May 15 email?

A. That's not correct.

Q. Let's pull up the May 15 email,

please.

A. What exhibit number?

THE COURT: JX 1318.

THE WITNESS: Thank you.

Q. Let's take a look at the sentence that starts, "The SLP's position is therefore that further funding of those Early-Stage Companies will waste the ATP Fund's assets."

A. Yes, I see it.

Q. And Deep Apple was on the list of companies that you were instructing ATP to liquidate if it wanted to have further conversations about funding for clinical-stage companies; correct?

A. We invited the general partner to come with the ideas how we can salvage value from those companies, and this business development is a good illustration of that idea.

Q. You instructed the general partner to liquidate Deep Apple if it wanted to have further conversations with you about budgets for Aulos, Ascidian, and Marengo; isn't that true?

A. We instructed the general partner and we asked him to come with ideas how we can salvage value from those early-stage companies.

ATTORNEY BERDON: Let's turn to 195, please.

Q. This is an email from Anna Kolonchina to Seth Harrison in a chain that is -- let's go to the next email down, please.

It forwards a draft of Amendment 20.

A. Yes.

Q. Have you ever seen what's been marked as Exhibit 195 before?

A. I'm not sure. Like, most likely I reviewed certain documents from the past when I was not involved in the ATP matters, but I'm not sure.

Q. Let's take a look at numbered paragraph 5 on page 4, "Remaining Unfunded Capital Commitments." It says in paragraph (a) that there's an unfunded capital commitment for Pool ATP IV of 20 million; correct?

A. Yes.

Q. "Pool ATP V-1 will be deemed to have remaining unfunded capital commitments of [$220] million ...."

A. Right.

Q. Pool ATP V-2 was going to be deemed to have an unfunded capital commitment of 664 million.

ATTORNEY BORN: Objection. This predates his time, and I think he says he's not sure if he's ever seen it before.

ATTORNEY BERDON: He is the chief executive officer of the company, and I believe it is fair game to ask him because he also testified that he probably also saw it during the course of his work.

THE COURT: If you don't have an understanding of this document, then you can so testify, but you are the CEO of the company.

A. Frankly speaking, this is a draft and I don't recall reviewing the drafts. I do remember that I reviewed the final amendment which was signed, but this is the work in progress. I can hardly help you.

Q. Let's take a look at the top email on the first page. Anna Kolonchina writes back to Dr. Harrison and she said, "Please find attached marked up version with [a] couple of revisions. No substantive changes here ...."

Do you see that?

A. Yes, I see.

Q. Mr. Bogdanov, Rigmora received a number of capital calls on May 30; correct?

A. That's correct.

Q. Was each of those capital calls within the amount of the approved budget for the portfolio company on which it was called?

A. I think so.

Q. Has Rigmora paid them?

A. No.

Q. Does Rigmora have any intention to pay them absent an order of this Court?

A. Again, we disputed those calls, right.

ATTORNEY BERDON: Pass the witness, Your Honor.

THE COURT: Just a moment. I have a few questions and then you can decide what to do with him.

Remind me, you took over the responsibilities that you currently have at Rigmora in October 2024; is that correct?

THE WITNESS: That's correct.

THE COURT: What were you told when you took over those responsibilities?

THE WITNESS: I didn't have any specific instructions. Obviously I was involved in many matters. So that was kind of like a small

transaction. But my predecessor left exactly on that date when I became the new CEO, it was October 17, and there were no specific instructions.

THE COURT: There were no instructions from anyone as to how to proceed?

THE WITNESS: There were no specific instructions.

THE COURT: Go ahead.

ATTORNEY BORN: No further questions. Thank you, Your Honor.

THE COURT: Thank you.

(Witness excused.)

ATTORNEY BARLOW: Plaintiff rests subject to rebuttal.

THE COURT: Thank you.

ATTORNEY SELDEN: Good morning, Your Honor. Shannon Selden of Debevoise & Plimpton for defendants. Defendants will call Dr. Dmitry Rybolovlev.

(Steven Lagutin, Russian Interpreter, was previously placed under oath.)

COURT CLERK: Please remain standing and raise your right hand. State and spell your first and last name for the record.

THE INTERPRETER: Rybolovlev Dmitry Yevgenevch.

COURT CLERK: Can you spell it, please.

THE INTERPRETER: R-y-b-o-l-o-v-l-e-v, Dmitry, D-m-i-t-r-y, and there's a patron (indecipherable), Yevgenevch, Y-e-v-g-e-n-e-v-c-h [sic]. I might be off on that.

THE COURT: Going forward, the questions will be directed to the witness and then you translate. I want to make sure that we're hearing the words from the witness.

DMITRY YEVGENYEVICH RYBOLOVLEV, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY SELDEN:

Q. Good morning, Dr. Rybolovlev. Could you please state your name for the record.

A. Dmitry Rybolovlev.

Q. Dr. Rybolovlev, where were you born?

A. The Soviet Union, the city of Perm, P-e-r-m.

Q. Where did you grow up, Dr. Rybolovlev?

A. Same place.
Q. Did you go to university?
A. Yes. I graduated from Perm Medical Institute.
Q. When did you graduate?
A. In 1990.
Q. Did you ever work in medicine?
A. Yes. I was working as a medic, as a male nurse, taking night shifts. All in all, about five years.
Q. Did you practice in medicine after graduating?
A. Yes. I practiced one year as an intern doctor.
Q. And why did you stop working as a doctor?
A. At that time the work of a doctor in the USSR was paid, to say the least, modestly. I was making at that time about 120 rubles a month, plus ten rubles for being an excellent student. At the same time I had no apartment -- I had family, I had no apartment, I had no means to support myself. Therefore I had to change my nature of activity.
Q. And what did you do next?

A. Me and my father opened a small enterprise providing medical services to industrial enterprises, to factories. At that point in whatever was called the Soviet Union, there was a process named "perestroyka," or restructuring, that would allow private enterprise activity, which is what we took advantage of.

Q. Did there come a time when you changed jobs again?

A. Yes. The thing is, back when I was a child, I happened to read a book that was pretty popular in the Soviet Union at the time. It was a book by Theodore Dreiser, *The Financier*.

Then I took an interest in it, and then at that time the market -- the stock markets in Russia started developing, and that pushed me towards going to study and taking one of the first -- be one of the first ones to take the certificate on the operations with shares, valuable papers.

Respectively, I was the first one to open an investment company in my region. At that moment in Russia they started the process of privatizing of the state-owned companies. So therefore I happened to be one of the ones who were

most prepared in my region for that kind of market.

The process of privatizing happened to have an auction that the government was selling the enterprise through various mechanisms to various private actors. The entire population was given some voucher that they could sell or they could exchange for shares of certain enterprises. Therefore I created a special investment fund and became an active participant in this kind of activity, privatizing.

At some point we accumulated about 20 enterprises under our ownership. Eventually they went down -- the number went down to seven. And furthermore, as a result of further sales and various acquisitions, I focused on two major enterprises. As a result, I happened to obtain a control package of one of them. That was a company Uralkali.

Q. Dr. Rybolovlev, could you spell Uralkali for the court reporter.

A. U-r-a-l-k-a-l-i.

Q. Dr. Rybolovlev, at some point did you obtain a controlling block Uralkali?

A. Yes.

Q. And what did you do then?

A. The thing is, it was a pretty big

enterprise of the Soviet style that had about 15,000 people working on it. Correspondingly, there has been a big -- large work done to restructure the enterprise and conducting various reforms to make it more in line with the western-style corporate leadership.

As a result, in 2007 we introduced the company to the London Stock Exchange. It was a successful step and at that time we managed to earn our first billion. Eventually in 2010 the company was sold.

Q. And how much did you receive for your stake in Uralkali when it was sold?

A. Around 5 billion.

ATTORNEY SELDEN: Your Honor, would now be a good time for a break?

THE COURT: We can break now. I will need about 20 minutes for the morning break because I have a ton of administrative things to do every break. Why don't we break now and resume in 20 minutes.

(Court in recess at 10:30 a.m.)

(Resuming at 10:50 a.m.)

THE COURT: Please be seated. Thank you.

Just a reminder, we'll break next at noon.

ATTORNEY SELDEN: Thank you, Your Honor. Shall I proceed?

BY ATTORNEY SELDEN:

Q. Dr. Rybolovlev, did three come a time when you left Russia?

A. In 1995 I moved my family to Switzerland and became a tax-paying resident of Switzerland myself. Although there was a lot of time I was still spending in Russia because we needed this time to take care of the enterprise. And when in 2010 the company was sold, I finally left Russia for good.

Q. The company that you're referring to is Uralkali?

A. Uralkali.

Q. What did you do professionally after you sold your interest in Uralkali?

A. Yes. I happened to have a medical education and I really love medicine and I really regret that I ended it so abruptly. I started taking

interest in being in Switzerland in biotech.

After sale of the Uralkali, I conducted several meetings with various fund managers in the U.S. in order to find an optimal way to invest in biotech industry. My idea was essentially to replicate the approach that I had in Russia. The idea was to have like a rolling investment in multiple companies with subsequent focusing of one or two of them in order to eventually create a family business.

The other possible way to do it would be to heavily invest in one company, but considering biotech being a pretty risky industry, that was a pretty risky venture in itself.

As a result of these meetings, I met Seth Harrison, which essentially liked the strategy. He happened to have small foundation; and as a result of our cooperation, we created this fund.

Q. And what's the name of that fund that you created with Dr. Harrison?

A. It was the Apple Tree fund, which essentially had the same name as the fund that Mr.-- Dr. Harris [sic] had. However, this time we took the commitment to invest about 1.5 billion.

Q. Dr. Rybolovlev, do you have other

investments besides the fund?

A. Yes. I generally like investing in technology. In the future, I believe there will be three major ways -- well, three major directions that humanity will benefit the most from, which is number one, health, the food, and entertainment.

Yeah. So this is as far as we go considering this foundation regarding the health or the health protection. We also made some investments in creation of cellular-based meat. I believe this will dramatically change the approach that humanity treats the nutrition stuff, because this is going to be an artificial meat, essentially, and this is going to be having absolutely no impact on the environment. And right now, as you know, the cattle farming is one of the biggest factors that impacts the environment. So we have this company in Oxford, and it develops pretty well.

The next direction is gaming, and there we have several investments. Also, we do have some realty investments as well as other portfolio investments.

Q. And, Dr. Rybolovlev, do you also own a football team, or a soccer team as we would say here?

A. Yeah. This is a part of the same approach we took regarding the entertainment industry. Yeah. We happen to have ownership of 66 percent of the soccer club Monaco. And like I said, this is another investment in the entertainment industry, in gaming.

Q. Dr. Rybolovlev, in addition to your investments, do you also like to keep significant cash on hand?

A. We do not like to keep a lot of liquidity on hand. I believe the money, whether it's cash, it has to work. So when it comes to dealing with liquidity, such as cash, we manage it pretty scrupulously. And I believe our liquidity's fine as far as our assets goes.

Q. Does that approach make it difficult to satisfy obligations to pay in cash when they arise?

A. In all my being in the business, we had no difficulties with that.

Q. And, Dr. Rybolovlev, do you understand Dr. Harrison alleges or APT alleges that the war in Ukraine changed your approach to investments beginning in February of 2022?

A. I don't agree.

Q. What impact, if any, did the Ukraine war have on your approach to investing?

A. No impact.

Q. Have you been the subject of any U.S. or EU sanctions since the start of the Ukraine war?

A. No.

Q. Do you invest in the U.S.?

A. The main investments just happen to be here in the U.S.

Q. Dr. Rybolovlev, let's talk about your investment in the fund that's at issue here, APT. How did you structure your investment in the fund?

A. So we happened to be in the position of LP, Dr. Harrison was GP, general partner.

Q. And the LPs that invest are the Rigmora Biotech Investor One and Two?

A. Yes.

Q. Have other LPs invested in the fund, to your knowledge?

A. It has been always our position that Dr. Harris would have the similar motivation in the interests of the company as us. This is why we decided to give him a small share as LP in terms of free credit line that we provided for him to get a

share.

Q. Dr. Rybolovlev, are you familiar with the term "capital commitments"?

A. Yes.

Q. What do you understand it to mean?

A. That's the number of commitments that companies of the trust took upon themselves to the fund.

Q. Did the Rigmora LPs make a capital commitment to the fund?

A. Yes.

Q. How much did the LPs initially commit to invest in the fund, if you know?

A. About 1.5 billion.

Q. Does that include the loan you mentioned to Dr. Harrison?

A. Yes.

Q. Do you recall how much that loan was?

A. About 75 million.

Q. Dr. Rybolovlev, when the LPs committed to invest $1.5 billion in the fund, was that paid in all at once, upfront?

A. No. Within the scope of the life of the founding fund.

Q. Did there come a time when the fund began making investments?

A. Somewhere in the area of 2013.

Q. When the fund started making investments, did you play any role?

A. Yes. Normally the way it happened is Dr. Harris would come one day with a proposal, briefly describe it, and name general number required for it.

Yeah. So normally, if we like the idea as a whole, we would approve it. And, further, there was a process of formalizing it and approving it at Rigmora.

Q. What was that process, if you know?

A. Yeah. Dr. Harris would provide a package that was required to Rigmora with numerous investment documents, such as milestones, et cetera, numerous documents, and, furthermore -- eventually Rigmora would study it and make decision.

Q. Was that formal process important to you?

A. Yes, of course.

Q. Are you familiar with the term "milestones"?

INTERPRETER: I'm sorry, Ma'am?

Q. You're familiar with the term "milestones"; right?

A. Yes.

Q. What do you understand that to mean?

A. That is a very important mechanism of control of the company's development. This is so-called timeline which is agreed upon both with founders and the management about the way the company's supposed to develop.

So if milestones, for whatever reason, are not achieved so there is some issue, that basically shows that the founders and managers didn't cope with the problem. Therefore, this requires further in-depth analysis in order to understand what exactly needs to be done, whether the milestone needs to be changed or the company has to be terminated.

Q. Were milestones something you considered when reviewing the investment proposals?

A. So definitely Rigmora was adhering to this mechanism. However, my level set was always telling me that the number -- the numbers that we utilized did not always go along with the outlined budget. For example, we can spend 1 or 3 billion -- million eventually to understand that a company does

not fulfill the obligations.

The adherence to the control points, which is what it is, is one of the major obligations of general partner.

Q. Do you consider biotech to be a high-risk investment?

A. Yeah, it's a high-risk investment.

Q. Why is that?

A. There's a very little number of companies that eventually reach success.

Q. Is it fair to say that milestones are important to your investments in the fund?

A. Yes, clearly. When you are not situated inside the company, it's very important for you to understand the mechanism that works as an investor.

Q. Dr. Rybolovlev, did there come a time when the LPs increased their capital commitment to the fund, to your knowledge?

A. Yes. About -- in about the middle of 2020, we decided to increase the commitment by 1 billion.

Q. Why?

A. So Dr. Harris came up with a proposal

to continue investment, and we liked this considering the fact that biotech investments we consider strategic investments. Based on this, we gave our approval.

Q. In 2020, after the LPs agreed to increase their commitment, what was their total capital commitment to the fund, if you know?

A. About 2.5 billion.

Q. Did there come a time when the LPs made another capital commitment to the fund?

A. No.

Q. Were you involved in an amendment to the fund's LPA regarding a company called Braeburn?

A. Essentially, no. That involves a lot of technical works, which I do not get involved much into.

Q. That was Amendment 20. Do you recall being involved in Amendment 20?

A. Yes. So we often discussed this with Dr. Harris, but Dr. Harris eventually proceeded to -- was the one who directly involved in the execution of this.

As far as Braeburn, he had pretty negative view of this, and, therefore, we decided to

separate it in a separate pool. And if time comes, we could reallocate this, but then Dr. Harris would lose his carry.

Q. Did you agree to commit more capital to the fund in connection with that amendment?

A. No.

ATTORNEY EPSTEIN: Objection.

THE COURT: What is the objection? You have to stand up and say it out loud.

ATTORNEY EPSTEIN: Foundation. He said that he wasn't involved in the direct.

THE COURT: So this is not a deposition. If you want to make an objection, stand up and make it. If you want me to resolve, I'll resolve it.

What is your response to the objection on foundation?

ATTORNEY SELDEN: My response to the objection is he has described his general understanding of what Amendment 20 does. At a high level, I'm asking for his general understanding of whether he agreed to commit more capital in response to Amendment 20. I think that's a fair question under the circumstances.

THE COURT: Overruled. Thank you. You can answer the question.

A. Can you repeat the question, please.

Q. I can. And maybe I can improve it and avoid the objection.

Dr. Rybolovlev, do you have an understanding of whether the LPs agreed to commit more capital to the fund in connection with Amendment 20?

A. No.

Q. Did you, yourself intend to agree to commit more capital to the fund in connection with Amendment 20?

A. No.

Q. Is it possible the LPs committed more capital to the fund without your knowledge?

A. No.

Q. Do you know how much the LPs have actually invested in the fund to date?

A. About 2.7 billion.

Q. Why, if you know, did the LPs invest more capital in the fund than the 2.5 billion you stated they committed?

A. Well, we consider it our investment and our assets, and we are interested -- taking

interest in developing those companies. Therefore we decided to increase our assets.

Q. Was the total amount of the LPs' capital commitment important to you?

A. Of course.

Q. Why is that?

A. It's very important for everyone to understand his own obligations.

Q. Did you ever discuss the total amount of the LPs' commitments to the fund with Dr. Harrison?

A. Yes.

Q. When was that?

THE INTERPRETER: 2023?

A. 2023.

Yes, it was 2023, and we clearly communicated to Dr. Harrison that we would prefer to stay in the range of 2.5 billion, which is basically the number of the general subscription to the fund.

Q. Was that in May of 2023?

A. About that.

Q. What were those conversations like?

A. He was pretty negative about it.

Q. Was that the only time that you discussed the limit on the LPs' capital commitment to

the fund?

A. No. Also we did it in fall of 2023.

Q. What were those discussions like?

A. Well, it was kind of pretty obvious that there might be some issues with the early-stage companies.

The fact of the matter is that when the decision about investment in these companies was being made, the market happened to be in a very high position. That happened as a result of COVID. There was a big, positive reaction in terms of development of medical sciences. Also, there was a large number of unqualified investors entering the market at that time, therefore. Therefore, even in preclinical studies companies had opportunity to syndicate a number of investors.

So, with that in mind, you also have to keep in mind the fact that the reserve -- the Federal Reserve rate is extremely important factor of this. And if the rate is low, the attraction is higher. So I could say there were two major factors in this. The first was COVID and the second was low interest rate that attracted so many investors at that time in preclinical studies.

As you know, eventually the rates went up and investors started giving up on risky assets. Well, correspondingly, the index that show the level of development, the level of technology companies went down, and eventually it became obvious that for the early-stage companies, for that early-stage companies, attracting more investments was becoming more and more difficult. This is one side. And the other side, the subscription, by the end of 2023 has to come to the end, has to finish.

So we made a deal with Dr. Harrison that he would make an attempt to sell the companies with early-stage. We were prepared for big discounts. And it happened that he didn't find anyone in a year and a half. So that means the market didn't accept it.

Q. Why were you willing or ready to sell at a big discount at that point in time, in the fall of 2023, some of the companies in the fund's portfolio?

A. Yes. The early stage.

Q. My question was why.

A. It was becoming obvious that at that stage of the market it would become more and more

difficult for them to attract outside investments and, correspondingly, making investment themselves. And this is one side. And the other side is our subscription was coming to the end.

Q. When you say "subscription," are you referring to the $2.5 billion capital commitment of the LPs to the fund?

A. Yes.

Q. Do you know how much of that $2.5 billion commitment had been drawn down by the fund at that point in the fall of 2023?

A. "Draw down," what did you mean by that?

Q. Do you know how much of that $2.5 billion in capital commitment had been called and invested by the fund at that point?

A. At what date?

Q. The fall of 2023.

A. I don't exactly remember. We were very much getting close to the end of it, but at the end of 2023, the commitment was up.

Q. Did you discuss with Dr. Harrison how close the fund was to exhausting the LPs' commitments?

A. Right. This is actually one of the

reasons we needed to sell the companies.

Q. How did your discussions with Dr. Harrison go?

A. Pretty tensely. Pretty tense.

Q. I'm sorry. I'm just having a hard time hearing. Pretty tense?

A. With tension.

Q. With tension.

Dr. Rybolovlev, was it around that time that you requested a distribution of a company called Braeburn?

A. Yes.

Q. What's Braeburn?

A. This is a company that develops a product that uses -- that is used in opioid dependency, addiction.

Yes. So at the point of conception the beauty of this company was the fact that it was utilizing the pretty well-known -- pretty well-known technique of fighting addiction. However, the general way of doing it happened to be through pills. We did it through injections. That would change a lot and allow us to eventually develop the company and hopefully attract more capital and make -- of the

company that it was considered a low risk at that time. With that capital we could invest into high-risk capital companies eventually.

However, we faced very unexpectedly another risk here. There was a regulatory risk where then several years, under very different pretext, the FDA did not approve the product as per results of the trials.

There was a point when Dr. Harrison was saying that it would be more frugal to just write this investment off.

It's not only based on our will that the company not only managed to survive, but eventually got approval from FDA. Correspondingly, in 2023 we decided to reallocate it.

Q. What happened when you requested distribution of Braeburn?

A. He refused.

Q. Then what happened?

A. So, considering by then we had a number of negotiations, we decided to keep it at least at the level of some more constructive part. As a result, we just decided to keep the legal rights for reallocation but decided not to proceed with that.

Q. Did there come a time when you were involved in litigation over Braeburn?

A. Yes. About the middle of 2024 we decide -- we requested again to reallocate. He refused again. So, correspondingly, we went to court.

Q. Is Dr. Rybolovlev saying "reallocate" or "distribution" of Braeburn? I believe there's an error in the translation.

A. Redistribution.

Q. So, Dr. Rybolovlev --

THE COURT: There is an objection. Why don't you state your objection, Counsel.

ATTORNEY EPSTEIN: My objection is I don't believe that Ms. Selden speaks Russian. So I am not understanding the objection in the transcription.

THE COURT: I think she knows what her client intended to testify because she's been working with him up until today. So it's a fair question to ask if the translation was accurate, given that it's probably inconsistent with what she knew him to say. So I'll allow it to proceed. Thank you.

ATTORNEY SELDEN: I have wished many times in the past three months that I did not drop Russian after my first semester of college.

BY ATTORNEY SELDEN:

Q. So, Dr. Rybolovlev, you were involved in litigation over Braeburn in 2024. Did that incident with Braeburn affect your confidence in Dr. Harrison?

A. Of course.

Q. In 2024, during this time, is that when Anna Kolonchina left Rigmora, do you know?

THE INTERPRETER: Anna Kolonchina --

ATTORNEY SELDEN: Left Rigmora.

A. Yes.

Q. Do you know why she left?

A. Yeah, she came and said that she burned out, she's tired and she needed a break.

Q. Did you want her to leave?

A. No.

ATTORNEY SELDEN: May I just ask the translator to speak into the microphone or speak up a little bit. You're very hard to hear from here.

Q. Dr. Rybolovlev, have you had any discussions with Dr. Harrison about further investment in the fund since December of 2024?

A. Yes.

Q. When was that?

A. Yes. It was at the end of 2024, beginning of '25 when we discussed the increase of the budget regarding several companies.

Q. Has Dr. Harrison submitted any new budget requests since December 2024, do you know?

A. Yes.

Q. What was Rigmora's response to the new budget request, if you know?

A. Yeah. Well, we -- of course we discussed it. Correspondingly, we requested that leaders of several companies would visit us in Monaco. For example, there was a discussion regarding the company Replicate budget increase.

Well, correspondingly, we approved the budget and paid a fraction of it, which is about 4 or 5 millions.

Q. And you understood that Mr. Bogdanov had some questions about Replicate; is that what you said?

A. Yes. At that point Dr. Bogdanov got our attention to the fact that unexpectedly the legal expenses of the foundation grew dramatically, abruptly. Correspondingly, he said that he has his suspicions that part of this money might be used in

the litigation on the Cayman Islands, Cayman process.

So, respectively, he requested more information. And Dr. Harrison provided a very emotional response to that. That was in Monaco when we were meeting there in January.

Correspondingly, as a result of this conversation, this budget was decreased by 250,000. But we never received that information. All of that was in parallel time-wise and with discussion of the Replicate budget. So correspondingly, we had a question whether everything that we see is accurate and right. Correspondingly, Mr. Bogdanov requested more additional information about Replicate, for example, the transcripts of the CEO conferences. The transcripts of the council of directors.

ATTORNEY SELDEN: Do you mean board minutes?

THE INTERPRETER: Board of directors.

A. And prospectively, Dr. Harrison also reacted very negatively to that. So I asked him, why is that? All the more reason is whatever Mr. Bogdanov is requesting is part of our agreement. He said yes. And then I go, what is the problem, then? So for me, it really looked very weird. If you, for example,

invest 50, $100 million in the company and somebody refuses to produce you the transcripts from the board of directors meeting, that is strange.

So as you understand, after these discussions, we had a pretty good understanding that we need a more detailed investigation with this matter.

Q. Did Dr. Harrison's reaction to these information requests affect your approach to his budget proposals going forward?

A. Only from that particular point of view that we really need to provide a very more thorough analysis of things.

Q. From that point in time, did you believe you needed to ask for more information?

A. Yes.

Q. And why was that?

A. The fact of the matter is that this discussion about a simple request of producing like a pretty simple information being refused really affected the confidence.

Q. Did there come a time when you met with anyone from the portfolio company?

A. Yes, we were meeting with the CEO of

Replicate, Aulos, and Maria [sic].

Q. Marengo?

A. Marengo.

Q. What, if anything, did you learn from those meetings?

A. It depends on the company. If you look at the -- each company needs to be looked at individually. For example, in the case of Aulos, they got in the pretty complicated situation because due to the management error, the entire -- the clinical trials would have to be repeated. Although the results were seemingly fine, they, in reality, could not be used. However, we still expressed our readiness in further financing.

As far as company Marengo, everything as a whole was good.

Q. During that period of time, were you still considering budgets that Dr. Harrison brought you?

A. Yes.

Q. Why were you still considering budgets from Dr. Harrison, given what you've told us about your loss of confidence?

A. Well, this is our investment. This is

our money. And we are basically the first people interested in their good development.

Q. Was there a time when you discussed with Dr. Harrison reallocating budgets within the portfolio of companies?

A. Yes. About May, beginning of May, Dr. Harris suggested that we reallocate the assets, the funds from the early development companies to the well-developed companies. And as far as early development companies, some of them would stay while the other one may well liquidate.

Q. What did you understand the next steps to be with respect to that reallocation proposal?

A. So we approved this approach. As a matter of fact, we were pretty happy to see that finally Dr. Harris moved in this direction.

THE COURT: So need to take an hour now or an hour and a half. We'll resume at 1:30. Thank you.

(Lunch recess taken at 12:00 p.m.)

(Resumed at 1:42 p.m.)

THE COURT: Thank you. Please be seated.

Mr. Rohrbacher.

ATTORNEY ROHRBACHER: Blake Rohrbacher, Your Honor. Two brief housekeeping matters. After Dr. Rybolovlev is done, the defendants will be playing a series of clips of video designations with counterdesignations from the other side. Including those video clips, we calculate that the other side has about 47 minutes left or less. And so we hope it won't become an issue, but I just wanted to raise it in case it does.

THE COURT: All right. Look, I shouldn't do this, but if I need to watch the clips elsewhere, I can. I prefer to take in testimony all at once in court so you all are conscious of my own personal time. You've been exceptionally accommodating of me, so I'm willing to do that.

ATTORNEY ROHRBACHER: There are clips. We are hoping to play them here live as part of our case in chief. So that is -- and we've made cuts elsewhere to make sure that we have the time to do them.

THE COURT: Great. Let's hope that works.

Shall we continue?

ATTORNEY SELDEN: Thank you, Your Honor.

BY ATTORNEY SELDEN:

Q. Good afternoon, Dr. Rybolovlev.

Before lunch I had asked you about a reallocation proposal made by Dr. Harrison in May of this year.

Do you remember that?

A. Yes.

Q. You were happy with that proposal?

A. Yes.

Q. What did it propose to do?

A. It was proposed that the early-stage companies would be partly liquidated or consolidated. Correspondingly, we would need to investigate also what is the value of IP that can be actually stayed in, and most of what it is could be -- the money could be directed towards the companies with the clinical research.

Q. What does it mean to consolidate the early-stage companies, if you know?

A. I didn't understand the question.

Q. What did you understand the proposal to do with respect to consolidation of the early-stage companies?

A. So most of it I implied by decreasing of expenses for the companies of the early stage. That would essentially lead to breaching the various agreements, breaching the agreement of rent. That would essentially lead to firings or dismissal of personnel.

And among those -- the ways that were remaining in the companies, we would choose the most prospective one, the most promising one, and keep it; whereas, the money that would be -- that we would have after these changes would be directed to the bigger companies with the clinical-stage research.

Q. And why were you happy with that proposal to consolidate the early-stage companies?

A. That was the right decision, and that was something we'd been discussing for a long time before that.

Q. Did you reach an agreement on a reallocation plan with Dr. Harrison?

A. Yes. We had a video phone call during

which he was convincing us that was the right thing to do. Accordingly, I agreed, and from that point we discussed that him and Yuri Bogdanov would proceed to the technical part of it.

Q. And do you know what came of those discussions between Dr. Harrison and Mr. Bogdanov?

A. Essentially, it turns out that Dr. Harrison wanted complete control of all the sums of money, which essentially would deprive of us of any right of LP.

Whereas, the way it was perceived by Yuri Bogdanov was different. That was in line more like first you go through the liquidation of the early-stage companies, and then you proceed with budgeting of the clinical research companies.

Q. Were you ultimately able to reach agreement on a final reallocation plan with Dr. Harrison?

A. No. I believe eventually they could not come to an agreement, and there came a point where we ended up in court.

Q. Do you know why you were unable to reach agreement on the reallocation plan?

A. I gave it a lot of thought, and it

looks to me that for Dr. Harrison power and control is more important than effectiveness.

Q. Did you have confidence in Dr. Harrison at that point?

A. Clearly, the trust was undermined. However, until the very last moment, we kept trying to preserve constructive dialogue.

Q. Dr. Rybolovlev, switching gears for a moment. Was there ever a time before the complaint was filed when you decided that the LPs would not satisfy any more capital calls from the fund?

A. No.

Q. Had the LPs, to your knowledge, ever failed to pay a capital call before this litigation was initiated?

A. No.

Q. Was there ever a time when you thought that the LPs would be unable to pay a capital call when it came?

A. No.

Q. How do you think about investing in the portfolio companies now?

A. Again, I continue investing in the portfolio companies because we consider them our

companies and our investments; and, of course, we would like for them to keep developing further. But it's very important that among those companies were the companies that have clear chance to reach success.

Clearly, for us as investors, writing off some assets is a very painful process because we're talking about the money that had been invested but never get back. When we take something -- a decision like this, we take it through pain, but sometimes it has to be done so that the good money would not follow the bad ones.

Q. Dr. Rybolovlev, how do you think about investing with Dr. Harrison in the future?

A. I believe that trust in Dr. Harrison is irreparably undermined, and I don't see how he could possibly manage the money of our family trust.

ATTORNEY SELDEN: Thank you, Dr. Rybolovlev. I pass the witness.

CROSS-EXAMINATION

BY ATTORNEY EPSTEIN:

Q. Good afternoon, Dr. Rybolovlev. It's good to see you again.

A. Good afternoon.

Q. So am I correct that throughout this

entire examination that we went through this morning, your counsel did not show you a single, contemporaneous document from you backing up anything; correct?

A. There were no documents.

Q. And you don't really use email; correct?

A. No, I don't.

Q. And you primarily communicated with Mr. Bogdanov via Signal; correct?

A. Signal and WhatsApp.

Q. And you did not change your settings on Signal or WhatsApp to retain messages until about May 30 when this suit was filed; correct?

A. I didn't quite understand the question. What is retention of messages?

Q. Do you understand that Signal messages disappear after a certain amount of time?

THE INTERPRETER: Yeah. "Retention" was interpreted differently. I apologize. Backing up or saving messages basically?

ATTORNEY EPSTEIN: Is what I meant by retention, yes.

A. No, I haven't changed it.

Q. So you have not changed your settings to retain messages?

A. No.

Q. So I believe you said earlier that biotechnology investing can be risky; correct?

A. Yes.

Q. And you appreciated those risks when you decided to go into business with Dr. Harrison; right?

A. Not completely.

Q. Well, fair to say that 15 years later you now appreciate those risks even more?

A. Yes.

Q. And you would agree that biotech, and drug discovery in particular, is a capital-intensive business; right?

A. Yes and no, depending on circumstances.

Q. But in any event, one of the things that you like about biotech investing is when a drug does reach market, it does bring massive profit; right?

A. Yes, but besides that, also we use to help of people.

Q. I think you said those were one of the three things you were interested in investing in along with food and entertainment; right?

A. I believe that the more we know about the biology of the human body, it's not only going to help us, but change our civilization overall.

Q. So you understand that preclinical companies are riskier than clinical companies; right?

A. Yes.

Q. And in your view in the current market in 2025, you believe it's very, very difficult to track funding at the preclinical stage; right?

A. Somewhere in the year of 2022 I believe there is an index that could provide you a very good picture of what's actually happening. So that index will reflect that there was a peak somewhere between 2020, 2021, after which the fall started, and the fall went consistently through 2022, 2023 and '24. And it's been only one, maybe two months since we've been observing some positive changes, that is, the market started correcting itself, and we believe that this is going to help us, all of our technology companies, biotechnology companies.

ATTORNEY EPSTEIN: Could you put up 74, 9 through 11, Marco. The question too, please. It was another long answer.

Q. So you were asked, "And to the best of your recollection, did Rigmora approve, at least preliminarily, a merger of Nereid into Marlinspike?"

Do you see that?

THE INTERPRETER: Counsel, could you repeat that.

Q. "To the best of your recollection, did Rigmora approve, at least preliminarily, a merger of Nereid into Marlinspike?"

Do you see that?

I'm sorry. Maybe my question didn't get translated. My question was simply, does he see that statement.

A. That's what I was going to answer you. Overall the answer is yes, but there's some nuances.

Q. I'm going to stop you again.

THE COURT: Let's pause for a moment. You're trying to impeach the witness; is that correct? So, in trial, if you say something that's inconsistent with something you've said before, then the attorney who's asking you questions is going to show you what

you said before, and the attorney will say something like "did I ask that question and did you give that answer?" When they do that, they're not reasking the question on the page. They're just showing it to you. Your attorney will have the opportunity to say why what they showed you does or doesn't matter. Does that make sense?

THE WITNESS: Yes.

ATTORNEY SELDEN: Your Honor, might I just add one other point, which is that Dr. Rybolovlev doesn't read English.

THE COURT: I'm aware, which is why I understand it was confusing.

ATTORNEY SELDEN: Thank you so much.

THE WITNESS: There is two answers to that question. One of them is short and one of them is comprehensive. This is why when I answered I answered yes, but with nuances.

THE COURT: So you might want to impeach the witness using video clips if you have them or speaking the words into the record.

BY ATTORNEY EPSTEIN:

Q. So you recall that just now I had asked you whether or not in your view it was very,

very difficult to attract funding at the preclinical stage in 2025. You recall I just asked you that; yes?

A. What is the question exactly?

ATTORNEY EPSTEIN: Could I have it read back?

ATTORNEY SELDEN: May I suggest we take down the exhibit to lessen the confusion?

THE COURT: That's really up to the examining attorney.

ATTORNEY EPSTEIN: We can go ahead and take down the exhibit.

Would you read the question back, please.

(Record read as requested.)

A. Yes.

Q. And now if we could bring up 74, 9 through 11.

Do you recall that at your deposition you testified that "[I]n this market in 2025, it is very, very difficult to attract funding at this stage, for this stage."

A. What's the question?

THE COURT: Do you remember saying that during your deposition?

THE WITNESS: Yes.

ATTORNEY EPSTEIN: You can take that down, Marco. Thank you.

Q. That was a change from 2020 or 2021 when companies were more easily able to syndicate at the preclinical stage; correct?

A. Counsel, when you say "syndicate," what exactly do you mean?

ATTORNEY EPSTEIN: Could we bring up page 73, 11 to 25.

Q. Do you recall at your deposition testifying that you expressed a mistake that "because it was a situation in the market, that was 2020/[20]21, when biotech stock grew substantially against the background of the Covid epidemic, [] a lot of nonqualified investors moved in" --

A. Yes.

Q. -- "so suddenly the sector had much more money in [it]."

A. Yes.

Q. And "At this point [in] time, companies were able to syndicate at a preclinical stage. But this period was [very] short, but Seth and the team seemed to believe that that's how it [was]

going to be from now on."

THE COURT: He needs time to translate.

ATTORNEY EPSTEIN: Of course.

A. Yes.

Q. And so at least at the time of your deposition, it was your view that it is more difficult to syndicate preclinical companies in 2025 --

A. Yes.

Q. -- than it was in 2020 or 2021; correct?

A. It was much easier.

Q. In 2020 or 2021?

A. 21st.

Q. There's nothing that you're aware of in your agreements with Dr. Harrison that conditions funding the portfolio companies on the ability to syndicate; right?

A. I didn't understand the question.

Q. You understand that your -- Rigmora's relationship with Apple Tree Partners and the general partner are governed by contract?

THE COURT: I think the last question is do you understand that Rigmora's relationship with

Apple Tree Partners and the general partner are governed by contract?

What was the response?

THE INTERPRETER: The answer was yes.

THE COURT: Next question.

Q. Are you aware of anything in those contracts that conditions Rigmora's obligation to fund portfolio companies on the ability to syndicate those companies?

A. Limit Rigmora's capabilities to syndicate, is that the question?

Q. No. The question is, do you know of anything in the agreements that says that Rigmora does not need to fund the portfolio company if the syndication market changes?

A. I don't remember.

Q. So as you sit here today, you're not aware of anything; correct?

A. The thing is, I do not get involved in the technical part of document -- documents. The fact of the matter is I vocalize the main directions we need to go, and from that point various attorneys and other specialists get involved. I do not participate in that process.

Q. So you're not involved in the details?
A. No.
Q. And as you sit here today, you're not aware of anything in the agreement that says that Rigmora can stop funding portfolio companies if market conditions change; correct?
A. The fund would syndicate the companies, right. It's not Rigmora that syndicates the companies.
Q. Let me try this question again. Are you, Dr. Rybolovlev, as you sit here today, aware of any provision in the contracts between Rigmora and Apple Tree Partners that says that Rigmora may stop funding approved budgets for portfolio companies if the syndication market changes?
A. I don't remember anything like that.
Q. So do you recall earlier you were talking about wanting your cash to work for you?
A. Right. The money doesn't have to lie in one place; it has to work.
Q. You don't really like it when your cash is just held in an account; right?
A. I just do not like it when the money do not work.

Q. In fact, as a general approach, you did not want large balances held in the companies that you invest in; right?

A. Right. It's just money sitting there.

Q. In fact, in your view, if a company has a cash reserve for more than six months, it's just lying there while it could be doing work; right?

A. Overall, yes, but it depends on various situations.

ATTORNEY EPSTEIN: Could we have 48 -- excuse me, it's 49.

Q. Do you recall that at your deposition you were asked, "Can you tell me what you mean when you say, 'And, therefore, it wouldn't be right for us if there were significant balances in the companies, in biotech companies'?"

A. Yes.

Q. And you were asked, "What [do] you mean by that"?

Do you recall that?

A. Yes.

Q. And you answered, "Well, a company has spare cash for a quarter, had for a year, two years, three years, and accordingly, the cash reserve is for

more than six months, it's just lying there while it could be working."

Do you recall testifying to that?

A. Yes.

Q. And you believe -- withdrawn.

Dr. Harrison has told you before that, in his view, a just-in-time approach is not a path to success for biotech companies; correct?

A. Yeah. We periodically discussed this subject as to what remainder the company should have on their accounts.

Q. And you understood that Dr. Harrison's view was that a just-in-time approach to funding did not work for biotech companies?

A. The thing is that in the biotech the companies syndicated much earlier. Therefore, the model that was used in our fund when the LPs -- the only investor of the LP is LP fund.

ATTORNEY EPSTEIN: I'm going to move to strike that.

THE INTERPRETER: One second. Can I -- can he repeat the answer?

A. For a long time we have been the only investor in the fund, which is LP. And then, if

that's the case, then it works very normally. So when the company syndicates on an earlier stage, therefore it gets the money and the money is on the company's account. This is what happens.

THE COURT: I'm going to ask -- this time will count against them.

ATTORNEY EPSTEIN: Thank you.

A. So while we don't have the syndication yet, we finance it as budget organization. And I believe six months' worth of money is fine for normal functioning of the company.

For example, we did have a situation when the company needed more money to resolve the issue on the business development, for example. When we saw that there was a sufficient amount of money left on the company's account, we always would transfer sufficient amount of money to complete that task.

ATTORNEY SELDEN: Your Honor, I would just note that I believe, via the translation, it appeared that Dr. Rybolovlev is being asked for his understanding and not for a yes/no question. I understand that time will count against us, and I just want to acknowledge that but flag that translation

issue.

THE COURT: So that is five minutes against the clock on the other side.

ATTORNEY EPSTEIN: I'd like to move to strike that as nonresponsive, understanding that it was a translation error. So let's move on.

THE COURT: We have an objection.

ATTORNEY SELDEN: I'm sorry. I just wasn't sure if you were going to strike that as nonresponsive. I have not been noting translation errors as they go --

THE COURT: Yes. So the motion to strike was on the grounds that it was nonresponsive, which it was, although it was due to a translation error. So I'm striking it and I'm counting the time against you all, and we're going to move forward.

ATTORNEY SELDEN: Thank you, Your Honor. I'm trying not to raise translation issues as we go, but -- okay.

ATTORNEY EPSTEIN: I unfortunately don't speak Russian, or we'd be moving more quickly.

THE COURT: Not for me.

BY ATTORNEY EPSTEIN:

Q. So moving on, do you recall testifying

earlier at some length about the importance of milestones and investment memoranda and a formal process for budget approval?

A. Yes.

Q. But do you recall that at your deposition you testified that your normal process was for Dr. Harrison to come over and present one or two of the investments or the companies, and since it's difficult to work out the science and you trusted Dr. Harrison, you would agree with the proposal?

Do you recall that?

A. Overall, yes.

Q. And you testified just a few minutes ago that you don't get involved in the technical details; correct?

A. Yes.

Q. And you recall that you testified at your deposition that once you agreed with a proposal from Dr. Harrison, the further details of the budget and approvals by trustees was done by Anna Kolonchina.

Do you recall that?

A. Yes.

Q. And you testified at your deposition that you do not know the details of the budgeting

process; correct?

A. Yes.

Q. Do you recall testifying earlier about Rigmora's capital commitments to Apple Tree Partners being capped at $2.5 billion?

A. Yes.

Q. And do you recall testifying that, in your view, Amendment No. 20 did not change the amount of Rigmora's capital commitments to Apple Tree Partners?

A. Make changes? Could you repeat it?

Q. Rigmora's original investment to Apple Tree Partners -- how much capital -- I'll withdraw.

How much capital do you believe that Rigmora has committed to Apple Tree Partners?

A. 2.5.

Q. And are you aware that Amendment 20 was signed on June 21, 2021?

A. I don't remember.

Q. I'll represent to you that it was for purposes of this next question. Okay?

A. Sure.

Q. I should correct the record. It's dated June 21 of 2021.

So could we have JX 0230.

If you look at -- you'll recognize, if you look at the screen, the name Anna Batarina; correct?

A. Yes.

Q. And I'll go ahead and read it to you and have it translated since I know you can't read it. It was sent on June 24 of 2021, and it was sent to Anna Kolonchina.

You would agree with me that June 24 of 2021 is later than June 21, 2021; correct?

A. Probably, yes.

Q. Last we checked.

And in the email it says, "Please see attached the capital call notice for [] $2,000,000 Braeburn follow-on as well as the ATLS Fee, Incubation expenses, and the initial amounts for the IGI agreement."

Do you see that?

I understand you can't read it. So I'll represent to you again that that is -- what I've read into the record is what I see on the screen.

So am I correct that you've never seen this email before?

A. Yes.

ATTORNEY EPSTEIN: Can we go to page 4, Marco.

Q. So Dr. Rybolovlev, have you ever seen this chart before?

A. It's hard for me to look at it without external attributes like who prepared it, et cetera. When the chart has too many numbers, I really don't look at it.

Q. So you don't look at charts with too many numbers?

A. Right. I could have seen it as a part of some documents. I cannot just tell you I've seen it just looking by itself.

Q. Sitting here today, do you recall ever seeing a chart that says in Pool V-1 and V-2 as of June of 2021 --

THE INTERPRETER: From June -- I'm sorry.

Q. -- as of June 24, 2021, that there was roughly $940 million left to call for Pools V-1 and V-2? Do you recall ever seeing a chart that says that.

A. I don't remember.

Q. And do you recall ever seeing a chart that says as of June 24 of 2021, there was $310 million left to call in Pool V-3?

A. I don't remember.

Q. So then I take it you also don't remember ever seeing a chart as of June 24, 2021 that said in Pool IV, which was the original investment pool, there was $20 million left to call; correct?

A. I don't remember.

ATTORNEY EPSTEIN: Pass the witness.

ATTORNEY SELDEN: We have no redirect, Your Honor.

THE COURT: Doctor, you can step down.

(Witness excused.)

ATTORNEY BORN: Your Honor, we would call our next witness, Dr. Ehlers, by video.

Dr. Ehlers joined the fund as a venture partner and chief scientific officer in 2019. Dr. Ehlers founded or co-founded four of the fund's portfolio companies and served as board member of several others. Dr. Ehlers left the fund in November 2024, but remains the CEO of Ascidian and continues to serve as a board member of Aulos and Replicate. Dr. Ehlers has declined to testify in person today.

The video of his deposition testimony reflects plaintiff's inclusions. Defendants have designated 18 minutes of testimony, and plaintiff has designated 8 minutes.

THE COURT: Is it in sequence where it's defendants and then plaintiff, or is it all mixed in?

ATTORNEY BORN: We've prepared two versions in case this situation occurred. So we can play it with just ours.

THE COURT: I think it would be helpful to have it mixed in so I actually understand why they're cross-designating what they're cross-designating. We still are going to break in 15 minutes. So let's start it and then we'll take a break.

ATTORNEY BORN: I'm just reading the agreed language. The video contains Dr. Ehlers' testimony concerning the fund's investment in and management of certain of its portfolio companies. We agreed to do it sequentially. So that was the agreed-upon language.

We also overnight prepared a short additional clip of a minute and half of testimony by

Dr. Ehlers that rebuts Dr. Harrison's testimony about the global default charge. We can just play that at the end while we're watching his video or we can do it at the very end of trial, whatever works best for you.

THE COURT: Whatever.

ATTORNEY BORN: Okay.

MICHAEL EHLERS, was examined and testified via video as follows:

Question: So you said a little bit ago that you've now become more aware of what the potential structure and approval process would be. What's your understanding of when the Rigmora LPs are required to contribute additional capital to ATP?

Answer: And probably this is a dramatic oversimplification, it may not be completely correct, because I will freely admit to having, at best, partial information, but I'd say my understanding at this point is that there's budgets that are submitted and reviewed by the LPs. And then kind of based on those -- and for each of these deals there was kind of an initial agreed here's what the Series A financing is and that that commitment through that Series A financing was a commitment that was sort of locked -- like a boxed-in commitment to the given

deal or the given portfolio company where, within that box, tranches of capital could be released upon request based on milestones and other things, that budgets would then get reviewed.

And that over time, I think -- when I say that I became aware of it, because that was all very smooth early on, and then later as, I would say, biotech markets went to hell in a handbasket and it was pretty clear that to be able to get to syndicated financing or pharma deals or other things it was requiring later and later-stage data to the point of clinical data. And, of course, to get to clinical data requires a larger investment in that.

So while some of these deals were reaching their outer end of that initially agreed amount, then it became a different process, right. That's when I say I became more aware. Like with Intergalactic, because it was a very complicated technology, it ended up requiring more money than we'd anticipated going in and some things didn't work. We ended up being through that agreed-upon funding at a point where we had, I'd say, strong in vivo data and proof of concept, but then to get to clinical data was going to be beyond that and that required a different

set of requests. This is this kind of micro tranche sort of thing.

And something similar was kind of experienced at Ascidian where, again, there was an initial agreed-upon amount, and, for that matter, both Aulos and Replicate. In all these cases I was close to, it was a very, I'd say, straightforward process when it was within that initially agreed-upon amount. And as it got beyond that and there was a need to finance or fund further, that that became sort of a series of one-off, you know, mini budgets, mini discussions that just went through ATP.

And that's when -- that's when I say I became more clear about that being a constraint, that it was easier when it was within the initially approved amount and then beyond that everything was a discussion.

Question: When you said "the biotech markets went to hell in a handbasket," when was that?

Answer: Well, when was the -- I mean, the peak of it all -- I'd say the positive peak was, what, early '21? So I'd say we left '21 and into '22 and '23 and '24 and now '25. You know, it really started becoming more challenging. I think this got

particularly notable in '22 on into '23, and it's really continued to today. I mean, this is a well-known phenomenon at this point.

Question: And do you recall whether Ascidian needed to meet certain milestones in order to be entitled to receive the next tranche of Series A funding?

Answer: Yes, that was the general structure.

Question: So you say, "I've updated the milestones in Series A tranches for both Ascidian and Intergalactic as indicated in the attached. Seth gave excellent advice on making the tranche milestones more specifically value-creating data points."

Do you see that?

Answer: Yes.

Question: And why is it key to have the milestones be something that somebody else from the outside looking in can recognize as a value-add?

Answer: It's important for a few things. One is that a tranche financing, I think, de-risks an investment for the investor rather than putting something in as a lump sum, if you will, and that it also focuses the company, management and the

company, on the things that really matter in terms of value as defined by the investors. And I think that's super helpful because when you're running an organization, it's very easy to just sort of run things and do the standard stuff. It's very helpful to have those focused targeted goals that really kind of move the needle and that you're doing that in the most capital-efficient way possible because those dollars in need to be sort of reflected, ideally, in value that's more than the dollars that have gone in, to some extent.

And that's -- of course, value is a vague thing; right? It's kind of whatever anyone else will look at and ascribe to it, but that's the way I think about it.

Question: You mentioned that tranche financing de-risks an investment for the investor; is that right?

Answer: Yes.

Question: How so?

Answer: It provides kind of waypoints through the course of, you know, maybe a larger investment that ensures that there are key goals and key advances made before additional money goes in and

that there's visibility into that.

Question: And you -- you referred to tranche financing. What is that?

Answer: It's taking an amount, an overall amount, say, of a Series A raise and dividing it up into segments.

Question: And is part of tranche financing that each segment of funding is released only upon the achievement of a milestone?

Answer: I would say that is typical. It might not be only, but it's usually kind of guided by -- it's usually automatically triggered by that. And then usually there's some degree to which boards or investors can make judgment calls around it.

Question: And did you expect that Dmitry would be interested in understanding what the milestones -- the tranche milestones were?

Answer: Yes.

Question: Why was that your expectation?

Answer: Well, it was his money that was being invested. So I would expect that he was interested to know what the plan was for this new investment.

Question: And did you expect that he would want to evaluate the fund's investment in Ascidian by reference to those milestones?

Answer: I would imagine so, yes. You know, I think it was -- I mean, my impression from this during that time would have been that this was a required element to approve what the plan would be.

Question: Do you recall how much the Series A funding for Ascidian from ATP was?

Answer: Oh, I believe it was 50 million. It might be a little bit more than that, but I believe it was 50 million. That got expanded over time to the point where, you know, there was a Series A extension. There was a bit more where I think now 90 million overall has gone in, but the original Series A I believe was 50 million.

Q. So I think you said that it was your understanding that Ascidian needed to meet the specified milestones in order to receive the tranches of Series A funding; is that right?

Answer: What I would say is that my understanding for the reason I'm putting these together, Ascidian and beyond Ascidian, was to take whatever the Series A financing was and say we need

this tempo of financing to go in in these tranches, and those tranches will essentially buy you or allow us to fund to this particular milestone. And that that's kind of the plan and that as we go along and achieve these, of course, provide those updates and then seek release of additional tranches of funding.

And, again, I think back to why this de-risks is that, you know, if you're advancing through a company and you realize early on that your core idea is just flawed or doesn't work, then you've not put in the totality of the money to begin with. So it's figuring out step by step what aspects -- is this technology really working, how is it working, et cetera, you know, in a measured way. And that's exactly what we did at Ascidian.

Question: And you may not have had any understanding of this at all. So I'm just going to start by asking you whether you had any understanding. And I've been asking you about what Ascidian needed to do to get the funding from ATP, but did you have any understanding as to whether ATP could call more capital from the Rigmora LPs if Ascidian didn't meet the milestones?

Answer: I think my assumption was

that they could.

Question: What was that assumption based on?

Answer: No information to the contrary, I guess I would say. So, I mean, it was -- I knew that there was a certain commitment, but also I think a selling point for ATP in the model was that as sole owner and investor in a company, there was a lot of flexibility in how investing would occur and that this was a core strategic advantage of ATP relative to, I'd say, a typical syndicated investment where you've got multiple investors, all of which have to agree on things and for which there's much less flexibility in that regard.

That was probably the basis for my assumption on that because I think one of the selling points -- certainly the way I would sell to founders, like why -- why work with us as an investor as opposed to some other investors, I'd say a selling point to founders that I would provide is that, one, you know, there's kind of a full Series A commitment that would go in as opposed to like a seed and do that; and second is you don't have to corral a bunch of VCs to kind of agree and you can focus on execution only. So

those would be selling points.

Again, there are advantages and disadvantages of the kind of model. So I think, you know, based on those as being -- a little bit of the selling points of ATP is probably the origins of an assumption that there would be -- that there was flexibility in exactly how, if needed, there would be additional investment.

And to some extent that ended up being true, right, because Ascidian, at least this -- you know, we went beyond the original Series A investment, you know, as it became clear that things were working to a point, but, you know, we didn't have syndicated financing. And to be able to finance the sort of next things we would need additional capital, and that was -- that was agreed upon. So I think that ended up being basically a correct assumption, at least in this regard.

THE COURT: We'll take 15 minutes.

(Court in recess at 3:00 p.m.)

(Resuming at 3:15 p.m.)

THE COURT: Thank you. I probably don't need to say this, but please remember to tell our court staff, including our court reporters, what an awesome job they do.

Let's continue. Mr. Barlow, you have some housekeeping matters, I understand.

ATTORNEY BARLOW: Your Honor, you proposed shortly before the last break that the video might be watched later. If that is the case, we would propose that the video from Mr. Engels be watched later. If that would apply only to our video of Mr. Engels so that we could present more time in trial testimony, we'd certainly be okay with that, and we would prefer to proceed in that way and use the time for trial testimony rather than video.

THE COURT: All right. So right now we're watching Mr. Ehlers. Am I saying that right?

ATTORNEY BARLOW: We understand that that's underway.

THE COURT: Mr. Engels, how long is that deposition or that testimony?

ATTORNEY BARLOW: Our portion of it is 15 minutes.

MALE SPEAKER: 10.

THE COURT: 10. Okay. And then I understand Mr. Finkelstein was also going to be called by deposition?

ATTORNEY BARLOW: We have already withdrawn all of Mr. Finkelman's --

THE COURT: Finkelman. I'm sorry.

ATTORNEY BARLOW: -- deposition testimony for us.

THE COURT: Correct, but you all wanted to show Mr. Finkelman's?

ATTORNEY SELDEN: Yes. We have eight minutes of deposition testimony for Mr. Finkelman for which we would seal the courtroom.

THE COURT: I can watch that at my desk too, rather than seal the courtroom. It'd be a more convenient way.

So if what you need is more time in court to present live witnesses, I will grant whatever accommodation you need to make that happen. I'm also willing to watch whatever you want me to watch back at my desk, provided it's no longer than what it was just represented.

ATTORNEY BARLOW: Understood, Your

Honor.

THE COURT: So let's finish this witness and go to whatever's next.

(The video was resumed.)

Question: Does this refresh your recollection at all as to whether Ascidian achieved these initial milestones?

Answer: As I look at this, I do recognize these and I would say that we've achieved all those. I don't know if they were exactly at the time points where the milestones are indicated, but I would -- I would say that Ascidian has achieved all those milestones.

Question: And Ascidian, upon its achievement of these five milestones, received the tranches of Series A funding that were tied to these milestones?

Answer: Yes, more or less, I'd say. So we definitely received those tranches and we achieved the milestones.

Question: You referred to there being discussion as to how much runway Ascidian would have with and without the 6 million; is that right?

Answer: Yes.

Question: How much runway -- you know, as of these discussions in sometime around May of 2025, how much runway did Ascidian have without the 6 million?

Answer: Oh, maybe a yearish.

Question: And how much runway would Ascidian have with the 6 million?

Answer: It'd add- -- and, again, it's a yearish based on kind of mile- -- you know, risk-adjusted milestones. I think it's -- Dan Rosan will probably correct me. So on all these things give it a plus or minus, but we -- that would add about two quarters.

Question: Do you have an understanding of how much runway Aulos has at present?

Answer: Oh, I'm going -- the Series B was to fund inclusion of these expansion cohorts. So I think that's going to take until roughly the middle of next year. Roughly.

Question: Okay. So as of today, Aulos has significant -- sufficient cash to get through the middle of 2026?

Answer: I believe that's correct. It was really structured in a way to get through these

expansion cohorts, and I think that's how long it's going to -- that's how long it's going take. I could be off by a bit, but it's roughly that.

It might be more in the third quarter or something.

Question: Looking at the top of the next page at 11:30 p.m. you say, "Craziness. No drug in sight."

Do you see that?

Answer: Yes.

Question: Were you referring to Nereid?

Answer: No. I believe I was referring -- because I think our texts were crossing.

Question: Yeah.

Answer: And I think I was referring to this Marlinspike expansion in headcount and of funding the remaining 35 million.

Question: And so, in your view, it was crazy to fund the remaining 35 million when there was no drug in sight?

Answer: That's what I stated, yes.

Question: And so you say, "It does not seem like optimal capital allocation given where

we are at and reallocation is clearly in DR's best interest for ROI."

Does "DR" mean Dmitry Rybolovlev here?

Answer: It does.

Question: And "ROI" means return on investment?

Answer: It does.

Question: So your review was that reallocating capital away from the six early-stage companies would produce a better ROI?

Answer: I would -- I would put it that ensuring capital allocation to our late-stage programs, wherever they reside, to generate, you know, potentially transformed clinical data was -- was the prioritization. In and of itself, reallocation away, I wouldn't put it that way. I'd say from wherever you get it, we should be prioritizing those clinical programs. And if that means if it's a zero-sum gain across the portfolio, then take it from somewhere else.

Question: Was the reallocation -- this reallocation that you're proposing here in this exchange, is this something you came up with initially, or is this an idea that has roots somewhere

else before this?

Answer: You know, I mean, it seems so obvious to me that other people might have contemplated this as well. So I mean, I -- I don't know if it had origins elsewhere. To me it was -- to me it was kind of an obvious potential strategy here. So...

Question: At this point in time, in August 2024, was it your view that the fund overall would produce a higher return on investment if capital was allocated from these six early-stage companies to the four later-stage companies that we were discussing?

Answer: You know, what I say here I think is clear in that regard because I just say reallocation is clearly in DR's best interest for ROI.

And there could have been nuances about how and exactly what amount and to which programs, in a way, but broadly speaking, yeah, the imperative was to generate clinical data, in my view.

Question: Marking as Exhibit 18 an article by Dr. Michael D. Ehlers titled "Lessons from a Recovering Academic" and dated May 19, 2016.

Answer: One my favorite articles.

Question: You say "Substantial literature indicates that too many drug discovery programs fail at late stages despite the presence of evidence that could have rationally led to termination earlier. Why does this matter? As drug discovery programs advance to screening, identification of initial lead compounds clinical candidate selection and on into clinical trials, the cost soars."

Do you see that?

Answer: Yes.

Question: And then you say, "It is hard to step away from exciting science revealing new biology. So much effort, heart, soul, and money goes into making molecules that are suitable for testing in humans that it is a disappointment when, despite best efforts, the clinical hypothesis is refuted."

Do you see that?

Answer: Yes.

Question: Is this still your view?

Answer: It is.

Question: Did you know when you received this email what Jardine had discussed with Dr. Harrison?

Answer: Yes, I had a pretty good

idea.

Question: What was that idea?

Answer: It was that Paul Da Silva Jardine was concerned about Raj Chopra's management style and leadership of Marlinspike and Aethon.

Question: What specifically were his concerns insofar as he told you?

Answer: Abusive behaviors, inability to retain and attract people a bit as a consequence of that, and, to some degree, kind of a lack of strategic focus.

Question: Do you know whether Jardine took these concerns to Seth?

Answer: I believe that he did.

Question: And do you know whether Seth took any action based on that?

Answer: I -- I am not aware that there was action taken by Seth.

Question: Do you have an understanding as to why Mr. Chopra left?

Answer: Yeah. My understanding is that he got a position within a flagship portfolio company.

Question: And it was your

understanding that he was not fired by Dr. Harrison?

Answer: I've got no information that he was fired at all.

Question: Is it your view now that Dr. Chopra should have been asked to leave ATP at some point before he left earlier this year?

Answer: If it had been me, I probably would have asked him to leave before that.

Question: So, Dr. Ehlers, do you recall earlier in the deposition you were showed Exhibit 8, which is an email with an attachment of the Aulos SPA?

Answer: Yes, I have it in front of me.

Question: And I believe you were asked about several provisions in this document as it concerns milestones, and that is at -- it's after the blue sheet, Bates ending 360.

Answer: Yes.

Question: And do you --

Answer: I recall.

Question: Okay. And do you recall testifying about the board reasonably determining in good faith whether the company had a milestone and if

that would lead to the release of funds?

Answer: Yes.

Question: And is it also your understanding that the GP had discretion with regard to calling capital for the portfolio companies?

Answer: Yes.

Question: And if you go to Bates ending 361, there is a highlighted paragraph in the middle of the page.

Do you see that?

Answer: Yes, I do.

Question: And counsel skipped that paragraph when she was questioning you earlier; is that right?

Answer: We didn't discuss it, that's correct.

Question: And in your words, what does this provision provide for?

Answer: Just a minute. I'll read it.

So my understanding of this provision is that it allows the purchaser, in this case ATP, to purchase any additional shares or kind of outstanding shares at any time that they wish, provided they give appropriate notice.

Question: And is this reflective of your understanding that ATP or the GP had discretion with respect to calling capital?

Answer: Yes, as stated here. So if they -- if ATP wanted to, they could purchase additional shares and put in additional money at any time.

Okay. But assuming you weren't capital-constrained, would you be -- you would not be forced in deciding allocation between certain companies over other companies?

Answer: That's probably true.

Question: Okay. And over your time at ATP, there were obviously instances where you raised concerns with Seth; is that accurate?

Answer: Yes.

Question: Okay. And, for example, you raised concerns with Seth about Raj; is that right?

Answer: Yes.

Question: And do you -- did you feel free to voice concerns with Seth when you had them?

Answer: I did, yes.

Question: And is it fair to say that

he would listen to you sometimes with respect to your concerns, i.e., for example, removing Raj from the board?

Answer: That's accurate.

Question: And were there other times where Seth decided to go in a different direction?

Answer: Yes. Yeah.

Question: And did that sort of go hand-in-hand with Seth's discretion in running ATP?

Answer: Well, I mean, what I would say is fundamentally these were Seth's decisions on these matters, whether it was personnel or portfolio companies.

Question: Okay. And you'd agree that through Seth's decision-making over the years ATP has generated significant value through its portfolio companies?

Answer: Well, I think the financial numbers would support that.

(Video paused.)

ATTORNEY SELDEN: Good afternoon. I would like to play the next clip of the rebuttal testimony. I understand plaintiff has an objection.

ATTORNEY BARLOW: I'm sorry, Your

Honor. This is Ehlers rebuttal testimony. Go ahead. I withdraw the objection.

(Video resumed.)

Question: During your time at ATP, did you have any understanding as to whether the LPA referred to a default charge?

Answer: I would say during my time at ATP, no. Only after I left ATP and there was the announced litigation and the publicly available stuff on that did we become -- did I become aware that there was such a thing.

Question: So the default charge is not something that you discussed with Dr. Harrison during your time at ATP or before you joined ATP?

Answer: Well, definitely not before I joined ATP.

Was I ever -- I don't think that while I was at ATP I ever had a discussion on that, because I think my awareness that there was such a thing only came about when this litigation came about. And if I'm remembering correctly, I mean, I left ATP November '24, and I think this was afterward.

Question: And so to be clear, that's not something that you discussed with executives at

any of the ATP portfolio companies --

Answer: No.

Question: -- with which you were involved?

Answer: No. And I'm not -- I don't even know if any of -- if any of those folks have an awareness of it, it would have come through whatever publicly available information of the litigation.

(End of video clip.)

ATTORNEY ROHRBACHER: Counter-housekeeping, Your Honor. So we have Dr. Rimm that we will put on on direct. We understand that the plaintiff would like to play their video in your office. The Finkelman video would make sense because it would require sealing anyway. Time-wise they're about an hour and a half. They've used more than -- an hour and a half more than us, 87 minutes to be precise. So given the time left, we would still like to play our Engels clip. If they wanted Your Honor to watch that in the comfort of your office, that's fine. But we have Rimm, then we'd like to play our Engels clip, and then we have Alexey Yakovlev. And we believe we have plenty of time under what we should have available.

THE COURT: Okay. Let's proceed.

ATTORNEY TAFT: Your Honor, the defendants call Dr. Illona Rimm. And we do have witness binders. With permission, we'll approach.

ILONNA RIMM, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Dr. Rimm.

A. Good afternoon.

Q. Could you please introduce yourself to the Court.

A. My name is Dr. Ilonna Rimm.

Q. Thank you.

Dr. Rimm, have you ever served before as an expert giving testimony in court?

A. I have not.

Q. Okay.

ATTORNEY TAFT: We have some slides, Mr. White, thank you. And the next slide, please.

Thank you.

Q. Dr. Rimm, could you please describe your medical and scientific training for the Court.

A. Yes. I graduated from Harvard

University with an MD and a Ph.D. in immunology. I then took care of patients for 20 years. I worked at Boston Children's Hospital, the Dana-Farber Cancer Institute, and the Brigham and Women's Hospital. In my last role I served as an attending in a stem cell transplant unit for eight years. In addition, I served as an attending physician on the pediatric oncology service.

This time was very important in my career. I took care of patients with very serious illnesses, and I came to understand that via health care innovation we, with our hands, could develop cures for these previously incurable diseases. And that was very exciting to me. I was so excited about health care innovation, I decided to make a transition in my career to learn more about how health care innovation is done.

Q. Dr. Rimm, at that point, did you begin to get involved in investing in life science industries?

A. Yes. I started at Wyeth Pharmaceuticals, where I served in global business development as the manager of genomics deals. I then moved to venture capital. I worked at Oxford

Bioscience Partners, where I was an entrepreneur-in-residence. I worked closely with all of the general partners, deciding where we should invest money and which of the portfolio companies should receive additional money and which portfolio companies should not receive additional money.

I then moved to the public equity side of health care investing and worked there for a number of years. During that time I decided I really needed to learn more about valuation, and I completed the chartered financial analyst designation.

Currently I work at Rimm Healthcare Capital Advisory, where I work with early-stage health care companies, and I work with the CEOs as they are starting to raise their seed rounds. I do that work at the Harvard Innovation Lab, which is located on the campus of the Harvard Business School.

Q. Thank you.

ATTORNEY TAFT: Your Honor, we offer Dr. Rimm as an expert on biotech investing and the evaluation of early-stage biotech companies.

THE COURT: Any objection?

ATTORNEY BERDON: No, Your Honor.

BY ATTORNEY TAFT:

Q. Dr. Rimm, could you address some of the common risks that investors in early-stage biotech companies face.

A. Yes. Investing in early-stage biotechnology is extremely risky. There is the scientific risk, the clinical risk, the regulatory risk, and the competitive risk. In addition, the process takes 10 to 15 years, which, again, increases the risk.

ATTORNEY TAFT: Mr. White, could we bring up the next slide.

Q. And, Dr. Rimm, you've prepared some slides in connection with today's testimony; correct?

A. Yes, I did.

Q. Okay. Could you please describe how this slide relates to the opinions in your report.

A. Certainly. So this slide shows the drug development process. As you can see, across the top is a timeline. And as you can see, the timeline takes a long time, from basically 10 to 15 years.

The drug development process goes through discovery, clinical, preclinical, clinical and commercialization. And as we've discussed already a bit, between discovery and preclinical is a very

important milestone called development candidate nomination where a particular single molecule is moved forward. Then that molecule is tested in animals in the preclinical setting, and then we get to the investigational new drug application which is submitted to the FDA, the IND, a very important, again, valuation inflection point. Then the drug goes to clinical trials, which can last many years and have a 90% failure rate. After that, the few remaining molecules that actually become drugs are commercialized and there can, in addition, be failure at the commercialization stage. So there's extensive failure in drop auto-molecules at every stage along the line.

Q. And how could a drug candidate fail at the clinical stage, for example?

A. So at the clinical stage drugs fail either on safety or efficacy. In this country, we want to have drugs that are both safe and efficacious. So we take a lot of failure along the way.

Q. And you focused on the DCN and the IND. Why are those particularly relevant points in the drug development process?

A. Those two points are valuation

inflection points, particularly the IND. If a molecule has passed the IND stage, it can be bought and sold quite easily. Whereas a molecule at the DCN stage at least has more value than a molecule before the DCN stage. So those are stages that are known to have valuation increments.

Q. Thank you. How long does -- sorry. How much does this process generally cost in terms of capital investment?

A. The clinical trials themselves can cost hundreds of millions of dollars. So the entire process is frequently said to cost $2 billion primarily because of all the failure along the way.

Q. And in addition to I think you mentioned regulatory risks and the risk of failure of efficacy or safety, are there other risks that investors in biotech companies need to be aware of when considering the drug development process?

A. Yes. Importantly, there are leadership and management risks. So the question is, you know, if a small group of scientists say they're going to deliver on a particular milestone, will they actually deliver on that milestone on time? And this is considered to be a very important risk.

Q. And, Dr. Rimm, how do investors mitigate the risks of investing in these early-stage biotech companies?

A. Investors mitigate this risk by investing in tranches or bits or segments. So they invest -- if someone is going to invest 50 million, they would usually invest it in bits or tranches of 10 million. We can talk through this on the next slide.

ATTORNEY TAFT: Mr. White, can we pull up the next slide. Thank you.

Q. What does this slide show?

A. So this shows that venture capital investors who are interested in return, which is a key point, use milestones to mitigate risk. And this slide shows the milestone base tranche funding for Deep Apple, according to the investment memorandum. And this is just a sample of what the notion of a tranche investing is.

So at the initial close, the management team of Deep Apple would receive the investment of $5 million in the 2021 quarter 4. Then their job is to generate a lead by the Q3 2022. Let's assume they do. And then they would receive tranche

2, which is $7 million. And they are supposed to take tranche 2 and generate a development candidate nomination, or nominee, a development candidate, and they're supposed to do that by the second quarter of 2023. If they do that successfully, then the investor invests another $12 million.

However, if they fail to do that, if they fail to nominate the development candidate or if they nominate it late, then there may be reconsideration of whether the investor would like to invest tranche 3 or whether the investor would plan to take their assets and invest them somewhere else.

Q. Okay. And how does this milestone-based tranched funding program help mitigate risk?

A. It helps mitigate risk because it addresses the issue of whether a team can actually deliver their milestones on time. And the invest- -- that's something that happens over time. So the investor has a chance to see whether the team will deliver on time.

Q. And if a team is not delivering on time, what signals would that give to an investor?

A. That would usually be seen as quite

concerning by an investor. And the investor would be in a position to make a decision about whether they want to move their assets to something else and invest their next tranche of assets into something else or whether or how it would be handled. But it is certainly a serious issue if a team does not accomplish its milestones on time.

Q. Thank you.

What if a company at some point during this drug development process decides to move away from the initially anticipated program and focus on either a different drug candidate or a different program altogether, how would that be handled in the context of a milestone-based tranched funding program?

A. The way that would usually be handled is a new discussion with new written documentation and additional investment memorandum and an additional discussion of what the new milestones and what the new assets required are, because, again, the investor wants to have a choice about whether they want to do the new approach, whether they want to commit their assets. And it's important to remember that the work that was left behind is essentially a sunk cost that the investor has. So the investor might or might not

wish to go forward with the new approach.

Q. And would it be necessary or typical for there to be a discussion of the new budget in light of the -- of a new budget in light of the changed approach?

A. Absolutely.

Q. Based on your two decades of experience in the biotech industry, how common is this milestone-based investing?

A. I found that it was extremely common. Essentially every organization that I've been involved with that is involved in investing wants to know -- invest in tranches in early stages and wants to know will a team perform according to very specific goals. Occasionally it's called something different than tranches, occasionally it's called stages or rounds, but there's always a sense that there's a measured approach. The investor wants to invest a small amount, and then see if the team performs before they invest any additional assets.

Q. Now, Dr. Rimm, you were here in the courtroom yesterday for Dr. Robbins' testimony; correct?

A. That's correct.

Q. Do you recall that Dr. Robbins testified that he was unaware of any academic literature supporting your milestone-centric analysis?

A. Yes. I heard him say that.

Q. Did that surprise you?

A. Yes. It surprised me, particularly surprised me because one of the references for his slides was a document by Roger Wyse, who was a banker at Burrill, that documents that venture capital routinely works with biotechnology companies in tranches.

ATTORNEY TAFT: Mr. White, could we please turn to Robbins Slide 8, and if we could highlight the upper left-hand corner, please, or expand it.

Q. Dr. Rimm, is this the slide that Dr. Robbins presented with this reference?

A. Yes. And that's the reference, and it refers clearly to biotech investing and tranche and venture capital investing in tranches.

ATTORNEY TAFT: Could we please pull up JX 1581, page 7.

Q. If you look -- do you recognize this article?

A. Yes. Yes.
Q. And what is it?
A. It's the article that we were just referring to.
ATTORNEY TAFT: And if you pull down to the introduction.
BY ATTORNEY TAFT:
Q. Does this article focus specifically on venture capital investing in biotechnology companies?
A. Yes, it does.
Q. Do you recall what section of this article addresses the milestone-based tranche funding?
A. Yes, it's Section 4.1.2 that's on page 1284, I believe.
ATTORNEY TAFT: I think that's a reference to 1284, so I think 10. If we could go to JX 1581.10 and pull up 4.1.2, please.
Q. Dr. Rimm, what part of this section were you thinking of?
A. So I'm going to read the very last sentence of the paragraph that starts with "Venture capitalists will mitigate their own risk by offering funding in stages, investing more money as the company

passes each technological milestone."

Q. And is that consistent with the opinion stated in your report?

A. Absolutely. And I cited other additional academic references in my report.

Q. Thank you.

Dr. Rimm, in your report do you evaluate whether the fund's early-stage companies met their specified milestones?

A. Yes, I did that.

Q. And what materials did you rely on in order to reach your opinions?

A. I reviewed the investment memoranda, and I reviewed the quarterly digests.

ATTORNEY TAFT: And if we could pull up the next slide in Dr. Rimm's -- thank you. I believe it's the next one. Thank you.

Q. Dr. Rimm, what was your conclusion after analyzing the fund's performance against their milestones?

A. My conclusion was that the early-stage portfolio companies failed to meet their milestones, which is shown on this slide. The seven early-stage companies are listed down the left side. The years

are listed across the top. And we're going to go talk about Apertor, which is the second company down.

As you can see in the first couple of years, Apertor completed their milestones on time. However, then we move to the light yellow, where we see that the milestones were completed late, including important milestones, DCN, IND. And then when we get to the right side, we are in salmon where milestones were not met.

As you can see, Apertor failed to complete a number of milestones. When we look at the graph in general, we see that all seven companies have salmon on the right side. And these are all the important milestones, the IND and DCN Phase 1 trial milestones. In addition, a number of these milestones are two or three years late, and they are -- it's not an occasional month here, month there. We are talking about years late in several of these companies. So all of these companies failed to meet their milestones.

Q. And in analyzing the early-stage companies' performance against milestones, Dr. Rimm, did you also consider how that performance related to the amount of capital that had been funded into those

companies?

A. Yes, I did.

Q. And what was your conclusion?

A. It's on it. Can we look at the next slide.

ATTORNEY TAFT: Could we pull up the next slide, please. Thank you.

A. My conclusion was ATP had called capital for tranches with unmet milestones.

So, again, the seven early-stage companies are listed down the left side of the slide. The tranches are listed across the top. Again, on the left side, the gray bars show that there's capital drawn and milestones complete.

On this slide we're going to look at Deep Apple, which is the fifth company down. As you can see, for the first 24 million that was invested in Deep Apple the milestones were complete. However, then there were 19 million was drawn and the milestones were not met. Even though the milestones had not been met, an additional $9 million was called for. As you can see, again, in all of these companies, as we look to the right, all of the companies had substantial situations where there was

capital drawn and milestones not met.

Q. Thank you.

ATTORNEY TAFT: We can take down the slides, please.

Q. Dr. Rimm, in connection with the preparation of your rebuttal report, did you review opinions offered by Dr. Rao in this case?

A. Yes.

Q. And do you recall that Dr. Rao in his first report described certain valuations of the portfolio companies that were prepared under accounting standard ASC 820?

A. Yes, I saw that he did that.

Q. And in your opinion, is the information presented in those reports useful for the purposes of an investor in a biotech company?

A. No. I find that the valuations -- valuations of early-stage biotechnology companies are complicated and not done like other types of valuations. The valuations presented by Dr. Rao are essentially valuations based on the amount of assets put into the company, which is just not informative and not helpful.

As you know, I spent time thinking

about valuations. It's difficult to evaluate valuations in very early-stage biotech companies. Any company before the DCN and the IND is very difficult.

Q. Dr. Rimm, do you have an opinion as to whether Rigmora's refusal to make further investments in companies that had missed their milestones was consistent with reasonable investor behavior?

A. Yes. I think Rigmora's approach to decline funding for these companies was very reasonable. A reasonable investor, particularly an investor who is interested in return, which is specifically a reasonable investor, would have said that these companies missed milestones and called capital. And under that circumstance, it's very reasonable to decline further funding.

ATTORNEY TAFT: Thank you. I turn the witness.

THE COURT: Thank you.

CROSS-EXAMINATION

THE COURT: Please proceed. Thank you.

BY ATTORNEY BONACORSI:

Q. Good afternoon, Dr. Rimm.

A. Good afternoon.

Q. In forming your expert opinion in this matter, you never examined how Rigmora actually used budgets and milestones in connection with making its investment decisions; correct?

A. What I did was reviewed the investment memoranda and the quarterly digests.

Q. But you didn't examine Rigmora's actual behavior through its employees and internal communications to assess how it used budgets and milestones in connection with making its investment decisions; correct?

A. Yes. I know very little about Rigmora's internal decision-making process.

Q. And instead you worked from industry knowledge; is that right?

A. I worked from industry knowledge, the investment memoranda and the documentation of the work, the scientific work that was accomplished, which was documented in the quarterly digests.

Q. You testified that you have limited knowledge related to the capital calls involved in this matter?

A. I have some knowledge related to them, but I was asked to focus, again, on the documentation

of the milestones and that was less related to the capital calls.

Q. In fact, when you wrote your report, you testified that you did not know who at Rigmora was the individual responsible for approving capital calls made by ATP?

A. Yes. And I'm not sure why I would have known that.

Q. And you don't know whether anyone at Rigmora analyzed the likelihood of any of the preclinical companies you analyzed in your report hitting future milestones prior to May 15, 2025?

A. So that sounds like it's a question about what happened within Rigmora, and I have no information about what happened within Rigmora.

Q. And to confirm, one aspect of your expert opinion here concerns the reasonableness of Rigmora's decision to no longer fund the preclinical companies?

A. Yes.

Q. Okay. And you'd agree that your opinion does not address any information about Rigmora's assets, liabilities, or liquidity as of May 2025?

A. Yes. I was asked to evaluate the milestones in the early-stage companies, which does not include the information that you just described.

Q. And it would also not include Rigmora's actual risk tolerance at any time between 2021 and 2025?

A. I did not make any inquiries or have any information about Rigmora and its risk tolerance.

Q. And in your materials cited in your opening report, which is JX 1579, and the page 0082 -- if we could pull that up, please -- and you'll see there's a section here, Dr. Rimm, "Depositions."

Do you see that?

A. I'm trying to get to the right page here. So that's in the later part. Could someone give me the page number again, please.

Q. It's 0082. It should be on the screen in front of you. Or it was.

A. Only part of it is on the screen in front of me. So yes. Go ahead.

Q. And you cite three depositions here; right?

A. Yes.

Q. And none of these depositions are from

Rigmora employees; is that right?

A. Yes, that's my understanding.

Q. And that's because you did not rely on depositions of anyone who actually works at Rigmora; correct?

A. Yes, that's my understanding.

Q. But you do cite the depositions here of certain ATP employees; correct?

A. Yes.

Q. And you reviewed those depositions; right?

A. Yes, although I reviewed them in a limited way. I reviewed them mostly related to the -- to my assignment, which was to assess the milestones. I did not review them in extreme detail.

Q. So you'd agree, then, that you cite those depositions for certain limited points; is that right?

A. Yes.

Q. But you don't rely on any of the testimony in those depositions regarding ATP's actual use of milestones, do you?

A. That's -- no, I don't rely on their comments related to use of milestones in general.

It's possible that I relied on -- that I occasionally used pieces of them, but not as a general statement.

Q. Okay. And you testified earlier that you've some experience working in venture capital?

A. Yes, I do.

Q. And I believe you testified during your deposition that you understood that from that experience limited partnership agreements are important in that context?

A. Yes, of course.

Q. And you also testified that you knew a limited partnership agreement exists between the parties here; is that right?

A. Yes. However, limited partnership agreements are complicated and different, and as part of my role I was not asked to review that.

Q. So you did not review the limited partnership agreement in this case?

A. I reviewed it in a very limited way, meaning only in relation to the role that I was assigned, which was to assess the milestones.

Q. You did not review the limited partnership agreement to determine the role of budgets in the relationship between Rigmora and ATP?

A. I did not review it for that purpose, that is correct.

Q. And you did not review the LPA to determine the role of milestones in the relationship between Rigmora and ATP, did you?

A. I did not review it with regard to that issue. Most of my information related to milestones has to do with my 20 years of experience investing in life sciences. And so in that setting milestones have a very important role. And essentially, as I say, all investors I've ever interacted with address the issues of milestones, although they are sometimes called stages or something else. So I relied on that knowledge.

Q. And to confirm something you testified earlier, then, Dr. Rimm, you didn't rely on the testimony of individuals actually within Rigmora and their use of milestones, did you?

A. No, I did not rely on that.

Q. Okay. And you did not review the LPA to determine the role of investment memoranda and the relationship between Rigmora and ATP, did you?

A. I did not do that. However, again, I was very involved in the senior leadership role of a

venture capital firm for two years. I was very familiar with investment memoranda, and investment memoranda and milestones are used similarly in most venture capital firms. So I wouldn't have thought that it was necessary to review the details in this situation because of my extensive industry experience.

Q. But you didn't review the LPA in the detail necessary to determine with specificity how the parties here chose to outline the contractual obligations to one another.

A. I did not review the LPA with that issue in mind.

Q. Okay. And you also didn't familiarize yourself with any of the portfolio company Series A stock purchase agreements, did you?

A. No. I know they exist, but I was asked specifically to work on the investment memoranda and the quarterly digest, which I think is -- again, this is an industry-wide phenomena that milestones would be in the investment memoranda, and, again, quarterly digest is an industry-wide phenomena. So I paid most attention to what I perceived as a biotech investor are the usual important documents for this situation.

Q. But you'd, of course, agree that parties can set forth whatever contractual obligations they'd like in a limited partnership agreement; right?

A. I think that I am not an authority on that question.

Q. In forming your opinion in this matter, you also didn't rely on any of the portfolio company board materials, did you?

A. Could you restate the question, please.

Q. In forming your opinion in this matter, you didn't rely on any portfolio company board presentations, did you?

A. Well, we -- close to the end I saw some of them, but I didn't rely on them. I would say that eventually some of those became available, but they were not used extensively.

Q. And you acknowledge in your opening report that VCs typically assess multiple factors in looking at investments?

A. Are you asking the question of whether they look at multiple factors, whether when they are deciding to invest; is that the question?

Q. Sure.

A. Yes. VCs look at many aspects of the scientific and clinical and other aspect of a company when they are in the process of making a decision about whether to invest.

ATTORNEY BONACORSI: And could we pull up JX 1579, please, and go to page 27, para 56. Sorry. Page 27, para 56.

Q. And, Dr. Rimm, you see here you state, "In making investment decisions, the VCs assess several key factors, including the scientific soundness of the technology, the experience and composition of the management team, the therapeutic indication and degree of unmet medical need, and the broader regulatory and competitive landscape."

Do you see that?

A. Yes, I see that statement.

Q. And despite that statement, your opinion is based entirely on the quarterly digest in the investment memorandum?

A. Absolutely, yes. I mean, what we're talking about is the original -- what that statement refers to is the initial investment decision, and beyond that, there is very detailed attention paid as to whether the company accomplishes its milestones.

And I -- therefore, that's just the way that issue is handled on the investment level.

Q. And so to confirm, you did not consider all of these factors that you list in your report in this case?

A. I would have thought it was not appropriate to consider those factors. Those factors are usually considered at the beginning. And I arrived when the companies had already been started, and I assume those factors were considered as the initial investments were made. That's usually how it's done.

Q. An investment decision can occur at multiple points within a broader investment strategy; is that right?

A. Well, that's -- what is the question here?

Q. You state in your own expert report here para 56, the first part of this says, "In making investment decisions ...."

You don't say at the outset of an investment; do you?

A. No. I don't say it there, but that's actually accurate. Okay. At the -- usually biotech

companies are started by very smart people. And when I refer to making investment decisions, I'm referring to the fact there that the initial investment decision usually includes all the factors that are listed there.

Q. Okay. And pivoting a little bit here, when forming your opinion in this matter, you did not consider the likelihood of any of the preclinical companies meeting significant milestones in the future; did you?

A. I assessed whether companies had met the milestones as of the end of the first quarter of 2025.

Q. And not beyond that; right?

A. There was no reason to go beyond that that I -- I was not asked to do that.

Q. And you don't believe that hitting milestones in the future would inform the reasonableness of Rigmora's decision not to continue funding?

A. I do not.

So when a company tells me it's going to hit a milestone in the future, what my question is is how did they do on their past milestones? So if a

company has routinely hit their milestones on time, then I'm not so worried about the future. If the company has routinely not hit its milestones on time, then I see the future -- any statement about future milestones as pure speculation.

Q. And, Dr. Rimm, you did not analyze in forming your opinion with respect to the set of preclinical companies the timing of a potential preclinical exits, such as acquisitions or potential partnerships with larger biopharma companies; did you?

A. Could you rephrase the question?

Q. In connection with forming your opinion, you did not analyze the timing of potential preclinical exits, such as acquisitions with the preclinical companies; did you?

A. No, I did not analyze that because we were looking -- I was looking specifically at meeting milestones.

I am aware, as an investor, that those types of exits can occur, but that's not the question that we were addressing here. And these companies were much -- were way before -- very, very early compared to those types of events.

Q. And in forming your opinion, you also

did not -- and this is to quote Mr. Bogdanov -- form the opinion there was no way for a path to commercial success for any of the seven early-stage companies listed in your report; is that right?

A. Could you restate it? I believe that you cited someone who I'm not sure who I know who that is.

Q. We can move on to the next question.

And, Dr. Rimm, you testified about Deep Apple a few minutes ago?

A. Yes.

Q. And you understand that there was an $812 million deal between Deep Apple and Novo Nordisk in June of this year; right?

A. Yes. And I'd like to talk about that deal because I'd like to state that calling it an $812 million deal is a substantial overstatement to what actually happened. That is the description of a deal that's all the possible money that could ever come to Deep Apple, and that almost never happens.

What actually happens is a single payment is made early on, and that's called the deal. And the deal payment in this situation was like $30 million. But at every milestone later when a

payment might be made there's a decreasing probability that that payment will be made.

So I was certainly aware of this, but, you know, large companies do huge numbers of deals like this. They frequently only pay the upfront payment, and they don't pay any later payments because they don't particularly choose to go after that target.

So I did not find -- although it's nice that such a deal happened, as I say, I think it's important to characterize the actual financial value of the deal.

Q. And just -- you didn't do any specific analysis to test the hypothesis that that deal might not have actually been worth $812 million?

A. I'm very aware of all of these deal structures. So I worked in Wyeth Global's business development for two years and worked on these structures and then spent another 20 years interacting with these deal structures with a large number is in the vernacular known as biobucks and everybody circulates the large number, but what actually happens is the very small amount of money is transferred upfront and frequently none of the later payments ever

occur.

Q. Just to close this out, though, you did not do any specific analysis with respect to the deal between Novo Nordisk and Deep Apple, did you?

A. What analysis would be done?

Q. Beyond speaking from your general industry knowledge, did you do any investigation into the deal, paperwork or otherwise?

A. Yes, I read the deal. That's where I have the money, the upfront payment. And as a result, I also know what the milestones were. Some of these milestones were this target is commercialized, some of the larger milestones. So that molecule is very far from commercialization and, as we just discussed, the probability is very low.

Q. Okay. And, Doctor, you were in court yesterday; right?

A. What is the question again?

Q. You were in court yesterday?

A. Yes, I was in court yesterday.

Q. And did you hear Dr. Liras testify here in court yesterday?

A. I did, but I was sitting in the rear. I could hear only some of what was said. So I'm not a

reliable listener or reporter on what was said.

Q. But you did testify just a few minutes ago that you heard what Dr. Robbins testified yesterday in court; right?

A. Yes. I heard that. And also I had, you know, seen his reports and things.

Q. Just a few more questions. And did you hear Dr. Liras testify about ATP's flexibility with respect to milestones?

A. You know, I really cannot respond to that question. I just don't have enough information about what I heard.

Q. Okay. And you also just probably saw the tape played by your counsel where Dr. Ehlers also testified about the flexibility of ATP's approach with respect to milestones.

Do you recall hearing that?

A. I saw that there was -- I saw the tape that was being played. I actually was not impressed that this was really about the flexibility of ATP about milestones. I was more impressed that Dr. Ehlers was commenting that milestones had to be completed in order for tranches to be invested.

Q. So you don't recall just seeing a few

minutes ago him say that ATP did have a flexible approach with respect to milestones?

A. Well, what I recall is that Dr. Ehlers reported that milestones had to be completed. The term "flexible"" probably was used, but it depends on, you know, what the adjective of the moment is. But he certainly did comment that milestones were attended to.

ATTORNEY BONACORSI: Okay. No further questions. Thank you.

REDIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Very briefly, Dr. Rimm. Counsel took you to JX 1579.30, which was page 27 of your report. You can turn to it in the paper version it might be easier for purposes of this question.

A. Page 27?

Q. Yes.

A. Almost there. Yes.

Q. So counsel showed you paragraph 56; correct?

A. Yes, that's correct.

Q. What section of your -- what is the subheading for the section of this report?

A. "The Investment Thesis."

ATTORNEY TAFT: Thank you. No further questions.

THE COURT: All right. Thank you, Dr. Rimm.

THE WITNESS: Thank you.

(Witness excused.)

ATTORNEY TAFT: Your Honor, we would call our next witness, Mr. Engels, by video.

Mr. Engels was plaintiff's chief financial officer from April 2021 until August 2025, when he left ATP. Mr. Engels has declined to testify in person today. The video of his deposition testimony reflects plaintiff's inclusions. Defendants have designated 11 minutes of testimony, and plaintiff -- and I believe that that's the entirety of the testimony that will be played in court.

The video contains Mr. Engels' testimony concerning ATP's statements to third parties concerning the amount of capital committed to the fund following Amendment 20.

WILLIAM ENGELS, was examined and testified via video as follows:

Question: When did you form an

understanding of the purpose of Amendment 20?

Answer: I mean, I think, as I said, it -- it developed over time. It's a pretty complicated amendment, restructuring the fund. And so as we understood it, the mechanics of it better and what the functions of each of the different pools and how all of the different components would work, it took a little bit of time to figure out.

I'm not sure -- it wasn't like a light bulb went off on a certain day, but eventually we got comfortable with it.

Question: If you could go to the page that is Bates stamped 114558. Mr. Ravski provides First Republic with copies of the subscription agreements.

Do you see that?

Answer: Yes.

Question: He says, Please note that these agreements total 1.5 billion of committed capital that has since grown to 2.5 billion, which you will find in the amendments to the LPA.

Do you see that?

Yes.

Question: Was that accurate statement

when Mr. Ravski made it?

Answer: No. I think at the time we were still working through the impact of Amendment 20. This was just -- just about a month after it had been signed. And I think, as we discussed, it moved a lot of things around and changed a lot of aspects of the partnership. And so we were still getting a grasp of what it all meant and how it all flowed through.

Question: Could you turn to page 263 of the '24 financials, please. And very briefly, middle of the page, the paragraph that starts, As of December 31, 2024, that reflects the five separate pools in which the fund holds assets; correct?

Answer: Correct.

Question: Okay. And in the paragraph that starts, Pool ATP IV, you still have the reference to the $1.5 billion; correct?

Answer: Yes, it does reference that.

Question: And in the paragraph that starts, Pool ATP V-2, you still have the reference to the $1 billion?

Answer: Yes.

Question: So the paragraph that starts, ATP V-3 does not indicate a dollar amount of

additional capital commitments; correct?

Answer: It does not.

Question: Okay. And the paragraph that starts, Pool Braeburn also does not indicate a dollar amount of additional capital commitments; correct?

Answer: Correct. Those have been consistent with how we've presented them in this footnote.

Question: If we could turn to the document with Bates 392150. This is a list of Apple Tree entities; correct?

Answer: Yes.

Question: And is it your understanding that these are the entities that would be named insureds under the proposed insurance policy?

Answer: Yes.

Question: And is the fund listed among these entities?

Answer: Yes.

Question: Okay. And what is the amount of committed capital that is identified as being committed to the fund in this schedule?

Answer: 2.5 billion.

Question: Okay.

Answer: So it's 18 days after Amendment 20.

Question: Okay. I'm marking as Engels Exhibit 22 -- sorry, 23? -- 23, an email from you to Ms. Afif, with the Bates ATP 104423. The subject is "Professional and Management Liability Insurance Application."

Answer: Okay.

Question: Do you believe you sent this email on or about May 18th of 2023?

Answer: Yes.

Question: I would like you to turn to page 104427. And this section of the application is asking for details about the fund that is applying for insurance; correct?

Answer: It looks like it, yeah.

Question: Okay. And if you turn the page to 104428, what is the amount of total committed capital that is identified for the fund?

Answer: On here we have -- on here, what is listed as 2.5 billion.

Question: And from time to time in your capacity as CFO are you asked to provide letters

to landlords of portfolio companies in connection with their obtaining a -- a lease?

Answer: It's pretty rare, but yes.

Question: Okay. And if you turn to the attachment, this document, ATP 112834, is this such a letter?

Answer: Yes.

Question: Okay. And that's your signature on the page?

Answer: Yes.

Question: And just looking at the first paragraph, how do you describe ATP?

Answer: Pretty generally. As a very early-stage life science venture capital fund with 2.5 billion of committed capital. Yeah, I think it's pretty generalized.

Question: Okay. This is over a year after the execution of Amendment 20; correct?

Answer: Just over a year, yeah.

(End of video clip.)

ATTORNEY DUTZ: Your Honor, Sebastian Dutz, Debevoise & Plimpton. Defendants would call Alexey Yakovlev as our next witness.

ALEXEY YAKOVLEV, having first been

duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY DUTZ:

Q. Good afternoon, Mr. Yakovlev.

Could you please state your full name for the record.

A. Good afternoon. I'm Alexey Yakovlev.

Q. Could you briefly describe your educational background.

A. I graduated from Moscow Institute of International Relationship with major in finance and accounting.

Q. Could you briefly describe your professional background.

A. I worked as an auditor with Ernst & Young, and then I worked as a financial controller and head of financial department of Uralkali. I also worked as finance vice president with National Container Company in Russia. And in 2014 I joined Rigmora Holdings as the CFO, and in 2019 I became CFO for Rigmora Holdings.

Q. Okay. Are you still CFO for Rigmora Holdings?

A. Yes, I am.

Q. And what are your main responsibilities as CFO of Rigmora Holdings?

A. As the CFO for Rigmora Holdings, I'm responsible for relationships with the banks, managing treasury payments, running payroll, preparing operational budgets for Rigmora offices. I'm also responsible for accounting and audit, for preparing financial forecasts.

Q. Are you aware of what ATP Life Science Ventures, L.P. is?

A. Yes, sure. It's a partnership we invested in biotech company in the U.S.

Q. If I refer to that as ATP or the fund, will you know what I mean?

A. Yes, sure.

Q. What are your responsibilities as CFO of Rigmora with respect to ATP?

A. Well, my main responsibility with regards to ATP is to process capital calls. That means arrange for the payments of the capital calls. I am also keeping records of all the capital calls paid and all the distributions received.

ATTORNEY DUTZ: Could you pull up JX 1237.

BY ATTORNEY DUTZ:

Q. Mr. Yakovlev, this is an email from March 2025 from William Engels. Are you familiar with this document?

A. Yes, I am.

Q. Could you please explain to the Court the context for this email.

A. So Mr. William Engels, CFO of ATP at that time, is sending me certain Excel files following my request. So these Excel files contain -- containing breakdown details for the amount of distributions, contributions, and other amounts we have seen in the capital statements and we asked to provide detailed breakdown for these amounts.

ATTORNEY DUTZ: Could you please pull up the spreadsheet marked JX 1237.004 in native.

Mr. Yakovlev, do you recognize this document?

A. Yeah. This is one of the Excel files.

Q. And what does this sheet "Pool V-4 Total" represent? Can you explain it to the Court.

A. This sheet, you can see all the capital calls on the left side and all the distributions on the right side attributed to the Pool

V-4. They are placed here in chronological order. And the last column, which is cut, you can see the portfolio company. That's it.

Q. And can this spreadsheet be used to calculate the total contributions and distributions to the pools of ATP?

A. Well, this Excel file contains different spreadsheets for each of the pools of the ATP fund.

If you sum up the column total, "Capital Calls" per each pool, you will get the total amount of capital contributed to ATP fund.

Q. And did you review this spreadsheet at the time you received it?

A. Yes. We reviewed the spreadsheet with respect to capital calls and distributions. We compared it to our records and we found no material discrepancies.

Q. Did you perform any analysis or try and reconcile the amounts of capital commitments in this document?

A. Well, we -- there is another tab called "Amendment Summary" with capital commitments. We took note of it, but capital commitment could not

be reconciled with actual financial data like capital call, the amounts paid or received. So I was focused on reconciling the amount of capital calls paid and distributions received.

Q. Do you know how much the Rigmora limited partners contributed to ATP by the end of the year 2024?

A. Yes. To the best of my memory, the amount contributed by Rigmora by the end of 2024 is around 2.65 million.

Q. And can you get to that amount of amount contributed to the fund with this document?

A. Yeah. That's absolutely possible. In this document there are tabs. Along with tabs called "Pool Total," there are tabs called pool -- number of the pool and then a label, Ezbon, Blue Horizon. Ezbon, Blue Horizon are the names of the entities that were initially invested in the fund from Rigmora side. And these tabs contain the data attributed just to these limited partners. So if you sum up the amounts on these tabs, you will get the amount invested by Rigmora's piece.

Q. Just to make sure the record is correct, I think I heard 2.65 million. What just is

the amount, performing the analysis you described, as of end of year 2024?

A. Correct. As the end of 2024, Rigmora piece invested about 2.65 billion.

Q. Are you familiar with Rigmora's payments of capital calls in the year 2025?

A. Yes, I am.

Q. How much has Rigmora paid in response to capital calls this year?

A. I believe Rigmora paid around 42 million of capital calls issued in 2025.

Q. Taking that into account, what is the total contribution that Rigmora limited partners have made to the fund as of today?

A. As of today, taking the contributions made in 2025, the total amount of capital contributed is about $2.69 billion.

Q. How much, approximately, have the Rigmora limited partners contributed to the fund since February 2022?

A. To the best of my knowledge, since February '22, it was about 700 million.

Q. I recall you mentioned earlier that managing Rigmora's relationship with the banks is one

of your responsibilities?

A. That is correct.

Q. Can you describe what banks Rigmora has worked with since February 2022?

A. Rigmora's working with many major banks. So we have a relationship with J.P. Morgan, for example, in the U.S. We have a relationship with Swiss banks like Julius Baer and Pictet, many others.

Q. Are those all current relationships?

A. Yes, these are continued relationships.

Q. As CFO of Rigmora, are you familiar with Rigmora's leverage, the amount of debt?

A. Yes, sure.

Q. What is Rigmora's current leverage, if any?

A. I would say that currently the leverage of Rigmora and affiliated group is below 5 percent.

Q. Has that number changed significantly in the years since February 2022?

A. Well, this number fluctuates from year-to-year, but historically the leverage of Rigmora group is a very low level. I don't remember it

exceeding 15 percent.

Q. Had Rigmora ever not paid a capital call for a portfolio company before May 30th of 2025?

A. To the best of my knowledge, Rigmora always paid the capital calls for portfolio companies.

Q. Are you familiar with the capital calls received by Rigmora on May 30th, 2025?

A. Yes, I am.

Q. How many portfolio companies did ATP call capital for?

A. I believe 10 portfolio companies.

Q. How many years have you been processing capital calls for ATP for?

A. At least from 2019, it was my direct responsibility to process the capital calls.

Q. In your five years of experience processing capital calls, had the general partner of ATP ever called capital for that many companies at one time?

A. No, never for that many companies at one day.

Q. Mr. Yakolev, are you aware of the financial condition of the Rigmora LPs?

A. Yes, sure.

Q. Sitting here today, as CFO of Rigmora, do the Rigmora LPs have the ability to pay the disputed capital calls?

A. Yes. Rigmora LPs and other entities of the trust have sufficiently good assets and cash to meet those capital calls.

ATTORNEY DUTZ: Thank you, Mr. Yakovlev. I pass the witness.

ATTORNEY SELDEN: Your Honor, as we are being handed prepared cross-examination binders for the witnesses, I will note that paragraph 25 of the pretrial order said that plaintiffs and defendants would split the trial time 50/50. I think defendants are currently about 50 minutes behind plaintiffs. We would like to complete our case-in-chief here in court today, if we can. We have one last witness to call that we had proposed to call by deposition. But in the interest of fairness and the pretrial order and us completing our case-in-chief, I would just note that time. I'm not objecting to cross per se, but I am concerned about the time.

THE COURT: You think it's important that you watch me watch the Finkelman video?

ATTORNEY SELDEN: I do not think it's

important that I watch you watch the video, Your Honor. I do think it's important, however, that defendants and plaintiffs have equal trial time available. We certainly gave a lot of thought yesterday to managing our cross-examination so that we would be able to complete within the time. Had I known, we might have taken more time with our cross-examinations. I do not object to this cross-examination. And I do not want you to watch video in court when you don't need to.

THE COURT: Great.

ATTORNEY SELDEN: But I do want to note that point for fairness.

THE COURT: Please proceed. No objection. Please proceed.

ATTORNEY REESE: Thank you. Jessica Reese with Quinn Emanuel.

CROSS-EXAMINATION

BY ATTORNEY REESE:

Q. Good afternoon.

A. Good afternoon.

Q. Now, you testified earlier today that your main responsibility with regard to ATP was to process capital calls; correct?

A. That's correct.

Q. And Rigmora received a capital call on June 24th, 2021, from ATP; correct?

A. Rigmora continually received capital calls from ATP, that's correct.

Q. Well, let's take a look at the June 24th, 2021, capital call, JX 0230.

Mr. Yakovlev, do you see that this is an email from Anna Batarina, and you are copied here on this email dated June 24th, 2021?

A. Yes, I see.

Q. And this capital call, it attaches a capital call; correct?

A. Correct.

Q. And could we please pull up that capital call, which is page 4.

This is, Mr. Yakovlev, Exhibit A to the capital call; correct?

A. Yeah, it's not actually the first page of the capital call, yeah, but an exhibit attached to it.

Q. And focusing your attention, do you see the line that says, "Total Pool V-3 Call"?

A. Yes, I see it now.

Q. And do you see on that row under the column "Unfunded Commitment Prior to Current Capital Call," the amount stated is $310,455,340; is that correct?

A. That's what is stated here.

Q. And to your knowledge, no one at Rigmora raised any deficiency with the amount stated here as the unfunded commitment to total Pool V-3; correct?

A. I'm not aware of that.

ATTORNEY REESE: No further questions. Thank you.

THE COURT: Thank you.

ATTORNEY DUTZ: No further questions, Your Honor.

THE COURT: All right. You may step down. Thank you.

(Witness excused.)

ATTORNEY SELDEN: Your Honor, our final remaining witness is Mr. Finkelman, who we would call by deposition and play the video. It would require us sealing the courtroom. I do not want to make you sit in the courtroom and watch that, if you would prefer not to. So I raise it because that would

be the last witness in our case-in-chief. I can describe the introduction that I would have provided to the video, but I welcome your Honor's guidance as to how you'd like us to proceed.

THE COURT: Look, make sure I have the video. Rather than have everybody leave and come in and tell everybody to go, I think it makes sense for me to take the video back and watch it in my office.

If you want to submit a letter with the instructions you would have given as a preamble to that, I'm happy to read it, and I will read it right before I watch the video, I promise. So why don't we do it that way.

ATTORNEY SELDEN: That works perfectly well. Thank you, Your Honor. I very much appreciate it.

With that, I believe defendants rest. That is our conclusion.

And I think we just have the extra housekeeping matters of those proposed trial briefing scheduling to address, Your Honor.

THE COURT: All right. Thank you.

So what's left to be accomplished, and have you conferred on it? And what do you propose we

do next?

ATTORNEY BERDON: Just for the record, we are not going to be calling any rebuttal witnesses. We just ask that Your Honor view the video counterparts that we've already identified.

THE COURT: Okay. Make sure -- it would be actually really helpful to me if whatever you have that I need to view is put on a flash drive, one flash drive between the two of you. Maybe give me three copies so everybody who needs to have it can have it and sent to my office Monday. That would be helpful.

ATTORNEY BERDON: Yes, Your Honor.

ATTORNEY BARLOW: Your Honor, I think the remaining housekeeping matter is how Your Honor preferred to resolve this issue, this case to get us to judgment, not withstanding the pending request for provisional liquidators.

My understanding of the current situation in Cayman is that while Rigmora requested in Cayman that the provisional liquidator application be heard at the end of this month, that was denied. They've been offered the opportunity to present November 3rd and November 4th.

And at that hearing where this was discussed as a scheduling matter, the Court said the following -- and I hope you don't mind me reading it, because I don't want to be accused of misquoting the Court.

THE COURT: No. It's good that you remind me what I said. So please go ahead.

ATTORNEY BARLOW: No, I'm sorry, reminding you what the Court in Cayman said, Your Honor.

THE COURT: Either way.

ATTORNEY BARLOW: The court in Cayman said depending on what the state of play in Delaware at the time is, and if it looks as if a judgment is going to be given within days, it may be that I would hold back and reserve my judgment in order to give the parties the opportunity to obtain that judgment and make any further submission.

So as we proceed towards a hearing on November 3rd and November 4th in the Cayman Islands, plaintiff would respectfully request a fairly aggressive schedule for the submission of post-trial briefings.

What we have proposed is the

submission of opening briefs on or around Wednesday of next week; that our friends would put in their answering brief Sunday; and that we would get a reply to you by Tuesday, October 28th. That's roughly five days, four days, and two days.

But obviously we're here to accommodate whatever schedule the Court would like. And so any guidance Your Honor might provide in that respect, we appreciate it.

THE COURT: Thank you.

Mr. Rohrbacher?

ATTORNEY SELDEN: I'll address the scheduling, Your Honor.

Your Honor, at this point in the Cayman proceedings, I believe that plaintiff's counsel there, Walkers, and our clients' counsel there, Campbells, are engaged in scheduling cooperatively and have worked together and that schedule is indeed proceeding in the Caymans.

As I had noted when we discussed it previously, it is a provisional hearing pending a full trial in January for a temporary relief. It is not a liquidation of the fund or its portfolio companies. It is oversight by someone independent, with the

benefit of the court and the benefit of Cayman law, such that funding contributed to the portfolio companies during the pendency of the case can stay there as a matter of Cayman law and isn't voided by statute in January.

That said, Your Honor, we again welcome the Court's guidance with respect to schedule.

I think the schedule that plaintiff has proposed is a little too tight. I would ask at least a week to oppose or to file our responding brief, which I think puts it on October 29th if they file on the 22nd. And then that, Your Honor, I will be frank with the Court and tell you that on October 29th I am in the Second Circuit almost all day and wouldn't be available.

THE COURT: You have a large team of attorneys. So I'm sure someone could be here.

ATTORNEY SELDEN: I have a terrific team and they are there. I am only raising that issue because the relevance of the Cayman proceeding on the 31st has nothing to do with the request I am making. It is purely driven by trying to juggle that schedule.

So we would ask at least a week, and I was going to ask, your Honor, that we submit our

opposing brief on October 30th. And if plaintiffs then want to reply on the 3rd, Your Honor will at least have the benefit of our two major opening briefs before the weekend and before the 3rd.

Again, whatever the Court would prefer with respect to this.

And I guess there is also the question of whether argument needs to be scheduled related to those post-trial briefs.

THE COURT: Mr. Barlow?

ATTORNEY BARLOW: I neglected to mention in my opening presentation, of course, we have a pending motion with respect to the status quo order with respect to the proceedings in Cayman which would, of course, allow the parties substantial time to present these issues because they wouldn't proceed in Cayman on those issues. I don't want to get past that.

So as we're looking for additional time. One way to resolve it might be some sort of agreement that the Cayman proceedings aren't going to proceed to judgment and there's not going to be any ruling requested in judgment until Your Honor has a chance to adjudicate the claims.

THE COURT: Thank you. So I understand what I want in an aggressive briefing schedule in light of what's happening in the Caymans, and so I'm inclined to give it to them. But if you want to confer and figure out whether there's a way to relieve that pressure through agreement or stipulation, I'm open to that.

So why don't you take a few days to confer and let me know on Monday whether you reach agreement. If not, plan to proceed at the breakneck pace that Mr. Barlow proposed.

ATTORNEY SELDEN: Your Honor, could I ask again. If we are going to proceed on a faster pace, could we have our opposition brief be due on the 28th of October rather than Sunday the 26th?

THE COURT: If you want that, then work hard to negotiate a situation that gives them a little more confidence that something in the Caymans isn't going to deprive their client of the ability to manage the funds.

ATTORNEY SELDEN: Your Honor, I don't -- for clarity of the record, I will say we have proposed a draft stipulation. I have asked for my counterparts' responses to that. We have not received

a response. We have worked hard to negotiate a standstill agreement that is typical here in Delaware that would maintain the status quo. While we have a control fight elsewhere subject to the jurisdiction of the Cayman court, I do not want you to think that we have not tried in some detail and at some length and with exchange of many drafts and many requests from me for responses that I have not received from my counterparts to enter a basic status quo order where we would get notice, for example, of the sale of a portfolio company or a sale of an interest of the funds.

I asked again Dr. Harrison at his deposition if he was engaged in that. He told me at his deposition on October 6th no, but on October 8th they produced a list of companies that he is contacting to sell assets.

This is a real concern for my clients. So I cannot agree, I'm afraid, that he continue without Court oversight in those proceedings, but I would very much like to enter a basic status quo order here in Delaware and to proceed with briefing in this very significant case where the issues before Your Honor are also warranting serious consideration and

detailed briefing on a schedule that gets those to you in an orderly way. That is all I'm asking for here.

ATTORNEY BERDON: Your Honor, I think our friends have vastly misrepresented the information that was provided on October 8th. It was a list of parties that had been contacted or had contacted us to discuss the potential for funding the portfolio in the event that there was a consensual resolution of this matter or a judgment in this matter. The representation that we disclosed a group of companies that we were discussing asset sales with has no basis in fact.

I can tell you that the reason why we have been unable to reach agreement with Rigmora with respect to a status quo order here in Delaware is because they have refused to represent in that order that they would not seek the very *ex parte* relief that we had disagreed on back on September the 19th.

In addition, they made a condition precedent to it that we surrender the financial control of the fund for all matters over $50,000 during the period in question.

And so it is not a lack of trying on ATP's part, Your Honor. And I think that the status

quo here that we're looking to maintain, we have no intention whatsoever of selling assets without giving ample notice and seeking Court approval of an asset sale. We have no interest in hiding the ball on that. But what we are looking for is the ability to litigate this matter through to judgment without PLs being appointed that would take control of the fund before this Court has the opportunity to rule or the defendants going to Cayman again seek*ing ex parte* relief to change the status quo.

So we are willing to continue talking, but the factual substrate that you just heard from the other side is something that we cannot agree with.

THE COURT: Thank you.

All right. So here's what we're going to do. I believe your reply on the status quo is coming in on Sunday night; is that correct?

ATTORNEY BARLOW: Yes, Your Honor.

THE COURT: I'm going to read it. I assume we're on the breakneck pace that Mr. Barlow proposed. That puts your opening brief next Wednesday; is that right?

ATTORNEY BARLOW: Yes, Your Honor.

THE COURT: So that's more harmful for

them in the interim than you all.

If I read the papers or determine that there are other reasons to relax the briefing schedule, I will.

Be on call on Monday. After I read the papers, I may get you on the phone for a hearing. I'd also like to know whether there have been any developments in your meetings to determine whether you can stipulate to a different schedule that's less extreme.

Look, I do my best to render these judgments quickly, but it's very, very hard for me personally to marshal this amount of evidence into a thoughtful and cogent factual set of findings on the pace that you've proposed.

What I heard Dr. Harrison say, that he felt the funds could limp along until the end of the year, in my mind, I thought that meant that I would have until through November to issue a post-trial decision that gave you all sufficient time to appeal. Now I'm hearing that events in the Caymans could eclipse my ability to do so in a meaningful way, which makes me a little concerned.

So I really hope that you all can

agree to a schedule that gives everyone time to do what they need, including me.

But is there anything else we can accomplish?

ATTORNEY BARLOW: No. We appreciate the accommodation of the Court and, as always, its staff.

THE COURT: All right. All right. Look -- you may sit down, Mr. Barlow -- we all worked very hard to get through this trial and I appreciate it. I know it hasn't been easy for anyone, not the witnesses, certainly not the attorneys, and certainly not the people who have been here assisting the attorneys. I'm grateful. Thank you.

I hope that you express the same gratitude to the court staff that you did in court earlier. Make sure to thank them on the way out. They work extremely hard to make these days happen. I wish you all safe travels. I hope you all enjoy Wilmington this evening and try to relax, if only for a few hours.

With that, we are adjourned. Thank you.

(Court adjourned at 4:54 p.m.)

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CERTIFICATE

We, DENNEL NIEZGODA, KAREN SIEDLECKI, KATHY CORTOPASSI and TINA ALFARO, Official Reporters for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 290 through 490 contain a true and correct transcription of the proceedings as stenographically reported by us at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF we have hereunto set our hands at Wilmington, this 17th day of October, 2025.

/s/ Dennel Niezgoda
Official Court Reporter

/s/ Karen Siedlecki
Official Court Reporter

/s/ Kathy Cortopassi
Official Court Reporter

/s/ Tina Alfaro
Official Court Reporter

EXHIBIT J

APPLE TREE PARTNERS IV, L.P.

(A Cayman Islands Exempted Limited Partnership)

FIRST AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF APPLE TREE PARTNERS IV, L.P. AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND, IN CERTAIN CASES, WITH THE APPROVAL OF THE GENERAL PARTNER. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

NON-U.S. RESIDENTS ONLY: NO ACTION HAS BEEN OR WILL BE TAKEN TO COMPLY WITH THE SECURITIES LAWS IN ANY JURISDICTION OUTSIDE THE UNITED STATES OF AMERICA THAT WOULD PERMIT AN OFFERING OF THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, IN ANY COUNTRY OR JURISDICTION WHERE ACTION FOR THAT PURPOSE IS REQUIRED. IT IS THE RESPONSIBILITY OF ANY PERSON WISHING TO PURCHASE THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT TO SATISFY HIMSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE THE UNITED STATES OF AMERICA IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

Joint Exhibit
JX-0001
C.A. No. 2025-0607-KSJM

Proprietary and Confidential

APPLE TREE PARTNERS IV, L.P.
First Amended and Restated
Limited Partnership Agreement

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7070/11922-009 current/29923602v20

THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT (as amended and/or restated from time to time, the "Agreement"), dated this 1st day of November, 2012, by and among ATP III GP, Ltd., a Cayman Islands exempted company, as general partner (in its capacity as a general partner of the Partnership, the "General Partner"); Daniel P. Finkelman, as the withdrawing limited partner ("Finkelman"); and the Persons (as defined in Paragraph 18(j)) whose Subscription Agreements (as defined in Paragraph 1(e)) with the Partnership (as defined below) and the General Partner dated the date hereof for the purchase of limited partner interests in the Partnership have been accepted and who have executed (directly or by power of attorney) a counterpart to this Agreement, as limited partners (the "First Closing Limited Partners"). The First Closing Limited Partners, any additional limited partners admitted to the Partnership after the date of this Agreement, and any substituted limited partners admitted to the Partnership after the date of this Agreement, each in its capacity as a limited partner of the Partnership, are sometimes referred to herein collectively as the "Limited Partners". The General Partner and the Limited Partners are sometimes referred to herein collectively as the "Partners".

PRELIMINARY STATEMENT

The General Partner and Finkelman formed Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership (the "Partnership") by executing the Initial Exempted Limited Partnership Agreement of the Partnership, dated October 29, 2012 (the "Original Agreement"), and by registering the Partnership as an exempted limited partnership with the Registrar of Exempted Limited Partnerships under the laws of the Cayman Islands on October 29, 2012.

The First Closing Limited Partners desire to be admitted to the Partnership as limited partners.

The General Partner and the First Closing Limited Partners desire to amend the Original Agreement as hereinafter provided, and in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, agree as follows:

A. Immediately following the admission to the Partnership of the First Closing Limited Partners, Finkelman shall hereby withdraw from the Partnership as a limited partner, his contribution to the Partnership's assets (if any) as a limited partner shall be returned and he shall have no further interest in or obligation to the Partnership.

B. On the date first above written, upon execution of a counterpart to this Agreement by or on behalf of such Persons, (i) ATP III GP, Ltd. hereby continues as general partner of the Partnership and (ii) the First Closing Limited Partners are hereby admitted to the Partnership as limited partners of the Partnership.

C. The Original Agreement is hereby amended and restated in its entirety to read as follows:

The Partners agree to carry on an exempted limited partnership subject to the terms of this Agreement in accordance with the provisions of the Exempted Limited Partnership Law (2012 Revision) of the Cayman Islands (as the case may be amended from time to time, the "ELP Law").

1. Firm Name; Registered Office; Purposes; Powers; Specific Authorization; Currency.

(a) Firm Name. The name of the Partnership is Apple Tree Partners IV, L.P.

(b) Registered Office. The initial address of the Partnership's registered office in the Cayman Islands is at the offices of Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. The General Partner may change the Partnership's registered office to any other address in the Cayman Islands from time to time without the consent of any other Person. The General Partner shall provide notice of such change (and of any change in the registered office of the General Partner in the Cayman Islands) to the Limited Partners.

(c) Purposes. The sole purpose of the Partnership is to invest, through one or more entities directly or indirectly owned by the Partnership (each such entity, an "Intermediary"), in equity securities issued by Apple Tree Consolidated, SPRL, a to-be-formed Belgium private limited liability company ("ATC"), whose equity securities shall be owned, directly or indirectly through an Intermediary, by the Partnership. The sole purpose of ATC shall be to invest in pharmaceutical,

medical device and other medically-related business projects. Subject to the two preceding sentences, the Partnership and ATC shall have such other purposes that are necessary, convenient or related to the foregoing. Each Intermediary and ATC shall be wholly-owned, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(d) Powers. Subject to the terms and provisions hereof, the Partnership shall have all the powers available to it as an exempted limited partnership under the laws of the Cayman Islands.

(e) Specific Authorization. Notwithstanding any other provision of this Agreement, without the consent of any Limited Partner or other Person being required, the Partnership is hereby authorized to execute, deliver and perform, and the General Partner on behalf of the Partnership is hereby authorized to execute and deliver, (i) a subscription agreement with each Limited Partner, or the equivalent thereof in the case of a Limited Partner who will not have a Contingent Subscription (as defined in Paragraph 5(a)), for the purchase of such Limited Partner's interest in the Partnership (each, a "Subscription Agreement") and (ii) any agreement, document or other instrument contemplated thereby or related thereto, and (subject to any approvals expressly required by any such agreement, document or instrument or by this Agreement) any amendments thereto, and any such actions heretofore taken by the General Partner are hereby ratified. The General Partner is hereby authorized to enter into the agreements, documents and instruments described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Partnership.

(f) Functional Currency. The functional currency of the Partnership is the United States dollar. All capital contributions and cash distributions shall be made in United States dollars, and the Partnership's income, gains, losses and expenses will be calculated and reported in United States dollars.

2. General Partner.

(a) Name; Address. The name and address of the General Partner are set forth in the List of Partners (as defined in Paragraph 16(b)). The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the name or address of the General Partner.

(b) Control. The management, policies and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner. The General Partner and Apple Tree Venture Management, LLC (the "Management Company") shall, at all times prior to any removal of the General Partner as general partner of the Partnership pursuant to Paragraph 4(a), be owned exclusively by Dr. Seth L. Harrison ("Dr. Harrison").

(c) Management Agreement. The General Partner shall cause ATC to enter into a management agreement with the Management Company, in the form attached hereto as Schedule A (as amended from time to time, the "Management Agreement"). The Management Agreement shall not be terminated prior to the time set forth in Paragraph 5 thereof or amended, and none of its provisions shall be waived, in each case without the prior written consent of the holders of a majority of the Preferred Units (as defined in Paragraph 6(c)).

(d) Fees and Commissions. So long as the Management Agreement is in effect, any director's fees, consulting fees and other remuneration paid to the General Partner, the Management Company, Dr. Harrison, the members and employees of the Management Company or any of their respective affiliates in cash, securities or otherwise by an Intermediary, ATC or any direct or indirect subsidiary of ATC, including any Operating Company (as defined in Paragraph 2(l)) (a "Subsidiary"), shall only be received by them on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by Apple Tree Pharmaceuticals, Inc., a Delaware corporation ("ATPharma"), for services rendered to an Operating Company, rather than the gross amount thereof,

reduced by any ATPharma governance-related costs that are not borne by any such entity, shall be received by ATPharma on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board (as defined in Paragraph 2(n)); and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

(e) Salaries. Without the prior written approval of the holders of a majority of the Preferred Units, while the Management Agreement is in effect, neither the General Partner, the Management Company, Dr. Harrison nor any of their respective affiliates shall receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary and the employees of the Management Company shall not receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary, in each case other than the Management Fee, fees or other remuneration paid to ATPharma as described in Paragraph 2(d) or with the prior written approval of the holders of a majority of the Preferred Units; provided, however, that the General Partner shall be entitled to an annual fee of US $500 from the Partnership.

(f) Cayman Islands Registration Statement. The General Partner has filed a registration statement pursuant to Section 9 of the ELP Law to register the Partnership as an exempted limited partnership (the "Registration Statement") and shall file any required amendments thereto.

(g) Standard of Care. It is recognized that decisions concerning investments or potential investments involve exercise of judgment and the risk of loss. To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any such

investment or any other action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner or such affiliate.

(h) Guarantees. The Partnership shall not guarantee or agree in any other manner to become liable with respect to any indebtedness or obligation of any other Person without the prior written consent of the holders of a majority of the Preferred Units.

(i) Borrowing. The Partnership shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units.

(j) U.S. Trade or Business. The General Partner shall use its reasonable best efforts to conduct the affairs of the Partnership and its subsidiaries so that no Foreign Limited Partner realizes income that is "effectively connected with the conduct of a trade or business within the United States" within the meaning of Sections 871, 882 or 897 of the U.S. Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as the "Code"), solely by virtue of being a Limited Partner. Notwithstanding the foregoing, payments (or adjustments thereto) specifically provided for in this Agreement or the Management Agreement shall not be deemed to violate this undertaking. For purposes of this Agreement, the term "Foreign Limited Partner" shall mean any Limited Partner that (A) either (1) is a "nonresident alien" within the meaning of Section 7701(b)(1)(B) of the Code, a foreign corporation or partnership within the meaning of Section 7701(a)(5) of the Code, or a foreign trust or estate within the meaning of Section 7701(a)(31) of the Code, or (2) is treated as a partnership or flow-through entity for United States Federal income tax purposes and that has any partners, members or beneficiaries that would be a Foreign Limited Partner under clause (1) of this sentence if

they were Limited Partners and (B) has notified the General Partner of such status in the Subscription Agreement or transfer documentation pursuant to which it acquired its interest in the Partnership.

(k) Letter Agreement. Dr. Harrison shall, on the date first written above, execute and deliver to the holders of the Preferred Units a letter agreement in the form attached hereto as Schedule B (as amended from time to time, the "Letter Agreement").

(l) Co-investments. The General Partner shall not permit any Intermediary, ATC or any Subsidiary to purchase any Operating Company Securities (as defined below), debt, royalty arrangement or other economic interest issued by a prospective Operating Company in which the General Partner, the Management Company or any of their respective affiliates has a preexisting investment or is investing at the same time as ATC unless such purchase has been approved by the holders of a majority of the Preferred Units. Securities intended to achieve ATC's investment purpose are sometimes referred to herein as "Operating Company Securities". An entity in which ATC has a direct or indirect investment in Operating Company Securities is sometimes referred to herein as an "Operating Company". Except with the prior written consent of the holders of a majority of the Preferred Units, each Operating Company shall be wholly-owned, directly or indirectly, by ATC, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(m) Tax Classification. Except with the prior written consent of Ezbon International Limited ("Ezbon"), the General Partner shall (i) not cause or permit the Partnership to elect (A) to be excluded from the provisions of Subchapter K of the Code or (B) to be treated as a corporation for United States Federal income tax purposes; (ii) cause the Partnership to make any election reasonably necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for United States Federal income tax purposes; (iii) cause the Partnership to file any required tax returns in a manner consistent with its treatment as a partnership for United States Federal income tax purposes; and (iv) not take any action that would be inconsistent with the treatment of the Partnership as a

partnership for such purposes. Except with the prior written consent of the holders of a majority of the Preferred Units, the Partnership shall use its best efforts to cause ATC to be treated as a corporation for United States Federal income tax purposes.

(n) ATC Board. The board of directors of ATC (the "Board") shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in pharmaceutical, medical device and other medically-related projects and related activities (each, a "Project"), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC's management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the "Operating Agreement"); provided that no compensation shall be paid by ATC to

the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts (including, without limitation, cash and publicly-traded securities) received by ATC from Subsidiaries (including, without limitation, Operating Companies) which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received from Subsidiaries, including, without limitation, the Operating Companies). The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Intermediaries and Subsidiaries (including, without limitation, the Operating Companies) substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Intermediary or Subsidiary (including, without limitation, any Operating Company), such Intermediary or Subsidiary (including, without limitation, any Operating Company) shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Intermediary or Subsidiary (including, without limitation, any Operating Company) rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board.

3. Limited Partners.

(a) Names; Addresses; Contingent Subscriptions. The names and addresses of the Limited Partners and their respective Contingent Subscriptions (if any) and numbers and classes of Units (as defined in Paragraph 6(c)) are set forth in the List of Partners. Except as otherwise provided in this Agreement, the Contingent Subscription of Dr. Harrison (together with his permitted transferees) shall at all times prior to a Removal Event be equal to 5.26315% of the sum of the

Contingent Subscriptions of the other holders of the Preferred Units. The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the Contingent Subscription or number or class of Units of any Limited Partner, the withdrawal of any Limited Partner, the admission of any additional or substituted Limited Partner, the transfer of all or any part of the interest of any Limited Partner and any change in the name or address of any Limited Partner, provided such revision is, in each case, in accordance with the terms of this Agreement. The General Partner shall also maintain a Register of Partners, as required by the ELP Law.

(b) Limited Liability. No Limited Partner, in its capacity as such, shall be liable for the debts or obligations of the Partnership; provided that nothing in this sentence shall limit the liability of a Limited Partner (i) to make the capital contributions which it agreed to make to the Partnership pursuant to Paragraph 5, (ii) to return distributions that it is required to return to the Partnership pursuant to this Agreement or the ELP Law, or (iii) to pay any other amount that it is required to pay to the Partnership pursuant to this Agreement or its Subscription Agreement. None of the Limited Partners, in their capacity as such, shall take any part in the conduct of the business of the Partnership or have any power to sign for or to bind the Partnership.

(c) Additional Admissions. Subject to the provisions of this Agreement, including but not limited to Paragraphs 3(a) and 6(d), (e) and (f), the General Partner is authorized, but not obligated, to accept additional subscriptions from the Limited Partners, select and admit additional Limited Partners to the Partnership, and issue Incentive Common Units and Tracking Units (each as defined in Paragraph 6(c)) to the Limited Partners and additional Limited Partners. Each Limited Partner who is to make an additional subscription or receive additional Incentive Common Units or Tracking Units shall execute a Subscription Agreement (or the equivalent thereof) and each Person who is to be admitted as an additional Limited Partner shall execute a counterpart to this Agreement and, if such Person makes a subscription, a Subscription Agreement (or the equivalent thereof).

4. Removal of General Partner.

(a) Removal. Following the occurrence of a Removal Event (as defined in Paragraph 4(c)), the holders of a majority of the Preferred Units may, upon ten days' prior written notice to the General Partner, remove the General Partner as general partner of the Partnership and select a successor general partner. The successor general partner shall agree in writing to be bound by this Agreement and assume all of the obligations of the General Partner under this Agreement. The exculpation and indemnification of the General Partner pursuant to Paragraphs 2(g) and 15 shall survive for actions or omissions occurring prior to such removal (subject to the conditions described therein); the Management Agreement, the Letter Agreement and the Operating Agreement shall terminate (except that the Management Company shall continue to be entitled to receive the Management Fee for an additional 45 days and shall reimburse the Partnership to the extent (if any) that it was paid Management Fee for more than 45 days in advance); and the successor general partner shall file an amendment to the Registration Statement reflecting the change in the general partner of the Partnership.

(b) Substitution of Successor General Partner. The successor general partner shall be deemed admitted to the Partnership as general partner immediately upon the filing of the section 10 notice pursuant to the ELP Law in respect of such change of general partner.

(c) Removal Event. For purposes of this Paragraph 4, "Removal Event" means the occurrence of any of the following:

(i) The criminal conviction for a felony entered by a court of competent jurisdiction against Dr. Harrison in respect of, or in relation to, the Partnership's affairs;

(ii) Any act of willful fraud, willful misconduct or Gross Negligence by Dr. Harrison in respect of, or in relation to, the Partnership's affairs; or

(iii) Any violation by Dr. Harrison of his obligations under Section 4 of the Letter Agreement including, without limitation, upon his death or disability.

(d) Consequences of General Partner's Removal. If the General Partner is removed as general partner of the Partnership pursuant to Paragraph 4(a):

(i) The number of Founder Common Units (as defined in Paragraph 6(c)) held by Dr. Harrison (taken together with his permitted transferees) shall be reduced as follows:

(A) If such removal was the result of Dr. Harrison's death or disability, then such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 60 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 60, or

(B) In all other instances, such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 120 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 120;

Furthermore, if the General Partner is removed pursuant to Paragraph 4(a) as a result of (1) a Removal Event described in Paragraph 4(c)(i) or (2) willful and material fraud by Dr. Harrison within the context of Paragraph 4(c)(ii), as determined by a court of competent jurisdiction, then Ezbon shall have the option to purchase the remaining Founder Common Units held by Dr. Harrison (taken together with his heirs or legal representatives) at an aggregate price equal to $1. Such option may be exercised by Ezbon within 30 days following the removal date by written notice thereof by Ezbon to Dr. Harrison (or his heirs or legal representatives, as applicable), accompanied by payment in full of the purchase price therefor. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Founder Common Units to Ezbon.

(ii) At Dr. Harrison's election, his Contingent Subscription in respect of Preferred Units shall be reduced to the aggregate amount of capital contributions theretofore made by him to the Partnership in respect of such Preferred Units, in which case the number of his Preferred Units and Investment Common Units shall also be reduced by the same percentage by which Dr. Harrison's Contingent Subscription in respect of Preferred Units was reduced and future distributions in respect of Dr. Harrison's Preferred Units and Investment Common Units shall be adjusted to the extent necessary so that, as quickly as possible, aggregate distributions in respect of those Units, net of contributions, are what they would have been if Dr. Harrison had at all times held the reduced number of such Units. Such election right, and the consequences thereof, shall also apply to Dr. Harrison's heirs and legal representatives.

(iii) For the avoidance of doubt, the foregoing adjustments shall be applicable for purposes of determining Dr. Harrison's (and each of his heirs' and legal representatives') share of allocations and distributions only prospectively from the date of removal, and Dr. Harrison (and each of his heirs and legal representatives) shall not, as a result of this Paragraph 4(d), have any obligation (pursuant to Paragraph 15(e), or otherwise) to return to the Partnership or any Partner any distributions that Dr. Harrison (or such heirs and legal representatives) received prior to such date (but, for the further avoidance of doubt, this Paragraph 4(d)(iii) shall not relieve Dr. Harrison (or such heirs and legal representatives) of any obligation he (or they) would otherwise have under Paragraph 15(e) with respect to distributions made prior to the General Partner's removal).

(iv) So long as Dr. Harrison (taken together with his heirs and legal representatives) continues to own in the aggregate the greater of at least (Y) 50,000 Units (appropriately adjusted for any splits or combinations of, or dividends with respect to, Units occurring after the date of this Agreement or (Z) 20% of the Units owned by him (taken together with his heirs and legal representatives) following the Removal Event, after giving effect to all

adjustments (1) arising from such Removal Event (including, without limitation, adjustments pursuant to Paragraph 4(d)(i), (ii) and (vi)) and (2) pursuant to Paragraph 6(f)(i), neither the Partnership, any Intermediary, ATC nor any Subsidiary (including any Operating Company) shall enter into any transaction or agreement with Ezbon, Blue Horizon Enterprise Ltd. ("Blue Horizon") or any of their respective affiliates without the prior written consent of Dr. Harrison (or his heirs or legal representatives, if applicable); provided, however, that the Partnership may continue to issue additional Preferred Units and Investment Common Units to Ezbon, Blue Horizon or any of their respective affiliates, (i) at or above the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations or (ii) below the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations, provided that in the case of this clause (ii), (A) a third party investor who is not affiliated with either Ezbon or Blue Horizon and who is not a Limited Partner, but who comes within the definition of a "qualified purchaser" for purposes of the U.S. Investment Company Act of 1940, as amended, participates in such financing and purchase at least one-third of the Preferred Units and Investment Common Units sold in such financing and (B) the combined percentage ownership by Ezbon, Blue Horizon and their affiliates of Preferred Units and Investment Common Units immediately following such financing is less than their combined percentage ownership of such Units immediately prior to such financing. So long as Dr. Harrison (or his heirs or legal representatives) continues to own any Units, all such transactions or agreements with Ezbon, Blue Horizon or any of their respective affiliates shall be on "arms-length" terms or as otherwise approved by Dr. Harrison (or his heirs or legal representatives, if applicable).

(v) Dr. Harrison (or his heirs or legal representatives, if applicable) shall have a preemptive right, exercisable for a minimum period of 30 days and a maximum period of

60 days, to subscribe for his pro rata share of any additional Preferred Units and Investment Common Units offered by the Partnership (based on the percentage of the total number of outstanding Units of such class owned by Dr. Harrison (or his heirs or legal representatives)), on the most favorable terms and conditions offered to any third party (including, without limitation, Ezbon, Blue Horizon or their respective affiliates).

(vi) If the General Partner is removed pursuant to Paragraph 4(a) as a result of a Removal Event described in Paragraph 4(c)(ii) (other than for willful and material fraud as determined by a court of competent jurisdiction) or Paragraph 4(c)(iii), then Dr. Harrison (or his heirs or legal representatives) shall have the option to require Ezbon to purchase a percentage of his (or their) Preferred Units equal to the product of (A) the aggregate capital called in respect of such Preferred Units divided by the aggregate Contingent Subscriptions of his (or their) Preferred Units and (B) the quotient of (1) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by the then balance due under the Loan Arrangement divided by (2) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units. The purchase price for such Preferred Units shall be an amount equal to the sum of the capital contributions made or deemed made (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by (x) amounts then outstanding under the Loan Arrangement and (y) distributions to Dr. Harrison (or his heirs or legal representatives), in each case in respect of such Preferred Units. Such option may be exercised by Dr. Harrison (or his heirs or legal representatives) within 30 days following the removal date by written notice thereof by Dr. Harrison (or his heirs or legal representatives) to Ezbon. If Dr. Harrison (or his heirs or legal representatives) elects to exercise such option, Ezbon shall purchase such Preferred Units by payment of the purchase price therefor in four equal installments, with the first installment due within ten days following the date of

exercise and each subsequent installment due on the three-month anniversary of the due date for the prior installment; provided, however, that the entire amount shall be payable in full within ten days following the date of exercise if the aggregate purchase price does not exceed US $10 million. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Preferred Units to Ezbon. In the event of a sale of Preferred Units pursuant to this clause (vi), the provisions of Section 3 of Part A to Schedule D hereto shall no longer apply to any remaining Preferred Units owned by Dr. Harrison (or his heirs or legal representatives). In no event shall a sale of Preferred Units pursuant to this clause (vi) insulate the General Partner from any claim against it for willful misconduct or gross negligence giving rise to such removal.

5. Capital of the Partnership.

(a) Capital Contributions; General.

(i) Subject to the terms of this Agreement, each of the Partners shall contribute to the capital of the Partnership, in such installments as the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription" in the List of Partners (the "Contingent Subscription"). A Partner may not make less than the full amount of any required capital contribution.

(ii) Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, the Intermediaries and ATC, as applicable, to (A) pay Partnership and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership and Intermediary non-discretionary items (such as taxes and tax distributions by the Partnership) and satisfy other Partnership and Intermediary expenses and obligations incurred in the ordinary course of business and (C) make capital contributions (directly or indirectly through one or more Intermediaries) to ATC to allow ATC to (I) pay the

Management Fee for the next 12-month period and other ATC expenses then existing or reasonably anticipated to be incurred within the next six-month period, (II) invest in Projects approved by the Board in accordance with a Board-approved budget therefor and (III) pay ATC non-discretionary items (such as taxes) and satisfy other ATC expenses and obligations incurred in the ordinary course of business. Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (X) capital calls in respect of Partnership, Intermediary and ATC expenses and obligations incurred in the ordinary course of business for legal, audit, accounting and tax services, insurance, business development (including the identification, investigation and evaluation of prospective Projects), and other general and administrative matters (other than the Management Fee) shall be limited to the amount therefor set forth in a budget presented by the General Partner and approved by the holders of a majority of the Preferred Units in writing or the Board, whose approval shall not be unreasonably withheld or delayed, (Y) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (1) 20% of the Partnership's contributed capital or (2) $50 million, and (Z) in the case of a capital call pursuant to clause (C) of the preceding sentence that is made on a basis accelerated from that set forth in a Board-approved budget, the General Partner (1) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (2) provided the Board with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the holders of Preferred Units or the Board shall be required with respect to organizational expenses of the Partnership and its related entities.

(iii) Not less than ten business days' prior written notice shall be given to each Partner by the General Partner as to the date for each capital contribution. The amount of capital required to be contributed by each Partner on each occasion of a capital contribution shall

be computed by the General Partner so that each Partner contributes that portion of the aggregate capital contribution to be made by all Partners at such time which such Partner's Contingent Subscription bears to the total Contingent Subscriptions of all Partners, or in such other proportions as may be determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. All capital contributions shall be made in cash.

(iv) The General Partner may at any time, with the prior written consent of Ezbon, reduce on a pro rata basis or terminate, in their entirety, the outstanding commitments of the Partners to make further capital contributions to the Partnership, in which instance the obligation of the Partners to contribute additional capital to the Partnership shall be so reduced or terminated, as applicable, the number of Units held by each Partner shall be adjusted on an equitable basis and the List of Partners shall be revised to reflect such occurrence. A portion of the capital contributions to be made by Dr. Harrison shall be financed by Ezbon, and repaid to Ezbon by Dr. Harrison, as described in Schedule D attached hereto.

(b) Anti-Money Laundering. Each capital contribution made by a Limited Partner shall constitute a representation and warranty by such Limited Partner that, to such Limited Partner's knowledge:

(i) None of the cash that such Limited Partner has contributed or is contributing to the Partnership has been derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law; and

(ii) No contribution by such Limited Partner to the Partnership shall cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the Proceeds of Crime Law 2008, the Terrorism Law (2009 Revision) or the Money Laundering Regulations (2011 Revision), in each case, such statute

as amended to date and any successor statute thereto and including all regulations promulgated thereunder (the "Anti-Money Laundering Laws").

Each Limited Partner shall promptly notify the General Partner if it becomes aware that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws. Each Limited Partner shall use commercially reasonable efforts to provide promptly to the General Partner any additional information regarding such Limited Partner or its beneficial owners that the General Partner reasonably deems necessary or advisable to determine or ensure compliance with all applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges that if at any time it is discovered that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws, any of such Limited Partner's foregoing representations and warranties is incorrect, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the General Partner may undertake appropriate actions to ensure compliance with such applicable law or regulation. Actions that may be taken by the General Partner in the circumstances described in the previous sentence include, but are not limited to, the following:

(x) The General Partner, upon delivery of notice to that effect to the affected Limited Partner, may "freeze" such Limited Partner's interest in the Partnership and, in that event: (A) shall not permit the Partnership to accept any additional capital contributions from such Limited Partner so long as the interest is frozen; (B) shall not request any additional capital contributions from such Limited Partner so long as the interest is frozen; (C) shall not permit the Partnership to

allocate any items of Partnership income or gain to such Limited Partner's Capital Account with respect to any fiscal period commencing on or after the date of delivery of such notice and for so long as the interest is frozen (although the General Partner may cause the Partnership to continue to allocate items of loss or expense to such Limited Partner's Capital Account to the same extent as if, with respect to such Limited Partner and through the date of the Partnership's final liquidating distribution, such Limited Partner had timely made all required capital contributions with respect to its Contingent Subscription); and/or

(D) shall not permit the Partnership to make any distributions to such Limited Partner in respect of its frozen interest after the delivery of such notice and for so long as the interest is frozen, other than liquidating distributions pursuant to Paragraph 11 in an amount equal to the positive balance in its Capital Account, after payment to each other Partner of its final liquidating distribution in accordance with Paragraph 11 and subject in all events to compliance with applicable law.

(y) In the alternative, the General Partner may cause the Partnership to redeem such Limited Partner's interest using Partnership funds at a price equal to the lesser of (A) the aggregate amount of capital contributions theretofore made by such Limited Partner, net of amounts previously distributed to such Limited Partner, (B) the positive balance in the Capital Account of such Limited Partner, or (C) the fair market value of such interest (as determined by the General Partner); provided, however, that the General Partner shall cause the Partnership to redeem such Limited Partner's interest at such price if required by law, regulation or government order.

Each Limited Partner further understands that the Partnership or General Partner may release

confidential information about such Limited Partner and, if applicable, any of its underlying beneficial owners, to proper authorities if the General Partner, in its reasonable discretion, determines that it is required or otherwise in the best interests of the Partnership in light of the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges and agrees that the General Partner, without the consent of any Limited Partner and notwithstanding any other provision of this Agreement, may amend any provision of this Agreement in order to effectuate the intent of this Paragraph 5(b) and ensure compliance with the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities.

(c) Defaults on Contributions. If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due (or within five business days thereafter), interest will accrue on the outstanding balance of such unpaid capital contribution at a rate per annum equal to the lesser of (i) the prime rate (as published in The Wall Street Journal) plus 6% or (ii) the maximum rate permitted by law (the "Default Rate"), from and including the date the capital contribution was due until the earlier of the date of payment of such capital contribution by such Limited Partner (or a transferee) or such time, if any, as the General Partner imposes a Default Charge (as defined below).

If such Limited Partner fails to pay any such amount when due but pays such amount (together with any accrued interest thereon) prior to the time it becomes a Defaulting Partner (as defined below), the General Partner shall reflect in the records of the Partnership the amount paid by such Partner, with such amount treated as payment first of accrued interest to the extent thereof; provided, however, that no such payment of interest shall reduce the amount to be contributed to the Partnership by such Partner with respect to its Contingent Subscription.

A Limited Partner that has failed to make a payment in satisfaction of its Contingent Subscription (together with any accrued interest thereon) pursuant to this Paragraph 5 by the close of business on the date that is five business days after the relevant due date and has also failed to make such payment on or before the date that is 30 days after the General Partner has delivered, by certified or

registered mail or by nationally or internationally recognized "overnight" courier service, a notice (a "Default Notice") informing such Limited Partner of its failure to make such payment and notifying such Limited Partner that such Limited Partner will be considered a Defaulting Partner if payment is not received within such 30-day period, shall be deemed to be a "Defaulting Partner." The General Partner, in its sole discretion, may determine whether or not, or when, to deliver a Default Notice with respect to any Limited Partner that has failed to timely make a required payment pursuant to this Paragraph 5.

If a Limited Partner becomes a Defaulting Partner, the General Partner may, in its sole discretion, pursue one or more of the following alternatives:

(i) impose a Default Charge upon the Defaulting Partner;

(ii) assist the Defaulting Partner in selling its Preferred Units and Investment Common Units, with the full assumption by the buyer of the Defaulting Partner's Contingent Subscription, including any portion then due and unpaid;

(iii) accept a late contribution from the Defaulting Partner, with interest, in satisfaction of its then-outstanding obligation to contribute hereunder, if the General Partner determines in its sole discretion that such a late contribution will not jeopardize the activities and operations of the Partnership; or

(iv) pursue and enforce all of the Partnership's other rights and remedies against the Defaulting Partner under this Agreement, the relevant Subscription Agreement and Cayman Islands law, including, but not limited to, the commencement of a lawsuit to collect the unpaid capital contribution, interest and costs, and reimbursement of any other damages suffered by the Partnership (with interest on any such costs or other damages that are reimbursed).

If a Defaulting Partner's Preferred Units and Investment Common Units are sold in their entirety pursuant to (ii) above, or if the General Partner exercises its sole discretion to accept a late contribution pursuant to (iii) above, the General Partner shall not impose a Default Charge pursuant to (i) above. Otherwise, all such remedies, including the aforesaid damages provisions, shall be cumulative, and the

use by the General Partner of one or more of them against a Defaulting Partner shall not preclude the use of any other such remedy.

The Partners agree that the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy. To the maximum extent permitted by law, in connection with such failure (which remedy each Partner agrees is reasonable) and subject to the preceding paragraph of this Paragraph 5(c), the General Partner may cause such Defaulting Partner's number of Preferred Units and Investment Common Units to be reduced by up to 50% of such Defaulting Partner's corresponding number of Units of such class immediately prior to becoming a Defaulting Partner, which Units shall be allocated to the non-defaulting holders of Preferred Units in proportion to their respective number of Preferred Units (the "Default Charge"); provided, however, that if a Defaulting Partner (or any transferee(s) then holding the Defaulting Partner's interest) subsequently contributes the amount in arrears during such period, then in the sole discretion of the General Partner, the number of Preferred Units and Investment Common Units of the Partners (and the sharing of distributions among such Partners) shall be adjusted so that the Partners hold the same number of Units and receive the same of distributions as if such Defaulting Partner (together with such transferee(s), if any) had made all contributions with respect to such Defaulting Partner's interest on a timely basis.

The application of the aforesaid remedies and other damages provisions with respect to any Defaulting Partner shall not relieve such Defaulting Partner of his obligation to make (i) the capital contribution which resulted in the application of the aforesaid remedies and other damages provisions because of the failure of the Defaulting Partner to pay such capital contribution and (ii) all subsequent required capital contributions when due, or relieve such Defaulting Partner from designation as a Defaulting Partner and application of the aforesaid remedies and other damages provisions as to any such subsequent required capital contribution if he defaults with respect thereto. However, for the avoidance of doubt, the General Partner may not impose multiple Default Charges upon a Defaulting Partner with

respect to a single required capital contribution.

In connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made to the Defaulting Partner and the Partners to which the portions of the Defaulting Partner's Units are reallocated in accordance with this Paragraph 5(c) as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge. Without limiting the generality of the foregoing, the General Partner, in its sole discretion, may elect to retain any distributions that any Defaulting Partner would otherwise be entitled to receive pursuant to this Agreement (taking into account the effect of the imposition of any remedies and other damages provisions that have been applied) for use for any Partnership purpose, including for the purpose of applying such withheld amounts, first to any costs of collection incurred by the Partnership with respect to such Defaulting Partner's unpaid capital contributions and second, as payment of such Defaulting Partner's capital contributions that are due but unpaid (and interest thereon) in chronological order starting with the capital contribution that has been unpaid for the longest period. In the case of a distribution in kind, if the General Partner elects to withhold such distribution for application against such Defaulting Partner's unpaid capital contribution, the Partnership shall withhold securities otherwise distributable to the applicable Defaulting Partner and cause such securities to be sold for and on behalf of such Defaulting Partner (and such Defaulting Partner hereby irrevocably appoints the General Partner (with full power of substitution) as his agent and attorney in fact for purposes of effecting such sale) and remit the net proceeds of such sale to the Partnership for application as provided in this paragraph. Each Defaulting Partner with respect to which distributions are authorized to be withheld in accordance with this Paragraph 5(c) agrees to execute such other documents as the General Partner may reasonably request in order to effect the purposes of such withholding and the sale of any withheld securities on behalf and in the name of such Defaulting Partner. For purposes of maintaining such Defaulting Partner's Capital Account and all other purposes under this Agreement, such Defaulting Partner shall be deemed to have

received, at the time the distribution would otherwise have been made to such Defaulting Partner, any distribution that was withheld by the Partnership for application against such Defaulting Partner's unpaid capital contribution obligations and, in the case of a distribution in kind that was withheld, to have sold the withheld securities outside of the Partnership so that the Capital Accounts of, and economic arrangements among, the other Partners are not affected by the withholding of any such distribution. The value of any remaining withheld distributions that have not been applied to the Defaulting Partner's unpaid capital contribution obligations may be retained by the Partnership in cash or in kind, until the winding up of the Partnership, provided that the Partnership shall not be liable to such Defaulting Partner for any reduction in the value of any securities retained in kind and the Defaulting Partner shall not be entitled to the benefit of any appreciation in such retained securities.

6. Accounts; Units.

(a) Capital Accounts. There shall be established on the books of the Partnership a capital account ("Capital Account") for each Partner which shall consist of such Partner's initial capital contribution (if any) to the Partnership made pursuant to Paragraph 5, (i) increased by (A) any additional capital contributions by such Partner to the Partnership made pursuant to Paragraph 5 and (B) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 7, (ii) decreased by (A) any distributions to such Partner and (B) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 7, and (iii) adjusted pursuant to Paragraph 5(c).

(b) Distributions in Kind. For purposes of maintaining and determining Capital Accounts, all property distributed in kind by the Partnership to a Partner shall be charged to that Partner's Capital Account at the fair market value of such property on the date of distribution.

(c) Authorized Units. The Partnership is authorized to issue five classes of Limited Partner units (collectively, the "Units"), consisting of the following:

(i) up to 900,000 preferred units (the "Preferred Units"),

(ii) up to 900,000 investment common units (the "Investment Common Units"),

(iii) up to 225,000 founder units (the "Founder Common Units"),

(iv) up to 158,823 incentive common units (the "Incentive Common Units"), and

(v) tracking units with respect to any Project ("Tracking Units"), which shall not represent in the aggregate more than 5% of the Partnership's cumulative direct and indirect profits in such Project since its inception, and which "track" the profits (determined in accordance with GAAP, as defined in Paragraph 16(f)) of a particular Project.

(d) Purchase Price for Units. The purchase price for each Preferred Unit shall be US $1,666.66, to be contributed from time to time as described in Paragraph 5(a). The purchase price for each Investment Common Unit, Founder Common Unit, Incentive Common Unit and Tracking Unit (which may be US $0.00 in each case) shall be determined by the General Partner. Each Partner's Contingent Subscription shall be equal to the sum of the original issue purchase prices for its Units.

(e) Issuance of Units. On the date of this Agreement, (i) 436,050 Preferred Units and 436,050 Investment Common Units are being issued to Ezbon (ii) 418,950 Preferred Units and 418,950 Investment Common Units are being issued to Blue Horizon, and (iii) 45,000 Preferred Units, 45,000 Investment Common Units and 225,000 Founder Common Units are being issued to Dr. Harrison. Incentive Common Units and Tracking Units shall be issued from time to time as determined by the General Partner, in each case, subject to a vesting schedule as determined by the General Partner. Incentive Common Units shall only be issued to Persons providing bona fide services to ATPharma and Tracking Units in respect of a Project shall only be issued to Persons providing bona fide services directly related to the corresponding Project. No Incentive Common Units or Tracking

Units shall be issued to the General Partner, the Management Company, Dr. Harrison or their respective affiliates without the prior written approval of the holders of a majority of the Preferred Units. If any outstanding Preferred Units or Investment Common Units are redeemed by the Partnership or otherwise cancelled, they may only be reissued by action of the General Partner with the prior written consent of the holders of a majority of the Preferred Units.

(f) Reduction of Authorized and Issued Founder Common Units and Incentive Common Units. The number of authorized Founder Common Units and Incentive Common Units shall be automatically reduced (and each Partner's number of Founder Common Units and Incentive Common Units outstanding as of any date on which the number of authorized Founder Common Units or Incentive Common Units are reduced shall be reduced by the same percentage by which the authorized number of Units of the corresponding class were reduced as of such date), based on the amount of capital contributed to the Partnership in respect of the Preferred Units, as follows:

(i) Founder Common Units: reduced to 100,000 at such time as US $300 million has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Founder Common Units divided by the sum of the number of authorized Founder Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 20% to 10%, and

(ii) Incentive Common Units: reduced to 47,368 at such time as US $1 billion has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Incentive Common Units divided by the sum of the number of authorized Incentive Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 15% to 5%.

An example of how such authorized (and, similarly, issued and outstanding) Founder Common Units and

Incentive Common Units shall be reduced, and the manner in which distributions are apportioned pursuant to Paragraph 8(d)(ii), is attached hereto as Schedule E.

7. Allocations.

(a) Allocations Generally. Except as otherwise provided in this Agreement, the Profit or Loss (as defined in Paragraph 7(b)) for each fiscal quarter shall be allocated among the Partners in a manner that as closely as possible gives economic effect to the provisions of Paragraphs 5 and 8 and the other provisions of this Agreement, as determined in the reasonable discretion of the General Partner.

(b) Definitions. For purposes of this Agreement:

(i) "Carrying Value" shall mean, with respect to each Partnership asset, the asset's adjusted basis for United States Federal income tax purposes, adjusted to equal its fair market value, as determined by the General Partner, in accordance with the rules set forth in U.S. Treasury Regulations Section 1.704-1(b)(2)(iv)(f), except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional Partnership interest by any new or existing Partner in exchange for more than a de minimis capital contribution; (b) the date of the distribution of more than a de minimis amount of Partnership property (other than a pro rata distribution) to a Partner; or (c) such other dates as specified in U.S. Treasury Regulations under Section 704 of the Code; provided that adjustments pursuant to clauses (a), (b) or (c) above shall be made only if the General Partner determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners. The Carrying Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its fair market value. In the case of any asset that has a Carrying Value that differs from its adjusted basis, Carrying Value shall be adjusted by the amount of depreciation calculated for purposes of the definition of "Profit" or "Loss" rather than the amount of depreciation determined for United States Federal income tax purposes.

(ii) "Profit" or "Loss" for each fiscal quarter means the sum of the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for United States Federal income tax purposes, with the following adjustments: (a) all items of income, gain, loss or deduction allocated pursuant to Paragraph 7(c) shall not be taken into account in computing such taxable income or loss; (b) any income of the Partnership that is exempt from United States Federal income taxation and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (c) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value; (d) upon an adjustment to the Carrying Value of any asset (other than an adjustment in respect of depreciation), pursuant to the definition of Carrying Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (e) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset shall for purposes of determining Profit or Loss be an amount which bears the same ratio to such Carrying Value as the United States Federal income tax depreciation, amortization or other cost recovery deduction bears to such adjusted tax basis (provided, that if the United States Federal income tax depreciation, amortization or other cost recovery deduction is zero, the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deduction in calculating Profit or Loss); and (f) except for items in (a) above, any expenditures of the Partnership not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Profit or Loss pursuant to this definition shall be treated as deductible items.

(c) Regulatory Provisions. The following provisions of this Paragraph 7(c) are included in order to comply with United States Federal income tax laws and regulations. For purposes

of making allocations of Profit or Loss, if the Capital Account of any Limited Partner would be reduced below zero (or if an existing deficit in such Limited Partner's Capital Account would be increased) as a result of the allocation to it of any Loss, then such Loss shall first be allocated to such Limited Partner until such Limited Partner's Capital Account is reduced to zero; the remaining portion of such Loss shall be allocated to the remaining Partners in accordance with Paragraph 7(a) until the Capital Account of each remaining Limited Partner is reduced to zero; and any remaining portion of such Loss shall be allocated to the General Partner. In determining whether an allocation for a fiscal quarter would cause any Limited Partner's Capital Account to become negative or would add to an existing deficit in such Limited Partner's Capital Account for purposes of the preceding limitation, the following allocations and distributions shall be taken into account in determining such Limited Partner's Capital Account balance:

(i) allocations of loss and deduction that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner pursuant to Section 704(e)(2) of the Code (relating to allocations to a donee of a partnership interest), Section 706(d) of the Code (relating to allocations required in the case of a shift in a partner's interest in a partnership during a taxable year) and Treasury Regulation §1.751-1(b)(2)(ii) (relating to shifts in partners' interests in the inventory and unrealized receivables of a partnership, as those terms are defined in Section 751 of the Code, attributable to distributions from a partnership); and

(ii) distributions that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner to the extent they exceed offsetting increases to such Limited Partner's Capital Account that reasonably are expected to occur during (or prior to) the Partnership fiscal quarters in which such distributions reasonably are expected to be made.

If any Limited Partner receives an allocation or distribution described in the preceding sentence which is not reasonably expected to occur, but which causes or increases a negative balance in such Limited Partner's Capital Account, such Limited Partner shall be allocated items of Partnership

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income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. If any special allocation is made pursuant to the preceding sentence, subsequent allocations of loss, expenses or deductions shall be made to such Limited Partner so as to reverse the effect of such special allocation; provided, however, that no allocation of loss, expenses or deductions shall be made pursuant to this sentence which would cause such Limited Partner's Capital Account to become negative. The General Partner shall determine, in consultation with the Partnership's independent public accountants or auditors, whether any allocations or distributions described in this Paragraph 7(c) reasonably are expected to be made and the amount of any such allocations or distributions, and its determination shall be binding on all Partners. The provisions of this Paragraph 7(c) are intended to constitute a "qualified income offset" as defined in Treasury Regulation §1.704-1(b)(2)(ii)(d), and shall be so interpreted. All allocations with respect to any fiscal quarter pursuant to Paragraph 7(a) and any offsetting allocations pursuant to this Paragraph 7(c) shall be made on an interim basis, subject to adjustment when tax allocations are made pursuant to Paragraph 7(e) at the end of the fiscal year including such quarter.

(d) Changes in Partners' Interests. Notwithstanding the foregoing, with respect to any fiscal quarter during which any Partner's interest in the Partnership changes by reason of the admission of a Partner, the withdrawal of a Partner, non-pro rata contributions of capital to the Partnership, or any other event described in Section 706(d)(1) of the Code and any regulations issued thereunder, allocations of Profit or Loss made pursuant to this Paragraph 7 shall be adjusted appropriately to take into account the varying interests of the Partners in the Partnership during such quarter. The General Partner shall consult with the Partnership's accountants, auditors or other advisers and shall select the method of making such adjustments, which method shall be used consistently thereafter.

(e) Tax Allocations.

(i) For United States Federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocation of Profit and Loss pursuant to the other provisions of this Agreement, taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code. However, in the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.

(ii) If any Partners are treated for United States Federal income tax purposes as realizing ordinary income as the result of receiving interests in the Partnership (whether under Section 83 of the Code or under any similar provision of any law, rule or regulation) and the Partnership is entitled to any offsetting deduction (net of any income realized by the Partnership as a result of such receipt), the Partnership's net deduction will be allocated to and among the Capital Accounts of such Partners in such manner as to offset, as nearly as possible, the ordinary income realized by such Partners to the extent consistent with applicable law.

(f) Tax Withholding.

(i) If the Partnership incurs a tax withholding obligation with respect to the share of Partnership income or gains allocated or distributed to any Partner: (A) any amount that is (1) actually withheld from a distribution that otherwise would have been made to such Partner and (2) paid over to any taxing authority in satisfaction of such withholding obligation shall be treated under this Agreement for all purposes as if such amount had been distributed to such

Partner; and (B) to the extent that any amount paid over to any taxing authority by the Partnership in satisfaction of such withholding obligation exceeds the amount, if any, actually withheld from a distribution that otherwise would have been made to such Partner, such excess shall be treated as an interest-free advance to such Partner. Amounts treated as advanced to any Partner pursuant to this Paragraph 7(f) shall be repaid by such Partner to the Partnership within 30 days after the General Partner gives notice to such Partner making demand therefor, which notice shall be given promptly after such advance is made. The Partnership shall collect any unpaid amounts from any Partnership distributions to such Partner that otherwise would be made to such Partner and any unpaid amounts that exceed anticipated distributions to such Partner shall be subtracted from such Partner's Capital Account.

(ii) If the Partnership receives securities disposition proceeds or other investment returns with respect to which non-United States taxes have been withheld at the source, or the Partnership is otherwise required to pay any non-United States taxes, the aggregate amount of such taxes so withheld, paid or required to be paid shall be deemed for all purposes of this Agreement to have been received by the Partnership and then distributed by the Partnership to and among the Partners based on the amount of such withholding or other taxes attributable to each Partner, as determined by the General Partner after consulting with the Partnership's accountants, auditors or other advisers, taking into account any differences in the amount of such taxes attributable to each Partner because of such Partner's status, nationality or other characteristics. The intent of the preceding sentence is to ensure to the extent feasible that the burden of non-United States taxes withheld at the source, as required to be paid by the Partnership, are borne by those Partners to which such taxes are attributable. If the amounts deemed distributed to the Partners in accordance with such sentence do not comport with the provisions of this Agreement relating to the apportionment of distributions among the Partners,

then, notwithstanding such distribution provisions, subsequent distributions to the Partners shall be adjusted in an equitable manner by the General Partner to reflect the intent of such sentence.

(iii) Notwithstanding Paragraph 7(f)(i), such Paragraph shall not apply with respect to any withholding taxes in respect of a Net Tax Obligation of Ezbon or Blue Horizon in respect of its Preferred Units or Investment Common Units. Accordingly, the amounts distributed to the holders of Incentive Common Units and Founder Common Units shall be determined as if Net Tax Obligations were an expense of the Partnership, and the allocations, distributions, and related provisions of this Agreement shall be adjusted and applied in a manner consistent with such intention. For this purpose, a "Net Tax Obligation" with respect to the Preferred Units and Investment Common Units held by Ezbon or Blue Horizon shall mean the excess of (A) all United States Federal, state or local taxes imposed on Ezbon or Blue Horizon in respect of such Units, whether imposed by withholding or otherwise (taking into account any reduced tax rates to which Ezbon or Blue Horizon is entitled pursuant to any tax treaty, without regard to whether Ezbon or Blue Horizon avails itself of such reduced rates), over (B) the value of all refunds, tax credits and tax deductions to which Ezbon, Blue Horizon or their respective beneficial holders are entitled in respect of any amount described in clause (A) (without regard to whether Ezbon, Blue Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions). Ezbon and Blue Horizon shall each provide to the Partnership a properly completed Form W-8(BEN), and shall provide to the Partnership all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of United States Federal, state and local taxes imposed on Ezbon or Blue Horizon, as the case may be, in respect of its income from the Partnership. For the avoidance of doubt, the Net Tax Obligation of Ezbon or Blue Horizon shall not include any additional tax liability resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon, Blue

Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon, Blue Horizon or their respective affiliates (including any such activities that cause Ezbon or Blue Horizon to have a permanent establishment in the United States) apart from Ezbon's or Blue Horizon's investment in the Partnership, (y) Ezbon's or Blue Horizon's failure to comply with the requirements of the previous sentence, and (z) Ezbon or Blue Horizon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of United States Federal, state or local taxes. Ezbon or Blue Horizon, as applicable, shall, as soon as reasonably practicable, provide the Partnership with such information as is reasonably necessary for the Partnership to determine the Net Tax Obligation with respect to Ezbon or Blue Horizon.

(g) Profits Interests. Except as specifically determined by the General Partner upon prior consultation with the holders of a majority of the Preferred Units, Units issued after the date hereof ("Additional Units") are intended to be a "profits interest" for United States Federal income tax purposes. In furtherance of such intent, notwithstanding any provision in this Agreement to the contrary: (i) no items of income, gain, loss, deduction or credit shall be allocated to any Partner in respect of such Partner's Additional Units to the extent such items relate to any unrealized income, gain, loss, deduction or credit of the Partnership as of the issuance date of such Additional Units; (ii) distributions by the Partnership to any Partner in respect of such Partner's Additional Units shall be limited to the minimum extent necessary to be consistent with the treatment of such Additional Units as a "profits interest" for United States Federal income tax purposes (and if any distributions are not made to any Partner pursuant to the provisions of this clause (ii), then to the extent there is sufficient subsequent appreciation in value of the assets of the Partnership, distributions shall be adjusted so that,

to the maximum extent possible, each Partner receives, on a cumulative basis, the same amount of distributions such Partner would have received as if no distributions in respect of any Units had been limited by reason of any Units constituting profits interests); and (iii) the General Partner shall consult with the Partnership's legal and tax advisors to determine the manner in which allocations and distributions should be made by the Partnership in respect of Additional Units. Following the promulgation, if any, of final regulations and associated guidance by the United States Treasury Department and Internal Revenue Service regarding the tax consequences associated with the issuance or transfer of partnership interests in exchange for the performance of services, the Partnership is authorized and directed to elect (on behalf of the Partnership and each of its Partners) to have the liquidation value safe harbor contemplated by proposed Section 1.83-3(l) of the Treasury Regulations and by the revenue procedure contemplated by IRS Notice 2005-43 (or the corresponding provisions of any such final Treasury Regulations or associated guidance) apply irrevocably with respect to all Units transferred in connection with the performance of services. The Partnership and each Partner (including any Partner obtaining an interest in exchange for the performance of services and any person to whom an interest in the Partnership is transferred) shall comply with all requirements associated with any such election.

8. Distributions.

(a) Tax Distributions. During each fiscal year, the General Partner shall cause the Partnership to distribute in cash to each Partner an amount equal to the aggregate United States Federal and state tax liability and non-United States tax liability attributable to items of income, gain, loss or deduction allocated to such Partner by the Partnership with respect to such year ("Hypothetical Tax Liability"), as determined in accordance with this Paragraph 8(a). Hypothetical Tax Liability shall be determined as if each Partner were a natural person resident in the State of New York, as follows:

(i) The Hypothetical Tax Liability of a Partner shall be computed based upon the items of income, gain, loss, deduction or credit allocated to such Partner by the

Partnership with respect to the fiscal year, without taking into account any other items of income, gain, loss, deduction or credit, and without taking into account the standard deduction or any loss carryovers or exemptions; provided that, if the General Partner determines, after consulting with the Partnership's accountants, auditors or counsel, that the actual tax liability of a Partner resulting from participation in the Partnership is reasonably likely to exceed the Hypothetical Tax Liability as so computed as a result of (A) the phaseout of, or limitation on, the deductibility of expenses allocated to such Partner, whether under Section 67 or Section 68 of the Code or otherwise, (B) the application of the alternative minimum tax or similar taxes, or (C) for any other reason, then, at the election of the General Partner, appropriate adjustments shall be made in computing the Hypothetical Tax Liability of each Partner on an equivalent basis so as to insure that each Partner will receive distributions sufficient to satisfy the actual tax liability attributable to its participation in the Partnership;

(ii) Hypothetical Tax Liability generally shall be determined using the highest marginal rates of Federal and state tax applicable to individuals for such fiscal year; provided, however, that (A) the determination of such marginal tax rates shall take into account the character of income, gain, loss or deduction (including net capital gain or loss) that is allocated and (B) if all or any portion of the Hypothetical Tax Liability is attributable to the alternative minimum tax, such marginal tax rates shall be determined using the highest rates applicable under the alternative minimum tax; and

(iii) Hypothetical Tax Liability for a Partner holding more than one class of Units shall be determined separately for each such class of Units, and without regard to tax items allocated to such Partner in respect of the other classes of Units held by such Partner.

To assist the Partners in paying estimated tax, amounts may be distributed during a fiscal year with respect to such year by using estimates of Hypothetical Tax Liability based upon results of the Partnership's operations for the fiscal year to date; to the extent that such estimates result in distributions

pursuant to this Paragraph 8(a) in excess of the Hypothetical Tax Liability determined after the close of the fiscal year, such excess distributions shall be deemed made pursuant to the other provisions of this Paragraph 8, and subsequent distributions shall be adjusted accordingly. Amounts distributed within 90 days after the end of a fiscal year may, at the option of the General Partner, be deemed to have been made during such fiscal year rather than during the fiscal year in which the distribution is actually made, solely to the extent necessary to satisfy the requirements of this Paragraph 8(a) and solely for such purpose. Distributions previously made to a Partner pursuant to the provisions of this Paragraph 8 during a fiscal year (but not including any tax distribution with respect to a prior fiscal year) in respect of any class of Units shall reduce dollar-for-dollar the amount of any tax distribution to which a Partner is entitled with respect to such fiscal year pursuant to this Paragraph 8(a) in respect of allocations to such Partner corresponding to such class of Units. Tax distributions to any Partner in respect of a class of Units shall be treated as an advance against amounts otherwise distributable to such Partner (or its successors in interest) in respect of such class of Units pursuant to the other provisions of this Agreement.

(b) Tracking Unit Distributions. In connection with any "liquidity event" (including the receipt of interest, dividends, redemption or sale proceeds, royalties and other distributions, an initial public offering, or as otherwise determined in the reasonable discretion of the General Partner and the holders of a majority of the Preferred Units) with respect to a Project for which Tracking Units are then outstanding, the Partnership shall distribute, out of available assets, to the holders of such Tracking Units an amount (on a cumulative basis together with any prior distributions in respect of such Tracking Units) equal to 5% of the Partnership's direct and indirect profits (determined in accordance with GAAP) in such Project; provided that an amount equal to the sum of the Partnership's aggregate cost with respect to such Project and the balance of such profits has been or is simultaneously received by ATC from such Project; provided, further that, in accordance with the granting documents relating to Tracking Units with respect to a Project, the cumulative profits actually distributed to holders of Tracking Units with respect to a Project as of any time shall be less than the

5% profit amount referred to above if and to the extent that Tracking Units for such full 5% profit amount have not been granted and remain outstanding. Such distribution shall be made in cash, or in the discretion of the General Partner and with the prior written approval of the holders of a majority of the Preferred Units, in securities of ATC or other property identified by the General Partner. If Tracking Units are outstanding with respect to more than one Project that has undergone a liquidity event, distributions pursuant to this Paragraph 8(b) shall be apportioned among such holders of Tracking Units in proportion to the fair market values thereof.

(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary (including, without limitation, each Operating Company), shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary (including, without limitation, each Operating Company) to distribute promptly to

ATC any amounts (including, without limitation, cash and publicly-traded securities) which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets).

(d) Apportionment of Other Distributions. Distributions pursuant to Paragraph 8(c) shall be made as follows:

(i) First, to the holders of Preferred Units, in proportion to their respective number of such Units, until the cumulative amount distributed pursuant to this Paragraph 8(d)(i) equals the sum of (A) the aggregate amount previously contributed in respect of the Preferred Units and (B) $10,006,000.

(ii) Second, among the holders of Investment Common Units, Founder Common Units and Incentive Common Units, as follows:

(A) To the holders of Incentive Common Units, in proportion to their respective number of such Units, the Incentive Percentage of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time. The "Incentive Percentage" at any time shall mean the number of Incentive Common Units outstanding at such time divided by the sum of the number of authorized Incentive Common Units at such time and the number of authorized Investment Common Units at such time.

(B) To the holders of Investment Common Units and Founder Common Units, in proportion to their respective number of such Units, the balance of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time.

(e) Limitations on Distributions. Anything in this Agreement to the contrary notwithstanding, (i) no distribution shall be made to any Partner if and to the extent that such distribution

would not be permitted under the ELP Law or other applicable law and (ii) with respect to any distribution in respect of an interest intended to be a "profits interest", such distribution shall be limited as provided in Paragraph 7(g). For the avoidance of doubt, no Units issued to Ezbon or Blue Horizon as of the date hereof are intended to be treated as profits interests with respect to which distributions would be limited by reason of clause (ii) of the preceding sentence or Paragraph 7(g).

9. Valuation.

(a) Valuation by General Partner. Subject to Paragraph 9(d), the General Partner shall determine in good faith the fair market value of the assets owned directly and indirectly by the Partnership (including, without limitation, the assets held by ATC), in accordance with the Partnership's valuation methodology adopted by the General Partner and approved by the holders of a majority of the Preferred Units in writing. The General Partner shall submit all such valuations to the holders of a majority of the Preferred Units in writing.

(b) Fair Market Value. In general, but subject to the requirements of Paragraph 9(a), the fair market value of any security owned directly or indirectly by the Partnership which is freely tradeable shall be determined as of the close of trading on the date as of which the value is being determined by taking the last reported sale price of such security on such date on the exchange where it is primarily traded, or, if such security is not traded on an exchange, such security shall be valued at the last reported sale price on such date on the Nasdaq Stock Market, or, if such security is not reported on the Nasdaq Stock Market, such security shall be valued at the closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities. The determination of the fair market value of all other assets owned directly or indirectly by the Partnership shall be made in accordance with GAAP (as defined in Paragraph 16(e)). In making any such determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for goodwill or the name of the Partnership, the Partnership's office records, files and statistical data, or any other intangible assets of the Partnership.

(c) Freely Tradeable Securities. For purposes of this Agreement a security shall be deemed to be "freely tradeable" if (i) the Partnership's entire direct and indirect ownership of such security can be immediately sold by the Partnership to the general public and (ii) such security is either listed on a securities exchange or carried on the Nasdaq Stock Market and market quotations are readily available therefor. Notwithstanding the foregoing, in the case of a distribution of securities to the Partners, a security shall be deemed to be "freely tradeable" if the entire portion of such distribution made to the Limited Partners can be immediately sold by them and the condition provided for in clause (ii) of the preceding sentence is satisfied, assuming for purposes of this sentence that no Limited Partner is an affiliate of the issuer of such security. If only a portion of the Partnership's entire holding of such security satisfies the requirements of this Paragraph 9(c), that portion of the Partnership's entire holding of such security shall be deemed to be "freely tradeable."

(d) Disputed Valuations. If the General Partner determines a valuation for assets owned directly or indirectly by the Partnership which is objected to in writing by the holders of a majority of the Preferred Units within 15 days following the submission thereof in writing to the holders of a majority of the Preferred Units by the General Partner, and if the holders of a majority of the Preferred Units do not, within 45 days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted in writing by the General Partner, such valuation shall be determined by an independent chartered financial analyst selected by the General Partner and approved by the holders of a majority of the Preferred Units, whose determination shall be binding upon all Partners.

10. Term.

(a) Term of Partnership. The Partnership shall continue in perpetuity, unless it is sooner dissolved as provided in Paragraph 10(b) or by operation of law.

(b) Termination. The Partnership shall be wound up and dissolved (i) upon any event in respect of the General Partner specified in Section 15(5) of the ELP Law (subject to the

proviso thereto), (ii) at any time there are no limited partners of the Partnership, or (iii) upon the entry of a decree of judicial dissolution of the Partnership pursuant to the ELP Law.

11. Winding Up.

(a) General Provisions. Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner. The General Partner shall carry out the winding up of the affairs of the Partnership pursuant to this Agreement, provided that if the General Partner is no longer owned solely by Dr. Harrison, the holders of a majority of the Preferred Units shall appoint one or more liquidators to act as the liquidators in carrying out such winding up, subject to any contrary order of the court upon an application for a Partner or creditor pursuant to Section 15(4) of the ELP Law.

(b) Winding Up Distributions. The General Partner or the liquidators, as applicable, shall cause the Partnership to satisfy the Partnership's liabilities and obligations to creditors including Partners who are creditors (whether by payment or the making of reasonable provision for payment thereof). Any gain or loss incurred in connection with the winding up of the Partnership shall be allocated to and among the Partners in the manner provided in Paragraph 7 and the assets remaining after satisfaction of liabilities shall then be distributed among the Partners in cash or in kind in accordance with Paragraph 8. In performing their duties, the General Partner or the liquidators, as applicable, are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the General Partner or the liquidators, as applicable, shall determine to be in the best interest of the Partners.

(c) Expenses of Winding Up. The expenses incurred by the General Partner or the liquidators, as applicable, in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement and reasonable compensation for the services of the General Partner or the liquidators, as applicable, shall be borne by the Partnership, provided that if the General Partner is carrying out the winding up, no such

compensation shall be paid while the Management Agreement remains in effect. The General Partner or the liquidators, as applicable, shall use reasonable efforts to make final distributions following winding up of the Partnership before the later of (i) the end of the Partnership's taxable year in which the date of the completion of the winding up of the Partnership occurs, or (ii) 90 days after the date of the completion of the winding up of the Partnership; provided that at such point in time ATC has sold, distributed or otherwise disposed of all of its Operating Company Securities.

(d) Standard of Care. Neither the General Partner not any liquidator, as applicable, nor any of their respective affiliates shall incur liability to the Partnership or to any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or inaction on the part of such Person or any of its affiliates, provided that in any such case (i) such Person's or such affiliate's course of conduct was in good faith and reasonably believed by such Person or such affiliate to be in or not opposed to the best interests of the Partnership and (ii) such course of conduct did not constitute willful fraud, willful misconduct, Gross Negligence or an intentional and material breach of this Agreement on the part of such Person or affiliate.

(e) Return Obligation. Subject to the ELP Law, no Partner shall be obligated to restore to the Partnership the amount of any negative Capital Account.

(f) Dissolution. Upon completion of the winding up of the Partnership pursuant to this Paragraph 11, a notice of final dissolution shall be filed with the Cayman Islands Registrar of Exempted Limited Partnerships pursuant to the ELP Law and the Partnership shall dissolve thereon.

12. Transfer of Interests of Limited Partners.

(a) Conditions to Transfer. The prior written consent of the General Partner, in its sole and absolute discretion, shall be required for the assignment, pledge, mortgage, hypothecation, sale or other disposition or encumbrance (a "Transfer") by any Limited Partner of all or any part of its interest in the Partnership; provided, however, that such consent shall not be required for a transfer by Ezbon or Blue Horizon (or any subsequent transfer by a direct or indirect transferee of Ezbon or Blue

Horizon) of all or any part of its Limited Partner interest. The General Partner may require that any proposed Transfer be effective only as of the beginning or end of a fiscal quarter. Additionally, any Transfer shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership or of other counsel reasonably satisfactory to the Partnership (which opinion shall be obtained at the expense of the transferor) that such Transfer will not result in (A) the Partnership, the General Partner or the Management Company being required to register as an investment company under the U.S. Investment Company Act of 1940, as amended, (B) a violation by the Partnership of the ELP Law, (C) the Partnership being deemed terminated pursuant to Section 708 of the Code, or (D) the Partnership becoming subject to U.S. Federal income taxation at the entity level within the meaning of Section 7704 of the Code or otherwise being treated as a corporation for U.S. Federal income tax purposes; provided, however, that the condition of obtaining a written opinion of counsel may be waived (completely or as to particular matters) by the General Partner in its sole discretion with the prior written consent of the holders of a majority of the Preferred Units. Furthermore, any Transfer otherwise permitted hereunder shall, except in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon), be made only upon a determination by the General Partner that such Transfer will not result in a material adverse effect (including the cost of compliance) on the Partnership or any Partner as a result of the Partnership's obligations to make tax basis adjustments under Sections 734 or 743 of the Code; provided, however, that the General Partner may, in its sole discretion, waive the requirement to make such a determination. Each Limited Partner shall provide the General Partner with any information necessary to allow the Partnership to comply with its obligations to make tax basis adjustments under Section 734 or 743 of the Code. Except in accordance with the provisions of this Paragraph 12, each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership. To the fullest extent permitted by law, any attempted Transfer of a Limited Partner's interest without compliance with this Agreement shall be void. Every Transfer shall be

subject to all of the terms, conditions, restrictions and obligations of this Agreement.

(b) Substituted Limited Partners. Without the consent of the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon)), the aforesaid written opinion of counsel (unless waived by the General Partner with the prior written consent of the holders of a majority of the Preferred Units) and the aforesaid determination by the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon) or unless waived by the General Partner), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 12 shall be admitted as a substituted Limited Partner (to the extent of the interest transferred) upon the date specified therefor in a document providing for such admission, which document shall be executed by the General Partner (including, without limitation, in its capacity as attorney-in-fact for and on behalf of existing Limited Partners), the transferor of the Partnership interest transferred in accordance with the provisions of this Paragraph 12 and the transferee of such interest (and shall include the transferee's written agreement to be bound by this Agreement), and which admission shall not require the consent of any other Partner. Any transferee of a Partnership interest shall execute such other documents as the General Partner may request to effectuate such Transfer and shall, by its admission as a substituted Limited Partner, be subject to all of the terms of this Agreement and be deemed to have executed a power-of-attorney as provided in Paragraph 18(b). Each Partner, by its execution of this Agreement, agrees and consents to the admission of any substituted Limited Partner pursuant to the terms of this Paragraph 12.

(c) Disclosure of Information. No Limited Partner (other than Ezbon, Blue Horizon or a direct or indirect transferee of either Ezbon or Blue Horizon) shall disclose any Partnership Information (as defined in Paragraph 16(d)) to any prospective transferee (or otherwise violate the provisions of Paragraph 16(d)) in connection with a Transfer or proposed Transfer without the written

consent of the General Partner. The Limited Partners acknowledge that as a condition to granting such a consent, the General Partner may require that any prospective transferee execute a confidentiality agreement with the Partnership which is satisfactory to the General Partner.

(d) Transfer Expenses. The Limited Partner requesting a Transfer shall, at the request of the General Partner, reimburse the Partnership for any expenses reasonably incurred by the Partnership, the General Partner or any of their affiliates in connection with such Transfer or proposed Transfer, including any legal, accounting and other expenses related thereto ("Transfer Expenses"), whether or not such Transfer is consummated. At its election, and in any event if the requesting Limited Partner has not reimbursed the Partnership for any Transfer Expenses incurred by the Partnership in preparing for or consummating a proposed or completed Transfer within 30 days after the General Partner has given to such Limited Partner written demand for payment, the Partnership shall be entitled to reimbursement from the transferee of such interest. If neither such requesting Limited Partner nor the transferee reimburses the Partnership for such Transfer Expenses within a reasonable time, the General Partner may charge the transferee's or the transferor's Capital Account in an amount equal to the Transfer Expenses. For avoidance of doubt, such Transfer Expenses shall include, without limitation, the additional accounting, tax preparation and other administrative expenses reasonably incurred (or to be incurred) by the Partnership in the case of a Transfer that results in tax basis adjustments to be made by the Partnership under Section 743 of the Code or related provisions. Each Limited Partner also agrees to reimburse the Partnership, at the request of the General Partner, for any cost or other expense reasonably incurred by the Partnership, the General Partner or any of their respective affiliates (and if such expenses are not so reimbursed, the General Partner may charge such Limited Partner's Capital Account for such expenses) in connection with any tax basis adjustments that the Partnership is required to make under Section 743 of the Code or related provisions as a result of the transfer of interests of such Limited Partner by its beneficial owners. In the case of a Transfer (or the transfer of interests of a Limited Partner by its beneficial owners) that is

expected to result in future expenses of the type described in the two preceding sentences, the General Partner may estimate the amount of such expenses in good faith, and such estimate shall be final.

(e) No Entity Level Taxation. The General Partner (i) shall not cause or permit any offering of Partnership interests to be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), (ii) shall not cause or permit interests in the Partnership to become "traded on an established securities market," and (iii) shall withhold its consent to, and shall not "recognize", any Transfer of a "partnership interest" (or portion thereof) in the Partnership (Y) that, to the General Partner's knowledge after reasonable inquiry, would otherwise be accomplished by a trade on a "secondary market or the substantial equivalent thereof," in each case within the meaning of Section 469(k) or 7704 of the Code and any regulations promulgated thereunder that are in effect at the time of the proposed Transfer, or (Z) if and to the extent that such Transfer, if made, would cause the Partnership to fail to satisfy a "safe harbor" which it satisfied immediately prior to such Transfer, unless the General Partner determines that such Transfer would not otherwise cause the Partnership to be subject to U.S. Federal income tax at the entity level within the meaning of Section 7704 of the Code; for the purpose of the preceding clause, a "safe harbor" shall mean (1) the safe harbor for "transfers not involving trading" pursuant to Treasury Regulation §1.7704-1(e); (2) the safe harbor for "private placements" set forth in Treasury Regulation §1.7704-1(h); or (3) the "lack of actual trading" safe harbor set forth in Treasury Regulation §1.7704-1(j). The foregoing provisions of this Paragraph 12(e) shall not apply to the extent that the General Partner has determined with the consent of the holders of a majority of the Preferred Units that the Partnership shall be taxed as a corporation for U.S. Federal tax purposes.

(f) Representations and Warranties. The transferor and transferee shall provide the General Partner, in connection with any proposed Transfer, (x) with such written representations and warranties as it reasonably may request, including such representations and warranties as the General Partner may determine necessary in order to ensure that the Partnership will not be subject to U.S.

Federal income tax at the entity level within the meaning of Section 7704 of the Code and (y) with such other information as the General Partner reasonably may request, including tax basis information and the amount of gain or loss to be recognized upon such Transfer.

(g) Tag-Along Rights.

(i) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Preferred Units to any Person other than an affiliate (a "Buyer"), Dr. Harrison (taken together with his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same prices per Preferred Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the Preferred Units owned by Dr. Harrison (taken together with his heirs and legal representatives) as the Preferred Units to be sold by Ezbon or Blue Horizon represent with respect to the Preferred Units owned by Ezbon or Blue Horizon (as applicable) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If Dr. Harrison (or his heirs or legal representatives) wishes to participate in any sale under this Paragraph 12(g)(i), he (or they) shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him (or them) the opportunity to sell such Preferred Units to the Buyer, which written offer shall be made by Ezbon or Blue Horizon promptly after it decides to sell any or all of its Preferred Units to the Buyer. Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives, as applicable) shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Preferred Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to Dr. Harrison (and his heirs and legal representatives); provided, however, that any purchase of less than all of such Preferred Units by the Buyer shall be made from Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives)

pro rata based upon the relative number of Preferred Units that Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives) are otherwise entitled to sell pursuant to this Paragraph 12(g)(i). Any sale by Dr. Harrison (and his heirs and legal representatives) pursuant to this Paragraph 12(g)(i) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(i) shall survive any transfer by Ezbon or Blue Horizon of Preferred Units to an affiliate.

(ii) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Investment Common Units to a Buyer, each other Limited Partner (including, for the avoidance of doubt, Dr. Harrison and his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same price per Investment Common Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by such Limited Partner as the Investment Common Units to be sold by Ezbon or Blue Horizon represent with respect to the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by all Limited Partners (including, for the avoidance of doubt, Ezbon or Blue Horizon) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If any such other Limited Partner wishes to participate in any sale under this Paragraph 12(g)(ii), he shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him the opportunity to sell such Investment Common Units, Founder Common Units and/or Incentive Common Units to the Buyer, which written offer shall be made by Ezbon

or Blue Horizon promptly after it decides to sell any or all of its Investment Common Units to the Buyer. Ezbon or Blue Horizon and each such other Limited Partner shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Investment Common Units, Founder Common Units and/or Incentive Common Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to the other Limited Partners; provided, however, that any purchase of less than all of such Investment Common Units, Founder Common Units and/or Incentive Common Units by the Buyer shall be made from Ezbon or Blue Horizon and the other Limited Partners pro rata based upon the relative number of Investment Common Units, Founder Common Units and/or Incentive Common Units that Ezbon or Blue Horizon and each other Limited Partner are otherwise entitled to sell pursuant to this Paragraph 12(g)(ii). Any sale by each other Limited Partner pursuant to this Paragraph 12(g)(ii) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(ii) shall survive any transfer by Ezbon or Blue Horizon of Investment Common Units to an affiliate.

(h) Drag-Along Rights. Each Partner other than Ezbon and Blue Horizon (collectively, the "Holders") covenants and agrees that it shall, at the written request of Ezbon and Blue Horizon, consent to an Ezbon/Blue Horizon Sale (as defined below) and sell all of its Units pursuant to such Ezbon/Blue Horizon Sale and in accordance with this Paragraph 12(h). For purposes of this Paragraph 12(h), an "Ezbon/Blue Horizon Sale" shall mean the bona fide sale by Ezbon and Blue Horizon to an unaffiliated Person, for cash, of all of their Preferred Units and Investment Common Units (i) at an aggregate price equal to three times the price paid by Ezbon and Blue Horizon

for such Units, (ii) in a transaction which places an enterprise value on the Partnership of at least $3 billion or (iii) with the prior written consent of Dr. Harrison (or his heirs or legal representatives). Dr. Harrison (and his heirs or legal representatives, as applicable) shall sell all of his (or their) Preferred Units and Investment Common Units for the same consideration per Unit and, except as otherwise provided herein, on the same terms and conditions as Ezbon and Blue Horizon in the Ezbon/Blue Horizon Sale. Each Holder (including, without limitation, Dr. Harrison (and his heirs or legal representatives, as applicable)) shall sell, in connection with the Ezbon/Blue Horizon Sale, all other Units held by such Holder, at the then fair market value therefor established by the pricing for the Preferred Units and Investment Common Units in the Ezbon/Blue Horizon Sale, i.e., the then inherent value of the "profits interests" represented by the Founder Common Units and the Incentive Common Units after the then fair market values of the Tracking Units (if any) have been determined in the reasonable discretion of the General Partner. Notwithstanding anything herein to the contrary, in connection with an Ezbon/Blue Horizon Sale, any indemnification a Holder shall be required to provide will be made on a several, and not joint and several, basis, and pro rata to its share of the sale proceeds, no Holder shall be required to agree to any non-solicitation, non-competition or similar restrictive covenant or agreement, and no Holder's obligations for indemnification and similar obligations shall exceed the aggregate of the cash proceeds actually received by, and any amount deposited into escrow on behalf of, such Holder in connection with such Ezbon/Blue Horizon Sale. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with an Ezbon/Blue Horizon Sale other than as the General Partner deems necessary to ensure that the purchaser of the Units in respect of any such Ezbon/Blue Horizon Sale is bound with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the drag-along rights established by this Paragraph 12(h) shall survive any transfer by Ezbon or Blue Horizon of its Units to an affiliate.

(i) Further Restriction on Sales by Dr. Harrison. Dr. Harrison (and his heirs and

legal representatives) shall not sell any of his (or their) Units until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, without the prior written consent of the holders of a majority of the Preferred Units, except as otherwise expressly provided for in this Agreement and subject to the right of first negotiation provided in Paragraph 12(j) and the obligation of good faith negotiation provided in Paragraph 18(n). In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(i), the net after-tax sales proceeds to Dr. Harrison (and his heirs or legal representatives, as applicable) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto.

(j) Right of First Offer. If at any time Dr. Harrison (or his heirs or legal representatives) desires to sell all or any part of his (or their) Units to any Person (other than pursuant to Paragraphs 4(d), 12(g) or 12(h)), and is not prohibited from doing so under Paragraph 12(i), he (or they) shall submit a written offer (the "Offer") to sell such Units (the "Offered Units") to Ezbon and Blue Horizon on terms and conditions, including price, not less favorable to Ezbon and Blue Horizon than those on which Dr. Harrison (or his heirs or legal representatives) proposes to sell such Units to a third party. Each of Ezbon and Blue Horizon shall have the right to purchase its pro rata share of the Offered Units (based on their relative ownership of the type of Units to be sold), together with a right of oversubscription if either fails to exercise the Offer in full. If Ezbon or Blue Horizon desires to purchase all or any part of the Offered Units, it shall communicate in writing its election to purchase to Dr. Harrison (or his heirs or legal representatives) within 30 days of the date the Offer was made. Sales of the Offered Units shall be made at the principal office of the Partnership on the 45th day following the date the Offer was made (or if such 45th day is not a business day, then on the next succeeding business day.) If Ezbon and Blue Horizon do not purchase all of the Offered Units, the Offered Units not so purchased may be sold by Dr. Harrison (or his heirs or legal representatives) at any time within 120 days after the date the Offer was made, at not less than the price and upon other

terms and conditions, if any, not more favorable to the buyer than those specified in the Offer. In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(j), the net after-tax sales proceeds to Dr. Harrison (or his heirs or legal representatives) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Offered Units to either Ezbon and/or Blue Horizon.

13. Transfer of Interest of General Partner. The General Partner shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber all or any part of its general partner interest in the Partnership, except in connection with an Ezbon/Blue Horizon Sale. To the fullest extent permitted by law, any attempted transfer of the General Partner's interest, except in connection with an Ezbon/Blue Horizon Sale, shall be void.

14. Withdrawal. Other than in respect of the withdrawal of Finkelman as contemplated by this Agreement, no Partner shall have the right to withdraw from the Partnership.

15. Indemnification.

(a) Indemnified Parties. To the fullest extent permitted by law, the General Partner, the Management Company, ATPharma, the Tax Matters Partner (as defined in Paragraph 18(i)), each member of the Board, each liquidator for the Partnership, and each member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma or the liquidator (herein referred to collectively as "Indemnified Parties" and singly as an "Indemnified Party") shall be indemnified by the Partnership (to the extent such party has not been indemnified by any other organization) against any loss, judgment, liability, expense and/or amount paid in settlement of any claim incurred by or imposed upon him in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which he may be made a party or otherwise involved or with which he shall be threatened, by reason of his being the General Partner, the Management Company, ATPharma, the Tax

Matters Partner, a member of the Board, a liquidator for the Partnership, or a member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or any organization in which the Partnership directly or indirectly owns or owned an interest or of which the Partnership is or was a creditor, which organization he serves or has served as a managing director, director, officer, employee or agent directly or indirectly at the request of the Partnership (in any case, whether or not he continues to be the General Partner, the Management Company, ATPharma, the Tax Matters Partner, a member of the Board, a liquidator for the Partnership, or member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or of such organization at the time such action, suit or proceeding is brought or threatened, provided that with respect to any former Operating Company of which the Partnership no longer directly or indirectly owns any Operating Company Securities, such Indemnified Party shall only be entitled to indemnification and advancement of expenses pursuant to this Paragraph 15 for causes of action that arose from facts and circumstances in existence on or prior to the first annual anniversary of the date that the Partnership directly or indirectly disposed of the last of its Operating Company Securities of such Operating Company, regardless of when such action, suit or proceeding was brought or threatened), provided that the Indemnified Party acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership, except to the extent any such loss, judgment, liability, expense and/or amount paid in settlement of any claim was the result of willful fraud, willful misconduct, Gross Negligence or intentional and material breach of this Agreement on the part of the Indemnified Party or a dispute between or among the General Partner and one or more of its owners, the Management Company and one or more of its employees, ATPharma and one or more of its employees, two or more owners of the General Partner, two or more employees of the Management Company or two or more employees of ATPharma, and further provided that in the case of an owner of the General Partner or a member, partner, managing director, director, officer,

employee, agent or controlling person of the Management Company, ATPharma, a liquidator for the Partnership or such other organization, the action, suit or proceeding related directly or indirectly to the affairs of the Partnership. The General Partner is authorized to enter into such separate agreements or deed poll on behalf of the Partnership with or benefiting the Indemnified Parties on terms consistent with this Paragraph 15(a) as the General Partner in its reasonable discretion considers necessary or desirable to give full and complete effect to the indemnity provisions set forth herein. Notwithstanding anything to the contrary set forth in this Paragraph 15, holders of Tracking Units may only be indemnified by the Operating Company and/or Project with respect to which their Tracking Units relate, and not by the Partnership, ATP or any Subsidiary (including, without limitation, any Operating Company) or other Project.

(b) Indemnification Not Exclusive. The foregoing rights of indemnification shall be in addition to any rights to which an Indemnified Party may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(c) Expenses. The Partnership may pay the expenses incurred by an Indemnified Party in defending any action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by such Indemnified Party to repay such payment if he shall be determined not to be entitled to indemnification therefor as provided herein; provided that no such advance payment by the Partnership to an Indemnified Party shall be made with respect to expenses incurred as a result of any action, suit or proceeding initiated against such Indemnified Party by the holders of a majority of the Preferred Units.

(d) Ordering of Indemnification Obligations. Solely for purposes of clarification, and without expanding the scope of indemnification pursuant to this Paragraph 15, the Partners intend that, to the maximum extent permitted by law, as between (i) Operating Companies, (ii) the Partnership and (iii) the General Partner, the Management Company, ATPharma or a liquidator for the

Partnership, this Paragraph 15 shall be interpreted to reflect an ordering of liability for potentially overlapping or duplicative indemnification payments, with any applicable Operating Company having primary liability, the Partnership having only secondary liability, and (if applicable) the General Partner, the Management Company, ATPharma or a liquidator for the Partnership having only tertiary liability. The possibility that an Indemnified Party may receive indemnification payments from an Operating Company shall not restrict the Partnership from making payments under this Paragraph 15 to an Indemnified Party that is otherwise eligible for such payments, but such payments by the Partnership are not intended to relieve any Operating Company from any liability that it would otherwise have to make indemnification payments to such Indemnified Party and, if an Indemnified Party that has received indemnification payments from the Partnership actually receives duplicative indemnification payments from an Operating Company for the same claim, such Indemnified Party shall repay the Partnership to the extent of such duplicative payments. If, notwithstanding the intention of this Paragraph 15, an Operating Company's obligation to make indemnification payments to an Indemnified Party is relieved or reduced under applicable law as a result of payments made by the Partnership pursuant to this Paragraph 15, the Partnership shall have, to the maximum extent permitted by law, a right of subrogation against (or contribution from) such Operating Company for amounts paid by the Partnership to an Indemnified Party that relieved or reduced the obligation of such Operating Company to such Indemnified Party. Indemnification payments (if any) made to an Indemnified Party by the General Partner, the Management Company, ATPharma or a liquidator for the Partnership in respect of any claim for which (and to the extent) such Indemnified Party is otherwise eligible for payments from the Partnership under this Paragraph 15 shall not relieve the Partnership from its obligation to such Indemnified Party and/or the General Partner, the Management Company, ATPharma or a liquidator for the Partnership, as applicable, for such payments. As used in this Paragraph 15, "indemnification" payments made or to be made by an Operating Company shall be deemed to include (i) payments made or to be made by any successor to the indemnification

obligations of such Operating Company and (ii) equivalent payments made or to be made by or on behalf of such Operating Company (or such successor) pursuant to an insurance policy or similar arrangement.

(e) Partner Clawback. If (i) the Partnership incurs a liability or obligation under this Paragraph 15 and (ii) the Partnership does not have sufficient available cash on hand to satisfy such liability or obligation, then the General Partner, in its sole discretion, may require that each Partner make additional payments to the Partnership, upon no less than ten days' prior written notice from the General Partner, of its pro rata share (according to the amount by which such liability or obligation would have reduced the aggregate distributions received by each Partner (and its predecessors in interest) as of the time of such notice in respect of each class of Units then held by each Partner), after giving effect to any distributions returned by the Partners pursuant to this Paragraph 15(e) and any distribution of such returned amounts to the Partners, had such liability or obligation been incurred and paid by the Partnership prior to the time any distributions were made) of an amount up to the amount necessary to satisfy such liability or obligation; provided that (A) no Partner shall be required to contribute an aggregate amount pursuant to this Paragraph 15(e) that exceeds 20% of its aggregate capital contributions to the Partnership and (B) no Partner shall be required to contribute an amount that exceeds the aggregate amount of distributions made to such Partner (and such Partner's predecessors in interest) in respect of the applicable class of Units during the 24-month period preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period. A Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall survive the winding up and dissolution of the Partnership (and, to the fullest extent permitted by law, the General

Partner may require any payments made after the Partnership's dissolution to be made to the General Partner or directly to an Indemnified Party). The return obligations of the Partners pursuant to this Paragraph 15(e) shall be in addition to their capital contribution obligations with respect to their Contingent Subscriptions (if any). Amounts returned by a Partner pursuant to this Paragraph 15(e) in respect of a class of Units shall be treated as a reduction in the amount of distributions received by such Partner in respect of such class of Units, and amounts returned by such Partner pursuant to this Paragraph 15(e) shall not reduce such Partner's unfunded Contingent Subscription; provided that failure to make a required payment pursuant to this Paragraph 15(e) by any Partner may, in the General Partner's sole discretion, be treated for purposes of Paragraph 5(c) and the provisions and remedies therein as a failure by such Partner to make a required capital contribution with respect to its Contingent Subscription (if any). Amounts to be returned pursuant to this Paragraph 15(e) shall be payable in cash. For purposes of determining any applicable limit on a Partner's return obligation pursuant to this Paragraph 15(e), amounts distributed to a Partner in kind shall be valued at their fair market value on the date of distribution. The provisions of this Paragraph 15(e) shall not be construed or interpreted as inuring to the benefit of any creditor of (i) the Partnership (other than Indemnified Parties with respect to which the General Partner has elected to invoke the provisions of this paragraph), (ii) a Limited Partner, (iii) the General Partner or (iv) any Indemnified Party.

16. Fiscal Year; Records and Reports; Confidentiality; Organizational Expenses.

(a) Fiscal Year. Except as may be required by the Code, the fiscal year and the taxable year of the Partnership shall each be the calendar year.

(b) Partnership Records. At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership in accordance with the ELP Law. Such books of account, together with an executed copy of this Agreement and the Registration Statement (and any amendments thereto) and a list containing the names, addresses and Subscriptions of the Partners (the "List of Partners"), shall at all

times be maintained at a principal office of the Partnership, and shall be open to inspection by the Partners or their duly authorized representatives for purposes related to the inspecting Limited Partner's interest in the Partnership. Copies of all information and records referenced in the preceding sentence shall be provided to each holder of at least 25,000 Preferred Units promptly following its written request therefor. A copy of the List of Partners shall also be provided to each holder of at least 25,000 Preferred Units promptly after any change thereto.

(c) Audit. At any time while the Partnership continues and until its affairs have been wound up (but only during reasonable business hours), each Partner may fully examine and audit the Partnership books, records, accounts and assets, including bank balances, may make copies of such books and records (provided such Partner agrees to reimburse the Partnership or the Management Company, as applicable, for the reasonable costs incurred in making such copies), and may make, or cause to be made, any examination or audit at such Partner's expense. Notwithstanding the preceding sentence, the cost of any such audit, examination or copies made by or on behalf of the holders of a majority of the Preferred Units shall, in each case, be borne by the Partnership. Any such examination or audit may be undertaken by (i) such Limited Partner, or (ii) a designee of a Limited Partner (provided that the designee agrees in writing to the confidentiality provisions of Paragraph 16(d) or is otherwise subject (by the nature of its position, pursuant to written agreement, or otherwise) to substantially equivalent restrictions with respect to use and disclosure of Partnership Information as are set forth in Paragraph 16(d)). The Partnership shall ensure that the provisions of this Paragraph 16(c) apply with equal respect to the books and records of ATP and any Subsidiary (including, without limitation, any Operating Company).

(d) Confidentiality.

(i) A Limited Partner's rights to access or to receive any information about the Partnership, an Intermediary, ATC, the Operating Companies and their respective affairs, including, without limitation, (1) information to which a Limited Partner is provided access

pursuant to Paragraph 16(b) or (c), (2) financial statements, reports and other information provided pursuant to Paragraphs 16(e) and (f), and (3) this Agreement, any amendments hereto or any documents pursuant to which such Limited Partner acquired its interest in the Partnership and any other related agreements or materials (the "Partnership Information"), are conditioned on such Limited Partner's willingness and ability to assure that the Partnership Information will be used solely by such Limited Partner for purposes reasonably related to such Limited Partner's interest as a Limited Partner, and that such Partnership Information will not become publicly available as a result of such Limited Partner's rights to access or to receive such Partnership Information, and each Limited Partner agrees not to use Partnership Information other than for purposes of evaluating, monitoring or protecting its investment in the Partnership. For purposes of this Paragraph 16(d), Partnership Information (including information relating to an Operating Company or another Partner (or its respective partners, stockholders or members)) provided by one Partner to another shall be deemed to have been provided on behalf of the Partnership.

(ii) Each Limited Partner acknowledges the General Partner's belief that the Partnership Information includes trade secrets of the Partnership and the Operating Companies and that the release of any such Partnership Information would cause competitive harm to the Partnership, the General Partner, the Management Company, and/or the Operating Companies.

(iii) The Limited Partners acknowledge that the General Partner and the Management Company and their respective partners, members, managing directors, officers, and employees are expected to acquire confidential third-party information that, pursuant to fiduciary, contractual, legal or similar obligations, may not be disclosed to the Partnership or the Limited Partners without violating such obligations, and agree that none of such Persons shall be in breach of any duty under this Agreement or the ELP Law as a result of acquiring, holding or failing to disclose such information to the Partnership or the Limited Partners.

(iv) Each Limited Partner agrees to maintain any Partnership Information provided to it in the strictest confidence and not to disclose the Partnership Information to any Person including, without limitation, a prospective transferee of such Partner's interest in the Partnership, without the prior written consent of the General Partner. Notwithstanding the foregoing, the General Partner hereby consents to the disclosure by each Limited Partner of Partnership Information to such Limited Partner's accountants, attorneys, board members and similar advisors bound by a duty of confidentiality.

(v) With respect to any Limited Partner, the obligation to maintain any Partnership Information in confidence shall not apply to any Partnership Information: (A) that is required to be disclosed pursuant to applicable law or a securities exchange rule (but in each case only to the extent of such requirement and, to the fullest extent permitted by law, only if prompt notice is given to the Partnership so that the General Partner may seek an appropriate remedy with the reasonable cooperation of such Limited Partner; (B) that is required to be disclosed in order to protect such Limited Partner's interest in the Partnership (but only to the extent of such requirement and only after consultation with the General Partner); (C) that is publicly known or available in the absence of any improper or unlawful action on the part of such Limited Partner; (D) that is known or available to such Limited Partner other than through or on behalf of the Partnership, the General Partner or the Management Company; or (E) the disclosure of which has been consented to by the General Partner in writing.

(vi) Each Limited Partner shall promptly inform the General Partner if it becomes aware of any reason, whether under law, regulation, policy, securities exchange rule or otherwise, that it (or any of its equity holders) will, or might become compelled to, use the Partnership Information other than as contemplated by Paragraph 16(d)(i) or disclose Partnership Information in violation of the confidentiality restrictions in Paragraph 16(d)(iv) (disregarding Paragraph 16(d)(v)(A)).

(vii) Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, with the exception of the financial statements and reports to be provided to certain holders of Preferred Units and Dr. Harrison (or his heirs or legal representatives) pursuant to Paragraphs 16(e) and (f), the General Partner shall have the right not to provide any Limited Partner, for such period of time as the General Partner in good faith determines to be advisable, with any Partnership Information that such Limited Partner would otherwise be entitled to receive or to have access to pursuant to this Agreement or the ELP Law if: (A) the Partnership, the General Partner, an Intermediary, ATC, the Management Company or ATPharma is required by law or by agreement with a third party to keep such Partnership Information confidential; (B) the General Partner in good faith believes that the disclosure of such Partnership Information to such Limited Partner is not in the best interest of the Partnership or could damage the Partnership or the conduct of the affairs of the Partnership or the Operating Companies (which may include a determination by the General Partner that such Limited Partner (or any of its equity holders) is disclosing or may disclose such Partnership Information (or may be compelled to disclose such Partnership Information) or has not indicated a willingness to protect Partnership Information from being disclosed (or compelled to be disclosed) and that the potential of such disclosure by such Limited Partner (or any of its equity holders) is not in the best interest of the Partnership or could damage the Partnership, the Operating Companies or the conduct of the affairs of the Partnership or the Operating Companies) or (C) such Limited Partner has notified the General Partner of its election not to have access to, or to receive, such Partnership Information.

(viii) In addition to any other remedies available at law, the Partners agree that, to the fullest extent permitted by law, the Partnership shall be entitled to equitable relief, including, without limitation, the right to an injunction or restraining order, as a remedy for any

failure by a Limited Partner to comply with its obligations with respect to the use and disclosure of Partnership Information, as set forth in Paragraph 16(d)(i) and (iv).

(ix) Each Limited Partner agrees to cooperate with such procedures and restrictions as may be developed by the General Partner from time to time in connection with the disclosure of non-public Partnership Information, as determined by the General Partner to be reasonably necessary and advisable to maintain and promote compliance with legal and other regulatory matters applicable to the Partnership, the Limited Partners, the General Partner, an Intermediary, ATC and the Management Company, including securities laws and regulations.

(x) Each Limited Partner acknowledges and agrees that the General Partner may consider the different circumstances of Limited Partners with respect to the restrictions and obligations imposed on Limited Partners in this Paragraph 16(d) and the provision of information under this Agreement, and the General Partner in its reasonable discretion may agree to waive or modify any of such restrictions and/or obligations with respect to a Limited Partner with the consent of such Limited Partner. Each Limited Partner further acknowledges and agrees that any such agreement by the General Partner with a Limited Partner to waive or modify any of the restrictions and/or obligations imposed by this Paragraph 16(d) (or to withhold Partnership Information) shall not constitute a breach of any duty stated or implied in law or in equity to any Limited Partner, regardless of whether different agreements are reached with different Limited Partners.

(xi) Notwithstanding any other provision of this Agreement to the contrary, to comply with Treasury Regulation §1.6011-4(b)(3), each Limited Partner (and any employee, representative or other agent of such Limited Partner) may disclose to any and all Persons, without limitation of any kind, the U. S. Federal tax treatment and tax structure of the Partnership or any transactions contemplated by the Partnership, it being understood and agreed that, for this purpose (A) the name of, or any other identifying information regarding, (1) any existing or

future Partner (or any affiliate thereof), or (2) any investment or transaction entered into by the Partnership, (B) any performance information relating to the Partnership or its investments or to Operating Companies, and (C) any performance or other information relating to other investments sponsored by the General Partner, ATC or the Management Company do not constitute such tax treatment or tax structure information.

(xii) To the fullest extent permitted by law, the provisions of this Paragraph 16(d) shall survive the withdrawal of any Partner or the transfer or assignment of any Partner's interest in the Partnership and shall be enforceable against such Partner after such withdrawal, transfer or assignment.

(xiii) Notwithstanding anything to the contrary set forth in this Agreement, this Paragraph 16(d) shall not be applied to authorize any information to be withheld from, or any access to any information to be limited in respect of, Ezbon, Blue Horizon or their respective direct or indirect transferees or assignees.

(e) Annual Financial Statements. The General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 90 days after the close of each fiscal year the financial statements of the Partnership for such fiscal year. Such financial statements shall include statements of assets and liabilities, net assets represented by Partners' capital, operations, changes in net assets, cash flows and changes in such Partner's capital, shall be prepared and presented in accordance with generally accepted accounting principles in the U.S. ("GAAP"), except for such deviations as are required to implement the terms of this Agreement, and shall be audited by a firm of independent public accountants or auditors of national or international standing which has been approved by the holders of a majority of the Preferred Units. Notwithstanding anything in this Agreement to the contrary, the Partnership shall not be required to consolidate (or otherwise combine, including, without limitation, via the equity method of accounting) its financial results with those of Operating Companies whether or not U.S. generally accepted

accounting principles would require such consolidation (or other form of combination). The General Partner shall also use its best efforts to transmit to each Partner within 90 days after the close of each fiscal year a report indicating such Partner's share of all items of income, gain, loss or deduction of the Partnership for such year for U.S. Federal income tax purposes and such additional information with respect to the Partnership as he may reasonably request to enable him to complete any tax return or report he is required to file or otherwise to comply with applicable law. Without limiting the foregoing (i) the General Partner shall use reasonable efforts to determine whether any entity in which the Partnership invests (directly or indirectly) is a "passive foreign investment company" (a "PFIC") as defined in Section 1297 of the Code and will so advise the Partners and (ii) at the request of any Partner, the General Partner shall use reasonable efforts to cause each entity that the General Partner determines is a PFIC based on the advice of the Partnership's U.S. tax advisors to agree to provide on a timely basis to the Partnership or the Partners, as applicable, the financial information that is necessary to permit the Partnership or the Partners, as applicable, to make an election to treat any such PFIC as a "qualified electing fund" under Section 1295 of the Code (a "QEF Election"), and to permit the Partners to comply with their U.S. federal income tax reporting requirements relating to the PFIC. For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison within 90 days after the close of each fiscal year, (i) a list of the Partnership's direct and indirect investments, valued at fair market value as determined in accordance with Paragraph 9, as of the end of such fiscal year, and (ii) a brief narrative report as to status and operations of the Partnership. The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish annual financial statements of the type specified in this Paragraph 16(e) with respect to any Intermediary, ATC and any Subsidiary (including, without limitation, any Operating Company).

(f) Quarterly Financial Statements. Each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) shall be furnished, within 45 days after the end

of each of the first three quarters of each fiscal year of the Partnership, (i) an unaudited list of the Partnership's direct and indirect investments as of the end of such quarter, (ii) unaudited statements of assets and liabilities of the Partnership and net assets represented by Partners' capital as of the end of such quarter and (iii) unaudited statements of operations and changes in such holder or Dr. Harrison's (or his heirs' or legal representatives') capital (as the case may be) for the period from the beginning of such fiscal year through the quarter then ended. Such financial statements shall be prepared and presented in accordance with GAAP, except for such deviations as are required to implement the terms of this Agreement, the omission of certain information and footnote disclosures normally included in year-end financial statements prepared in accordance with GAAP and as otherwise provided in Paragraph 16(e). For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 45 days after the end of each quarter, (i) a list of the Partnership's direct and indirect investments, valued at fair market value in accordance with Paragraph 9, as of the end of such quarter, and (ii) a narrative report as to status and operations of the Partnership (which shall include a discussion of operations compared to each then currently applicable budget). The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish quarterly financial statements of the type specified in this Paragraph 16(f) with respect to ATC, any Intermediary and any Subsidiary (including, without limitation, any Operating Company).

(g) Monthly Telephone Updates. At the request of the holders of a majority of the Preferred Units, the General Partner will make itself available to such holders by telephone for an update as to status and operations of the Partnership.

(h) Web Site. Notwithstanding Paragraph 18(a), the General Partner shall be deemed to have satisfied its obligations to transmit or furnish financial statements and reports pursuant to this Paragraph 16 if the General Partner posts such financial statements and/or reports on a web site and gives prompt written notice to the requisite Limited Partners, pursuant to Paragraph 18(a), of the

availability of such financial statements and/or reports, the URL address of the web site and a password for access to such web site, if necessary. Any such financial statements and reports posted to a web site and not delivered in hard copy to the requisite Limited Partners shall be maintained on such web site for a reasonable period of time. Any such web site shall provide for print capability for such financial statements and reports, provided that, with respect to any Limited Partner (except any holder of at least 25,000 Preferred Units or Dr. Harrison (or his heirs or legal representatives)), the General Partner may disable the print capability (or not allow print capability) if the General Partner exercises (or would be permitted to exercise) its right pursuant to Paragraph 16(d)(vii) not to provide such Limited Partner with Partnership Information, but only to the extent provided therein.

(i) Organizational Expenses. The organizational expenses of the Partnership shall be amortized for U.S. Federal income tax purposes to the extent permitted by Section 709 of the Code. The reasonable out-of-pocket legal expenses incurred by Ezbon and Blue Horizon in connection with the organization of the Partnership shall be reimbursed to Ezbon and Blue Horizon by the Partnership and treated as an organizational expense of the Partnership.

17. Amendment. Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived (on behalf of all Partners), modified or amended only with the written consent of the General Partner, the holders of a majority of the Preferred Units and Dr. Harrison (or his heirs or legal representatives) so long as Dr. Harrison (or his heirs or legal representatives) remain as Limited Partners; provided, however, that the consent of Dr. Harrison (or his heirs or legal representatives) shall not be required to (i) authorize additional Preferred Units and Investment Common Units, (ii) modify or delete any provision of this Agreement that becomes contrary to applicable law after the date of this Agreement, provided that such modification or deletion is to the minimum extent required to comply with such law, or (iii) modify any provision of this Agreement for bona fide tax structuring reasons, provided that such modification does not have a disproportionate adverse affect on Dr. Harrison (or his heirs or legal representatives). Upon obtaining all approvals required by this Agreement (if any)

and without further action or execution by any other Person, including any Limited Partner, (i) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the General Partner, and (ii) the Limited Partners shall be deemed a party to and bound by such amendment of this Agreement. The General Partner shall promptly furnish copies of any amendments to this Agreement to all Partners.

18. General Provisions.

(a) Notices. Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and shall be deemed to have been properly given two days after delivery by courier or being sent by e-mail, addressed in each case, if to the Partnership or the General Partner, at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, e-mail: seth@appletreepartners.com, and if to any Limited Partner, at the address set forth in the List of Partners or, in each case, to such other address or addresses as the addressee may have specified by written notice as aforesaid to the other parties. Sections 8 and 19(3) of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply.

(b) Power of Attorney. To the fullest extent permitted by law, (i) each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner as his attorney-in-fact with full power, proxy and authority in his name, place and stead to make, execute, sign, acknowledge and, if necessary, file (A) any required amendment to the Registration Statement; (B) any amendment to this Agreement that does not require, under the terms of this Agreement, the approval of all the Partners, including any amendment pursuant to Paragraph 5(b); provided that Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment have signed or otherwise approved such amendment and all other required signatures and approvals have been obtained; (C) any other instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the

Partner's assignee as a Partner; and (D) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the Cayman Islands, the U.S. or any state or governmental entity in any jurisdiction in which the Partnership is conducting or intends to conduct its affairs, provided all such instruments, certificates and other documents referred to in clauses (A), (B), (C) and (D) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents executed pursuant to such power of attorney shall be sent to all Partners, except any instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the Partner's assignee as a Partner.

(i) Each of the Partners is aware that the terms of this Agreement permit certain amendments to the Registration Statement and this Agreement to be effected and certain other actions to be taken by or with respect to the Partnership, in each case with the approval or by the vote of less than all the Partners. If, as and when (A) an amendment of the Registration Statement or this Agreement is proposed or an action is proposed to be taken by or with respect to the Partnership which does not require, under the terms of this Agreement, the approval of all of the Partners, (B) Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment or action have approved such amendment or action in the manner contemplated by this Agreement, and (C) a Partner has failed or refused to approve such amendment or action (hereinafter referred to as a non-consenting Partner), each Partner agrees that (1) it is bound thereby, (2) any such amendment or action may be executed solely by the General Partner without any further action or execution by any other Person (including, without limitation, the non-consenting Partners), and (3) to the fullest extent permitted by law, the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such non-consenting Partner, and in his name, place and stead, any and all instruments

and documents which may be necessary or appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Partner is fully aware that he and each other Partner have executed this special power of attorney, and that each Partner will rely on the effectiveness of such powers with a view to the orderly administration of the Partnership's affairs.

(ii) To the fullest extent permitted by law, the foregoing grant of authority and that granted pursuant to Paragraph 5(c), (A) is each a special power of attorney coupled with an interest in favor of the General Partner, deemed to secure the proprietary interest of the General Partner and/or the performance of obligations owed to the General Partner, and as such shall be irrevocable and shall survive the death, disability or incapacity (or, in the case of a Partner that is a corporation, association, limited liability company, partnership, trust or other entity, shall survive the merger, dissolution or other termination of the existence) of the Partner and (B) shall survive the assignment by the Partner of the whole or any portion of his interest, except that in the case of an assignment of the Partner's whole interest, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect the substitution of his transferee.

(c) Additional Documents and Acts. Each Partner hereby agrees to execute and deliver all certificates, instruments or documents required by laws of the various states or other jurisdictions in which the Partnership conducts its affairs, to conform with the laws of such states or other jurisdictions governing limited partnerships.

(d) Binding on Successors. This Agreement shall be binding upon and it shall inure to the benefit of the respective heirs, successors, permitted assigns and legal representatives of the parties hereto. Without limitation as to the foregoing, the rights of Dr. Harrison specified in this Agreement and the Schedules hereto shall inure to the benefit of his heirs and legal representatives.

(e) Counterparts. This Agreement or any amendment hereto may be signed in any number of counterparts, each of which shall be an original, but all of which taken together shall con-

stitute one Agreement (or amendment, as the case may be).

(f) Voting. Any vote or other action required or permitted to be taken by this Agreement may be taken by written consent signed by not less than the requisite percentage in interest of parties required or permitted to take such vote or other action. Notwithstanding anything to the contrary set forth in this Agreement, a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as may otherwise be required by law, and any Units it may hold shall not be deemed outstanding for purposes of determining the parties required or permitted to take any vote or other action. The voting, consent, approval, appointment and other such rights granted to Ezbon and Blue Horizon pursuant to this Agreement (i) are personal to them and may not be assigned, transferred or otherwise disposed of without the consent of the General Partner, in its sole and absolute discretion, except in connection with a transfer by Ezbon and Blue Horizon of their entire interests as limited partners, and (ii) shall cease and be of no further force or effect if Ezbon or Blue Horizon becomes a Defaulting Partner, except as may otherwise be required by law or this Agreement.

(g) Applicable Law, Remedies for Breach and Jurisdiction.

(i) Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the Cayman Islands without regard to principles of conflicts of laws and, without limitation thereof, that the ELP Law as now adopted or as may be hereafter amended shall govern this Agreement.

(ii) EACH LIMITED PARTNER AND THE GENERAL PARTNER, ON BEHALF OF ITSELF AND THE PARTNERSHIP, IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST THE GENERAL PARTNER, THE MANAGEMENT COMPANY (OR THEIR RESPECTIVE

PARTNERS, MEMBERS, STOCKHOLDERS, MANAGERS, DIRECTORS, OFFICERS, CONSULTANTS OR EMPLOYEES, IN THEIR CAPACITY AS SUCH OR IN ANY RELATED CAPACITY) OR THE PARTNERSHIP, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY SCHEDULE HERETO.

(iii) Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a party may be lawfully entitled.

(iv) In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion) for the Partnership and the other Partners, and the General Partner, in its sole discretion, may take different actions with respect to multiple Limited Partners that breach the same provisions. To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.

(v) It is the intent of the parties that this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties.

(vi) To the extent not prohibited by applicable law, each Partner (A) agrees that any action, suit or other proceeding arising out of or based upon this Agreement or any Schedule hereto, the subject matter hereof or thereof or the dealings of any Partner or the Partnership in connection therewith shall be brought only in a court of applicable jurisdiction located in the Cayman Islands or a state or Federal court in the State of Delaware in the U.S., (B)

irrevocably submits to the jurisdiction of the courts of the Cayman Islands and the state and Federal courts in the State of Delaware in the U.S. and (C) waives and agrees not to assert in any such action, suit or proceeding brought in any of the above named courts, any claim that such Partner is not subject personally to the jurisdiction of such court or that such action, suit or proceeding is brought in an inconvenient forum or that the venue is improper.

(h) Securities Act Matters. Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, he must bear the economic risks of his investment for an indefinite period because the Partnership interests have not been registered under the Securities Act and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act or an exemption from such registration is available.

(i) Tax Matters Partner. The "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership shall be the General Partner (the "Tax Matters Partner"). The Tax Matters Partner shall not take any action in its capacity as such that is adverse to the holders of the Preferred Units or Investment Common Units without the prior written consent of the holders of a majority of the Units of such class.

(j) Contract Construction. Where the context of this Agreement so permits, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa, and use of the word "Person" shall be deemed to mean or include natural persons, entities, trusts, limited partnerships, exempted limited partnerships, limited liability companies, corporations, general partnerships, joint ventures, associations and governmental bodies and agencies. The invalidity or unenforceability of any one or more provisions of this Agreement shall not impair the enforceability of the other provisions. If one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, whether due to public policy, equitable considerations, because such provisions are excessively broad as to scope, activity or subject, or otherwise, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as

to be enforceable to maximum extent compatible with the applicable law as it shall then appear. References in this Agreement to sections of the Code or the ELP Law shall be deemed to refer to such sections as they may be amended after the date of this Agreement. Definitions in this Agreement apply equally to both the singular and the plural forms of the defined terms.

(k) Fiduciary Duty of Indemnified Parties. Notwithstanding anything to the contrary in this Agreement, to the extent that at law or in equity an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or any Partner, such Indemnified Party acting under this Agreement shall, to the fullest extent permitted by law, not be liable to the Partnership or any Partner for breach of fiduciary duty for its good faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities relating thereto of an Indemnified Party to the Partnership or any Partner otherwise existing at law or in equity, are agreed by each Partner to so replace such other duties and liabilities of such Indemnified Party.

(l) Entire Agreement. This Agreement, the Schedules hereto, the related Subscription Agreements and any other written agreement between the General Partner, on its own behalf or on behalf of the Partnership, and any Limited Partner, shall constitute the entire agreement and understanding among the respective parties to such agreements with respect to the subject matter hereof and thereof. The Partners acknowledge that, notwithstanding any provision of this Agreement (including Paragraph 17) or of any Subscription Agreement, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner or other Person, may enter into side letters or other writings to or with Ezbon, Blue Horizon or their respective direct or indirect transferees which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or any Subscription Agreement ("Side Letters"). The Partners agree that any rights established, or any terms of this Agreement or any Subscription Agreement altered or supplemented, in a Side Letter to or with Ezbon, Blue Horizon or their direct or indirect transferees

shall for the purposes of this Agreement or any Subscription Agreement be valid, binding and enforceable in accordance with their terms as between Ezbon, Blue Horizon or any such transferee, the General Partner and the Partnership.

(m) Partnership Counsel. The General Partner has retained Proskauer Rose LLP and Maples and Calder in connection with the formation of the Partnership and the offering of the limited partner interests and may retain Proskauer Rose LLP and Maples and Calder as legal counsel in connection with the management and operation of the Partnership, including, without limitation, making, holding and disposing of investments. Neither Proskauer Rose LLP nor Maples and Calder will represent any Limited Partner or prospective limited partner of the Partnership, unless, subject to applicable laws, the General Partner and such Limited Partner or prospective limited partner otherwise agree and such Limited Partner or prospective Limited Partner separately engages Proskauer Rose LLP or Maples and Calder, as applicable, in connection with the formation of the Partnership, the offering of limited partner interests, the management and operation of the Partnership or any dispute that may arise between any Limited Partner, on the one hand, and the General Partner and/or the Partnership on the other hand (the "Partnership Legal Matters"). Each Limited Partner, if it wishes to obtain counsel on any Partnership Legal Matter, may retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel.

(n) Good Faith Negotiation. Ezbon and Blue Horizon, on the one hand, and the General Partner and Dr. Harrison, on the other hand, each agree that if the other party desires to terminate the Partnership or such party's participation therein, it shall negotiate in good faith with respect thereto.

(o) No Duty to Account. Other than as expressly provided for, or prohibited otherwise, in this Agreement, each Partner may engage in any other business (including being a partner of other partnerships, whether general or limited) and shall not be restrained from engaging in any other activity nor forego or be required to account for any profits from any such business,

notwithstanding that such business may compete with the Partnership's business.

19. Definitions. The respective Paragraphs or other locations in which capitalized terms used in this Agreement are defined are set forth below opposite such terms:

Additional Units	7(g)
Agreement	Preamble
Anti-Money Laundering Laws	5(b)
ATC	1(c)
ATPharma	2(d)
Blue Horizon	4(d)(iv)
Board	2(n)
Buyer	12(g)(i)
Capital Account	6(b)
Carrying Value	7(b)(i)
Code	2(j)
Contingent Subscription	5(a)
Default Charge	5(c)
Default Notice	5(c)
Default Rate	5(c)
Defaulting Partner	5(c)
Dr. Harrison	2(b)
ELP Law	Preliminary Statement
Ezbon	2(m)
Ezbon/Blue Horizon Sale	12(h)
Finkelman	Preamble
First Closing Limited Partners	Preamble
Foreign Limited Partner	2(j)

Founder Common Units	6(c)
GAAP	16(e)
General Partner	Preamble
Gross Negligence	2(g)
Holders	12(h)
Hypothetical Tax Liability	8(a)
Incentive Common Units	6(c)
Incentive Percentage	8(d)(ii)(A)
Indemnified Party	15
Intermediary	1(c)
Investment Common Units	6(c)
Letter Agreement	2(k)
Limited Partner	Preamble
List of Partners	16(b)
Loss	7(b)(ii)
Management Agreement	2(c)
Management Company	2(b)
Management Fee	Management Agreement
Net Tax Obligation	7(f)(iii)
Offer	12(j)
Offered Units	12(j)
Operating Agreement	2(n)
Operating Company	2(l)
Operating Company Security	2(l)
Original Agreement	Preliminary Statement
Partner	Preamble

Partnership	Preliminary Statement
Partnership Information	16(d)(i)
Partnership Legal Matters	18(m)
Person	18(j)
PFIC	16(e)
Preferred Units	6(c)
Profit	7(b)(ii)
Project	2(n)
QEF Election	16(e)
Registration Statement	2(f)
Removal Event	4(c)
Securities Act	12(e)
Side Letters	18(l)
Subscription Agreement	1(e)
Subsidiary	2(d)
Tax Matters Partner	18(i)
Tracking Units	6(c)
Transfer	12(a)
Transfer Expenses	12(d)
Units	6(c)

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as a deed on the day and year first above written.

GENERAL PARTNER

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

WITHDRAWING LIMITED PARTNER

Executed as a deed by:

_____
Daniel P. Finkelman

In the presence of:

_____
Witness

APPLE TREE PARTNERS IV, L.P.

Limited Partner Signature Page

IN WITNESS WHEREOF, the undersigned has executed this First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. as a deed.

Executed as a deed by:

Ezbon International Limited
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

Executed as a deed by:

Blue Horizon Enterprise Ltd.
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

SCHEDULE A

MANAGEMENT AGREEMENT

AGREEMENT dated November ___, 2012 (as amended from time to time, this "Agreement"), and effective as of November 1, 2012, between Apple Tree Venture Management, LLC, a Delaware limited liability company (the "Management Company"), and Apple Tree Consolidated, SPRL, a Belgium private limited liability company ("ATC").

In consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership, of even date herewith (as the same may be amended from time to time, the "Partnership Agreement").

2. Management Company Duties. The Management Company shall (i) identify prospective Operating Companies for ATC to invest in and (ii) provide assistance to ATC in evaluating investment opportunities in prospective and existing Operating Companies, it being the expectation that such Operating Companies will primarily consist of the ownership by ATC (either directly as a division, or indirectly through one or more entities wholly owned by ATC but disregarded for U.S. federal income tax purposes) of pharmaceutical, medical device and other medically-related operating assets. Notwithstanding the services provided by the Management Company, the Management Company shall not be authorized to manage the affairs of, act in the name of, or bind ATC.

3. Payment of Expenses. The Management Company agrees to pay (a) all compensation of Dr. Harrison and his administrative assistant in their capacities as employees of the Management Company; and (b) a pro rata share of ATC's facilities and other overhead expenses, based on the portion of such facilities used by the Management Company. ATC shall pay all other expenses properly chargeable to its affairs which are not reimbursed by Operating Companies.

4. Management Fee. ATC shall pay the Management Company a management fee (the "Management Fee") each year for the services to be provided hereunder, in the amount of US $2 million or such greater amount as may be approved by the Board; provided, however that the Management Fee for the first year shall be US $1,694,000 or such greater amount as may be approved by the Board. The Management Fee for each year shall be reduced (but not below zero) by (i) any director's fees, consulting fees or other remuneration paid to the Management Company, the members and employees of the Management Company, the General Partner, Dr.

Harrison or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise for services rendered to Operating Companies; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by any such Operating Company, shall reduce the Management Fee; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities. Any securities or other property received in kind (with the prior written consent of the holders of a majority of the Preferred Units) shall be valued at the time they are reduced to cash or cash equivalents for purposes of the foregoing reduction to the Management Fee. The Management Fee for each year shall also be reduced (but not below zero) for "deemed contributions" as provided in Part B of Schedule D of the Partnership Agreement. Payments of the Management Fee shall be made in advance at the beginning of each calendar quarter in each year in an amount determined by the Management Company but not more than 25% of the maximum aggregate amount of the Management Fee for such year. Notwithstanding the preceding sentence, the first payment shall be due upon the date of this Agreement and shall be for the pro rata amount due until the beginning of the next succeeding calendar quarter. In no event shall fees or other remuneration referred to in the second sentence of this Paragraph 4 be paid in any calendar quarter in an aggregate amount that would exceed the amount of the next succeeding quarterly installment of the Management Fee. The amount of the fees and other remuneration paid or remitted to the Management Company, the General Partner, Dr. Harrison or any of their affiliates from Operating Companies shall be computed for each year, and any net amount due ATC from the Management Company or the Management Company from ATC shall be remitted within 30 days after such computation. If in any year any reductions described above would exceed, individually or collectively, the Management Fee otherwise payable, the excess amount of such reductions shall be carried forward on a year-by-year basis.

5. Term of Agreement. This Agreement shall terminate upon the earlier of (i) the completion of liquidation of ATC and (ii) the removal of the General Partner pursuant to Paragraph 4 of the Partnership Agreement; provided, however, that the Management Fee shall continue to be paid for an additional 45 days following any such removal of the General Partner.

6. Termination and Amendment. This Agreement shall not be terminated prior to the time set forth in Paragraph 5 or amended, and none of its provisions shall be waived, in each case without the written consent of the parties hereto and the holders of a majority of the Preferred Units.

7. Independent Contractor. The relationship of the Management Company to ATC is that of an independent contractor and neither this Agreement nor the services to be rendered

hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship between the parties.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original instrument, but all of which together shall constitute a single agreement.

10. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

APPLE TREE CONSOLIDATED, SPRL

By: _____
Seth L. Harrison
Title: _____

APPLE TREE VENTURE MANAGEMENT, LLC

By: _____
Seth L. Harrison
Managing Member

Proprietary and Confidential

SCHEDULE B

LETTER AGREEMENT

Apple Tree Partners IV, L.P.
c/o Maples Corporate Services Limited
P.O. Box 309, Ugland House
Grand Cayman, KY1-1104
Cayman Islands

November 1, 2012

To the holders of Preferred Units:

Reference is made to the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. (the "Partnership"), of even date herewith (as amended from time to time, the "Partnership Agreement"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Partnership Agreement. When the context of this letter agreement so requires, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa.

In consideration of your subscription for an interest in the Partnership as a Limited Partner, the undersigned hereby represents, warrants and agrees that, so long as ATP III GP, Ltd. is the general partner of the Partnership and you are not a Defaulting Partner:

1. So long as the Management Agreement is in effect, any director's fees, consulting fees or other remuneration paid to the General Partner, the Management Company, the members and employees of the Management Company, the undersigned or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise by an Operating Company for services rendered to it shall be remitted to the Management Company; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by such Operating Company, shall be remitted to the Management Company; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

2. So long as ATC continues to make investments, all investment opportunities in privately-held companies which come to his attention (including but not limited to follow-on investment opportunities), except for such opportunities which he believes in good faith are not within the purpose of or otherwise appropriate for ATC, shall be made available to ATC. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account (other than ATC) which he controls or in which he has a beneficial interest (unless he has no control) may (a) purchase a security of an Operating Company, (b) invest in or manage a private life science venture capital fund (except for preexisting investments in and management obligations to such funds on the date hereof), or (c) invest in any opportunity which has been presented to and rejected by ATC.

3. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account which he controls or in which he has a beneficial interest (unless he has no control) may borrow money from the Partnership or ATC.

4. He shall devote substantially all of his business time to the affairs of the Partnership, ATC, the Operating Companies, Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("ATP II – Annex") until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, and thereafter he shall devote such of his business time to the affairs of the Partnership and ATC as is reasonably required to manage the affairs thereof. So long as the terms of the preceding sentence remain applicable, he shall not permit ATP I, ATP II or ATP II-Annex to invest, after the date of this letter agreement, in entities that were not portfolio companies (or their successors or affiliates) of such partnerships on such date.

5. Without the approval of the holders of a majority of the Preferred Units, he shall not voluntarily permit any other Person to control the General Partner.

The terms and provisions of this letter agreement may be waived, modified or amended only by a writing signed by the undersigned and with the written consent of the holders of a majority of the Preferred Units.

This letter agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, without regard to conflict of law principles.

Very truly yours,

Executed as a deed by:

_____
Seth L. Harrison

In the presence of:

_____
Witness

SCHEDULE C

BUDGETING PROCESS

At the beginning of each fiscal year, the Board will review and approve the overall annual budgets for the Partnership and ATC and the budget for each Project that has been approved by the Board. This approved budget will then become the basis for a quarterly rolling forecast process that will result in the quarterly financial reports referred to below. This rolling forecast process will be driven by Finance with the participation of operating management (Commercial and Research & Development). Revenue and expense budgets, and other items affecting cash flow, will be updated as part of this rolling forecast process. Management will implement a system of spending and other controls designed to ensure that Project budgets are not exceeded without further Board approval. Any new Projects that the General Partner recommends to be added to the ATC portfolio, and any discretionary extraordinary expense, will both require approval by the Board and a budget established (and approved by the Board) before spending can commence.

The General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter, on or before the tenth working day of the month following each quarter (or other period) end, in a format to be agreed upon between the General Partner and the holders of a majority of the Preferred Units. This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs, along with at least the following:

- Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter (or other period) then ended and including explanations of major variances to budget. The report will also include a reconciliation of total expenditures and cash flows from inception through the reporting date.

- Detailed budget by major Project by quarter (or other period) for the next twelve months, including operating income and expenses by major category, and other items affecting cash flow (capital expenditures, upfront / milestone payments, deposits / advances).

- Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets.

In addition to providing the quarterly (or other period) financial report, the General Partner will present in person the Partnership's financial results and budget to the holders of the Preferred Units twice per year, generally in January and July. The presentation will be made at a time and place to be decided by the holders of a majority of the Preferred Units and agreed with the General Partner. In addition to presenting the most recent quarterly (or other period) financial report, the General Partner will present additional material to provide the holders of the Preferred Units with a more complete understanding of the state of the Partnership's current operations and planned achievement of its goals. Members of the General Partner's core management team will be made available to assist in the presentation as required.

SCHEDULE D

FINANCING OF DR. HARRISON'S CAPITAL CONTRIBUTIONS

For the first $15 million of capital calls to Dr. Harrison in respect of his Preferred Units, 80% shall be funded from capital provided by Ezbon to him pursuant to an interest-free, limited-recourse loan (the "Loan Arrangement"), as described in Part A below, and 20% shall be funded by him as provided in Part B below. Any additional capital calls to Dr. Harrison in respect of his Preferred Units in excess of $15 million shall be funded from capital provided by Ezbon pursuant to the Loan Arrangement. Notwithstanding the foregoing, no additional capital shall be funded under the Loan Agreement if the General Partner has been removed pursuant to Paragraph 4(a) of the Agreement. Dr. Harrison's obligations under this Schedule D shall be binding upon his heirs and legal representatives.

Part A: Loan Arrangement.

Each portion of any capital call to Dr. Harrison to be funded through the Loan Arrangement shall be satisfied through a loan from Ezbon. Amounts shall be repaid under the Loan Arrangement as follows:

1. A pro rata portion of distributions to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions and distributions pursuant to Paragraph 4(d)(iv) of the Agreement), based on the then outstanding principal balance under the Loan Arrangement and the amount of capital for such Preferred Units funded by him in cash or by reductions in the Management Fee, shall be applied against the loans. By way of example only, if $15 million had been called from Dr. Harrison in total in respect of his Preferred Units, of which Dr. Harrison had funded $3 million as provided in Part B below and $12 million had been funded under the Loan Arrangement and remained outstanding, then 80% of amounts distributable to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions) would be applied against the loans.

2. 100% of all other distributions, other than Tax Distributions and net of any other tax liabilities arising from such distributions, to Dr. Harrison from the Partnership, shall be applied against the loans.

3. 20% of the first $20 million of "after-tax" distributions to Dr. Harrison from Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("Annex") after the date of the Agreement, and thereafter 80% of any additional "after-tax" distributions to Dr. Harrison from ATP I, ATP II and Annex after the date of the Agreement, but only to the extent necessary to cause cumulative repayments of amounts borrowed under the Loan Arrangement to equal

$12 million, shall be applied against the loans. For purposes of this Section 3, "after-tax" distributions shall mean the gross amount of any such distributions received by Dr. Harrison, reduced by his tax liability in respect thereof (or the allocations giving rise to such distributions), calculated in a manner consistent with the determination of Hypothetical Tax Liability pursuant to Paragraph 8(a) of the Agreement and after any in-kind distributions have been reduced to cash.

4. If any distribution (whether from ATP I, ATP II, Annex or the Partnership) is made to Dr. Harrison in kind rather than in cash, repayment of the Loan Arrangement shall be due after such distribution has been reduced to cash, based on the after-tax amount so realized (calculated based on the product of the taxable gain, if any, so realized and the highest applicable marginal federal and state tax rates applicable to the character of such gain). In the case of any in-kind distributions of publicly-traded securities to Dr. Harrison from ATP I, ATP II, Annex and the Partnership, Dr. Harrison shall, as soon as practicable and legally permissible, put up to 20%, 80% or 100%, as required and as applicable based on Section A.1-3 above, of the shares received from such distribution into a Rule 10b5-1 Distribution Plan (the "Plan") that is designed to effectuate in a market-reasonable legal manner the sale of such shares at a price that is at or above the distribution price of such shares. Dr. Harrison shall cause his attorneys to deliver promptly to Ezbon a copy of the relevant portions of the Plan. If there are no sales of shares pursuant to the Plan, Dr. Harrison and Ezbon shall confer reasonably about the next steps to cause such shares to be liquidated.

Any failure or refusal by Ezbon to fund the Loan Arrangement may, at the sole discretion of the General Partner, subject Ezbon to the imposition of a Default Charge under the Agreement. The failure by Dr. Harrison to satisfy a capital call in respect of his Preferred Units due to the failure by Ezbon to fund the Loan Arrangement shall not result in Dr. Harrison being deemed to be a Defaulting Partner or otherwise subject to Dr. Harrison to a Default Charge.

Part B: Deemed Contributions.

With respect to the portion of any capital call to Dr. Harrison in respect of his Preferred Units that are not funded through the Loan Arrangement, 20% shall be made in cash and the balance shall be deemed to have been contributed by Dr. Harrison. All such deemed contributions shall reduce Dr. Harrison's unfunded Subscription and shall otherwise be treated as a capital contribution, except that such amounts shall not increase Dr. Harrison's Capital Account balance. Payments of the Management Fee shall be reduced as necessary until cumulative reductions in the Management Fee equal the cumulative deemed contributions by Dr. Harrison pursuant to this Part B. Dr. Harrison shall be entitled to receive distributions in respect of his Preferred Units as if all capital calls in respect of such Preferred Units had been contributed by Dr. Harrison in cash, except such distributions shall be limited, pursuant to the principles set forth in Paragraph 7(g), to the extent necessary to ensure that Dr. Harrison's interest in the Partnership by reason of such deemed contributions is respected as a "profits

interest" for United States Federal income tax purposes. If the General Partner is removed as the general partner of the Partnership pursuant to Paragraph 4(a) of the Agreement, then to the extent the cumulative deemed contributions exceed the cumulative reductions in the Management Fee (including any such reductions occurring within 45 days after the removal date), 95% of such excess amount shall be deemed to be a loan under the Loan Arrangement.

Part C: Tax Gross Up Provisions

If any payment to Ezbon under the Loan Arrangement is subject to a U.S. federal, state or local tax (whether imposed by withholding or otherwise), the amount of such payment shall be increased by the Gross Up Amount with respect to such payment. For these purposes, the "Gross Up Amount" with respect to any payment shall equal the amount of increase necessary so that after any such deduction or withholding in respect of taxes has been made (including such deductions and withholdings applicable to additional sums payable under this paragraph), Ezbon receives an amount equal to the amount it would have received had no such deduction or withholding in respect of taxes been made. Ezbon shall each provide to Dr. Harrison (or his heirs or legal representatives) a properly completed Form W-8(BEN), and shall provide all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of U.S. federal, state and local taxes imposed on amounts due in respect of the Loan Arrangement.

Notwithstanding the foregoing, Gross Up Amounts shall not include any additional tax liability, deductions or withholdings resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon or its affiliates (including any such activities that cause Ezbon to have a permanent establishment in the United States) apart from Ezbon's investment in the Partnership and participation in the Loan Arrangement, (y) Ezbon's failure to comply with the requirements of the previous sentence, and (z) Ezbon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of U.S. federal, state or local taxes. Ezbon shall, as soon as reasonably practicable, provide Dr. Harrison with such information as is reasonably necessary for Dr. Harrison to determine the Gross Up Amount with respect to Ezbon. In addition, with respect to a tax imposed on net income, the Gross Up Amount shall only be equal to the excess (if any) of (i) the amount of such tax over (ii) the value of all refunds, tax credits and tax deductions to which Ezbon or its respective beneficial holders are entitled in respect of any amount to be repaid under the Loan Arrangement (without regard to whether Ezbon or its beneficial holders claim such refunds, tax credits or tax deductions), in each case, including such taxes on, and refunds, tax credits or tax deductions arising from, the Gross Up Amount.

Without limiting the foregoing, at Dr. Harrison's request, the parties shall use commercially reasonable efforts to structure the Loan Arrangement in a tax efficient manner, including in a manner that minimizes any Gross Up Amount due pursuant to this Part C.

SCHEDULE E

UNIT REDUCTION SCHEDULE

The table below sets forth the number of authorized Incentive Common Units and Founder Common Units at various Preferred Unit capital contribution levels. Reductions will be made on a pro rata basis for each incremental $10 million of Preferred Unit capital contributions; provided, however, that no reductions shall be made until the aggregate Preferred Unit capital contributions reach $100 million; and provided further, that no further reductions to the authorized Incentive Common Units or authorized Founder Common Units shall be made after the aggregate Preferred Unit capital contributions reach $1 billion and $300 million, respectively.

Preferred Unit Capital Contributions	Authorized Incentive Common Units	Authorized Founder Common Units
$ 100,000,000	158,823	225,000
140,000,000	146,512	197,561
180,000,000	134,483	171,429
220,000,000	122,727	146,512
260,000,000	111,236	122,727
300,000,000	100,000	100,000
440,000,000	89,011	100,000
580,000,000	78,261	100,000
720,000,000	67,742	100,000
860,000,000	57,447	100,000
1,000,000,000	47,368	100,000
1,100,000,000	47,368	100,000
1,200,000,000	47,368	100,000
1,300,000,000	47,368	100,000
1,400,000,000	47,368	100,000
1,500,000,000	47,368	100,000

Distributions pursuant to Paragraph 8(d)(ii) are apportioned among the holders of Units based, in part, on the number of authorized Incentive Common Units and Investment Common Units, which are determined in part based on the amount of capital contributions in respect of Preferred Units at the time of distribution. The following tables set forth two examples of distributions pursuant to Paragraph 8(d)(ii). The assumptions for both examples are the same, except that in example 1, 100% of the authorized number of Incentive Common Units are outstanding at all relevant times, and in example 2, 40% of the authorized number of Incentive Common Units are outstanding at all relevant times. These examples are for illustrative purposes only, and the actual apportionment of distributions as of any time will be governed by the terms of the Agreement.

Example 1: All authorized Incentive Common Units are outstanding at all relevant times:

Preferred Unit Capital	Authorized Number of Common Units			Oustanding Incentive	8(d)(ii)(A) Incentive Common	8(d)(ii)(B) Class of Commcn Units		Total Sharing of 8(d)(ii) Distributions Class of Common Units		
Contributions	Investment	Incentive	Founder	Common Units	Units	Investment	Founder	Incentive	Investment	Founder
$100,000,000	900,000	158,824	225,000	158,824	15.00%	80.00%	20.00%	15.00%	68.00%	17.00%
140,000,000	900,000	146,512	197,561	146,512	14.00%	82.00%	18.00%	14.00%	70.52%	15.48%
180,000,000	900,000	134,483	171,429	134,483	13.00%	84.00%	16.00%	13.00%	73.08%	13.92%
220,000,000	900,000	122,727	146,512	122,727	12.00%	86.00%	14.00%	12.00%	75.68%	12.32%
260,000,000	900,000	111,236	122,727	111,236	11.00%	88.00%	12.00%	11.00%	78.32%	10.68%
300,000,000	900,000	100,000	100,000	100,000	10.00%	90.00%	10.00%	10.00%	81.00%	9.00%
440,000,000	900,000	89,011	100,000	89,011	9.00%	90.00%	10.00%	9.00%	81.90%	9.10%
580,000,000	900,000	78,261	100,000	78,261	8.00%	90.00%	10.00%	8.00%	82.80%	9.20%
720,000,000	900,000	67,742	100,000	67,742	7.00%	90.00%	10.00%	7.00%	83.70%	9.30%
860,000,000	900,000	57,447	100,000	57,447	6.00%	90.00%	10.00%	6.00%	84.60%	9.40%
1,000,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,100,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,200,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,300,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,400,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%

1,500,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%

Example 2: 40% of authorized Incentive Common Units are outstanding at all relevant times.

Preferred Unit Capital	Authorized Number of Common Units			Oustanding Incentive	8(d)(ii)(A) Incentive Common	8(d)(ii)(B) Class of Common Units		Total Sharing of 8(d)(ii) Distributions Class of Common Units		
Contributions	Investment	Incentive	Founder	Common Units	Units	Investment	Founder	Incentive	Investment	Founder
$100,000,000	900,000	158,824	225,000	63,530	6.00%	80.00%	20.00%	6.00%	75.20%	18.80%
140,000,000	900,000	146,512	197,561	58,605	5.60%	82.00%	18.00%	5.60%	77.41%	16.99%
180,000,000	900,000	134,483	171,429	53,793	5.20%	84.00%	16.00%	5.20%	79.63%	15.17%
220,000,000	900,000	122,727	146,512	49,091	4.80%	86.00%	14.00%	4.80%	81.87%	13.33%
260,000,000	900,000	111,236	122,727	44,494	4.40%	88.00%	12.00%	4.40%	84.13%	11.47%
300,000,000	900,000	100,000	100,000	40,000	4.00%	90.00%	10.00%	4.00%	86.40%	9.60%
440,000,000	900,000	89,011	100,000	35,604	3.60%	90.00%	10.00%	3.60%	86.76%	9.64%
580,000,000	900,000	78,261	100,000	31,304	3.20%	90.00%	10.00%	3.20%	87.12%	9.68%
720,000,000	900,000	67,742	100,000	27,097	2.80%	90.00%	10.00%	2.80%	87.48%	9.72%
860,000,000	900,000	57,447	100,000	22,979	2.40%	90.00%	10.00%	2.40%	87.84%	9.76%
1,000,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,100,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,200,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,300,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,400,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,500,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%

EXHIBIT K

Michaelmas Term
[2025] UKPC 56
Privy Council Appeal No 0007 of 2024

JUDGMENT

Aquapoint LP (in Official Liquidation) (Appellant) *v* Xiaohu Fan (Respondent) (Cayman Islands)

From the Court of Appeal of the Cayman Islands

before

Lord Sales
Lord Leggatt
Lord Burrows
Lord Richards
Dame Janice Pereira

JUDGMENT GIVEN ON
27 November 2025

Heard on 31 March 2025

Appellant
Tom Smith KC
Chris Keefe
Peter Burgess
Geoffrey Sykes
(Instructed by Walkers (Cayman) LLP and Blake Morgan LLP (London))

Respondent
Ben Valentin KC
Bhavesh Patel
(Instructed by Seladore Legal Limited and Travers Thorp Alberga (Cayman Islands))

LORD RICHARDS:

Introduction

1. This is an appeal against an order made to wind up AquaPoint LP ("Aquapoint") on the grounds that it was just and equitable to do so. The appeal raises issues as to the circumstances in which the exercise of legal rights may be subject to equitable constraints.

2. Aquapoint is an exempted limited partnership ("ELP") formed in the Cayman Islands under the Exempted Limited Partnership Act ("the ELP Act"). The ELP Act requires an ELP to consist of one or more general partners and one or more limited partners. The general partner has full responsibility for the management and conduct of the ELP's business and is liable for the ELP's debts in the event of a shortfall in its assets. A limited partner must not take part in the management of the ELP and is not liable for its debts and obligations except as may be provided by the partnership agreement.

3. Aquapoint has one general partner and three limited partners. The general partner is GenScript Corporation ("Genscript"), incorporated under the laws of Delaware. Genscript is and has at all material times been controlled by Dr Fangliang (Frank) Zhang. The petitioner, Dr Xiaohu (Frank) Fan, is one of the limited partners, with a 65.96% interest in Aquapoint. The other limited partners are Ms Ye (Sally) Wang, with a 32.98% interest (now held in a family trust), and Genscript, with a 1.06% interest.

4. Aquapoint was established in 2017 to hold approximately 15% of the shares in Legend Biotech Corporation ("Legend Cayman"), a company incorporated in the Cayman Islands and formed by Genscript. It was established in preparation for an initial public offering ("IPO") and listing of the shares of Legend Cayman on the NASDAQ stock exchange in New York. The IPO and listing occurred in 2020. Dr Fan's interest as a limited partner in Aquapoint equates to nearly 20 million shares in Legend Cayman, which is approximately 10% of its share capital ("the 10% shareholding").

5. The essence of Dr Fan's case is that, in order to induce him to become a limited partner in Aquapoint, Genscript (acting by Dr Zhang and Ms Wang) gave him assurances that he would be able to withdraw the 10% shareholding from Aquapoint six months after the IPO, but that, in breach of those assurances, Genscript prevented him from doing so by exercising its power as general partner under the partnership agreement to refuse its consent to the withdrawal. The trial judge found that the assurances had been given so as to induce Dr Fan to become a limited partner in Aquapoint. Those findings were not challenged on appeal.

6. The essence of Aquapoint's case is that, by refusing its consent to Dr Fan's request, Genscript was simply exercising its legal power under the partnership agreement and that the prior assurances given to Dr Fan provided no basis on which the court could conclude that it was just and equitable to wind up Aquapoint.

7. At first instance, in a judgment dated 10 June 2022 Doyle J accepted Dr Fan's case and ordered Aquapoint to be wound up. For the reasons given in a judgment dated 4 October 2023 (Civil Appeal No 14 of 2022), the Court of Appeal (Goldring P, Field and Birt JJA) dismissed Aquapoint's appeal. Aquapoint appeals to the Board.

Facts

8. Genscript was founded in 2002 by Dr Zhang and others, including Ms Wang. The Genscript group operates in the biological and medical research sector. Its principal operations are in Nanjing and Zhenjiang in the People's Republic of China ("the PRC").

9. Dr Fan is a research scientist who carried out important work on cell therapy, immunology and cell biology as an employee of the Genscript group.

10. In 2014, Genscript launched a new project to develop novel cell therapies for the treatment of cancer and other purposes. Dr Fan accepted appointment as the project's chief scientific officer and, in that capacity, he was closely involved in the development of various therapies. In March 2016, he was with others responsible for the invention of a ground-breaking therapy for the treatment of multiple myeloma patients. It is common ground that he made a significant contribution to the success of the business.

11. In November 2014, Genscript formed Nanjing Legend Biotechnology Co Ltd ("Legend Nanjing") in the PRC as the vehicle for the new project and with a view to an IPO and listing of its shares.

12. As Doyle J recorded in his judgment at para 4, "Dr Zhang astutely recognised that Dr Fan could play a key role in significantly adding to the value of the business and wished to encourage him to remain within the business with the incentive of financial rewards". On 1 January 2016, Legend Nanjing, acting by Dr Zhang, and Dr Fan entered into an agreement ("the 2016 Agreement") under which Legend Nanjing agreed to grant Dr Fan a 10% shareholding in Legend Nanjing on terms that, prior to Legend Nanjing's IPO, he would not transfer the shares or create any security interest over them without Legend Nanjing's approval.

13. Later in 2016, Genscript established Legend Cayman as the intended listed vehicle for the Legend business. Genscript, acting by Dr Zhang and Ms Wang, proposed to Dr Fan that the 2016 Agreement should be terminated and that Dr Fan should become a limited partner in an ELP which would hold approximately 15% of the shares in Legend Cayman. Discussions and communications to this end began in July 2016.

14. Critical to the issues in this appeal are the assurances given to Dr Fan during these discussions. The assurances and their context were summarised by Field JA in his judgment (with which Sir John Goldring P and Birt JA agreed) at para 12:

> "When Dr Fan was approached with Dr Zhang's new strategy, his chief concern was that he should still be entitled after the IPO to be registered as the owner of 10% of the shares in the listing entity, as he had been under the 2016 Agreement in respect of 10% of the shares in Legend Nanjing. He made this very clear on several occasions to Ms Wang and Dr Zhang who both assured him that the 2016 Agreement would be 'rolled over' into the arrangement involving a Cayman ELP. Dr Fan relied on these assurances when signing the 2017 Agreement: he would not have signed the constituent agreements if the assurances had not been given. His interest in the partnership under the 2017 Agreement was the equivalent of 10% of the shares in Legend Cayman which was the same percentage he was promised in respect of the shares in Legend Nanjing. In the light of these matters the judge held that Dr Fan had a legitimate expectation and reasonable understanding that 6 months after the Legend Cayman IPO he would be entitled to have access to 10% of the shares in Legend Cayman."

15. The discussions were successfully concluded in May 2017. Aquapoint had been formed pursuant to an initial partnership agreement made on 16 February 2017 between Genscript as the general partner and a nominee company as the initial limited partner. On 25 May 2017, Dr Fan entered into a subscription agreement, pursuant to which he subscribed for a partnership interest in Aquapoint (representing 65.96% of the partnership interests) ("the Subscription Agreement"). Also on 25 May 2017, Genscript as general partner and Ms Wang and Dr Fan as newly admitted limited partners entered into an amended and restated limited partnership agreement ("the LPA"), and the initial limited partner withdrew from the partnership. On 9 June 2017, Dr Fan entered into a written acknowledgement of the termination of the 2016 Agreement. These agreements and acknowledgement are together referred to as "the 2017 Agreement" in this judgment and in the judgments of the courts below.

16. The assurances previously given to Dr Fan were repeated in early June 2017. For example, in WeChat exchanges with Dr Fan, Ms Wang said "The best news for you is that your stake in Nanjing Legend will be turned into shares in Cayman Legend" and "This agreement is not to change any material personal interests of yours. It's only intended to make the original agreement legitimate, and to create scope for future development".

17. The sole asset of Aquapoint was, in 2017, and remained, at the date of the Court of Appeal's judgment, its holding of 30,320,000 ordinary shares in Legend Biotech, representing 15.6% of its issued share capital in 2017.

18. In October 2017, Dr Fan paid RMB 2.5 million, the sum fixed by the 2016 Agreement, in respect of his underlying interest in 10% of the shares of Legend Cayman, of which RMB 2 million was reimbursed to him over a four-year period.

19. The shares of Legend Cayman were listed on the NASDAQ exchange on 5 June 2020. The listing documents stated that the existing shareholders of Legend Cayman, which of course included Aquapoint, agreed not to dispose of their shares in the six months after the listing.

20. The lock-up period following the listing expired in December 2020. What then happened is summarised by Field JA in para 15 of his judgment:

> "Following the end of the 6 month lock in period, Dr Fan informed Ms Wang and Dr Zhang that he wanted access to 10% of the Legend Cayman shares held by [Aquapoint]. He first suggested that ALP be dissolved to achieve this and was invited to serve a written request that his Legend Cayman shares be sold subject to the [general partner] exercising its discretion accordingly. He then proposed that 2 million Legend Cayman ADS [American Depositary Receipt] shares (equivalent to 20 million ordinary shares) be sold as an interim measure whilst the differences between him and Dr Zhang and Ms Wang were sorted out. At a meeting on 26 February 2021, Dr Zhang refused Dr Fan's sales plan, mentioning that maybe Dr Fan would be able to sell about 30,000 Legend Cayman ADS shares raising about US$ 1 million, which would have meant that it would have taken over 300 years for Dr Fan's total shares to be sold. Dr Zhang's declared reason for this response was that the company needed to raise funds and Dr Fan's sales plan would 'crash the stock price'. Dr Fan then asked Dr Zhang on 5 March 2021 for an offer to allow the sale of a reasonable amount of

> his shares to which Dr Zhang responded the same day, stating that the Legend Cayman management team and board were only prepared to sell 200,000 ADS shares producing around $US4.5 million and this was a final offer. This offer Dr Fan accepted, but no steps were taken by [Genscript] to implement it. Instead, Dr Zhang let Dr Fan know that he had been instructed not to sell the shares. Following a chasing letter from Dr Fan's attorneys, Travers Thorp Alberga ('TTA'), [Aquapoint's] then attorneys, Dentons, stated in a letter dated 21 May 2021 that Dr Fan had not adopted the correct methodology for attempting to transfer his interest in the partnership and added that he could not be allowed to sell 10% of the Legend Cayman shares on account of the impact this would have on the share price. Five days later, by a letter dated 26 May 2021, Dentons, on behalf of [Aquapoint], offered to release 5% of the Legend Cayman shares held under Dr Fan's interest in the partnership followed by 3.5% every year thereafter but Dr Fan rejected this offer."

21. On 9 June 2021, Dr Fan presented his petition to wind up Aquapoint.

The 2017 Agreement

22. The legal relations between the partners in Aquapoint are governed by the 2017 Agreement (principally, the LPA) and by the ELP Act.

23. By clause 2 of the LPA, the parties acknowledged that Aquapoint was formed as an ELP and that "[e]xcept as otherwise expressly provided for herein, the rights and obligations of the Partners shall be as provided for in the [ELP Act]". The limitations on the liability and authority of the limited partners are set out in clause 3, while clause 4.1 gives to Genscript as the general partner "full power and authority to conduct, administer, manage, control and operate the Partnership Business".

24. Clause 7.1 provides for a capital account to be established in the partnership accounts for each partner's capital interest. Each capital account was to be initially equal to the relevant partner's capital contribution. The contributions agreed under the terms of the LPA were RMB 2.5 million for Dr Fan, RMB 1.25 million for Ms Wang and RMB 40,000 for Genscript, in each case to be paid in cash on or before 29 December 2017.

25. Clause 7.7 (headed "No Right of Withdrawal") is of central importance in this appeal. It provides:

> "No Limited Partner will be permitted to withdraw from the Partnership, or to withdraw any part of its Capital Account, save with the prior consent of the General Partner, which consent may be given or withheld for any reason (or no reason at all) in the sole and absolute discretion of the General Partner."

26. Clause 9 provides for the General Partner to distribute any partnership assets which it does not, in its discretion, consider to be necessary to the operation of the partnership, at the time or times determined by the General Partner. Any distribution is to be made to the partners pro rata to their respective interests as determined by reference to their capital contribution.

27. Clause 12.11 is an entire agreement clause which provides, among other things, that the LPA "cancels and supersedes any prior understandings and agreements between the parties with respect to such subject matter." It goes on to provide that:

> "There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter of this Agreement other than those expressly set forth in this Agreement and/or the other documents required to be delivered pursuant to such agreements."

28. By the Subscription Agreement, Dr Fan agreed to pay RMB 2.5 million to Aquapoint as a capital contribution and agreed to be bound by all the terms and provisions of the LPA.

29. Clause 5 of the Subscription Agreement provides:

> "To induce the Partnership to accept this subscription, the Subscriber hereby makes the following representations, warranties and covenants to the General Partner, the Partnership and counsel to the Partnership: […]
>
> (e) in formulating a decision to invest in the Partnership, the Subscriber has not relied or acted on the basis of any representation or other information purported to be given on behalf of the Partnership or the General Partner except as set forth in the Partnership Agreement (it being understood that no person has been authorised by the Partnership or the General

> Partner to furnish any such representation or other information)."

30. Clause 7 of the Subscription Agreement provides:

> "The Subscriber hereby represents and warrants to the General Partner and the Partnership as follows: […]
>
> (b) the Subscriber has reviewed and understands the Partnership Agreement and this Subscription Agreement […]
>
> (c) the Subscriber acknowledges and agrees that, except as set forth in the Partnership Agreement, this Subscription Agreement or an additional written document (executed by a director or officer of the General Partner) which clearly and explicitly indicates that the Subscriber is entitled to rely thereon, the Subscriber has neither received, nor is entitled to rely upon, any representations or warranties from the Partnership, the General Partner, or any partner, member, director, officer, employee or agent thereof […]
>
> (d) the Subscriber is aware that except as provided in the Partnership Agreement, the Subscriber will have no right to withdraw from the Partnership or to receive distributions in liquidation of the Partnership Interest […]."

31. By clause 7(g), Dr Fan also represents and warrants that he had sought independent legal and other advice to the extent that he deemed necessary or appropriate. He did not in fact seek legal advice because, as Doyle J found, he trusted Dr Zhang and Ms Wang.

The ELP Act

32. The ELP Act has been amended and republished in revised form a number of times since its enactment. The 2021 revision applies to the present proceedings. An ELP may be formed for any lawful purpose to be undertaken in or from within the Cayman Islands

or elsewhere, but it may not undertake business with the public in the Islands save as necessary for its business outside the Islands (section 4(1)).

33. An ELP does not have separate legal personality but is a form of partnership. To constitute an ELP, it must be registered with the Registrar of Companies. As earlier noted (see para 2 above), an ELP must include at least one general partner and at least one limited partner. A general partner is liable for all the debts and liabilities of an ELP to the extent of any deficit of assets and is responsible for the conduct and management of the business of the ELP, while a limited partner is normally liable only to the extent provided in the partnership agreement (section 4(2)). A limited partner is not permitted to take part in the conduct of the business and loses its limited liability status if it does so (sections 14(1) and 20(1)).

34. Section 3 of the ELP Act provides:

> "The rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding sections 31, 45 to 54 and 56 to 57 shall apply to an exempted limited partnership, except where they are inconsistent with the express provisions of this Act."

35. Section 19 provides:

> "(1) A general partner shall act at all times in good faith and, subject to any express provisions of the partnership agreement to the contrary, in the interests of the exempted limited partnership.
>
> (2) Subject to any express provisions of the partnership agreement to the contrary, a limited partner of an exempted limited partnership in that capacity does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner".

36. Section 36 makes provision for the winding-up of an ELP, to which the provisions in the Companies Act and the Companies Winding Up Rules apply with modifications necessary for the different status of an ELP and subject to any special rules that may be made by the insolvency rules committee. A limited partner is treated as if it were a shareholder and a general partner is treated as if it were a director.

37. Of particular relevance to this appeal is section 36(3)(g) which provides:

> "(3) …the provisions of Part 5 of the Companies Act …shall apply to the winding up of an exempted limited partnership and for this purpose – […]
>
> (g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable."

38. Part 5 of the Companies Act contains the provisions for the winding up of companies. Section 92(e) provides that a company may be wound up by the court if "(e) the Court is of the opinion that it is just and equitable that the company should be wound up".

The judgments below

39. The facts on which Dr Fan relied for his case that it was just and equitable to wind up Aquapoint were essentially those summarised above. He had been assured by Dr Zhang and Ms Wang on behalf of Genscript that he would be entitled to receive a 10% shareholding in Legend Cayman, notwithstanding the termination of the 2016 Agreement and the formation of Aquapoint. He had relied on these assurances in entering into the 2017 Agreement, but Genscript had then used its legal power under the LPA to prevent him from withdrawing from Aquapoint and receiving the 10% shareholding in Legend Cayman. His case was that it was those facts, seen in their context, which made it just and equitable to wind up Aquapoint. Having heard oral evidence from Dr Fan, Dr Zhang and Ms Wang, Doyle J found that the assurances alleged by Dr Fan had been given and that he relied on them in entering into the 2017 Agreement and becoming a limited partner in Aquapoint. There was no appeal against those findings.

40. As identified by the Court of Appeal, there were four grounds on which Doyle J held that it was just and equitable to wind up Aquapoint.

41. The first ground was that, as a consequence of the assurances which Dr Fan received from Dr Zhang and Ms Wang which induced him to agree to the termination of the 2016 Agreement and to enter into the 2017 Agreement and become a limited partner in Aquapoint, "the relationship between Dr Fan and Dr Zhang was sufficiently akin to partnership of the sort contemplated by Lord Wilberforce in [*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Westbourne Galleries*")] for the assurances to be of a character arising between one individual and another that made it inequitable for

[Genscript] to insist on a claimed entitlement to refuse to agree to Dr Fan's request to have 10% of the Legend Cayman shares transferred to him" (para 63 of Field JA's judgment). The Court of Appeal upheld this ground. Reliance by Genscript on the entire agreement clause in the LPA and the provisions of the Subscription Agreement whereby Dr Fan agreed that he was not relying on any representations to become a limited partner in Aquapoint was "inconsistent with the free-standing duty to act in good faith which I find to be engaged in respect to the assurances, the honouring of which is a matter that I find affected the conscience of [Genscript]" (para 66 of Field JA's judgment).

42. The second ground, which the Court of Appeal did not uphold, was that the relationship between the partners was one of mutual trust and confidence which, as a result of Genscript's refusal to consent to Dr Fan's withdrawal, had irretrievably broken down. Giving the judgment of the Board in *Lau v Chu* [2020] UKPC 24, [2020] 1 WLR 4656, Lord Briggs said at para 15 that "where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between *participating* members may justify a just and equitable winding up" (emphasis added). Dr Fan was a limited partner in Aquapoint who was therefore prohibited from taking part in the conduct of its business. Relying on what Lord Briggs had said, Field JA said at para 71 "I find myself constrained to conclude that in respect of this second winding up ground, Dr Fan had to establish that he was a participant in running the business of [Aquapoint] which was a condition that on the evidence he was never going to be able to satisfy".

43. The third ground, which was upheld by the Court of Appeal, was that Dr Fan had justifiably lost trust and confidence in the conduct and management of Aquapoint's affairs as a result of Genscript's failure to honour the assurances given to Dr Fan.

44. The fourth ground, also upheld by the Court of Appeal, was that Genscript was in breach of its duty to act in good faith and to avoid conflicts of interest when it refused its consent to Dr Fan's withdrawal from Aquapoint. While agreeing with Doyle J's conclusion on this ground, Field JA pointed out at para 75 of his judgment that "this conclusion is dependent on the judge's finding that [Genscript] frustrated Dr Fan's legitimate expectation that [Genscript] would transfer into his ownership 10% of the Legend Cayman shares contrary to the good faith duty it owed in regard to the assurances" so that in substance and form the first and fourth grounds duplicated each other.

Jurisdiction to wind up an ELP on the just and equitable ground

45. While it is not in doubt that the court has jurisdiction to wind up an ELP on the ground that it is just and equitable to do so, there appears to have been some uncertainty as to the statutory provision under which this power arises. Doyle J noted at para 157 of his judgment that there had been a debate in cases at first instance as to whether the jurisdiction arose under section 35(e) of the Partnership Act, as applied by section 3 of

the ELP Act, or under section 92(e) of the Companies Act, as applied by section 36(3) of the ELP Act. As it was common ground that the court had jurisdiction to wind up an ELP if it was just and equitable to do so, he considered that it was unnecessary to enter into the debate. The Court of Appeal considered it inappropriate to decide the issue in the absence of submissions on it.

46. The Board has likewise received no submissions on this point, which is of no significance to the parties given their common position that the court has power to wind up an ELP on the grounds that it is just and equitable to do so. It is perhaps less than satisfactory that a court should make orders while being uncertain of the source of its power to do so. While acknowledging that it has received no submissions on the point, the Board's present view is that the power arises simply under section 36(3)(g) of the ELP. An ELP is a special form of partnership created by the ELP Act. The primary source of legal provision for the nature and attributes of an ELP, and the court's jurisdiction in relation to an ELP, is the ELP Act. Section 36(3)(g) provides in terms that "on an application by a partner …, the court may make orders …for the winding up and dissolution of an exempted limited partnership as may be just and equitable". There would not seem to be any need to look further for the court's jurisdiction to wind up an ELP on the just and equitable ground.

47. As regards the principles to be applied in deciding whether it is just and equitable to order the winding up of an ELP, the submissions of both parties before the courts below, and before the Board, have been made on the basis that the principles developed in relation to the winding up of companies by UK and Commonwealth courts, including the Board, apply. In a "closing observation" at the end of his judgment, Field JA drew attention to the marked differences between an ordinary partnership governed by the Partnership Act, an ELP, and a company incorporated under the Companies Act. He said that he would have been interested to hear argument as to whether "just and equitable" in section 36(3)(g) of the ELP Act "was to be construed in an expansive and flexible way, taking full account of the special nature of an ELP and less account of the overseas jurisprudence".

48. Neither party took up this invitation before the Board and both proceeded, as they had below, to argue the case on the basis of the principles established in the authorities as regards the winding up of companies. Field JA was right to draw attention to the special characteristics of an ELP, which differentiate it from both an ordinary partnership and a registered company. Unlike partners in an ordinary partnership, limited partners in that capacity do not owe fiduciary duties (section 20(2)) and a general partner's duty to act in the interests of the ELP is subject to any express provisions of the partnership agreement to the contrary. The nature of a limited partner's interest has a good deal in common with that of a shareholder in a company, but nonetheless an ELP is not a separate legal person and the property and rights of an ELP are held on trust "as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement", such that limited partners have a proprietary interest in the partnership assets.

49. Like the Court of Appeal, the Board will apply the principles applicable to the jurisdiction to wind up a company on the just and equitable ground. On the facts of this case, it does not appear to the Board to be wrong to do so. Given the status of an ELP as a type of partnership, as opposed to a registered company, it appears to the Board to be highly unlikely that the principles would be less generous to a petitioning partner in an ELP than to a petitioning shareholder of a company.

Winding up a company on the just and equitable ground: general principles

50. Companies registered under companies legislation are creatures of statute and so the power to bring them to an end by winding up and the circumstances in which this can be achieved are necessarily matters for statutory provision. In the United Kingdom, the power of the court to wind up a company on the grounds that it is just and equitable to do so has been included in legislation since the mid-19th century, starting with the Joint Stock Companies Winding Up Act 1848. It has likewise appeared, and continues to do so, in many other jurisdictions, including the Cayman Islands. There has likewise developed a uniformity of approach to the interpretation and application of this power.

51. The analysis of the just and equitable ground for winding up by Lord Wilberforce in his speech in *Westbourne Galleries*, a decision of the House of Lords, has proved to be of central and enduring importance. Lord Wilberforce's approach was endorsed by the House of Lords in *O'Neill v Phillips* [1999] 1 WLR 1092 and applied to petitions for relief in respect of unfairly prejudicial conduct in the affairs of a company under what is now section 994 of the Companies Act 2006.

52. It is appropriate to quote extensively from Lord Wilberforce's speech but before doing so, it is helpful to set out a passage from the judgment of Smith J in the Australian case of *In re Wondoflex Textiles Pty Ltd* [1951] VLR 458 at 467, which Lord Wilberforce quoted:

> "It is also true, I think, that, generally speaking, a petition for winding up, based upon the partnership analogy, cannot succeed if what is complained of is merely a valid exercise of powers conferred in terms by the articles: ... To hold otherwise would enable a member to be relieved from the consequences of a bargain knowingly entered into by him: . . . But this, I think, is subject to an important qualification. Acts which, in law, are a valid exercise of powers conferred by the articles may nevertheless be entirely outside what can fairly be regarded as having been in the contemplation of the parties when they became members of the company; and in such cases the fact that what has been done is not in excess of power will not

> necessarily be an answer to a claim for winding up. Indeed, it may be said that one purpose of [the just and equitable provision] is to enable the court to relieve a party from his bargain in such cases."

53. In *Westbourne Galleries*, Lord Wilberforce said at pp 374H: "there has been a tendency to create categories or headings under which cases must be brought if the clause [ie the power to wind up a company on the just and equitable ground] is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances".

54. Having reviewed earlier authorities, none of which was a decision of the House of Lords, Lord Wilberforce said at p 378 that those cases amount to "a considerable body of authority in favour of the use of the just and equitable provision in a wide variety of situations, including those of expulsion from office" (that being the principal ground on which the petitioner relied in *Westbourne Galleries*) and then said at pp 379-380 in a celebrated passage:

> "My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

> It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.
>
> It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to 'quasi-partnerships' or 'in substance partnerships' may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

55. In *O'Neill v Phillips*, Lord Hoffmann giving the only reasoned speech drew a direct parallel between the concept of unfair prejudice in a company context and Lord Wilberforce's approach to the just and equitable ground for winding-up. The parallel was

"in the principles upon which [the court] decides that the conduct is unjust, inequitable or unfair" (p 1100).

56. Lord Hoffmann said at p 1098 that Parliament had chosen fairness as the criterion for relief "to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable". At the same time, this was not an unfettered power but one which must be used having regard to the particular context and background, which had two features identified by Lord Hoffmann at pp 1098-1099:

> "First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."

57. There are a number of important points of direct relevance to the present appeal which emerge from the speeches of Lord Wilberforce and Lord Hoffmann:

(i) The choice of "just and equitable" as a ground for a winding-up order is a deliberate choice to introduce equitable principles into what is an essentially statutory scheme.

(ii) It was natural for Parliament to introduce these principles, given that company law was a development from the law of partnership under which dissolution would be ordered where it was just and equitable to do so.

(iii) The application of equitable principles is not subject to a scheme of categories into which a particular case must fall. As Lord Scarman said in the context of the power to grant injunctions, "the width and flexibility of equity are not to be undermined by categorisation": *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 at 573, quoted in *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at para 21. Lord Wilberforce could not have been clearer on this: "It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise" (p 379E).

(iv) In particular, the relevant circumstances are not restricted to cases where the parties have previously been in partnership or where the arrangement between the parties is in effect a partnership in corporate form (a so-called "quasi-partnership"). Consistently with what he said in the passage quoted in sub-para (iii) above, Lord Wilberforce was careful to say in the same paragraph, when identifying three particular characteristics which might bring equitable considerations into play, that they were typical, not exclusive.

(v) The role of equity is more general. It is, as it always is, to enable the court "to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way".

(vi) At the same time, the commercial context and the fact that the parties have become shareholders in a company, governed by the companies legislation and by the articles of association by which they agree to be bound, means that in the great majority of cases the legislation, articles and any other agreements binding the shareholders will be a sufficient and exhaustive statement of their rights and expectations. As Lord Hoffmann said in *O'Neill v Phillips* at pp 1098-1099: "a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted".

The present appeal

58. As earlier stated, Field JA identified four distinct grounds on which Doyle J had found that it was just and equitable to wind up Aquapoint. In truth, however, they boil down to one ground: in the light of the assurances given to Dr Fan to induce him to give

up his rights as regards shares in Legend Nanjing and to become a limited partner in Aquapoint, Genscript was not entitled to exercise its power under the LPA to refuse consent to Dr Fan's request for the shares in Legend Cayman attributable to his interest in Aquapoint.

59. The attempt to separate this single ground into four separate grounds reflects the tendency of practitioners and courts to try to slot cases into categories, despite Lord Wilberforce's warning not to do so. Different catchphrases are used for this purpose – "quasi-partnership", "legitimate expectations", "a loss of mutual trust and confidence". Correctly understood and applied, these phrases may have some value but they must not disguise that, in cases like the present, the court's task is to conclude whether, on the facts and circumstances of the particular case (which do not involve breaches of the law or the articles of association or other contracts, when different considerations apply), there exist "considerations…of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way" (*Westbourne Galleries* at p 379 per Lord Wilberforce).

60. The broad submission of Aquapoint is that where parties have expressly regulated their relationship in relation to the matter about which complaint is made, it is the contract which governs the relationship and any complaint must be adjudicated in accordance with the law of contract. It is not suggested by Dr Fan that there was any invalidity or flaw in the 2017 Agreement or specifically in clause 7.7 of the LPA. Assuming the contract to be valid and enforceable, it is not the proper role of the just and equitable winding up jurisdiction to ameliorate or change the effect of the contract. The decisions of the courts below to the contrary are wrong as a matter of principle and are unsupported by the authorities. Aquapoint notes that countless parties across all jurisdictions hold investments or business operations through a company or partnership in which the participants' relationships are governed by carefully drafted articles of association, shareholders' agreements and partnership agreements. It submits that the reasoning of the courts below would undermine the certainty essential to the operation of such arrangements in a commercial context by enabling a party to seek to rely on some other matter as giving rise to alleged unfairness and as justifying a winding up order, even though no remedy was available under the law of contract. In particular, it submitted that it would undermine the attraction of establishing and investing in ELPs, contrary to the interests of the Cayman Islands' economy.

61. As the judgment of Lord Wilberforce in *Westbourne Galleries* at p 379C and of Lord Hoffmann in *O'Neill v Phillips* at pp 1098-1099 make clear, this broad submission is correct in the great majority of cases. However, contrary to the dire predictions advanced on behalf of Aquapoint, the decisions of the courts below do not pose a widespread threat to certainty in the establishment and operation of commercial concerns. A similar submission by the respondents in *Westbourne Galleries* did not deter Lord Wilberforce and the other members of the House of Lords: see [1973] AC 360 at 369D. In particular, whether or not the facts of this case justify the winding up of Aquapoint,

those facts are very unusual and similar facts are highly unlikely to arise in the case of the vast majority of ELPs.

62. As Lord Hoffmann said in *O'Neill v Phillips* and as Lord Wilberforce explained in *Westbourne Galleries*, Aquapoint's broad submission is not invariably correct. The articles of association in the latter case permitted the shareholders by a majority vote to remove a director. That was a valid provision, and it was not suggested that the majority shareholders had acted in breach of their rights under the articles in removing Mr Ebrahimi as a director or that any remedy lay against them or the company under the law of contract. Nonetheless, the particular circumstances of the personal relationship between the shareholders meant that the exercise of that undoubted legal right was subject to equitable restraints.

63. Mr Smith KC on behalf of Aquapoint sought to distinguish the relevant article in *Westbourne Galleries* from clause 7.7 of the LPA on the grounds that the latter expressly provided that the prior consent of Genscript was required to a withdrawal from the partnership which could be withheld for any reason (or no reason) in Genscript's sole and absolute discretion, whereas in *Westbourne Galleries* the articles simply provided that a director could be removed from office by an ordinary resolution of the shareholders. He submitted that the articles of association in *Westbourne Galleries* did not deal with the unspoken understanding that Mr Ebrahimi would remain a director involved in the management of the company, whereas the LPA in the present case was inconsistent with any understanding that Dr Fan would be entitled to withdraw a 10% shareholding in Legend Cayman from Aquapoint.

64. The Board does not accept this suggested distinction. The right of a shareholder to cast a vote on a resolution, including a resolution to remove a director, is a personal right which is not generally subject to any restriction. The exercise of a shareholder's right to vote is, as a matter of law, in the sole and absolute discretion of the shareholder and it may be exercised for any reason or for no reason. There is no need to spell this out in the articles. By contrast, clause 7.7 conferred a power on Genscript which it was required by section 19 of the ELP Act to exercise in good faith and, subject to any express provisions of the LPA, in the interests of Aquapoint. Section 19 permits a relaxation of a general partner's fiduciary obligations but only as expressly provided in the partnership agreement. The relaxation as regards Genscript's power to give or withhold consent to a withdrawal of a partner was therefore required to be expressly stated in the LPA. The effect of clause 7.7 was not, as Mr Smith submitted, to distinguish it from a shareholder's right to vote to remove a director but to put the power under clause 7.7, to some extent, on the same footing as a shareholder's right to vote by freeing it from a restriction otherwise imposed by section 19.

65. It follows that the Board does not accept Mr Smith's associated submission that where a contractual provision "covers the field", there is no room for the imposition of

equitable considerations. If covering the field meant that, in the light of all the relevant circumstances, there was no room for any equitable considerations, the submission would be unexceptionable. But Mr Smith had a narrower meaning in mind, one which confined the inquiry to the construction of the contractual provisions. As the Board has already noted, the terms of the contractual provisions will be a highly relevant factor, but they cannot alone demonstrate that there is no room for equitable considerations, as *Westbourne Galleries* shows.

66. Aquapoint submitted that the approach taken in *Westbourne Galleries* was not applicable to the present case because, on a true analysis, it stands as authority for the proposition that, in the case of a quasi-partnership company, where the understanding or expectations that give rise to the petitioner's complaint are not dealt with in the company's constitutional documents, the exercise by a party of a right under the constitution may be subject to equitable restraint to give effect to the undocumented understanding or expectation. However, where the parties have negotiated a tailor-made contract governing their relations in the company, the just and equitable winding up jurisdiction does not permit the court to disregard the parties' agreement.

67. This submission seeks to draw two distinctions between the present case and the principles stated by Lord Wilberforce. First, it is said that the principles apply only in the case of a "quasi-partnership company". This point is addressed below.

68. Secondly, the parties in *Westbourne Galleries* had adopted standard form Table A articles without any apparent negotiation, whereas the LPA is a tailor-made agreement which was negotiated over several months by the parties. Mr Smith stressed that not only does clause 7.7 of the LPA specifically deal with the withdrawal of a limited partner but clause 12.11 of the LPA and clauses 5 and 7 of the Subscription Agreement ("the entire agreement clauses") clearly provide that the LPA and associated documents constitute the entire agreement between parties with respect to the subject matter of the LPA, that they cancel and supersede any prior understandings and agreements and that the parties have not relied on any representations, warranties or undertakings, express or implied, outside the terms of the agreements. The Board accepts that this is a relevant factor when considering whether equitable principles come into play, but it cannot be a decisive factor. On the facts of a particular case, it may be correct to conclude that the negotiation of a specific agreement did not exclude equitable considerations.

69. Aquapoint relied on a number of authorities which illustrate the importance of specifically negotiated and detailed agreements between the parties in deciding whether there was any room for the existence (or continued existence) of equitable considerations applicable to the exercise of legal powers, whether arising under those agreements or otherwise.

70. In particular, Mr Smith relied on *In re Virginia Solution SPC Ltd* (CICA (Civil) Appeal No 4 of 2022) (unreported) 28 July 2023 ("*Re Virginia Solution*"), a decision of the Court of Appeal of the Cayman Islands (Sir John Goldring P, Martin and Moses JJA). Virginia Solution SPC Ltd ("Virginia Solution") was a Cayman Islands company with two shareholders, Augusta Healthcare Inc ("Augusta") and Valley Health System ("Valley"), both of which were described in the judgment of Martin JA as "regional community health systems operating in the State of Virginia in the United States". They, together with three other healthcare providers based in Virginia, established Virginia Solution in 2004 to provide insurance cover for the shareholders. The principles governing the operation of Virginia Solution were discussed and developed by the five shareholders over the next few years. In 2009, the parties agreed a participation agreement, a dividend policy and revised articles of association ("the 2009 documents"). From 2014, the only shareholders were Augusta and Valley and thereafter a series of amendments to the participation agreement were made. By the end of 2016, the retained profits of Virginia Solution amounted to over US$24 million. Augusta and Valley disagreed as to the amount of dividends that should be paid in 2017. Attempts to resolve these differences failed and in January 2020 Valley presented a petition to wind up Virginia Solution on the just and equitable ground on the basis that Augusta had refused to agree to the payment of dividends in accordance with the dividend policy.

71. In refusing to agree the payment of dividends on the basis of the dividend policy, Augusta was not acting in breach of any legal obligation. The issue was therefore whether, on the facts, there existed equitable considerations affecting the exercise of its legal rights. The trial judge found that at inception the relationship between the shareholders was a "quasi-partnership" in the sense that the exercise of legal rights was subject to equitable considerations. The Court of Appeal held that she was entitled to make that finding, although as Martin JA observed at para 45 the circumstances of the company and its shareholders did not come close to the paradigm case for the intervention of equitable principles. However, the Court of Appeal held that the position changed in 2008-2009 when the founding members decided to record the basis of their participation in the 2009 documents. Martin JA said at para 46:

> "The context of those documents was the impending arrival of a new member; and the inevitable inference is that the existing members recognised that the informal arrangements which had previously governed their participation could not safely continue, even if the new member or subsequent members agreed to subscribe to the underlying ethos adopted by the founding members."

72. Martin JA identified the participation agreement as the key document. It was expressed to prevail in the case of conflict with the articles, and it contained an arbitration clause and an entire agreement clause. It provided that the declaration of dividends was to be the province of the board of directors. He said at para 48 that "it defined

comprehensively the obligations of the members and the company and provided a remedy for any failure to meet those obligations …there was no scope for the superimposition of equitable considerations".

73. There are numerous other cases in which the existence of particular contractual arrangements have been held to be inconsistent with the possibility of equitable considerations either arising at all or continuing in place: see, for example, *Third v North East Ice & Cold Storage Co Ltd* [1998] BCC 242, *In re Coroin Ltd* [2012] EWHC 2343 (Ch), [2013] 2 BCLC 583, *In re Migration Solutions Holdings Ltd* [2016] EWHC 523 (Ch) and *Cool Seas (Seafoods) Ltd v Interfish Ltd* [2018] EWHC 2038 (Ch).

74. The Board regards it as important to acknowledge and repeat that, in a corporate context, equitable considerations as regards the exercise of legal rights will not generally apply, but nonetheless whether they do apply and the relevance of contractual arrangements between the parties are to be decided on the facts and circumstances of the case.

75. The critical fact in the present case is that the very arrangements on which Aquapoint relies to say that there is no room for equitable considerations – the 2017 Agreement – were entered into by the parties on the basis of the assurances given by Dr Zhang and Ms Wang that Dr Fan's unqualified entitlement to receive a 10% shareholding in the Legend vehicle (Legend Cayman in place of Legend Nanjing) would not be affected by the terms of the 2017 Agreement. That was the agreed basis on which the parties entered into the 2017 Agreement. It is wholly inconsistent with the facts, as found by the judge, to suggest that, by virtue of the terms of the 2017 Agreement including the entire agreement clauses, Dr Fan and the other parties were agreeing that Dr Fan's entitlement to a 10% shareholding was cancelled and that Genscript was entitled to refuse consent to his withdrawal from Aquapoint without regard to the assurances which he had been given. It may well be that, as a matter of contract law, the entire agreement clauses prevented Dr Fan from placing reliance on the assurances – the Board is not concerned to decide that question but will assume that it is correct – but that does not oust the jurisdiction of the court to make a winding up order on the just and equitable ground if the circumstances of the case are such as to bring equitable considerations into play. Contractual provisions of this sort are highly relevant to the issue whether those considerations do come into play, but they are not decisive.

76. It is relevant to mention that no new partners were admitted to Aquapoint after the 2017 Agreement was made and, although it made provision for the admission of new partners, there is no evidence that the admission of new partners was contemplated, in contrast to the position in *Re Virginia Solution*. The admission of new partners without knowledge of the assurances given by Dr Zhang and Ms Wang would clearly be a relevant factor, although not always decisive: see, for example, *In re Edwardian Group Ltd* [2018]

EWHC 1715, [2019] 1 BCLC 171 at para 157, and at paras 133-134 (commenting on *Fisher v Cadman* [2005] EWHC 377 (Ch), [2006] 1 BCLC 499).

77. Turning to the "quasi-partnership" issue raised by Mr Smith as a basis for his submission that the approach in *Westbourne Galleries* does not apply to the present case, this raises a central issue as to the circumstances in which the exercise of legal rights may be subject to equitable considerations for the purposes of the winding up jurisdiction.

78. Mr Smith submitted that *Westbourne Galleries* requires the court to find that a quasi-partnership exists among the participants, which in turn requires the court to find that the three indicia (or something close to them) identified by Lord Wilberforce at p 379F-G (quoted in para 54 above) are present. Of those indicia, Mr Smith submitted that only the third (restrictions on the transfer of members' interests) was present. That, he correctly submitted, could not be sufficient on its own to bring equitable considerations into play, because very large numbers of private companies have such restrictions with no basis for suggesting that they constitute "quasi-partnerships".

79. The fundamental flaw, in the Board's view, with Mr Smith's submission is his treatment of a finding of a "quasi-partnership" as essential to the application of equitable considerations to the exercise of legal rights. The Board has noted above in para 57 that Lord Wilberforce was careful not to restrict the application of equitable considerations to "quasi-partnerships".

80. It is in the Board's view a misreading of Lord Wilberforce's speech to treat the existence of a "quasi-partnership" as essential to the application of equitable considerations to the exercise of legal rights. On the contrary, it is clear from his speech that he gave the indicia of a quasi-partnership as examples, albeit common ones, of the circumstances in which equitable considerations will be applied.

81. The fundamental principle that Lord Wilberforce was applying was that the just and equitable provision enables the court "as equity always does" to subject the exercise of legal rights to considerations "of a personal character arising between one individual and another". This requires a close examination of the relationship between the individuals which led to or provides the context for their association as shareholders (or as partners in an ELP).

82. On the facts of the present case, the Board considers that Doyle J was fully entitled to conclude that the relationship between Dr Fan, Dr Zhang and Ms Wang was a personal relationship of a type that brings equitable considerations into play, and that the Court of Appeal was right to uphold his decision. Dr Fan was a highly respected research scientist who had worked for some years at a senior level in the Genscript group, itself controlled by Dr Zhang. From that sprang the Legend project in which Dr Fan was to (and did) play

a key role on the basis of an agreement with Genscript that he would be entitled to a 10% shareholding in the listed Legend company. When Dr Zhang wanted to use Legend Cayman in place of Legend Nanjing as the corporate vehicle for the listing of Legend shares, he and Ms Wang gave the assurances to Dr Fan.

83. It is understandable that parties, in formulating their cases in petitions for a winding up order on the just and equitable ground, have tended to focus their attention on the features which may go to make a "quasi-partnership". It is in such cases that the application of equitable considerations will most commonly arise. But "quasi-partnership" is itself a term of somewhat uncertain scope, and it is certainly not a term of art. In particular, the vice in focusing solely on "quasi-partnerships" is that it leads wrongly to the view that equitable considerations can only apply in those cases where it was agreed or understood that the petitioner would participate in the conduct of the business and that a winding up order is appropriate only where the petitioner has been excluded from participation in the business. Courts have made it clear over the years since *Westbourne Galleries* (see, for example, *Fisher v Cadman* at para 84) that this view is erroneous but the point has not always been heeded.

84. In the present case, it is unnecessary to decide whether the relationship between the general and limited partners of Aquapoint had the characteristics typical of a "quasi-partnership", but it appears to the Board that it did not have those characteristics. It was simply a passive vehicle for holding shares in Legend Cayman and there was, for example, no agreement or understanding that any partner other than Genscript would participate in the conduct of the business, such as it was. A restriction on the transfer of partners' interests could not by itself suffice. But, as emphasised above, a finding of a "quasi-partnership" is an example, not a definition, of the circumstances in which equitable considerations may come into play.

Availability of alternative remedies

85. It is well established that the court may, and usually will, refuse to make a winding up order on a shareholder's petition where one or more alternative remedies are available to the petitioner and the petitioner is acting unreasonably in not pursuing them.

86. Aquapoint submit that there are two alternative remedies available to Dr Fan.

87. First, it is said that Dr Fan could issue proceedings for breach of contract. This is a surprising submission, in view of Aquapoint's fundamental position that there has been no breach of contract. Aquapoint may well be, indeed probably is, right about that. It follows that such proceedings are not a reasonable alternative remedy.

88. Second, it is said that Dr Fan could bring a derivative action on behalf of Aquapoint against Genscript for breach of its duty of good faith under section 19(1) of the ELP Act. A derivative action would at best bring a remedy for Aquapoint (although it is not clear what that remedy would be), not for Dr Fan, and it could not therefore be an adequate remedy for Dr Fan personally. It is true, as confirmed by the Board's decision in *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2024] UKPC 36, [2025] AC 709, that if Aquapoint were a company and Dr Fan were a shareholder in it, he could bring a personal claim against Aquapoint. The same may well be true in relation to an ELP (although the proceedings would have to be brought against the general partner: see section 33(1) of the ELP Act). But Dr Fan would need to establish that Genscript had not acted in good faith within the meaning of section 19(1), which is directed to the fiduciary duty owed by a general partner to the ELP, that is, the partners as a whole, rather than to any individual partner in respect of assurances given to that partner personally. It is not clear that it would be established, but it is not necessary to a successful petition for winding up on the just and equitable ground.

89. The Board is accordingly satisfied that there were no alternative remedies reasonably available to Dr Fan.

Conclusion

90. For the reasons given above, the Board will humbly advise His Majesty that this appeal should be dismissed.

EXHIBIT L

Michaelmas Term
[2024] UKPC 32
Privy Council Appeal No 0045 of 2023

JUDGMENT

Kuwait Ports Authority and another (Respondents) *v* Mark Eric Williams and 2 others (Appellants) (Cayman Islands)

From the Court of Appeal of the Cayman Islands

before

Lord Reed
Lord Hodge
Lord Hamblen
Lord Leggatt
Lady Simler

JUDGMENT GIVEN ON
28 October 2024

Heard on 20 June 2024

Appellants
Graham Chapman KC
Andrew Pullinger
Harry Shaw
(Instructed by Campbells LLP and Sinclair Gibson LLP)

Respondents
David Allison KC
Dan McCourt Fritz KC
Rachael Reynolds KC
(Instructed by Ogier (Cayman) LLP and Baker & McKenzie LLP (London))

LORD HAMBLEN:

Introduction

1. The Cayman Islands Exempted Limited Partnership Act (2021 Revision) (the "Act") provides for the establishment of exempted limited partnerships (an "ELP"). A limited partner in an ELP enjoys limited liability but is precluded from participating in the conduct of the business of the ELP, which is carried out exclusively by a general partner.

2. This appeal concerns the circumstances in which a limited partner can bring a derivative action on behalf of the ELP for injury or damage done to the ELP. This is governed by section 33(3) of the Act which provides that such an action may be brought if the general partner has "without cause, failed or refused to institute proceedings".

3. This is the first case in which this issue has been considered. In its decision the Court of Appeal of the Cayman Islands (Sir Richard Field, Sir Michael Birt and Sir Jack Beatson JJA) provided general guidance as to the approach to be adopted to derivative actions brought pursuant to section 33(3) of the Act and concluded that the general partner in this case did refuse or fail to institute proceedings "without cause" and that as a matter of discretion it was appropriate to allow the respondents' derivative claims to be brought. The appellants contend that the Court of Appeal was wrong so to conclude. The respondents cross-appeal is in respect of one aspect of the general guidance provided, namely at what point in time the section 33(3) test falls to be assessed.

Factual background

4. The Port Fund LP (the "Fund") is a Cayman Islands ELP which invested in port-related assets around the world. It was established in 2007 by KGL Investment Company KSCC ("KGLI Kuwait") which acted as the Fund's sponsor and placement agent and was also one of the limited partners in the Fund. The Fund has one general partner and eleven limited partners including KGLI Kuwait and the two respondents, Kuwait Ports Authority ("KPA") and The Public Institution for Social Security ("PIFSS"). The limited partners invested a total of US$188,152,000, approximately 65% of which was invested by the respondents.

5. The general partner of the Fund is Port Link GP Ltd, a Cayman Islands exempted limited company (the "General Partner"). It was appointed as the sole general partner from 21 March 2007 onwards pursuant to identical limited partnership agreements between itself and the limited partners.

6. The first appellant ("Mr Williams") is the ultimate beneficial owner of the General Partner and has very close connections with the second appellant, Wellspring Capital Group Inc ("Wellspring"), and the third appellant, KGL Investment Company Asia ("KGLI Asia"). In summary:

(1) Mr Williams was a vice president of KGLI Kuwait from September 2007 until 2008 and its investment director from 2009 until 2011. Mr Williams was also a member of the Investment Committee of the Fund from 2009 until 2013.

(2) Mr Williams is the sole shareholder and director of Port Link Holdings USA Inc ("Port Link Holdings"), which since July 2018 has owned the entirety of the issued share capital of the General Partner.

(3) On 23 January 2020 Mr Williams was appointed as the authorised representative of the General Partner in relation to proceedings against it by KPA seeking information regarding the condition of the Fund pursuant to section 22 of the Act ("the section 22 proceedings"). The resolution conferred full authority on Mr Williams to take all necessary actions in relation to those proceedings.

(4) Mr Williams is also the chief executive, chief financial officer, president, vice president, treasurer and secretary of Wellspring. Wellspring is owned by the Mark E Williams Living Trust, the trustees of which are Mr Williams, his wife and his brother.

(5) Mr Williams has been the chief executive officer of KGLI Asia since 1 January 2012. KGLI Asia is owned by KGLI Kuwait. KGLI Asia is said by the appellants to have provided administrative support to the Fund between December 2017 and August 2020 pursuant to an administrative services agreement dated 1 December 2017. KGLI Asia has been in voluntary liquidation since 20 December 2020.

7. The respondents began raising concerns with the General Partner concerning the management of the Fund from October 2016. On 29 January 2020, KPA commenced the section 22 proceedings against the General Partner seeking disclosure of certain documents to which it claimed to be entitled.

8. Also on 29 January 2020, after Mr Williams was appointed as the authorised representative of the General Partner, certain professional directors from FFP (Directors) Ltd (the "FFP Directors") were appointed as directors of the General Partner by Abdulghfoor Alwadhi ("Mr Alwadhi") and Mr Williams. They initially acted alongside Mr Alwadhi, who was a director of the General Partner from 2010 until he resigned on

28 March 2021. Mr Alwadhi was the sole appointed director from 24 May 2018 until 29 January 2020, which was when much of the wrongdoing alleged by the respondents took place. The FFP Directors have no connection to such wrongdoing and describe themselves as "independent directors". They remained in office until they resigned on 15 February 2023.

9. KPA's application in the section 22 proceedings was opposed by the General Partner at a time when the FFP Directors were in post, but KPA obtained an order requiring the General Partner to disclose various documents in August 2020. The General Partner sought to appeal that order but that appeal was compromised and the General Partner agreed to provide various documents to the respondents pursuant to a consent order made in November 2020.

The proceedings

10. On 14 October 2020, the current proceedings were commenced in the Grand Court of the Cayman Islands (the "Grand Court") by the respondents against the General Partner only.

11. On 12 February 2021, the respondents' statement of claim was amended and re-filed joining the appellants as the second to fourth defendants respectively. The respondents advance both direct and derivative claims on behalf of the Fund against Mr Williams and Wellspring, and derivative claims only against KGLI Asia. The respondents allege that the assets of the Fund, which are held on statutory trust by the General Partner, have been misappropriated as part of an unlawful means conspiracy and/or due to dishonest and/or negligent breaches of trust and fiduciary duty, in which each of the appellants have wrongfully participated, in some cases having knowingly received some or all of the proceeds.

12. So far as relevant, the claims made by the respondents may be summarised as follows (see para 152 of the Court of Appeal judgment):

(1) The respondents allege that the General Partner has been guilty of wrongdoing which has caused the Fund loss said to be well in excess of US $100m.

(2) The claims against the General Partner allege that, in breach of its fiduciary, contractual and other duties, it acted contrary to the interests of the Fund and the limited partners by making substantial payments, using the Fund’s monies, that were not for the benefit of the Fund and/or the limited partners. Amongst these is the alleged sham settlement of proceedings brought against it in the Dubai International Finance Centre Court (the “DIFCC proceedings”) as a result of which

US $59,990,461.30 (the "Wellspring Payment") was paid to Wellspring. It is alleged that the General Partner conspired with, amongst others, Mr Williams and Wellspring to cause loss to the Fund and/or the limited partners by unlawful means in relation to the DIFCC proceedings and the Wellspring Payment.

(3) The claims against Mr Williams are that he orchestrated the DIFCC proceedings and the Wellspring Payment and was accordingly party to the above conspiracy. It is further alleged that he dishonestly assisted in the General Partner's breach of trust/fiduciary duty, knowingly procured the General Partner to breach its contractual duties and was in breach of fiduciary duties he owed to the Fund and/or the General Partner.

(4) The claims against Wellspring are for knowing receipt of the Wellspring Payment, conspiracy in relation to the Wellspring Payment and the DIFCC Proceedings and for repayment of the Wellspring Payment.

(5) The claim against KGLI Asia is for knowing receipt in respect of a number of payments said to have been made to it in breach of trust and/or fiduciary duty by the General Partner.

13. The appellants deny the claims against them, counterclaim against the respondents, alleging that the proceedings are an abuse of process commenced for an improper collateral purpose, and crossclaim against the General Partner in respect of alleged underpayments and rights to indemnification. No application has been made to strike out the respondents' claims on their merits or for reverse summary judgment. The claims must therefore be treated as having a real prospect of success.

14. The FFP Directors stated in sworn evidence that, for the purpose of determining whether there was cause for the derivative claims to be pursued by the Fund as required by section 33(3) of the Act, they conducted an intensive, forensic investigation into the actions of the General Partner and the former management team of the Fund. The stated results of the FFP Directors' investigations are set out in various memoranda dated from 28 May 2021 and in the third affidavit of Richard Lewis (one of the FFP Directors) dated 4 June 2021. These set out that, in the General Partner's view (acting by the FFP Directors), there was currently no cause to bring the derivative claims against the General Partner or the appellants, and that even if such claims did have merit, the General Partner would need to undertake a cost/benefit analysis of whether it was in the best interests of the Fund to pursue them and, if so, whether the Fund was in a position to pursue them or could raise funding to do so.

15. On 7 June 2021, the General Partner and the appellants applied to the Grand Court to strike out the derivative claims against them, on the grounds that such claims failed to

satisfy the statutory test under section 33(3) of the Act. Those applications were heard by Parker J between 13-19 October 2021. On 25 November 2021, the Grand Court handed down its judgment granting part of the General Partner's summons on discrete points that did not result in any claims against it being struck out and dismissing the appellants' application.

16. The Grand Court's order was appealed by both the General Partner and the appellants. That appeal was heard by the Court of Appeal on 25 and 26 May 2022 and its judgment was handed down on 20 January 2023. It dismissed the strike out appeal save in relation to the derivative claims made against the General Partner.

17. On or around 15 February 2023, the FFP Directors resigned as the General Partner was apparently unable to pay their professional fees. The respondents thereafter applied (i) to be joined as defendants to the appellants' crossclaim against the General Partner and (ii) for receivers to be appointed in respect of the General Partner.

18. On 2 May 2023, the General Partner was placed into voluntary liquidation by resolution of its sole shareholder, Port Link Holdings, that is ultimately beneficially owned by Mr Williams.

19. By an order dated 1 June 2023, Parker J ordered the appointment of receivers in respect of the General Partner for the express purpose of conducting all litigation on behalf of the General Partner and the Fund (the "Receivers").

20. By an order dated 2 June 2023, Parker J ordered that the respondents be joined as defendants to the appellants' crossclaim against the General Partner in the proceedings. An appeal from this order was dismissed by the Court of Appeal on 15 August 2024.

21. The joint voluntary liquidators of the General Partner applied, in accordance with their statutory obligation to do so, to convert the voluntary liquidation of the General Partner into an official liquidation. This application was dismissed by Parker J on 18 September 2023 and the Receivers were permitted to continue managing the litigation commenced by and against the General Partner and the Fund. The Receivers therefore have conduct on behalf of the General Partner and the Fund of all litigation to which the General Partner or Fund are parties (save for the respondents' derivative claims). The Receivers have decided that the General Partner is not to appeal the Court of Appeal’s decision.

The legal framework

The Act

22. Section 3 provides that the rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding certain sections shall apply to ELPs, except where they are inconsistent with the express provisions of the Act.

23. Under section 4, ELPs are to consist of general partners and limited partners. General partners are liable for the debts and obligations of the ELP whilst limited partners generally have no such liability.

24. Section 14 provides that all contracts, letters, deeds, instruments or other documents are to be entered into by the general partner on behalf of the ELP and that the limited partners are not to take part in the conduct of the ELP's business.

25. Under section 16, any rights or property of the ELP, including choses in action, are held by the general partner upon trust as an asset of the ELP. The Act thereby creates a statutory trust.

26. Section 19 provides that the general partner is to act at all times in good faith. Subject to any express provisions to the contrary in the partnership agreement, the general partner is to act in the interests of the ELP and limited partners owe no fiduciary duties to the ELP or the other limited partners.

27. Proceedings involving an ELP are governed by section 33 which provides:

> "(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings.
>
> (2) If the court considers it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 20(1) or to enforce the return of the contribution, if any, required by section 34(1).

> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings.
>
> (4) If any action taken pursuant to subsection (3) is successful, in whole or in part, as a result of a judgment, compromise or settlement of any action, the court may award any limited partner bringing any action reasonable expenses, including attorney's fees, from any recovery in any action or from an exempted limited partnership."

Relevant case law

28. Although there is no prior case law concerning section 33 of the Act, the Court of Appeal recognised that some assistance may be derived from common law and equitable principles developed in relation to the bringing of derivative claims in the context of trusts and limited partnerships, particularly given the statutory trust imposed by section 16 of the Act (paras 101 and 140(ix)).

29. The relevant principles in relation to trusts are summarised in *Lewin on Trusts (20th Edition)* at paras 47-006 and 47-008:

> "47-006. However, as an alternative to proceedings brought in the name of trustees, a beneficiary may, sometimes, bring an action in his name on behalf of the trust against a third party. The fact that the action is brought in the name of a beneficiary rather than the name of the trustees does not alter its character. The action is a derivative action in which the beneficiary stands in the place of the trustees and sues in right of the trust, and does not enforce duties owed to him rather than to the trustees; a beneficiary can be in no better position than trustees carrying out their duties in a proper manner…
>
> 47-008. A beneficiary can bring a derivative action only in special circumstances, for example circumstances which tend to disable the trustees from suing (as where their acts and conduct with reference to the trust fund are impeached), or circumstances rendering it difficult or inconvenient for the trustees to sue, as where there is a conflict between their interest and duty. Special circumstances are not confined to circumstances of these kinds. The guiding principle is that there

> must be exceptional circumstances, which embrace a failure, excusable or inexcusable, by the trustees in the performance of a duty to the beneficiaries to protect the trust estate, or to protect the interest of the beneficiaries in the trust estate. The special circumstances relied on must have something to do with the willingness or ability of the trustee or alleged trustees to bring the action."

30. The fact that the special circumstances must have "something to do with the willingness or ability of the trustee or alleged trustees to bring the action" provides a clear link to the focus in section 33(3) on the justification for the failure or refusal of the general partner to institute proceedings.

31. Recent leading cases on the requirement for special circumstances include *Hayim v Citibank NA* [1987] AC 730 and *Roberts v Gill & Co* [2010] UKSC 22; [2011] 1 AC 240. In the latter case Lord Collins of Mapesbury provided the following summary of the law at para 46:

> "The cases go back to the 18th century, and many of them were reviewed in *Hayim v Citibank NA* [1987] AC 730. The special circumstances which were identified in the earliest authorities as justifying a beneficiary's action were fraud on the part of the trustee, or collusion between the trustee and the third party, or the insolvency of the trustee, but it has always been clear that these are merely examples of special circumstances, and that the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy…."

Lord Walker of Gestingthorpe (at para 110) stated that "what has to be special about the circumstances – is that the derivative action is needed to avoid injustice…."

32. The determination of whether there are circumstances which are special therefore involves a consideration of what the interests of justice require – see *In re Field, decd* [1971] 1 WLR 555 at 561 per Goff J, cited with approval by Lord Collins in *Roberts v Gill* at 258D-F: see also *Nurcombe v Nurcombe* [1985] 1 WLR 370 at 378D-H per Browne-Wilkinson LJ.

33. In *Certain Limited Partners in Henderson PFI Secondary Fund II LLP (a firm) v Henderson PFI Secondary Fund II LP (a firm)* [2012] EWHC 3259 (Comm); [2013] QB 934 ("Henderson") Cooke J held that that the special circumstances test also applied to the bringing of a derivative claim by a limited partner on behalf of an English limited

partnership. As with an ELP, a limited partnership established under the Limited Partnerships Act 1907 is not a separate legal entity and limited partners have no role in the management of the partnership business, which is exclusively carried out by the general partner. There is, however, no provision equivalent to section 33 of the Act.

34. The Board agrees with the Court of Appeal that the special circumstances test and case law are relevant to the interpretation and application of section 33. If there are special circumstances which mean that a derivative action is needed to avoid injustice then the failure or refusal of the general partner to institute proceedings may well be without cause. Conversely, if there are no such circumstances then the failure or refusal to do so may well be justifiable and therefore with cause.

35. Graham Chapman KC for the appellants submitted that the case law relating to the bringing of derivative claims on behalf of a company is also of assistance and in particular the fraud on the minority exception to the rule in *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189 that the proper plaintiff for a wrong done to a company is the company itself. There are, however, a number of important distinctions between ELPs and companies which mean that little assistance can be derived from such case law. In particular:

(1) An ELP has no separate legal personality.

(2) A company's articles of association constitute a contract between the company and its members, but no contractual relationship exists between an ELP and its constituent partners. The rights and obligations of the partners in an ELP are governed by a contract between the partners and a statutory trust.

(3) The directors of a company owe fiduciary duties to the company alone and not to the company's shareholders, whilst the general partner of an ELP owes fiduciary duties to all the ELP's limited partners.

(4) The directors of a company are treated as trustees in respect of the company's assets which are under their control, holding them for the company rather than for its shareholders. In contrast, the general partner of an ELP holds the ELP's assets on trust for all the limited partners.

(5) When a wrong is done to a company, it is the company, not its shareholders, that suffers loss. When a wrong is done to an ELP, its constituent partners suffer loss directly: the ELP itself does not suffer any loss that is separate or distinct from the partners' loss.

> (6) A majority of shareholders in a company generally have a range of rights and powers, including the power to remove or replace directors and to pass a special resolution requiring a company to bring legal proceedings. A majority of limited partners in an ELP do not have an equivalent power; faced with a general partner who refuses to bring proceedings on behalf of an ELP without cause, their only recourse is to bring a derivative claim.
>
> (7) The fraud on the minority exception concerns control over the bringing of proceedings by the majority shareholders. No such issue arises as between limited partners. As this case illustrates, the majority of limited partners may be seeking to bring the derivative claim.

The Court of Appeal judgment

36. At para 140 of its judgment the Court of Appeal gave general guidance in respect of derivative proceedings under section 33(3) of the Act. This guidance will be considered further below, but it includes the following summary of the nature of the court's task in deciding whether the requirements of section 33(3) have been complied with:

> "(viii) The essential task for the court at such a hearing is to determine whether the limited partner has brought himself within the terms of section 33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.
>
> (ix) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in section 33(3).
>
> (x) Whilst reference to a 'good arguable case' may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of section 33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the [Act] that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. …

> the court should consider, inter alia, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.
>
> (xi) The court should reach its decision as to standing by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.
>
> (xii) Even where the requirements of section 33(3) are met, the court has a discretion as to whether to permit a derivative claim to continue. One of the factors which is likely to be relevant in exercising that discretion is whether the plaintiff has an alternative remedy."

37. In relation to the interpretation of section 33(3), the Court of Appeal held that the expression "without cause" must carry the implication of "good" cause**,** noting that the legislature cannot have intended that a decision for any cause, no matter how inhibited or conflicted the decision maker might be, would be sufficient to prevent the bringing of a derivative action under section 33(3) (para 95). The Court of Appeal further held that the relevant inhibition or conflict of interest is that of the general partner itself, as opposed to that of its directors from time to time (para 168).

38. On the facts, the Court of Appeal held that the section 33(3) test was satisfied as the General Partner was under a relevant inhibition when it determined (acting by the FFP Directors) that there was cause not to bring the derivative claims against the appellants. The Court of Appeal observed that, on the respondents' case, the General Partner was deeply involved in the alleged wrongdoing, as was Mr Williams, and that the General Partner had to decide whether to institute proceedings against the appellants, in circumstances where (para 158):

> (1) The essential wrongdoing giving rise to the claims against the appellants was that of the General Partner itself in making various payments and where the General Partner was part of the unlawful means conspiracy to injure the Fund involving Mr Williams and Wellspring.
>
> (2) The contemplated proceedings would have to be brought against Mr Williams, the ultimate beneficial owner of the General Partner and against two companies with which he is deeply and closely involved, namely Wellspring and KGLI Asia.

(3) The General Partner would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy.

39. The Court of Appeal found (para 159) that this amounted to an "obvious and serious conflict of interest" by reason of which the General Partner was under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and which also meant that the failure by the General Partner to bring proceedings was without cause. In so finding the Court of Appeal was upholding the Grand Court's conclusion to the same effect.

40. As to discretion, it was submitted that because the respondents have direct claims against the first and second appellants they have an alternative remedy against them and so there is no need to bring a derivative claim. The Court of Appeal concluded, however, that it was appropriate to allow the claim to continue in circumstances where there was uncertainty around whether the respondents had direct claims against the first and second appellants and whether the court could order restoration of the trust fund on the success of such direct claims in the absence of a derivative claim on behalf of the Fund (para 170). Both the direct and derivative claims against the first and second appellants were therefore permitted to continue.

The appeal

41. The appellants contend that the Court of Appeal erred in the interpretation of section 33(3) and/or the exercise of its discretion by:

(1) Finding that the General Partner was subject to a relevant inhibition precluding it from making a valid determination as to whether to bring the derivative claims.

(2) Failing to give due regard to the commercial judgment of the General Partner (acting by the FFP Directors) that the derivative claims should not be pursued.

(3) Allowing the respondents to continue the derivative claims in circumstances where the General Partner had validly determined with "cause" that the derivative claims should not be pursued.

(4) Establishing a test which allows a limited partner to bring or continue a derivative claim simply by impugning the conduct of the general partner so as to

> give rise (on the basis of the Court of Appeal's findings) to a perceived potential conflict of interest that inevitably renders any decision not to bring such claims as one "without cause".

(1) Did the Court of Appeal err in finding that the General Partner was subject to a relevant inhibition precluding it from making a valid determination as to whether to bring the derivative claims?

42. The appellants accept that a failure to bring proceedings may be without cause where the decision making is subject to a relevant inhibition.

43. The appellants also accept that an actual conflict of interest would be a relevant inhibition (see para 90 of their written case).

44. A conflict of interest is a clear example of special circumstances justifying the bringing of a derivative claim. This is one of the examples given in *Lewin* at para 47-008. It was also the basis upon which Cooke J held that special circumstances existed in *Henderson.* In that case a derivative claim was allowed to be brought by the limited partners for alleged wrongdoing by the management company appointed by the general partner, which was a sister company of the general partner. Cooke J held that this sister company relationship gave rise to an "irreconcilable conflict of interest" and that the partnership's prospects of obtaining redress against the management company were "virtually eliminated" (para 57).

45. Mr Chapman submitted that there was no relevant conflict of interest in this case as the Court of Appeal had merely held that there was a potential conflict of interest rather than an actual conflict of interest and there was no finding, as in *Henderson,* as to the impact of that conflict on the prospects of obtaining redress.

46. In the Board's view, it is clear that the Court of Appeal correctly held that there was an actual conflict of interest and indeed an equivalent conflict of interest to that found to be established in *Henderson.* As the Court of Appeal stated (emphasis added):

> "158. We respectfully agree with the decision of Cooke J in *Henderson*. In our judgment there *is* a similar conflict of interest in the present case. On the plaintiffs' case, D1 as the general partner was deeply involved in all the alleged wrongdoing as was Mr Williams. …

> 159. On the face of it, *by reason of the obvious and serious conflict of interest*, D1 *is* under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also means that the failure by D1 to bring proceedings against D2 – D4 is without cause for the purposes of section 33(3).
>
> …
>
> 163. … [the General Partner] *is* subject to the conflicts of interest we have summarised above…
>
> …
>
> 167. … There is no doubt in our view that [the General Partner] *was and is* suffering from an inhibition … ."

47. It is correct that the Court of Appeal refers (at para 163) to the fact that the General Partner "cannot be seen to be in a position to take a fair and independent decision about the potential litigation", but that (and other like comments) is a description of the consequence of the conflict of interest rather than of its nature.

48. If the General Partner's decision whether or not to institute proceedings is subject to the conflict of interest which the Court of Appeal identified then the decision is inhibited thereby – it is not necessary or appropriate to go on to consider how it in fact affected the decision.

49. Further, in concluding that there was an actual conflict of interest the Court of Appeal was upholding the like finding made by the Grand Court:

> "104. The [General Partner] is a defendant to litigation where it is accused of serious wrongdoing: wilful default, liability under the Fraudulent Dispositions Act, and conspiracy with the other defendants are alleged.
>
> 105. A large number of the claims against [the appellants] are premised on a breach of duty by the [General Partner]. For example the allegation of knowing receipt is based upon a breach of duty by the [General Partner]. In the circumstances

> the [General Partner] cannot be expected to be the arbiter of whether to bring a claim against another defendant that is premised on its own breach of duty. It is in my view incapable of exercising an impartial decision-making function."

50. The Board agrees with the reasoning and conclusion of the Court of Appeal and the Grand Court.

(2) Did the Court of Appeal err in failing to give due regard to the commercial judgment of the General Partner (acting by the FFP Directors) that the derivative claims should not be pursued?

51. The appellants contend that the General Partner's decision not to bring the claims which are now brought derivatively was the product of a careful and thorough investigation and, ultimately, the considered exercise of commercial judgment by the General Partner acting by its independent FFP Directors. They reasonably concluded that the claims were not of sufficient merit to justify the bringing of proceedings. They appropriately also took into account how such claims might be funded and that the bringing of such proceedings might give rise to claims against the Fund, as it has done. This commercial decision is one with which the court should not interfere.

52. For a number of reasons, the fact that a commercial decision was taken by the FFP Directors does not avoid the conflict of interest which the Court of Appeal found there to be or the resulting inhibition on decision making.

53. First, as both the Grand Court and the Court of Appeal held, it is the position of the General Partner, not its directors, which must be considered. This is made clear by section 33 in general, which focuses on the "general partner", and by section 33(3) in particular, which refers to the "general partner" having failed or refused to bring proceedings without cause.

54. If, as the Court of Appeal held, the General Partner was subject to a disqualifying conflict of interest in making the decision whether or not to bring proceedings then that is not affected by the identity or independence of its directors. The conflict and the inhibition remain regardless of the identity of the directors from time to time.

55. Nor is this conclusion affected by the possibility adverted to by the Court of Appeal (at para 163) that different considerations might arise if liquidators were appointed by the court. It is not necessary to decide whether or not this is correct but, as the Court of Appeal observed, liquidators are not in the same position as directors as they are subject to the supervision of the court.

56. Secondly, even if it is appropriate to have regard to the position of the FFP Directors, they too were subject to a disqualifying conflict of interest and, moreover, one which they seemingly did not recognise. That conflict arises because the FFP Directors owed a duty to act in the best interests of the General Partner. Where there is a conflict between the interests of the General Partner and the Fund then that duty puts the FFP Directors in a conflicted position. The fact that the General Partner has a duty to act in the best interests of the Fund does not avoid that conflict; indeed, it highlights it.

57. As the Grand Court held, the FFP Directors were "seriously inhibited from making impartial decisions" regarding the bringing of proceedings because "they owe their duties primarily to the [General Partner] and it is obviously not in the [General Partner's] interests to be sued" (para 110). The Court of Appeal similarly recognised the conflict "between acting in the best interests of [the Fund] (which might include taking action against [the General Partner] as a co-conspirator) and acting in the best interests of [the General Partner] (which might be said to include the avoidance of being sued)" (para 163).

58. Thirdly, in any event the Grand Court further found that there was a "prima facie case that [the FFP Directors] are unable to assess the claims properly in an independent and objective way, notwithstanding Mr Lewis' extensive evidence" (para 110) and a "prima facie case that [the FFP Directors] have been guided (until recently) in their investigations by information provided by those who were under investigation themselves, and by their legal advisers, who were also conflicted" (para 111). This led the Grand Court to reach the following conclusion on the evidence:

> "121. Based on the available evidence, I have formed the view that there is a relevant inhibition which prevents the FFP Directors' decision making process being fair, because the decisions not to pursue the claims are insufficiently distinct from the wrongdoing upon which the claims are founded. …"

59. Mr Chapman submitted that this conclusion was undermined by the fact that the Grand Court had wrongly evaluated the evidence on the basis that it was only necessary to show a "prima facie" case. However, notwithstanding the different approach which the Court of Appeal held to be appropriate, it endorsed the Grand Court's conclusion, stating as follows:

> "168. Given our decision to uphold the judge's conclusion that it is the position of [the first defendant] as the general partner which must be considered in relation to any inhibition rather than the position of the directors from time to time, it is not necessary for us to address his finding about the position of the

> FFP Directors. Suffice it to say that, if we had found it necessary to do so, we would have considered that the judge was entitled to reach the conclusions which he did in this respect."

60. That endorsement of the Grand Court's conclusion necessarily includes the findings upon which that conclusion was based, as summarised above. Those findings are not open to challenge on this appeal.

(3) Did the Court of Appeal err in allowing the respondents to continue the derivative claims in circumstances where the General Partner had validly determined with "cause" that the derivative claims should not be pursued?

61. The basis upon which the appellants contend that the Court of Appeal so erred is that the FFP Directors had determined that the claims should not be pursued. All the reasons set out above as to why that decision was and remained conflicted and so was not made with "cause" equally apply to the exercise of any discretion to allow a derivative claim. This issue does, however, raise the question of whether there is such a discretion and, if so, its juridical basis. This question was raised by the Board at the hearing and, since the parties had not come to court prepared to deal with the issue, they were invited to address it by making written submissions.

62. Having had the benefit of those submissions, the Board concludes that there is no proper basis for the two stage approach adopted by the Court of Appeal whereby the court considers first if the section 33(3) test of whether there has been a refusal or failure to institute proceedings without cause is satisfied, and secondly whether as a matter of discretion the derivative claim should be permitted. Given that this two stage approach was common ground before the Court of Appeal, its appropriateness was not an issue which it addressed.

63. Section 33 does not refer to the court having any discretion, nor does it lay down any requirement for the court to grant permission or leave for the derivative proceedings to be brought. The sole statutory criterion is whether the requirements of section 33(3) are met. Although the subsection states that the limited partner "may" bring derivative proceedings where the test is satisfied, this relates to what the limited partner may do, not what the court may allow the limited partner to do. It is inconsistent with that statutory scheme to import a separate requirement that the bringing of derivative proceedings is additionally subject to the exercise of the court's discretion.

64. As explained above, however, the special circumstances test is relevant to the interpretation and application of section 33(3) and that involves a consideration of what the interests of justice require. This allows the court to take into account factors which

might otherwise be regarded as relevant to the exercise of a discretion ("discretionary considerations") as part of its evaluative determination of whether the requirements of section 33(3) are met. This would include, for example, whether there is an alternative remedy available, or whether the derivative claim is being brought for an ulterior motive, or views expressed by other limited partners.

65. Indeed, this is implicitly recognised in the Court of Appeal's description of how the court should approach the determination of whether the requirements of section 33(3) are met in para 140(x) of its judgment. It there refers to the court's task being an "evaluative one" which involves balancing "the need to avoid injustice" with "the need to respect the fact that a derivative action is an exception to the general principle" that decisions as to litigation are for the general partner. It also refers to the need to consider "the likelihood and nature of any injustice if the derivative claim is not permitted". Such an approach allows the court to have regard to discretionary considerations.

66. The Court of Appeal was therefore correct to have regard to discretionary considerations in reaching its conclusion, albeit that this should have been as part of its determination that the requirements of section 33(3) were met rather than as a separate step in a two stage approach. For the reasons stated in para 61 above, there was no error in its treatment of such factors.

(4) Did the Court of Appeal err by establishing a test which allows a limited partner to bring or continue a derivative claim simply by impugning the conduct of the general partner so as to give rise (on the basis of the Court of Appeal's findings) to a perceived potential conflict of interest that inevitably renders any decision not to bring such claims as one "without cause"?

67. As already stated, the Court of Appeal did not hold that there was "a perceived potential conflict of interest" but rather an actual conflict of interest and one which was, moreover, "obvious and serious".

68. Mr Chapman nevertheless submitted that the Court of Appeal's interpretation of section 33(3) set the bar too low and would be likely to lead to an undesirable proliferation of derivative claims in relation to ELPs.

69. As the Court of Appeal observed (para 173), such arguments do not bear on the proper interpretation of section 33(3) and are more matters for the legislature.

70. In any event, the Board would not accept that the bar has been set low. The Court of Appeal's decision is only likely to apply to a conflict of interest on the part of the general partner in the case of a claim against persons closely associated with the general

partner, or a claim in which the general partner is implicated, and which is seriously arguable.

71. Mr Chapman further submitted that the effect of the Court of Appeal's decision is that once a general partner is conflicted it is always likely to be conflicted and that the only way to avoid such a conflict is going to be the replacement of the general partner. Further, in the present case, due to the terms of the partnership agreement, that would lead to dissolution of the ELP.

72. Conflicts of interest may, however, take many different forms and be of varying levels of seriousness. In many cases, it may be possible to remove and resolve the conflict without there being any need to replace the general partner. This case may be different because of the "obvious and serious" nature of the conflict of interest, if there is substance in the allegations in the respondents' claims. As to the potential difficulties arising from the terms of the partnership agreement, this is not inherent in the operation of the Act; it is the consequence of the partnership terms agreed.

The cross-appeal

73. The respondents' position is that the Court of Appeal was correct as to the meaning, effect and application of section 33(3), save that, by their cross-appeal, the respondents submit that the Court of Appeal erred when it held that the point at which the section 33(3) test is to be assessed is the date of the strike out hearing, rather than, as the Judge held, at the time the derivative claim was commenced (the "Timing Issue").

74. On the Timing Issue the Court of Appeal held that the Judge's approach would require the court to ignore anything that had happened between the institution of proceedings and the hearing, which could lead to highly unsatisfactory results. It gave the example of the appointment of a new general partner which removed any question of inhibition or conflict of interest. It concluded that "the legislature cannot have intended that the court should allow a derivative claim to proceed in circumstances where, as at the date of the hearing of the strike out or preliminary issue, the requirements of section 33(3) are not met …" (para 125).

75. The respondents criticise that decision and rely in particular on the fact that the words "failed or refused" in section 33(3) are in the past tense, which suggests that the relevant failure or refusal must have taken place before the date of institution of the derivative claim.

76. In the Board's view the Court of Appeal reached the correct conclusion for a number of reasons.

77. First, although section 33(3) uses the past tense when it refers to whether the general partners "have, without cause, failed or refused to institute proceedings", that can refer to a failure or refusal to do so which began before the derivative action was commenced and continues up until the time of the court's determination. Similarly, although section 33(3) states that a limited partner may "bring" an action, which would most obviously refer to the commencement of the action, it can also refer to commencing and maintaining an action.

78. Secondly, this interpretation of section 33(3) is supported by pragmatic considerations and the fact that the nature of the evaluative decision which the court is called upon to make under section 33(3) is one which requires regard to be had to all relevant circumstances at the time of the decision. In particular, any consideration of what the interests of justice require can only properly be made on the basis of what justice currently requires, as opposed to what it may in the past have required.

79. As the Court of Appeal held, it would be highly unsatisfactory if the court could not have regard to how circumstances may have changed since the initiation of the proceedings, including, for example, the removal of the inhibition or conflict that was the basis for contending that the refusal or failure to institute proceedings was without cause.

80. Other examples given by the appellants of potentially important developments post-dating the initiation of proceedings include: (i) the insolvency of the derivative defendants; (ii) the defendants being denied insurance coverage for the claimed loss; (iii) determinative documents arising on discovery; (iv) adverse interlocutory findings during the course of proceedings; and (v) the costs of proceedings exceeding the value of the claim.

81. The respondents recognised the force of this point and acknowledged that it should be possible for the court to take into account later developments. They contended that the court could do so in the exercise of its discretion. On their approach there are two stages. The first stage is whether the requirements of section 33(3) are met, which is to be determined on the basis of the facts as at the time of the initiation of the proceedings. The second stage is the exercise of the court's discretion to allow the proceedings to be brought, which is to be determined on the basis of all facts as known at the time of the hearing before the court. However, for the reasons set out above, there is no two stage process; there is a single evaluative decision to be made which will include consideration of discretionary considerations. Unless that decision is made on the basis of the facts as they appear to the court at the hearing, it will not be possible to take into account changing circumstances, notwithstanding the respondents' acknowledgment of the need to do so.

82. Thirdly, the authorities on special circumstances show that that is an issue which goes to the cause of action being asserted and is required to be pleaded and proved. So,

for example, in *Roberts v Gill* Lord Walker stated that "special circumstances are part of his cause of action" which must be pleaded (para 103, p 272F) and that special circumstances are one of the "building blocks" and "essential facts … which must be pleaded and proved (if not admitted) in order to establish the cause of action" (para 108, p 274B-C).

83. This is borne out by the majority decision in *Roberts v Gill* that the amendment to add a derivative claim involved a new cause of action being brought after the expiry of the relevant limitation period. In that case the claimant commenced proceedings against two firms of solicitors who had advised the former personal representatives of his grandmother's estate. This claim was brought in his personal capacity as a beneficiary of the estate. After the limitation period had expired, he applied to amend to bring a derivative claim on behalf of the estate. The application was dismissed by the deputy judge on the grounds that no special circumstances existed. Although the Court of Appeal held that special circumstances did exist, it dismissed the appeal on the grounds that the amendment required the addition of a new party, the administrator of the estate, and that this was not permissible under CPR r 19.5(3)(b) (now CPR r 19.6(3)(b)) as such addition was not necessary in order to pursue the personal claim originally made. The House of Lords allowed the appeal against the Court of Appeal's decision as to the existence of special circumstances, but the majority (Lord Rodger of Earlsferry, Lord Walker and Lord Collins) also held that the Court of Appeal was correct to hold that the application did not meet the requirements of rule 19.5. Integral to that decision was their conclusion that the bringing of a derivative claim involved a new cause of action, as the capacity in which the party is suing is part of the cause of action. As Lord Collins stated at para 41:

> "The [derivative] claim is a claim involving a new cause of action since the capacity in which [the claimant] makes the claim is an essential part of the claim".

84. This decision implies that, at common law, the special circumstances justifying a derivative claim must, if disputed, be proved in order for the claim to succeed. If that is so, then it follows that, at common law, the special circumstances must continue to exist at the date of determination. Reading "bring" as meaning "commence and maintain" therefore has the consequence that the statutory regime is similar in this respect to the common law relating to derivative claims. That this is likely to have been intended is supported by the general preservation of common law rules except where inconsistent with express provisions (section 3 of the Act), and the link between the special circumstance mentioned in section 33(3) and the common law, to which attention has already been drawn (see paras 30−34 above).

The guidance

85. As referred to above, in its judgment the Court of Appeal gave general guidance as to how applications under section 33 should be approached and determined. The parties did not take issue with this guidance, save in relation to the Timing Issue. For the reasons explained above, the Board considers that the Court of Appeal erred in stating that the court has a discretion as to whether to permit a derivative action to continue even where the requirements of section 33(3) are met. There is a single evaluative decision to be made as to whether the statutory requirements are met, but that decision allows for account to be taken of discretionary considerations. For the same reason, it is not strictly correct to refer to the court permitting or allowing derivative proceedings to be brought. There is no permission or leave requirement. Subject to those clarifications, the Board endorses the guidance given by the Court of Appeal, in the amended form set out below:

(1) There is no requirement for leave to bring derivative proceedings under section 33(3). A limited partner may simply institute such proceedings.

(2) A limited partner must however plead the facts and matters relied upon as showing that it can bring itself within the requirements of the subsection.

(3) If a defendant wishes to raise an issue as to whether the requirements of the subsection are met, it should do so by means of a strike out application or seek the trial of a preliminary issue.

(4) Whichever of these routes is chosen does not affect the test which has to be applied in deciding whether section 33(3) is complied with.

(5) The decision of the court on such an application or preliminary issue is determinative (subject to appeal). If the court holds that the derivative claim may be continued, the limited partner may pursue the claim. It is not an issue which is deferred until or revisited at trial (save possibly in the context of costs at the end of the trial).

(6) The court should not conduct a mini trial as to whether the requirements of section 33(3) are satisfied. The court has to reach its decision on the basis of the material before it, which will be more limited than it will be following discovery and trial.

(7) At the hearing, the onus is on the limited partner to satisfy the court that the requirements of section 33(3) are met. Reference to ‘onus’ is not to be mistaken as

a reference to a 'burden' in the sense of having to show something on the balance of probabilities.

(8) The essential task for the court at such a hearing is to determine whether the limited partner has brought itself within the terms of section 33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.

(9) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in section 33(3).

(10) Whilst reference to a good arguable case may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of section 33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court. Regard should be had to the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the Act that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. The court should consider, inter alia, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim does not proceed. This will allow for account to be taken of discretionary considerations, such as whether the plaintiff has an alternative remedy.

(11) The court should reach its decision by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.

Conclusion

86. For the reasons set out above the Board will humbly advise His Majesty that the appeal and the cross-appeal should be dismissed.

EXHIBIT M

CAYMAN ISLANDS

EXEMPTED LIMITED PARTNERSHIP ACT

(2025 Revision)

Supplement No. 3 published with Legislation Gazette No. 7 of 30th January, 2025.

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PUBLISHING DETAILS

Law 5 of 2014 consolidated with Laws 10 of 2017, 31 of 2020, Act 13 of 2024 and as amended by Act 56 of 2020.

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Act 13 of 2024-11th December, 2024.

Consolidated and revised this 1st day of January, 2025.

Note (not forming part of this Act): This revision replaces the 2021 Revision which should now be discarded.

CAYMAN ISLANDS

EXEMPTED LIMITED PARTNERSHIP ACT

(2025 Revision)

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CAYMAN ISLANDS

EXEMPTED LIMITED PARTNERSHIP ACT

(2025 Revision)

Short title

1. This Act may be cited as the *Exempted Limited Partnership Act (2025 Revision)*.

Interpretation

2. In this Act —

"**certified translator**" means a person whose interpretation or translation competence has been tested and approved by a professional association or governmental body or any other person determined by the Registrar;

"**commitment**" means cash, property, services rendered or other assets which a partner agrees to contribute to the capital of an exempted limited partnership in its capacity as partner but does not include any moneys agreed to be lent to an exempted limited partnership;

"**Companies Act**" means the *Companies Act (2025 Revision)*;

"**contribution**" means cash, property, services or other assets which a partner contributes to the capital of an exempted limited partnership in its capacity as partner but does not include any moneys lent by a partner to an exempted limited partnership;

"**court**" means the Grand Court;

"**dual foreign name**" means an additional name in any language not utilising the Roman alphabet, utilising any letters, characters, script, accents and other diacritical marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet;

"**exempted limited partnership**" means —

(a) a partnership formed and registered under section 9(1); or

(b) a partnership that before the commencement of the *Exempted Limited Partnership Law, 2014 (Law 5 of 2014)* was formed and registered under the **repealed** *Exempted Limited Partnership Law (2013 Revision)*;

"**general partner**" means a person who is named as such in the statement filed pursuant to section 9 or 10(2) and if more than one shall mean each general partner, unless this Act otherwise provides;

"**general partnership interest**" means the partnership interest of a general partner in that person's capacity as such;

"**insolvency of the exempted limited partnership**" means that the general partner is unable to pay the debts and obligations of the exempted limited partnership, otherwise than in respect of liabilities to partners on account of their partnership interests, in the ordinary course of business as they fall due out of the assets of the exempted limited partnership, without recourse to the separate assets of the general partner not contributed or committed to the exempted limited partnership and "**insolvent**" shall be construed accordingly;

"**limited partner**" means a person who has become a limited partner in accordance with section 4(2) or otherwise pursuant to section 32;

"**limited partnership interest**" means the partnership interest of a limited partner in that person's capacity as such;

"**majority of limited partners**" means a majority or number of limited partners, or class or category of limited partners, or other persons, whether parties to the partnership agreement or otherwise including the general partner, required by or specified, either generally or in respect of a particular matter, in the partnership agreement and calculated in the manner specified in the partnership agreement, but if no such majority or manner is specified in the partnership agreement any required majority of the limited partners shall be a simple majority of the limited partners calculated by reference to the value of the contributions of the limited partners at the time of determination;

"**overseas company**" means a company, body corporate or corporate entity existing under the law of a jurisdiction outside of the Islands;

"**part**" means, in relation to a partnership interest, a proportionate part of that partnership interest, comprising both the rights, and the obligations under the partnership agreement and this Act but without prejudice to the liability of a general partner under section 4(2);

"**partner**" means a limited partner or a general partner;

"**partnership agreement**" means any agreement of the partners which provides for the establishment of, and regulates the affairs of, an exempted limited

partnership, the conduct of its business and the rights and obligations of the partners amongst themselves;

"**partnership interest**" means the interest of a partner in an exempted limited partnership in respect of profit, capital and voting or other rights, benefits or obligations to which that partner is entitled or subject pursuant to the partnership agreement or this Act;

"**public in the Islands**" excludes any exempted or ordinary non-resident company registered under the *Companies Act (2025 Revision)*, a foreign company registered pursuant to Part 9 of the *Companies Act (2025 Revision)*, a foreign limited partnership registered under section 42, any company acting as general partner of a partnership registered under section 9(1) or any director or officer of the same acting in that capacity or the trustee of any trust registered or capable of registration under section 74 of the *Trusts Act (2021 Revision)* acting in that capacity;

"**qualifying general partner**" means a general partner of an exempted limited partnership that satisfies paragraph (a), (b), (c) or (d) of section 4(4);

"**registered office provider**" means in relation to an exempted limited partnership the person who provides the registered office for that exempted limited partnership;

"**Registrar**" means the Registrar of Exempted Limited Partnerships appointed in accordance with section 8;

"**security interest**" means a legal mortgage, an equitable mortgage, charge or other form of security interest granted with respect to a partnership interest or part thereof whether or not governed by the laws of the Islands;

"**signature**" includes a facsimile of a signature however reproduced and a digital signature;

"**special economic zone business**" means any type of business authorised to be carried on in a special economic zone pursuant to any Law in force in the Islands; and

"**translated name**" means a translation or transliteration of an exempted limited partnership's dual foreign name into the English language provided by either a person licensed to provide the exempted limited partnership's registered office in the Islands or a certified translator, together with a statement as to the foreign language in which the dual foreign name is written.

Saving of rules of equity and common law

3. The rules of equity and of common law applicable to partnerships as modified by the *Partnership Act (2025 Revision)* but excluding sections 31, 45 to 54 and 56 to 57 shall apply to an exempted limited partnership, except where they are inconsistent with the express provisions of this Act.

Constitution

4. (1) An exempted limited partnership may be formed for any lawful purpose to be carried out and undertaken either in or from within the Islands or elsewhere upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities mentioned in this Act but an exempted limited partnership shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on of the business of that exempted limited partnership exterior to the Islands.

(2) An exempted limited partnership shall consist of one or more persons called general partners who shall, in the event that the assets of the exempted limited partnership are inadequate, be liable for all debts and obligations of the exempted limited partnership, and one or more persons called limited partners who shall not be liable for the debts or obligations of the exempted limited partnership save as provided in the partnership agreement and to the extent specified in sections 20(1) and 34(1), but a general partner, without derogation from that general partner's position as such, may, in addition, take an interest as a limited partner in the exempted limited partnership.

(3) A body corporate, with or without limited liability, and a partnership whether in the name of the partnership and whether or not an exempted limited partnership, may be a general or limited partner of an exempted limited partnership.

(4) Any one or more of the limited partners and general partners of an exempted limited partnership may be resident, domiciled, established, incorporated or registered under the laws of the Islands or outside of the Islands but at least one general partner shall —

(a) if an individual, be resident in the Islands;

(b) if a company, be registered under the *Companies Act (2025 Revision)* or registered pursuant to Part 9 of the *Companies Act (2025 Revision)*;

(c) if a partnership, be registered pursuant to section 9(1) or 42, as applicable; or

(d) if any other person, be registered under any other Law or regulation as may be prescribed.

(5) A limited partner, or person with analogous status, of a partnership which is the general partner of an exempted limited partnership shall not, by virtue of that fact alone, be taken to be a general partner of the exempted limited partnership.

(6) A limited partner of an exempted limited partnership shall not cease to have the benefit of limited liability by reason only of the partnership ceasing to have a qualifying general partner.

When licence not required

5. A person who acts as a general partner of an exempted limited partnership is not, by virtue solely of so acting, required to be licensed under the *Local Companies (Control) Act (2025 Revision)* and shall not require a trust company licence under the *Banks and Trust Companies Act (2025 Revision)*, a mutual fund administrator's licence under the *Mutual Funds Act (2025 Revision)*, a licence under the *Companies Management Act (2025 Revision)* or a licence under the *Trade and Business Licensing Act (2021 Revision)*.

Name reservation

5A. (1) A person ("applicant") may apply to reserve a specified name by —

(a) filing with the Registrar (including by permitted electronic means) an application executed by the applicant specifying the name to be reserved and the name and address of the applicant; and

(b) paying the prescribed application fee.

(2) If, on an application made under subsection (1), the Registrar finds that the name is available for use by an exempted limited partnership or a foreign limited partnership, the Registrar may reserve the name for exclusive use by the applicant for a period of up to four months.

(3) On or before the expiry of the period for name reservation under subsection (2), the applicant may make further successive applications pursuant to subsection (2) to reserve the specified name.

Name and registered office

6. (1) Every exempted limited partnership shall have a name which —

(a) shall include the words "Limited Partnership" or the letters "L.P." or "LP";

(b) may include the name of any general partner or limited partner or any derivation thereof; and

(c) in the case of an exempted limited partnership carrying on special economic zone business, shall include the words "special economic zone" or the letters "SEZ",

in each case which may be preceded by or followed with a dual or foreign name, but no exempted limited partnership shall have a name or translated name which, because it is identical or similar to the name of any other entity or it falsely suggests the patronage of or a connection with some person or authority or it suggests that the exempted limited partnership is licensed whether in the Islands or elsewhere to carry on any type or class of business when it is not in fact so licensed or because of any other reason, is calculated or likely to mislead.

(2) Every exempted limited partnership shall have a registered office situated in the Islands for the service of process and to which all notices and communications may be addressed.

(3) The registered office of an exempted limited partnership shall be the same as the address of a person licensed by the Authority under the *Banks and Trust Companies Act (2025 Revision)*, the *Companies Management Act (2025 Revision)* or the *Mutual Funds Act (2025 Revision)* except where the registered office was at a different address immediately prior to the date of commencement of this Act and remains at that address on or after the date of commencement of this Act.

(4) For the purpose of subsection (3) the Authority means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Act (2020 Revision)*, and includes a person acting under the Authority's authorisation.

Establishment

7. A partnership, limited or otherwise, shall not be an exempted limited partnership unless registered as such under section 9(1).

Registrar

8. The Registrar of Companies appointed under the *Companies Act (2025 Revision)* shall be the Registrar of Exempted Limited Partnerships.

Registration

9. (1) The registration of an exempted limited partnership shall be effected by payment to the Registrar of a registration fee of an amount that the Cabinet shall, from time to time, by regulation prescribe and by filing with the Registrar a statement signed, subject to section 11, by or on behalf of a general partner containing —

(a) the name or dual foreign name and translated name of the exempted limited partnership;

(b) the general nature of the business of the exempted limited partnership;

(c) the address in the Islands of the registered office of the exempted limited partnership;

(d) the term, if any, for which the exempted limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement;

(e) the full name and address of the general partner and, if more than one of each of them, specifying each of them as a general partner and

(i) in the case of a corporate general partner, there shall be filed with the statement a certificate of incorporation and a certificate of good standing (or similar documents under the laws of the jurisdiction of

incorporation) or a certificate of registration and a certificate of good standing under Part 9 of the *Companies Act (2025 Revision)*;

(ii) in the case of a general partner which is a partnership registered under this Act, there shall be filed with the statement a certificate of registration and a certificate of good standing or certified copies thereof; and

(iii) in the case of a general partner who is an individual there shall be filed with the statement photographic evidence of that person's identity and evidence of that person's residential address in the Islands; and

(f) a declaration that the exempted limited partnership shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on of the business of that exempted limited partnership exterior to the Islands.

(2) The Registrar shall maintain a record of each exempted limited partnership registered under this Act and all the statements filed in relation to the exempted limited partnership, which records and statements shall be kept open to public inspection during all usual business hours.

(3) An exempted limited partnership's dual foreign name shall only be entered on the record if its translated name conforms with the provisions of section 6(1).

(4) If the exempted limited partnership does not conform with section 6(1) then the dual foreign name and the translated name shall not be entered on the record.

(5) The Registrar shall issue a certificate of registration under the Registrar's hand and seal of office as soon as the registration of the statement pursuant to subsection (1) has been effected.

(6) A limited partner of an exempted limited partnership formed after the 15th July, 1991 shall not have the benefit of limited liability until the date indicated on the certificate referred to in subsection (5) issued by the Registrar, and a partnership registered in accordance with section 40(1) shall obtain the benefit of limited liability under this Act with effect from that date but subject to section 40(2).

(7) A certificate issued under subsection (5) shall be conclusive evidence that compliance has been made with all the requirements of this Act in respect of the formation and registration of an exempted limited partnership but subject to section 40(2).

(8) Notwithstanding subsections (1) and (5), the Registrar may refuse to accept the registration of an exempted limited partnership and refuse to issue a certificate of registration in any case where, in the Registrar's opinion, the name or translated name of the proposed exempted limited partnership is in contravention of section 6(1).

Changes in registered particulars

10. (1) Without prejudice to subsection (2), if, during the continuance of an exempted limited partnership, any change is made or occurs in any matter specified in paragraphs (a) to (e) of section 9(1), a statement signed, subject to section 11, by a general partner specifying the nature of the change shall, within sixty days of the change, be filed with the Registrar.

(2) A statement signed in accordance with subsection (1) in respect of any arrangement or transaction consequent upon which any person will be removed, replaced or admitted as a general partner in any exempted limited partnership, shall, within fifteen days of the arrangement or transaction, be filed with the Registrar and, until the statement is so filed, the arrangement or transaction shall, for the purposes of this Act and the partnership agreement, not be effective to remove, replace or admit that person as a general partner of the exempt limited partnership and with respect to a replacement or admitted general partner the documentation required by subsection 9(1)(e)(i), (ii) or (iii) of this Act shall be provided as the case may require.

(3) Save with the written consent of any person thereby affected, no arrangement or transaction shall take effect to the extent that it seeks to relieve or discharge a general partner from the obligations of a general partner with regard to any debt or obligation of the exempted limited partnership to a person incurred before the arrangement or transaction takes effect.

(4) If default is made in compliance with this section, each general partner in default shall incur a penalty of two hundred dollars for each day that the default continues which penalty shall be a debt due to the Registrar and the general partner shall indemnify any person who thereby suffers any loss.

(5) The name or translated name of an exempted limited partnership shall not be changed so as to contravene section 6(1) and the Registrar may refuse to accept a statement under subsection (1) which, in the Registrar's opinion, seeks to effect such a change.

Failure to file statement

11. If a person required by section 9(1), section 10(1) or (2) or section 36, or by the partnership agreement to execute and file a statement or notice fails to do so, any other partner, and any assignee of a partnership interest who is or may be affected by the failure or refusal may petition the court to direct a person the court sees fit to sign the statement and file the same on behalf of the person in default.

Copies of certificates

12. (1) Any person may require a certified copy of the certificate of registration, a certificate of good standing or a copy of or extract from any registered statement filed in relation to the exempted limited partnership to be certified as a true copy by the Registrar on payment of a fee the Cabinet may by regulation prescribe.

(2) A certificate of registration, a certificate of good standing or a copy of or extract from a registered statement filed with the Registrar issued under this Act, if certified by the Registrar to be a true copy, shall be received in evidence in all legal proceedings.

Fees for administrative services

12A. A person shall pay to the Registrar the prescribed fee for the provision by the Registrar of any administrative services as may be prescribed.

Express fees

13. (1) The Registrar, on receipt of —

(a) an application for registration under section 9 or 42;

(b) an application for any certificate, other than a certificate under section 9(5) or 42(9), which the Registrar is authorised to provide under this Act;

(c) the filing of a notice of termination of registration and written confirmation that the action is authorised by the partnership agreement, for de-registration under section 41;

(d) an application for de-registration under section 43; or

(e) any relevant information for a transaction under subsection (2),

which is accompanied by the prescribed fees and the prescribed express fee, shall complete the relevant transaction by —

(i) the end of the working day, where the application, filing or relevant information and all fees are received by 12 noon; or

(ii) 12 noon on the following working day, where the application, filing or relevant information and all fees are received after 12 noon.

(2) For the purposes of subsection (1)(e), the transactions are —

(a) the filing of any document with the Registrar (other than the filing of any document made as part of an application);

(b) certifications by the Registrar;

(c) the issuance or making of copies by the Registrar;

(d) the issuance of certificates by the Registrar, including customised certificates; or

(e) the issuance of letters by the Registrar, including customised letters.

Modification of general law

14. (1) A limited partner shall not take part in the conduct of the business of an exempted limited partnership in its capacity as a limited partner.

(2) All letters, contracts, deeds, instruments or documents whatsoever shall be entered into by or on behalf of the general partner (or any agent or delegate of the general partner) on behalf of the exempted limited partnership.

Agreement may specify delegation of authority

15. Where an exempted limited partnership has more than one general partner and this Act gives an authority, consent or power but not an obligation or liability, to the general partner, the partnership agreement may specify which general partner is entitled to exercise that authority, consent or power to the exclusion of any other general partner.

Property

16. (1) Any rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement.

(2) Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership.

(3) The assets of an exempted limited partnership, or any class of assets, may be the subject of a floating charge, whether or not the partners of the exempted limited partnership, or any of them, are companies, overseas companies or bodies corporate.

Rights, property and proceeds to vest in incoming partner

17. (1) On the admission or substitution of any general partner or general partners, in this subsection referred to as an "incoming general partner", in accordance with the terms of the partnership agreement and this Act, all rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof, held or deemed to be held by the general partner or general partners in accordance with the foregoing subsection, in this subsection referred to as the "existing general partners", shall vest without the requirement for further formalities in the incoming general partner and any continuing existing general partners and shall be held by it or them in accordance with this Act.

(2) On the withdrawal of a general partner in accordance with the terms of the partnership agreement and this Act —

(a) all rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof, shall vest without the requirement for further actions or formalities in the remaining general partner or general partners and shall be held by it or them in accordance with this Act; and

(b) subject to section 10(3), the remaining general partner or general partners shall be liable for and the property of the exempted limited partnership held by them in accordance with this Act shall be subject to all mortgages, charges or security interests and all contracts, obligations, claims, debts and liabilities of the exempted limited partnership.

Transactions with the exempted limited partnership

18. Subject to any express or implied term of the partnership agreement to the contrary and to the duty imposed upon a general partner by section 19(1), a partner may lend money to, borrow from and transact other business with the exempted limited partnership so that an asset, debt or obligation of the exempted limited partnership shall thereby be created and with or without interest or security as the general partner shall determine, and shall have the same rights and obligations with respect thereto as a person who is not a partner, but the obligations of the exempted limited partnership to repay a debt to a general partner shall, at all times, be subordinated to the claims of secured and unsecured creditors of the exempted limited partnership.

General partner to act in good faith

19. (1) A general partner shall act at all times in good faith and, subject to any express provisions of the partnership agreement to the contrary, in the interests of the exempted limited partnership.

(2) Subject to any express provisions of the partnership agreement to the contrary, a limited partner of an exempted limited partnership in that capacity does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner.

Liability of limited partner

20. (1) If a limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited partnership incurred during the period that that limited partner participates in the conduct of the business as though that limited partner were, for that period, a general partner, but that limited partner shall be liable only to a person who transacts business with the exempted limited partnership during the period with actual knowledge of that limited partner's participation and who then reasonably believed the limited partner to be a general partner.

(2) A limited partner does not take part in the conduct of the business of an exempted limited partnership within the meaning of this section by —

(a) holding an office or interest in, or having a contractual relationship with, a general partner or being a contractor for or an agent or employee of the exempted limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;

(b) consulting with and advising a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement, with respect to the business of the exempted limited partnership;

(c) investigating, reviewing, approving or being advised as to the accounts or business affairs of the exempted limited partnership or exercising any right conferred by this Act;

(d) acting as surety or guarantor for the exempted limited partnership either generally or in respect of specific obligations;

(e) approving or disapproving an amendment to the partnership agreement;

(f) calling, requesting, attending or participating in any meeting of the partners;

(g) taking any action that results in the winding up or the dissolution of the exempted limited partnership;

(h) taking any action required or permitted by the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought pursuant to section 33(2);

(i) appointing a person to serve on any board or committee of the exempted limited partnership, a general partner or a limited partner or removing a person therefrom;

(j) serving on any board or committee of the exempted limited partnership, a general partner, the limited partners or the partners, or by appointing, electing or otherwise participating in the choice of a representative or any

other person to serve on any board or committee, or by acting as a member of any board or committee either directly or by or through any representative or other person, including giving advice or consenting, or refusing to consent, to any action proposed by the general partner on behalf of the exempted limited partnership and exercising any powers or authorities or performing any obligations as a member of that board or committee in the manner contemplated by the partnership agreement;

(k) serving on the board of directors or a committee of, consulting with or advising or being an officer, director, shareholder, partner, member, manager, trustee, agent or employee of, or by being a fiduciary or contractor for, any person in which the exempted limited partnership has an interest or any person providing management, consultation, custody or other services or other products for, to or on behalf of, or otherwise having a business or other relationship with, the exempted limited partnership or a general partner of the exempted limited partnership; or

(l) voting as a limited partner on —

(i) the winding up and dissolution of the exempted limited partnership;

(ii) the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset by or of the exempted limited partnership;

(iii) the incurrence or renewal of indebtedness by the exempted limited partnership;

(iv) a change in the nature of the business of the exempted limited partnership;

(v) the admission, removal or withdrawal of a general or limited partner and the continuation of business of the exempted limited partnership thereafter; or

(vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

(3) Subsection (2) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the taking part by that limited partner in the business of the exempted limited partnership.

Accounts

21. (1) A general partner shall keep or cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices, with respect to —

(a) all sums of money received and expended by the exempted limited partnership and matters in respect of which the receipt of expenditure takes place;

(b) all sales and purchases of goods by the exempted limited partnership; and

(c) the assets and liabilities of the exempted limited partnership.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the business and financial condition of the exempted limited partnership and to explain its transactions.

(3) Where the general partner keeps the books of account described in subsection (1) at any place other than at the registered office of the exempted limited partnership or at any other place within the Islands, the general partner shall, upon service of an order or notice by the Tax Information Authority pursuant to the *Tax Information Authority Act (2021 Revision)*, make available, in electronic form or any other medium, at its registered office copies of its books of account, or any part or parts thereof, as are specified in the order or notice.

(4) A general partner shall cause all books of account required to be kept under subsection (1) to be retained for a minimum period of five years from the date on which they are prepared.

(5) A person who, being a general partner, knowingly and wilfully contravenes subsection (1) or (4) shall be subject to a penalty of five thousand dollars.

(6) A person who, being a general partner, defaults in complying with an order or notice under subsection (3) without reasonable excuse, shall incur a penalty of five thousand dollars and a further penalty of one hundred dollars for every day during which the non-compliance continues.

Information regarding condition of partnership

22. Subject to any express or implied term of the partnership agreement, each limited partner may demand and shall receive from a general partner true and full information regarding the state of the business and financial condition of the exempted limited partnership.

Differences decided by general partner

23. Any difference arising as to matters connected with the business of the exempted limited partnership shall be decided by the general partner, and, if more than one, by a majority of the general partners as is provided in the partnership agreement.

Establishment, regulation of boards, committees

24. (1) Where a partnership agreement contains provisions for the establishment and regulation of any boards or committees of an exempted limited partnership, its partners or any class or category of those partners, or representatives of any of the partners, including —

(a) the establishment and constitution of boards or committees;

(b) the manner and terms of appointment and removal of the members of boards or committees;

(c) the powers, rights, authorities, obligations and duties of the members of boards or committees;

(d) the regulation of the proceedings of boards or committees; and

(e) the rights of the members and former members of boards or committees to exculpation or to be indemnified out of the assets of the exempted limited partnership,

then, subject to the express provisions of the partnership agreement, any person duly appointed to be a member of any board or committee in accordance with those provisions shall be deemed to have notice of and shall have the benefit of those provisions which shall not be unenforceable by any person in that person's own right by reason only that the person is not a party to the partnership agreement.

(2) Subject to any express provisions of the partnership agreement to the contrary, a member of any board or committee referred to in subsection (1) does not owe any fiduciary duty in exercising any of its rights or authorities, or otherwise in performing any of its obligations, as a member of the board or committee to the exempted limited partnership or any partner.

Failure to perform

25. (1) If a partnership agreement provides that where a partner fails to perform any of its obligations under, or otherwise breaches the provisions of, the partnership agreement that partner may be subject to or suffer remedies for, or consequences of, the failure or breach specified in the partnership agreement or otherwise applicable under any law then those remedies or consequences shall not be unenforceable solely on the basis that they are penal in nature.

(2) The remedies or consequences under subsection (1) may include but are not limited to any one or more of the following —

(a) reducing, eliminating or forfeiting the defaulting partner's partnership interest in the exempted limited partnership or any rights of the defaulting partner under the partnership agreement;

(b) subordinating the defaulting partner's partnership interest to the interests of non-defaulting partners;

(c) effecting a forced sale or forfeiture of the defaulting partner's partnership interest;

(d) arranging for the lending by other partners or other persons to the defaulting partner of the amount necessary to meet the defaulting partner's commitment;

(e) providing for the fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and the redemption or sale of the defaulting partner's partnership interest at that value; or

(f) exercising any other remedy or consequence specified in the partnership agreement or available under any applicable laws.

(3) Subject to the general partner's duty under section 19(1), a general partner shall not be liable for its decision to impose or for imposing any remedies or consequences upon any partner, or for its decision not to do so and references in this subsection to a partnership interest shall for the avoidance of doubt also be construed as including any part thereof.

Agreement as to benefits

26. A person who has executed the partnership agreement of an exempted limited partnership or who is named or otherwise identified, including as a class, in the partnership agreement shall not be deemed to be or otherwise construed as a partner of the exempted limited partnership if —

(a) that person has executed the partnership agreement solely in order to take the benefit of a provision of, or assume an obligation under, the partnership agreement otherwise than as a partner; or

(b) where, on a proper construction of the partnership agreement, the parties did not intend the person to be a partner of the exempted limited partnership.

Execution considered valid

27. (1) Any partnership agreement, any agreement pursuant to which any person agrees to make any commitment or contribution to an exempted limited partnership as a partner and any agreement, contract, deed, instrument including any instrument under seal or document entered into by or on behalf of the general partner for itself in the case of the partnership agreement or otherwise on behalf of the exempted limited partnership is executed validly by the parties thereto where it is executed in any manner contemplated by the parties thereto, including, without limitation —

(a) where the complete agreement, contract, deed, instrument or document is executed; or

(b) where any signature or execution page to the agreement, contract, deed, instrument or document is executed, whether or not the agreement, contract, deed, instrument or document is at the time in its final form, and which is attached by, or on behalf of, the relevant party to, or otherwise with the relevant party's express or implied authority to, the agreement, contract, deed, instrument or document,

if the agreement, contract, deed, instrument or document is executed in conformity with this Act or any other Law of the Islands applicable to execution of the agreement, contract, deed, instrument or document.

(2) Subsection (1) shall apply to agreements, contracts, deeds, instruments including instruments under seal or other documents regardless of whether they were made before, on or after the commencement of this subsection and no agreement, contract, deed, instrument, including instruments under seal, or other document made before the commencement of this subsection shall be invalid if it satisfies the requirements of subsection (1).

Power of attorney

28. (1) For the purposes of the *Powers of Attorney Act (1996 Revision)* and section 8 of the *Property (Miscellaneous Provisions) Act (2017 Revision)* where a partnership agreement purports to create or grant a power of attorney, including an irrevocable power of attorney, that power shall be deemed validly to have been executed as a deed and if required duly witnessed on execution of the partnership agreement by or on behalf of the donor of the power or on adherence thereto by the donor of the power pursuant to section 32 without demonstration or satisfaction of any further formalities regarding its execution.

(2) Subsection (1) applies equally to every partnership agreement entered into prior to as well as after the commencement of this Act.

Register of limited partnership interests

29. (1) Subject to subsection (2) the general partner shall maintain or cause to be maintained in the country or territory that the general partner may determine a register of limited partners which shall contain the name and address of each person who is a limited partner of the exempted limited partnership, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner, and the register shall be updated within twenty-one days of the date of any change in the particulars therein.

(2) The general partner shall maintain or cause to be maintained at the registered office of the exempted limited partnership a record of the address at which the register of limited partners is maintained, which record shall be updated within twenty-one days of the date of any change in the particulars therein.

(3) The register of limited partners and the record of the address at which the register of limited partners is maintained shall be open to inspection during all usual business hours in the place where the register or record is maintained by —

(a) subject to any express or implied term of the partnership agreement, all partners; and

(b) any other person with the consent of the general partner.

(4) The register of limited partners shall be *prima facie* evidence of the matters which are directed by this Act to be inserted therein.

(5) Where the register of limited partners is kept at a place other than the registered office of the exempted limited partnership, the general partner shall make available at the registered office, in electronic form or any other medium, the register of limited partners upon service of an order or notice by the Tax Information Authority pursuant to the *Tax Information Authority Act* (*2021 Revision*).

(6) A person who, being a general partner, defaults in complying with subsection (1) or (2), commits an offence and is liable on summary conviction to a fine of ten thousand dollars for each day that the default continues and shall indemnify any person who thereby suffers any loss.

(7) A person who, being a general partner, defaults in complying with an order or notice under subsection (5) without reasonable excuse, shall incur a penalty of five hundred dollars and a further penalty of one hundred dollars for every day during which that non-compliance continues.

Maintenance of records

30. (1) The general partner shall maintain or cause to be maintained in any country or territory that the general partner may determine, a record of the amount and date of the contribution or contributions of each limited partner and the amount and date of any payment representing a return of the whole or any part of the contribution of any limited partner, which record shall be updated within twenty-one days of the date of any change in the particulars therein.

(2) Subsections (4), (5), (6) and (7) of section 29 shall apply to the records required to be maintained pursuant to this section.

(3) The records maintained pursuant to this section shall be open to inspection during all usual business hours in the place where the records are maintained by any person with the consent of the general partner.

Registration of security interests

31. (1) The general partner shall maintain or cause to be maintained at the registered office, a register of security interests in which shall be registered each security interest in relation to which a valid notice has been served in accordance with section 32(9).

(2) The register of security interests under subsection (1) shall contain the identity of the grantor and grantee, the partnership interest or part thereof subject to the security interest and the date on which notice of the security interest was validly served in accordance with section 32(9).

(3) The register described in subsection (1) may be inspected by any person during all usual business hours.

(4) Any security interest over the whole or any part of a limited partnership interest shall have priority according to the time that the written notice is validly served at the registered office of the exempted limited partnership in accordance with section 32(9).

(5) If default is made by a general partner in the maintenance of the register described in subsection (1), each general partner in default shall incur a penalty of twenty-five dollars for each day that the default continues.

Transfer of partnership interests

32. (1) A partnership interest is transferable in whole or in part in accordance with the provisions of the partnership agreement and this section.

(2) Subject to the partnership agreement, a person may become a partner of an exempted limited partnership either by executing and delivering the partnership agreement or any supplement thereto or counterpart thereof together with the general partner, by acceding to the partnership agreement in accordance with its terms or upon the transfer of all or part of a partnership interest in accordance with this section, each of which is for this section referred to as an "**admission**", and in each case without the consent of the limited partners.

(3) Where the requirements for or conditions to an admission contained in the partnership agreement have been complied with in accordance with their terms or, to the extent permitted by the partnership agreement, waived, any person, however admitted, shall without the requirement for any further actions or formalities, be deemed to have adhered to and agreed to be bound by the terms and conditions of the partnership agreement and shall have the rights and be subject to the obligations contained in the partnership agreement and this Act as if the person and all existing partners had together duly executed and delivered the partnership agreement.

(4) The provisions of subsection (3) shall apply to every transfer or purported transfer of a partnership interest in whole or in part and each admission of a person as a partner of an exempted limited partnership prior to, as well as after, the commencement of this Act.

(5) Section 6 of the *Property (Miscellaneous Provisions) Act (2022 Revision)* shall not apply to partnership interests.

(6) Subject to the partnership agreement, no limited partner may —

(a) transfer; or

(b) grant any security interest in,

the whole or any part of that person's limited partnership interest except with the written consent of the general partner given prior to, or simultaneously with, the transfer or grant.

(7) Subject to the partnership agreement and this Act, a general partner may transfer or grant a security interest in the whole or any part of that person's general partnership interest with the written consent of any other general partner given prior to, or simultaneously with, the transfer or grant.

(8) Subject to the partnership agreement —

(a) the transferee of a general partnership interest or part thereof shall be admitted as a general partner in place of and subject to section 10(2) to the exclusion of, or in addition to, as the case may be, the transferor in respect of the general partnership interest or part thereof transferred but —

(i) the transferee shall not be liable for any obligation of the exempted limited partnership incurred before the transferee is so admitted unless otherwise agreed in writing by the transferor and the transferee; and

(ii) the transferor shall remain liable for any obligation of the exempted limited partnership incurred before the transferor ceased to be a general partner unless otherwise agreed in writing by the transferor, the transferee and the person to whom the obligation is owed; and

(b) the transferee of a limited partnership interest or part thereof shall be admitted as a limited partner, wholly or partly, as the case may be, in place of and to the exclusion of the transferor in respect of the limited partnership interest or part thereof transferred but, unless otherwise agreed in writing by the transferor, the transferee and the general partner, the transferee shall not assume any liability of the transferor pursuant to section 20(1) or section 34(1) and no transfer shall relieve the transferor of any liability under those subsections.

(9) Written notice of the grant of a security interest over the whole or any part of a limited partnership interest shall be given by the grantor or the grantee to the exempted limited partnership at its registered office.

(10) A notice under subsection (9) is not validly given unless it specifies the agreement pursuant to which the security interest is granted including the date thereof and the parties thereto, the identity of the grantor and grantee of the security interest, and the partnership interest or part thereof that is subject to that security interest.

(11) Nothing in this section shall prevent a partner from assigning or otherwise disposing of, whether absolutely or by way of security in any manner permitted by law, any right, debt or other chose in action arising under a partnership agreement but no assignment or other disposition may, subject to the partnership agreement, be made without the consent of the general partner or, in the case of an assignment or disposition by a general partner, the consent of any other general partner given prior to, or simultaneously with, the assignment or disposition.

(12) A partnership agreement may provide that, as against any other partner, any assignment or other disposition by a partner of any right, debt or other chose in action arising under a partnership agreement shall confer economic rights only and for the purposes of this section "**economic rights**" are —

(a) any rights to make and enforce capital calls, to receive the proceeds thereof and to enforce payment of, and receive any sums payable to the partner including the rights on the winding up and dissolution of the exempted limited partnership;

(b) the right to receive a share of profits of the exempted limited partnership or a share of the property on its winding up and dissolution;

(c) the right to an account for the purpose of ascertaining the amount or share of any of the foregoing; and

(d) any other rights that are expressly stated in the partnership agreement to be assignable.

(13) Any consent of a general partner required by this section may, subject to any express provision of the partnership agreement to the contrary, be withheld in the general partner's sole discretion.

(14) Any notice of any assignment or other disposition referred to in subsection (11) that may be required or permitted to be given to any one or more of the other general partners of an exempted limited partnership shall, notwithstanding any other rule of law or equity, be deemed to have been so given if given to the exempted limited partnership.

Proceedings

33. (1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings.

(2) If the court considers it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 20(1) or to enforce the return of the contribution, if any, required by section 34(1).

(3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings.

(4) If any action taken pursuant to subsection (3) is successful, in whole or in part, as a result of a judgment, compromise or settlement of any action, the court may award any limited partner bringing any action reasonable expenses, including attorney's fees, from any recovery in any action or from an exempted limited partnership.

Return of contributions

34. (1) If a limited partner receives a payment representing a return of any part of that person's contribution or is released from any outstanding obligation in respect of that person's commitment and at the time that the payment was made or the release effected —

(a) the exempted limited partnership is insolvent including where the payment or release causes the insolvency; and

(b) the limited partner has actual knowledge of the insolvency of the exempted limited partnership,

then for a period of six months commencing on the date of that payment or release but not thereafter, the limited partner shall be liable to the exempted limited partnership for the amount of the payment or the due performance of the released obligation in respect of that person's commitment in each case to the extent that the repayment or performance of the released obligation is necessary to discharge a debt or obligation of the exempted limited partnership incurred during the period that the contribution or commitment represented an asset of the exempted limited partnership.

(2) Any amount required to be repaid pursuant to this section shall, unless the partnership agreement specifies otherwise, bear simple interest at the rate of ten per cent per annum, calculated on a daily basis.

(3) The partnership agreement may specify —

(a) that no interest shall apply;

(b) that a different rate of interest, including a compound rate shall apply; or

(c) a different basis for calculating interest payable.

Manner in which partnership may not be dissolved

35. Subject to any express or implied term of the partnership agreement to the contrary —

(a) an exempted limited partnership shall not be dissolved nor the partnership agreement terminated by —

(i) changes in, additions to or substitutions of any one or more of the partners;

(ii) the transfer of the whole or part of the partnership interest of a limited partner;

(iii) the death, bankruptcy, dissolution, removal, withdrawal or winding up of a limited partner or a limited partner's withdrawal or redemption of, or repurchase by the partnership of, any limited partnership interest;

(iv) the incapacity of a limited partner;

(v) any one or more of the limited partners granting a mortgage, charge or other form of security interest over the whole or part of that person's partnership interest;

(vi) the sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the exempted limited partnership; or

(vii) a de-registration of the exempted limited partnership pursuant to section 41 or 43; and

(b) a limited partner shall not be entitled to wind up and dissolve the partnership by notice.

Dissolution

36. (1) An exempted limited partnership shall be voluntarily wound up in accordance with the provisions of the partnership agreement —

(a) at the time or upon the occurrence of any event specified in the partnership agreement; or

(b) unless otherwise specified in the partnership agreement, upon the passing of a resolution of all the general partners and a two-thirds majority of limited partners.

(2) On the completion of the winding up of an exempted limited partnership, the general partner or other person appointed as liquidator in accordance with subsection (12) shall —

(a) file a notice of dissolution with the Registrar; and

(b) submit to the Registrar the prescribed fee,

and subject to section 37, an exempted limited partnership shall not be dissolved by an act of the partners or otherwise until a notice of dissolution signed by a general partner or liquidator has been filed with the Registrar and the prescribed fee has been submitted to the Registrar.

(3) Except to the extent that the provisions are not consistent with this Act, and in the event of any inconsistencies, this Act shall prevail, and subject to any express provisions of this Act to the contrary, the provisions of Part 5 of the *Companies Act (2025 Revision)* and the *Companies Winding Up Rules (2023 Consolidation)* shall apply to the winding up of an exempted limited partnership and for this purpose —

(a) references in Part 5 to a company shall include references to an exempted limited partnership;

(b) the limited partners shall be treated as if they were shareholders of a company and references to contributories in Part 5 shall be construed accordingly, except that the application of the provisions shall not cause a limited partner to be subject to any greater liability than that limited partner

would otherwise bear under this Act, but for the application of this paragraph;

(c) references in Part 5 to a director or officer of a company shall include references to the general partner of an exempted limited partnership;

(d) except for sections 123, excluding subsection (1)(b) and (c), 129, 140, 145, and 147 of the *Companies Act (2025 Revision)*, Part 5 shall not apply to a voluntary dissolution and winding up under subsection (1);

(e) in the case of a voluntary winding-up of an exempted limited partnership under subsection (1) where the partnership was registered under section 9 prior to 11th May 2009, the necessary time period for compliance with the requirements of section 123 (1) of the *Companies Act (2025 Revision)* shall be at least twenty-eight days prior to the final distribution of the assets of the exempted limited partnership to partners rather than within twenty-eight days of the commencement of its voluntary winding-up;

(f) the Insolvency Rules Committee established pursuant to the *Companies Act (2025 Revision)* shall have the power to make rules and prescribe forms for the purpose of giving effect to this section or its interpretation; and

(g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable.

(4) Notwithstanding that any order or direction has been made pursuant to subsection (3)(g) or that the winding up of an exempted limited partnership has commenced, a creditor who has security over the whole or part of the assets of the exempted limited partnership is entitled to enforce that person's security without the leave of the court and without reference to the general partner or any liquidator appointed to wind up the exempted limited partnership.

(5) Where a liquidator sells assets on behalf of a secured creditor of an exempted limited partnership, the liquidator is entitled to deduct from the proceeds of sale a reasonable sum by way of remuneration.

(6) Where an exempted limited partnership is being wound up and a liquidator is appointed, the Registrar shall within 28 days of the appointment be notified of the name and business address of the liquidator.

(7) The general partner or its legal representative shall promptly serve notice on all limited partners informing the limited partners of —

(a) the death;

(b) the commencement of liquidation, bankruptcy or dissolution proceedings; or

(c) the withdrawal, removal or making of a winding up or dissolution order,

in relation to the sole or last remaining qualifying general partner and in this section each event is referred to an "**event of withdrawal**".

(8) If default is made in compliance with this section, each general partner or its legal representative, in default shall incur a penalty of twenty-five dollars for each day that the default continues, which penalty shall be a debt due to the Registrar.

(9) Unless the partnership agreement provides otherwise, if a new qualifying general partner is not elected within ninety days after the service of notice of an event of withdrawal in accordance with subsection (7), in this section referred to as "**the automatic wind up date**", the exempted limited partnership shall be wound up in accordance with the partnership agreement or the orders or directions the court may make or give in accordance with subsection (3)(g).

(10) The winding up of an exempted limited partnership shall be deemed to commence upon the earlier to occur of any of the following —

(a) the passing of a resolution for winding up;

(b) subject to subsection (9), the automatic wind up date;

(c) the expiry of the period fixed for the duration of the exempted limited partnership by the partnership agreement;

(d) the occurrence of an event provided by the partnership agreement upon which the exempted limited partnership is to be wound up; or

(e) where a winding up order has been made, the presentation of the petition for winding up.

(11) In the event that an exempted limited partnership is required to be wound up in accordance with the provisions of subsection (9) then the date of commencement of winding up shall be the date falling ninety days after the service of notice of an event of withdrawal.

(12) If a majority of limited partners specified in the partnership agreement as being entitled to vote to elect a new general partner in accordance with the terms of the partnership agreement elects one or more new qualifying general partners by the automatic winding up date —

(a) the exempted limited partnership shall not be required to be wound up and dissolved; and

(b) the business of the exempted limited partnership may be resumed and continued as provided for in the partnership agreement or any subsequent agreement.

(13) Following the commencement of the winding up of an exempted limited partnership its affairs shall be wound up by the general partner or other person appointed pursuant to the partnership agreement unless the court otherwise orders on the application of any partner, creditor or liquidator of the exempted limited partnership pursuant to subsection (3)(g).

Registrar may strike off register

37. (1) Where the Registrar has reasonable cause to believe that an exempted limited partnership is not carrying on business or is not in operation, the Registrar may strike the exempted limited partnership off the register and the exempted limited partnership shall thereupon be dissolved.

(2) A request on behalf of the general partner to strike the exempted limited partnership off the register shall be accompanied by a fee in the amount prescribed by the Cabinet by regulation.

(3) Where an exempted limited partnership is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the exempted limited partnership are fully wound up, the Registrar may strike the exempted limited partnership off the register and the exempted limited partnership shall thereupon be dissolved without the need for a notice of dissolution to be filed pursuant to section 36(2).

(4) The Registrar shall immediately publish a notice in the Gazette to the effect that the exempted limited partnership in question has been struck off the register, the date on which it has been struck off and the reason therefor.

(5) A general partner, limited partner or creditor who objects to an exempted limited partnership being struck off the register pursuant to this section, on the grounds that the exempted limited partnership was at the time it was struck off the register carrying on business, in operation or otherwise, may make an application to the court for the name of the exempted limited partnership to be restored to the register.

(6) An application under subsection (5) shall be made —

(a) within two years of the date upon which the name of the exempted limited partnership was struck off the register; or

(b) within a period that the Cabinet may by order allow but which shall not exceed ten years of the date upon which the name of the exempted limited partnership was struck off the register.

(7) The court, if satisfied that the exempted limited partnership was, at the time that it was struck off the register, carrying on business, in operation or otherwise, may order that the name of the exempted limited partnership be restored to the register upon —

(a) payment by the applicant of a reinstatement fee;

(b) payment by the applicant of any other accrued outstanding fees; and

(c) any other terms and conditions which the court considers just.

(8) The reinstatement fee referred to in subsection (7) shall be the same as the fee paid by the exempted limited partnership upon initial registration.

(9) Where an order is made under subsection (7) the exempted limited partnership is deemed to have continued in existence as if it had not been struck off.

(10) The court may, in addition or subsequent to, an order made under subsection (7), by order give directions and make provision for, as far as possible, placing the exempted limited partnership and all other persons affected from the name of the exempted limited partnership being struck off the register, in the same position as if the name of the exempted limited partnership had not been struck off the register.

(11) The striking off the register of any exempted limited partnership under this Act shall not affect the liability, if any, of any general partner or limited partner of the exempted limited partnership, and the liability shall continue and may be enforced as if the exempted limited partnership had at all times continued to be in existence.

(12) An act performed or thing done by the Registrar under this section shall not attract any liability.

Tax undertaking

38. (1) The Financial Secretary may, on application by a general partner, give an undertaking in respect of any exempted limited partnership that a law which is hereafter enacted in the Islands imposing any tax to be levied on profits or income or gains or appreciations shall not apply to the exempted limited partnership or to any partner thereof in respect of the operations or assets of the exempted limited partnership or the partnership interest of a partner therein.

(2) Any undertaking given under subsection (1) may provide, in addition, that the aforesaid taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the exempted limited partnership or the interests of the partners therein.

(3) Any undertaking as aforesaid may be for a period not exceeding fifty years from the date of the approval of the application and may be in the form determined by the Financial Secretary.

(4) The Financial Secretary shall prepare and present to the Cabinet, a report of all applications made and granted pursuant to this section on a monthly basis.

(5) The first report due to be prepared pursuant to subsection (4) shall be presented to the Cabinet on the date specified by the Cabinet by Order.

Annual return

39. (1) An exempted limited partnership shall, in January in every year, file with the Registrar a return signed by or on behalf of a general partner certifying that the exempted limited partnership has, during the prior calendar year, complied with section 10(1) and that there has been no breach of the declaration given in accordance with paragraph (f) of section 9(1) and pay to the Registrar an annual fee of the amount that the Cabinet shall, from time to time, by regulation prescribe.

(2) The annual fee payable and the return due to be filed under subsection (1) shall be tendered at the same time.

(3) An exempted limited partnership which fails to comply with subsection (1) shall —

(a) where the annual fee is paid or the return is filed between 1st April and 30th June, incur a penalty of 33.33% of the annual fee;

(b) where the annual fee and penalties are paid or the return is filed between 1st July and 30th September, incur a penalty 66.67% of the annual fee; and

(c) where the annual fee and penalties are paid or the return is filed between 1st October and 31st December, incur a penalty 100% of the annual fee.

(4) A penalty specified in subsection (3) shall be a debt due to the Registrar.

Re-registration

40. (1) Any partnership registered under the *Limited Partnership Law (Revised)* prior to its **repeal** or sections 45 to 54 and 56 to 57 of the *Partnership Act (2025 Revision)* or any Law amending or replacing the same shall not be affected by this Act but shall continue to be governed by that law.

(2) A partnership described in subsection (1) and any partnership established under the laws of a jurisdiction other than the Islands, in this section referred to as a "**registered partnership**", may, at any time, upon —

(a) effecting the amendments to the partnership agreement as shall be necessary to comply with this Act, if any;

(b) paying a fee of the amount that the Cabinet may by regulation prescribe; and

(c) filing the statement required by section 9(1),

be registered under this Act and, with effect from the date indicated on the certificate of registration issued by the Registrar pursuant to section 9(5), shall be governed exclusively thereafter as an exempted limited partnership in accordance with this Act.

(3) With effect from the date indicated on the certificate of registration described in subsection (2), the exempted limited partnership and the partnership interests of

the parties therein and their rights and liabilities, as against any person who is not a partner, shall cease to be governed by the **repealed** *Limited Partnership Law (Revised)*, or sections 45 to 54 and 56 to 57 of the *Partnership Act (2025 Revision)* or the laws of any other jurisdiction, as the case may be, save in respect of any act or omission occurring before that date which shall continue to be governed by the law of the other jurisdiction.

(4) Without prejudice to the foregoing generality such registration shall not operate to —

(a) create a new legal entity;

(b) affect the property previously acquired by or on behalf of the exempted limited partnership;

(c) affect any act or thing done prior to registration or the rights, powers, authorities, functions or obligations of the exempted limited partnership, any partner or any other person prior thereto; or

(d) render defective any legal proceedings by or against the exempted limited partnership or any partner or any other person,

and any legal proceedings that could have been continued or commenced by or against the exempted limited partnership or any partner or any other person before its registration hereunder may, notwithstanding registration, be continued or commenced after registration and in respect of which the law of the other jurisdiction shall be of application.

(5) With effect from the date indicated on the certificate of registration described in subsection (2), all property of every description, including all choses in action and any right to make capital calls of the registrant partnership shall be the property of the exempted limited partnership to be held in accordance with section 16(1).

De-registration pursuant to partnership agreement

41. A general partner of an exempted limited partnership may at any time terminate the registration of an applicant partnership as an exempted limited partnership, if termination of registration is permitted under the terms of the partnership agreement, by filing a written notice of termination of registration with the Registrar together with written confirmation that the action is authorised by the partnership agreement, accompanied by the prescribed fee.

Registration of foreign limited partnerships

42. (1) In this section —

"**foreign limited partnership**" means a limited partnership or limited liability partnership established in a recognised jurisdiction outside the Islands.

"**recognised jurisdiction**" is one that is prescribed as such by the Cabinet in regulations made under this Act; and

"**relevant authority**" means the national, state or local government authority, registry or other body in the recognised jurisdiction that is responsible for forming or establishing the foreign limited partnership.

(2) Subject to subsection (3), a foreign limited partnership may apply to be registered pursuant to this section in order to act as the general partner of an exempted limited partnership.

(3) A foreign limited partnership may be registered by the Registrar upon payment to the Registrar of a registration fee of the amount the Cabinet by regulation, prescribes and by filing with the Registrar certified copies of —

(a) its certificate of formation in its jurisdiction of establishment or the equivalent document issued by the relevant authority as evidence of its formation; and

(b) a certificate of good standing issued by the relevant authority.

(4) If the certificate of good standing required under subsection (3)(b) is unavailable from the relevant authority, then the foreign limited partnership is required to file with the Registrar, a declaration signed by a person authorised to act on behalf of the foreign limited partnership stating that the foreign limited partnership is in good standing with the relevant authority.

(5) Neither certificate of good standing under subsection (3)(b) nor the declaration under subsection (4) shall be dated earlier than one month prior to the date of its delivery to the Registrar, and shall be accompanied by a statement signed by or on behalf of the foreign limited partnership specifying —

(a) the name, dual foreign name and the translated name, if applicable, of the foreign limited partnership;

(b) the jurisdiction in which it is established;

(c) whether the foreign limited partnership is deemed to be a separate legal person under the laws of the jurisdiction in which it is established and, if so, the full name and address of any managing member or other person, if not identified in paragraph (f), who immediately controls or directs the affairs of the foreign limited partnership;

(d) the address of its registered office in its jurisdiction of formation or establishment;

(e) the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it; and

(f) the full name and address of any general partners of the foreign limited partnership, if applicable.

(6) A foreign limited partnership shall, in January of each year, pay to the revenues of the Islands an annual fee in the amount and in the manner the Cabinet by regulation, prescribes.

(7) A foreign limited partnership that defaults in paying the annual fee specified in subsection (6) shall incur a penalty of —

(a) 33.33% of the annual fee specified in subsection (6) if the fee and penalty are paid between the 1st April and the 30th June;

(b) 66.67% of the annual fee specified in subsection (6) if the fee and penalty are paid between the 1st July and the 30th September; and

(c) 100% of the annual fee specified in subsection (6) if the fee and penalty are paid between the 1st October and the 31st December.

(8) A penalty specified in subsection (7) is a debt due to the Registrar.

(9) Upon compliance with subsections (3), (4) and (5) the Registrar shall issue a certificate of registration under the Registrar's hand and seal of office to the foreign limited partnership.

(10) A certificate of registration of a foreign limited partnership issued under subsection (9) is conclusive evidence that compliance has been made with all requirements of this Act in respect of registration.

(11) If any change is made in any details contained in the statement filed under subsection (5), a statement signed by or on behalf of the foreign limited partnership specifying the nature of the change shall, within sixty days of the change, be filed with the Registrar.

(12) If default is made in compliance with subsection (11), each foreign limited partnership shall incur a penalty of two hundred dollars for each day that the default continues which shall be a debt due to the Registrar and the foreign partnership shall indemnify any person who thereby suffers any loss.

(13) Any process or notice required to be served on a foreign limited partnership is sufficiently served if addressed to any person whose name has been delivered to the Registrar under subsection (5) and left at or sent by post to the address which has been so delivered.

(14) A document may be served on the foreign limited partnership by leaving it at or sending it by post to any place of business established by the foreign limited partnership in the Islands.

(15) An instrument executed by or on behalf of a foreign limited partnership outside the Islands is, and is to be treated as, a deed or instrument under seal —

(a) if it is —

(i) sealed; or

(ii) expressed to be, or is expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed; and

(b) if it is executed in conformity with any requirement imposed by —

(i) the laws of the jurisdiction in which the foreign limited partnership was established; and

(ii) its partnership agreement or equivalent governing document.

(16) An instrument executed in accordance with subsection (15) meets any requirement of any law that the instrument is, and is to be treated as, a deed or instrument executed under seal.

(17) The execution of an instrument in accordance with subsection (15)(a) and the fact that it was executed in accordance with subsection (15)(b) may be proved by the affidavit or solemn declaration of a witness to the execution of the instrument sworn or made before a notary public or any other person qualified to administer oaths in any jurisdiction.

(18) If a foreign limited partnership ceases to be a general partner of an exempted limited partnership, it shall as soon as reasonably practicable —

(a) file a notice to that effect with the Registrar; and

(b) submit to the Registrar the prescribed fee,

and from the date on which the notice and the prescribed fee are submitted to the Registrar, the obligation of the foreign limited partnership to deliver any document to the Registrar ceases.

(19) Notwithstanding subsection (18) if the Registrar is satisfied by any other means that a foreign limited partnership has ceased to be a general partner of an exempted limited partnership the Registrar may close the file of the foreign limited partnership and thereupon the obligation of the foreign limited partnership to deliver any document to the Registrar ceases.

(20) A general partner of a foreign limited partnership shall not be deemed to have established a place of business in the Islands or commenced carrying on business in the Islands pursuant to Part 9 of the *Companies Act (2025 Revision)* by virtue solely of so acting.

De-registration for continuation in another jurisdiction

43. (1) A general partner on behalf of an exempted limited partnership which proposes to be registered by way of continuation as a partnership, body corporate or any other form of entity under the laws of any jurisdiction outside the Islands, in this section referred to as an "**applicant**", may apply to the Registrar for the exempted limited partnership, in this section referred to as the "**applicant partnership**", to be de-registered in the Islands.

(2) The Registrar shall de-register an applicant partnership if —

(a) the applicant proposes to register the applicant partnership by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the applicant partnership in the manner provided in this section referred to as a "**relevant jurisdiction**";

(b) the applicant has paid to the Registrar a fee equal to three times the annual fee that would have been payable pursuant to section 39(1) in the January immediately preceding the application for de-registration;

(c) the applicant has filed with the Registrar notice of any —

(i) change in the name or dual foreign name;

(ii) change in the applicant partnership; and

(iii) change in its proposed registered office or agent for service of process in the relevant jurisdiction;

(d) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up, dissolve or liquidate the applicant partnership in any jurisdiction and no time or event has occurred upon which the applicant partnership is to be wound up;

(e) no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the applicant partnership, its affairs or its property or any part thereof;

(f) no scheme, order, compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the applicant partnership are and continue to be suspended or restricted;

(g) the applicant partnership is not insolvent;

(h) an application for de-registration is *bona fide* and not intended to defraud creditors or the limited partners of the applicant partnership;

(i) the applicant has delivered to the Registrar an undertaking signed by an authorised signatory of the applicant that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the applicant partnership;

(j) any consent or approval to the transfer required by any contract or undertaking entered into or given by the applicant partnership has been obtained, released or waived, as the case may be;

(k) the transfer is permitted by and has been approved in accordance with the partnership agreement of the applicant partnership;

(l) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;

(m) the applicant partnership, if licensed or registered under the *Banks and Trust Companies Act (2025 Revision)*, the *Companies Management Act (2025 Revision)*, the *Insurance Act, 2010 [Law 32 of 2010]*, the *Mutual Funds Act (2025 Revision)*, *the Private Funds Act (2025 Revision)* or the *Securities Investment Business Act (2020 Revision)*, has obtained consent of the Cayman Islands Monetary Authority to the transfer;

(n) the applicant partnership will upon registration under the laws of the relevant jurisdiction continue as a partnership, body corporate or other form of entity;

(o) the applicant partnership is in good standing with the registrar and all outstanding fees due to be paid in relation to the applicant partnership to the Registrar are paid; and

(p) the Registrar is not aware of any other reason why it would be against the public interest to de-register the applicant partnership.

(3) Paragraphs (d), (e), (f), (g), (h), (j), (k), (l) and (n) of subsection (2) may be satisfied by filing with the Registrar a voluntary declaration or affidavit of an authorised signatory of the applicant to the effect that, having made due enquiry, the Registrar is of the opinion that the requirements of those paragraphs have been met.

(4) A declaration or affidavit under subsection (3) shall include a statement of the assets and liabilities of the applicant partnership.

(5) The statement under subsection (4) shall be based on an assessment of the assets and liabilities of the applicant partnership as at the date of the declaration or affidavit or the date as close as is practicable to the foregoing date.

(6) An authorised signatory of the applicant, who makes a declaration or affidavit under subsection (3) without reasonable grounds commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

(7) The Registrar may, upon request from an applicant, where the Registrar is satisfied that the applicant has complied with subsection (2), de-register the applicant partnership.

(8) Section 41 does not apply to an applicant partnership under this section.

Certificate of de-registration

44. (1) Upon the termination of registration of a partnership under section 41, the Registrar shall issue a certificate under the Registrar's hand and seal of office that the registration of the partnership as an exempted limited partnership has been terminated and specifying the date of termination; and shall enter in the register of exempted limited partnerships the date of termination of the registration of the partnership under section 41.

(2) Upon de-registration of an applicant partnership under section 43, the Registrar shall issue a certificate under the Registrar's hand and seal of office that the applicant partnership has satisfied the de-registration requirements under section 43 and been de-registered as an exempted limited partnership and specifying the date of de-registration and shall enter in the register of exempted

limited partnerships the date of de-registration of the applicant partnership under section 43.

(3) From the commencement of the date of termination of registration under section 41 or de-registration under section 43 the applicant partnership shall cease to be an exempted limited partnership for all purposes under this Act and in the case of de-registration under section 43 shall continue as a partnership, body corporate or other entity under the laws of the relevant jurisdiction.

(4) From the commencement of the date of termination of registration of a partnership under section 41 the applicant partnership becomes a general partnership under the *Partnership Act (2025 Revision)* and in the case of an applicant partnership de-registered under section 43, the applicant partnership de-registered shall not by virtue of that de-registration alone cease to be a partnership, body corporate or other entity under the laws of the relevant jurisdiction.

(5) This section shall not operate, in relation to an applicant partnership de-registered under section 43 and continued as a partnership under the laws of the relevant jurisdiction —

(a) to create a new legal entity unless otherwise provided by the laws of the relevant jurisdiction;

(b) to prejudice or affect the identity or continuity of the applicant partnership as previously constituted unless otherwise provided by the laws of the relevant jurisdiction;

(c) to affect the property of any applicant partnership;

(d) to affect any appointment made, resolution passed or any other act or thing done in relation to the applicant partnership pursuant to a power conferred by the partnership agreement of the applicant partnership or by the laws of the Islands;

(e) except to the extent provided by or pursuant to section 43 and this section, to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant partnership or any other person unless otherwise provided by the laws of the relevant jurisdiction; or

(f) to render defective any legal proceedings by or against the applicant partnership, and any legal proceedings that could have been continued or commenced by or against the applicant partnership before its de-registration under this Act may, notwithstanding the de-registration, be continued or commenced by or against the applicant partnership after de-registration.

Notice of de-registration

45. The Registrar shall give notice in the Gazette of the termination of registration of a partnership under section 41 or the de-registration of an applicant partnership under section 43 and, in the case of de-registration under section 43, the jurisdiction under the laws of which the applicant partnership has been registered by way of continuation and the name of the applicant partnership, if changed.

Certificate of good standing

46. (1) The Registrar may on application made by —

(a) an exempted limited partnership; or

(b) a foreign limited partnership registered under section 42,

issue a certificate of good standing to the exempted limited partnership or the foreign limited partnership that is in good standing in accordance with subsection (2).

(2) A certificate of good standing is evidence of the fact that the exempted limited partnership is in good standing on the date that the certificate of good standing is issued.

(3) An exempted limited partnership is deemed to be in good standing if all fees and penalties under this Act have been paid and the Registrar has no knowledge that the exempted limited partnership is in default under this Act.

Electronic business

47. Nothing in this Act shall prohibit an exempted limited partnership from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

Regulations

48. (1) The Cabinet may make Regulations in respect of exempted limited partnerships and foreign limited partnerships prescribing —

(a) the duties to be performed by the Registrar for the purposes of this Act;

(b) the forms to be used for the purposes of this Act;

(c) the fees payable to the Registrar in respect of filings, certifications, administrative services or otherwise pursuant to this Act; and

(d) generally, the conduct and regulation of registration under this Act and any matters incidental thereto.

(2) Regulations made under this Act may —

(a) make different provision in relation to different cases or circumstances;

(b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases and define a class by reference to any circumstances whatsoever; and

(c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Cabinet to be necessary or expedient for the purposes of the regulations.

(3) Regulations made under this Act may create an offence punishable by a fine not exceeding fifteen thousand dollars.

(4) Fees prescribed for the purpose of this Act need bear no relationship to the cost of providing any service.

Recovery of penalties

49. (1) Notwithstanding any provision of this Act which prescribes a specific *per diem* penalty in respect of a default of any obligation to make a filing, to serve a notice or to maintain a record set out in this Act the Registrar may, in any case where the aggregate *per diem* penalty has exceeded the amount of one thousand dollars and the Registrar is satisfied that the failure is not due to wilful default, accept payment of a penalty of one thousand dollars in lieu thereof.

(2) Without prejudice to the powers exercisable by the Registrar under this Act, all sums that the Registrar is entitled to recover by way of fees or penalties are recoverable either summarily as a civil debt, or as a simple contract debt, in any court of competent jurisdiction.

Repeal of the Exempted Limited Partnership Law (2013 Revision) and savings

50. (1) The *Exempted Limited Partnership Law (2013 Revision)* is **repealed**.

(2) The **repeal** of the *Exempted Partnership Law (2013 Revision)* shall not affect any exempted limited partnership registered under the **repealed** *Exempted Limited Partnership Law (2013 Revision)* and a provision in any document referring to the **repealed** *Exempted Limited Partnership Law (2013 Revision)* or its revision shall, so far as may be necessary for preserving its effect, be construed as referring to the corresponding provision in this Act.

Validation of the Exempted Limited Partnership Regulations, 2014

51. (1) The purpose of this section is to remedy certain defects in the *Exempted Limited Partnership Regulations, 2014* which were purported to be made in accordance with section 48 of the *Exempted Limited Partnership Act, 2014*.

(2) Section 48 of the *Exempted Limited Partnership Act, 2014* provided for the making of regulations by the Cabinet in respect of exempted limited partnerships but the *Exempted Limited Partnership Regulations, 2014* also provided for foreign limited partnerships.

(3) The defect under subsection (2) makes regulations 2, 5 and 6 and Schedules 1, 4 and 5 of the *Exempted Limited Partnership Regulations, 2014* inconsistent with the *Exempted Limited Partnership Act, 2014* to the extent that those regulations and Schedules provided for matters concerning foreign limited partnerships without statutory authority.

(4) Notwithstanding the inconsistency referred to in subsection (3), during the specified period —

(a) the fees paid without statutory authority to the Registrar in respect of foreign limited partnerships; and

(b) any forms for a translation certificate submitted in respect of foreign limited partnerships,

are validated and deemed to have been paid or submitted, as applicable, in accordance with the *Exempted Limited Partnership Act, 2014*.

(5) For the purposes of this section —

(a) "**specified period**" means the period commencing on 2nd July, 2014, which is the date of the commencement of the *Exempted Limited Partnership Act, 2014*, and ending on 1st January, 2025, the commencement date of the *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]*; and

(b) references to the *Exempted Limited Partnership Act, 2014* and the *Exempted Limited Partnership Regulations, 2014* include any amended or revised versions of that Act and those Regulations, prior to 1st January, 2025, the commencement date of the *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]*.

Validation of payment and collection of fees

52. The payment of fees to, and the charging and collection of fees by, the Registrar without statutory authority for any service provided by the Registrar prior to 1st January, 2025, the commencement date of the *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]* are —

(a) validated; and

(b) taken to have been lawfully charged by, paid to and collected by the Registrar,

as if the Registrar was empowered under the *Exempted Limited Partnership Act (2021 Revision)* as amended by *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]* to charge and collect those fees.

Orders or determinations by court not affected

53. The *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]* does not affect any order or determination made by a court with respect to fees charged by, paid to and collected by the Registrar without statutory authority for any service provided by the Registrar prior to 1-Jan-2020, the commencement date of the *Exempted Limited Partnership (Amendment and Validation) Act, 2024 [Act 13 of 2024]*.

Publication in consolidated and revised form authorised by the Cabinet this 21st day of January, 2025.

Kim Bullings
Clerk of the Cabinet

ENDNOTES

Table of Legislation history:

SL #	Act/Law #	Legislation	Commencement	Gazette
51/2024		Exempted Limited Partnership (Amendment and Validation) Act, 2024 (Commencement) Order, 2024	19-Dec-2024	LG47/2024/s17
	13/2024	Exempted Limited Partnership (Amendment and Validation) Act, 2024	1-Jan-2024	LG47/2024/s4
		Exempted Limited Partnership Law (2021 Revision)	29-Jan-2021	LG9/2021/S3
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	31/2020	Exempted Limited Partnership (Amendment)Law, 2020	7-Jul-2020	LG49/2020/s7
		Exempted Limited Partnership Law (2018 Revision)	16-Mar-2018	GE22/2018/s15
	10/2017	Exempted Limited Partnership (Amendment) Law, 2017	5-Jun-2017	G12/2017/s7
	5/2014	Exempted Limited Partnership Law, 2014	2-Jul-2014	GE48/2014/s1

(Price: $9.60)

EXHIBIT N

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as general partner of ATP Life Science Ventures, L.P., Plaintiff, v. RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, Defendants.	Case No. 2025-0607-KSJM

AN EXPERT OPINION OF

MICHAEL BLOCH KC

ON CAYMAN ISLANDS LAW

Confidential

A. PRELIMINARIES

1. I am a barrister and King's Counsel practising in the courts of England and Wales and other British Commonwealth jurisdictions, including the courts of the Cayman Islands, where, in accordance with the rules, onshore counsel are called on a case-by-case basis where appropriate. I was called to the bar of England and Wales in 1979 and appointed to Silk in 1998. A copy of my curriculum vitae as it appears on my chambers' website is attached as Appendix A hereto.

2. I am not an academic, and I have no legal publications to disclose. I have provided expert evidence on legal issues in other proceedings. I have not been required to attend court in any of those proceedings, and I do not believe that any of the opinions which I have provided in those proceedings would be material to the

Joint Exhibit
JX-1574
C.A. No. 2025-0607-KSJM

evidence I am giving in these proceedings. I do not recall having provided an expert opinion over the last 5 years.

3. I have been asked by the attorneys for the plaintiff in these proceedings, ATP III GP, Ltd., in its capacity as general partner of ATP Life Science Ventures, L.P. ("**the General Partner**"), to describe the substantive laws of the Cayman Islands to which I shall refer, and to give my opinion on the issues which I shall address. As I understand it, I may also be asked to consider and respond to an opinion or opinions to be given by an expert or experts retained by the defendants in these proceedings, Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP ("**Rigmora**").

4. My remuneration under my retainer in connection with these proceedings is based on a rate of GBP1,250 per hour which is unexceptional for me, and I am being reimbursed for reasonable travel and out-of-pocket expenses. I do not believe that the views I express here have been influenced by the remuneration I have received or am to receive for providing it, and I have endeavoured to present my views fairly and accurately. My compensation in connection with this matter is not dependent on my opinions, and it is not contingent on the outcome of this matter.

5. I have no affiliation with the parties or their legal advisors apart from my retainer for the provision of my evidence in these proceedings. I affirm that this report and the opinions expressed in it are my own opinions, and not those of any organization or group with which I am or have been affiliated, or any other third party.

6. This report and the opinions expressed in it are based on my familiarity with the law to which I refer, to the reading I describe of the documents to which I refer, to my understanding, as I describe it, of the context in which the contractual documents to which I refer were concluded and my analysis of the same. I qualify the opinions I express in this report where I consider that my understanding of the

facts and matters relevant to the issues to which it relates makes it appropriate for me to do so.

7. I have been provided with a copy of a document which I understand to be the First Amended and Restated Partnership Agreement of ATP Life Science Ventures, L.P. (formerly known as Apple Tree Partners IV, L.P.) and twenty-two written amendments executed by the parties between November 2012 and December 2024.[1] As I understand it, there is no dispute between the parties to these proceedings as to the validity or coming into effect of this agreement as amended by them. I shall refer to this amended agreement in its various emanations as "**the LPA"**, to specific amendments as "**Amendment 1**" etc., and to the First Amended and Restated Partnership Agreement as amended by, for example, Amendment 22, as "**the LPA Am22**".

8. A complete list of the materials I relied upon in forming the opinions contained in this report is attached as Appendix B.

Road Map

9. I have structured this report as follows.

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[1] The First Amended and Restated Limited Partnership Agreement of ATP Life Science Ventures, L.P., dated as of November 1, 2012, has been produced in this litigation at ATP_00202247. Bates numbers for the LPA are available in Appendix B.

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B. SUMMARY

10. The fact that the LPA has been amended twenty-two times, that later amendments refer to earlier ones and that there is no restatement of the LPA from LPA Am1 onwards makes it harder to follow than it might be, and the fact that each of the amendments made to it will have been made in a context which might affect its meaning makes it harder to understand than it might be. Nonetheless, I believe that the nature and objects of the partnership to which it relates ("**the Partnership**"), and the roles which it envisages for, grants to and requires of the partners to that Partnership, in particular, under LPA Am22, and in relation to budget approvals, are clear, at least, on the face of the LPA.

11. In my opinion, in the absence of strong contextual indications to the contrary of which I am unaware, the budget approval processes set out in Paragraphs 5 and 26 of the LPA Am22 require Rigmora to engage with those processes and to do so in an honest and rational manner.

12. In my opinion, in the absence of some dealings between the parties of which I am unaware or of an underlying commercial justification which I am not in a position to assess, the Bogdanov Email (defined herein) may constitute or demonstrate a failure on the part of Rigmora to engage with the budget approval processes and to do so in an honest and rational manner.

13. Further, if Rigmora have failed to engage with the budget approval processes or to do so in an honest and rational manner, the General Partner may, in my opinion, be entitled to treat any requirement for their approval of the budgets as satisfied and any right they may have had to refuse such approval as waived.

C. FACTUAL BACKGROUND

14. My understanding of the circumstances in which the LPA and its various amendments were entered into, and of the facts relating to the dispute between the parties as to the performance of the LPA is derived from the documents listed at Appendix B. It is apparent to me that there are matters of fact of potential relevance to the issues on which I am being asked to express my opinion which are in dispute in these proceedings, and I shall endeavour to make it clear where the outcome of any such dispute might affect my opinion.

15. The Partnership is an exempted limited partnership under the Exempted Limited Partnership Act (2025 Revision) ("**the Exempted Limited Partnership Act**") organised pursuant to the LPA, with the General Partner as its general partner, and with 18 limited partners.

16. There is a dispute between the General Partner and two of the limited partners, Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP.

D. THE LAW OF THE CAYMAN ISLANDS

17. The LPA is governed by the law of the Cayman Islands. LPA ¶ 18(g).

18. The Cayman Islands are a British overseas protectorate with its own legislature, courts and binding case law. The final court of appeal from the Grand Court of the Cayman Islands and the Cayman Islands Court of Appeal is to His Majesty's Privy Council; the panels of the Privy Council are largely drawn from the judges of the Supreme Court of England and Wales; and, when it comes to matters of common

law and equity, if and insofar as they are unaffected by statutes or regulations or local policies which are specific to the Cayman Islands, the members of the Privy Council may be expected to adjudge the law as they would when sitting in the Supreme Court of England and Wales.

General Principles of Interpretation

19. The LPA is an agreement of the partners which provides for the establishment of, and regulates the affairs of, a Cayman Islands exempted limited partnership, the conduct of its business and the rights and obligations of the partners amongst themselves.

20. The LPA is governing in relation to such matters subject only to any relevant mandatory provisions of the Exempted Limited Partnership Act, and, whilst the content and purposes of the Exempted Limited Partnership Act may inform the interpretation of the LPA, I do not believe that there are any relevant mandatory provisions of the Exempted Limited Partnership Act which resolve the issues on which I have been asked to opine. As I see it, these are, at least, primarily matters of Cayman Islands contract law.

Express Terms

21. The general principles of interpretation of contracts such as the LPA are set out and explained in the decisions of the Supreme Court of England and Wales in *Arnold v Brittan* [2015] UKSC 36 and *Wood v Capita* [2017] UKSC 24.

22. These Supreme Court decisions have been referred to and followed in Cayman cases such as *Re Tyr Capital Partners SPC* Unreported, FSD 370 of 2023, 21 June 2024, Doyle J.

23. The fundamental principle which emerges from these cases is as follows.

(1) "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the context to mean" ...": Lord Neuberger (with whom Lord Sumption and Lord Hughes agree) in *Arnold v Britton* at [15].

(2) "The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.": Lord Hodge (with whom Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption agree) in *Wood v Capita* at [10].

24. Three of the seven factors which Lord Neuberger emphasises in *Arnold v Britton* in the context of that case at [17] – [19] may warrant emphasis here.

"17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it.

However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made."

25. The way in which issues of interpretation are to be approached is elaborated further by Lord Hodge in *Wood v Capita* at [12] & [13]:

"12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated: Arnold para 77 citing In re Sigma Finance Corpn [2010] 1 All ER 571, para 10 per Lord Mance. To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.

13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. ..."

26. There are some rules of interpretation under English law which may not be followed in other common law jurisdictions such as the rule excluding evidence of pre-contractual negotiations discussed by Lord Hoffmann in *Chartbrook v Persimmon* [2009] UKHL 38 at [41] - [46]. However, I anticipate that the fundamental principle articulated by Lord Neuberger and Lord Hodge, and the general considerations which inform its application, will be matters with which any common law jurist would be familiar.

27. There is a temptation to seize on the emphasis in the latest case as indicating a departure from what has been said before. However, as Lord Hodge noted in *Wood v Capita* at [15]: "The recent history of the common law of contractual interpretation is one of continuity rather than change".

28. In this case, changes of circumstances have, no doubt, been reflected in the amendments made to the agreement. *In Stena Line Ltd v MNRPF Trustees Ltd* [2011] EWCA Civ 543, at [30] citing *British Airways Pension Trustee Ltd v. British Airways plc* [2002] EWCA Civ 672, Arnold LJ (with whom Toulson and Rimer LJJ agree) observes:

> "[t]he general principle is that each new provision should be considered against the circumstances prevailing at the date when it was adopted rather than as at the date of the original trust deed: see per Millett J in Re Courage Group's Pension Schemes, above, at 505–506. Likewise, the meaning of a clause in the scheme must be ascertained by examining the deed as it stood at the time the clause was first introduced."

Implied Terms

29. English and Cayman law recognise two types of implied term, as explained by Lady Hale in *Societe Generale v Geys* [2012] UKSC 63 at [55] & [56]:

> "First, there are those terms which are implied into a particular contract because, on its proper construction, the parties must have intended to include them: see *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10... Second, there are those terms which are implied into a class of contractual relationship, such

as that between landlord and tenant or between employer and employee, where the parties may have left a good deal unsaid, but the courts have implied the term as a necessary incident of the relationship concerned, unless the parties have expressly excluded it…"

30. I am unaware of any case in which terms have been implied into an exempted limited partnership agreement as a matter of law (otherwise than as provided by statute). However, exempted limited partnerships and the exempted limited partnership agreements which constitute such partnerships will be characterised by certain key features as noted, for example, in the decision of the Cayman Islands Court of Appeal in *Kuwait Port Authority v Williams* 2023 1 CILR 50 at [22] – [26]:

"22. The judge dealt with direct claims by a limited partner at [60]-[65]. Before doing so, at [46]- [59] he helpfully considered and analysed the characteristics of an ELP, how it differs from an ordinary partnership and a company, and the statutory regime established by the ELPA.

23. He stated at [46]-[47] that the rights and obligations of the limited partners and the general partner (or partners) inter se are regulated by the ELPA, the express provisions of which are to prevail where they are inconsistent with the rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision). He also referred at [46] to the provision in section 3 of the ELPA that absent such inconsistency those rules "shall apply to an exempted limited partnership".

(a) Characteristics of an ELP that differ from those of an ordinary partnership:

24. At [46]-[53] the judge identified the following characteristics of ELPs which he considered to be important points of distinction from an ordinary partnership, and which create different rights and obligations between the partners to those in an ordinary partnership:

(1) By section 4(2) and 20 of the ELPA, the limited partners in an ELP have limited liability whereas the general partner is liable for all debts and obligations of the ELP: [48].

(2) By section 14 of the ELPA limited partners have no active involvement in the business in their capacity as limited partners. The business is carried out by the general partner who enters into all contracts by or on behalf of the ELP: [49] and [52].

(3) Section 19(1) of the ELPA imposes an express duty of good faith on the general partner of an ELP requiring the general partner to act in the interests of the ELP: [50].

(4) Whereas in an ordinary partnership, mutual and reciprocal rights and obligations are owed to each other by partners, section 19(2) of the ELPA provides that, unless the partnership agreement provides to the contrary, a limited partner owes no fiduciary duty either to the ELP or to other partners: [51].

(b) Characteristics of an ELP that differ from those of a company:

25. At [54]-[55] the judge stated that the fundamental legal distinction is that an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right. He stated that the consequence of the ELP not having a separate legal personality is that its general partner holds its rights and property, including choses in action, on trust for each of the partners. Because a limited partnership has no legal personality, the partnership as a whole is not able to enforce the general partner's obligations as trustee.

26. The judge then identified other characteristics of ELPs which he considered to be important points of distinction from those of companies:

(1) the general partner of an ELP owes its duties to all of the individual limited partners whereas the board of directors of a company only owe duties to the company (as the legal entity) and not to its shareholders: [56]-[57].

(2) because in the case of a company directors' duties are owed to the company, any breach by them is generally only actionable by or on behalf of the company and not by shareholders, although there are important exceptions where the wrongdoer directors are in control of the company: [57]-[59].

(3) by section 33(1) of the ELPA, the general partner in an ELP is the only entity who can institute proceedings on behalf of the partnership, whereas in the case of a company there are exceptions to the rule in Foss v Harbottle (1843) 2 Hare 461 where the wrongful directors are in control of the company. The judge stated that "if the limited partners have claims against the GP it is in practice unworkable for it to bring proceedings against itself for breach of duty. If the GP is the arbiter of whether to bring claims against itself that clearly gives rise to a conflict of interest": [60]."

31. Upon appeal to the Privy Council in *Kuwait Port Authority v Williams* [2024] UKPC 32, the Privy Council identified similar distinctions between exempted limited partnerships and companies, as follows at [35]:

"(1) An ELP has no separate legal personality.

(2) A company's articles of association constitute a contract between the company and its members, but no contractual relationship exists between an ELP and its constituent partners. The rights and obligations of the partners in an ELP are governed by a contract between the partners and a statutory trust.

(3) The directors of a company owe fiduciary duties to the company alone and not to the company's shareholders, whilst the general partner of an ELP owes fiduciary duties to all the ELP's limited partners.

(4) The directors of a company are treated as trustees in respect of the company's assets which are under their control, holding them for the company rather than for its shareholders. In contrast, the general partner of an ELP holds the ELP's assets on trust for all the limited partners.

(5) When a wrong is done to a company, it is the company, not its shareholders, that suffers loss. When a wrong is done to an ELP, its constituent partners suffer loss directly: the ELP itself does not suffer any loss that is separate or distinct from the partners' loss.

(6) A majority of shareholders in a company generally have a range of rights and powers, including the power to remove or replace directors and to pass a special resolution requiring a company to bring legal proceedings. A majority of limited partners in an ELP do not have an equivalent power; faced with a general partner who refuses to bring proceedings on behalf of an ELP without cause, their only recourse is to bring a derivative claim.

(7) The fraud on the minority exception concerns control over the bringing of proceedings by the majority shareholders. No such issue arises as between limited partners. As this case illustrates, the majority of limited partners may be seeking to bring the derivative claim."

32. Similar features were also noted in the judgment of Field JA (with whom Birt & Goldring JJA agree) in *Aquapoint v Xiaohu Fan* (unreported 4 October 2024, *CICA) (Civil) Appeal No. 0014 of 2022* at [62]:

"[the appellant exempted limited partnership] is very different from a conventional partnership under the Partnership Act for the reasons identified by Mr Smith. Nonetheless, under the law of the Cayman Islands it is a partnership, albeit an exempted limited partnership, and a partner therein has a statutory right

under section 36 (3) (g) to petition for its winding up on the ground that it is just and equitable to do so."

33. Accordingly, whilst there may be no terms to be read into the LPA as a matter of law in the sense explained by Lady Hale in *Societe Generale v Geys*, the nature of the LPA in the context of the Exempted Limited Partnership Act and the remedies which the law provides in connection with the regulation of partnerships may be relevant to the implication of terms into the LPA on a factual or *ad hoc* basis.[2]

34. The general principles governing the implication of *ad hoc* contractual terms are set out and explained in the decisions of the Supreme Court of England and Wales in *Marks & Spencer v BNP Paribas* [2015] UKSC 72 and *Tesco Stores v USDAW* [2024] UKSC 28.

35. The decision in Mark*s & Spencer v BNP Paribas* has been referred to and followed in Cayman Islands cases such as *Primeo Fund (In Official Liquidation) v Bank of Bermuda (Cayman) Limited* [2017 (2) CILR 334]; and *Cayman Shores v Registrar of Lands* [2021 (2) CILR 1], [2023 (1) CILR 252].

36. The fundamental principle is that "*to be implied, the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract*": Lord Leggatt in *Tesco Stores v USDAW* at [102].

37. The fundamental principle is elaborated and explained in the judgment of Lord Neuberger (with whom Lord Sumption and Lodge Hodge agree) in *Marks & Spencer v BNP Paribas* at [21] – [29]:

"21. In my judgment, the judicial observations so far considered represent a clear, consistent and principled approach. It could be dangerous to reformulate the principles, but I would add six comments on the summary given by Lord Simon in

[2] For the purposes of *Barton v Morris* [2023] UKSC 3 at [134] and [135] in the dissenting judgement of Lord Leggatt the distinction made by Lady Hale in *Societe Generale v Geys* is treated as being the same as distinction between 'default rules' and 'gap fillers' which I understand is sometimes made in the states of the United States and which Lord Steyn adopts in *Equitable Life v Hyman* [2002] 1 AC 408 at 458-459. Whether the two distinctions are the same for all purposes may be another matter.

BP Refinery as extended by Sir Thomas Bingham in Philips and exemplified in The APJ Priti. First, in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, Lord Steyn rightly observed that the implication of a term was "not critically dependent on proof of an actual intention of the parties" when negotiating the contract. If one approaches the question by reference to what the parties would have agreed, one is not strictly concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in the position of the parties at the time at which they were contracting. Secondly, a term should not be implied into a detailed commercial contract merely because it appears fair or merely because one considers that the parties would have agreed it if it had been suggested to them. Those are necessary but not sufficient grounds for including a term. However, and thirdly, it is questionable whether Lord Simon's first requirement, reasonableness and equitableness, will usually, if ever, add anything: if a term satisfies the other requirements, it is hard to think that it would not be reasonable and equitable. Fourthly, as Lord Hoffmann I think suggested in Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988, para 27, although Lord Simon's requirements are otherwise cumulative, I would accept that business necessity and obviousness, his second and third requirements, can be alternatives in the sense that only one of them needs to be satisfied, although I suspect that in practice it would be a rare case where only one of those two requirements would be satisfied. Fifthly, if one approaches the issue by reference to the officious bystander, it is "vital to formulate the question to be posed by [him] with the utmost care", to quote from Lewison, The Interpretation of Contracts 5th ed (2011), para 6.09. Sixthly, necessity for business efficacy involves a value judgment. It is rightly common ground on this appeal that the test is not one of "absolute necessity", not least because the necessity is judged by reference to business efficacy. It may well be that a more helpful way of putting Lord Simon's second requirement is, as suggested by Lord Sumption in argument, that a term can only be implied if, without the term, the contract would lack commercial or practical coherence.

...

27. Of course, it is fair to say that the factors to be taken into account on an issue of construction, namely the words used in the contract, the surrounding circumstances known to both parties at the time of the contract, commercial common sense, and the reasonable reader or reasonable parties, are also taken into account on an issue of implication. However, that does not mean that the exercise of implication should be properly classified as part of the exercise of interpretation, let alone that it should be carried out at the same time as interpretation. When one is implying a term or a phrase, one is not construing words, as the words to be implied are ex hypothesi not there to be construed; and to speak of construing the contract as a whole, including the implied terms, is not helpful, not least because it begs the question as to what construction actually means in this context.

28. In most, possibly all, disputes about whether a term should be implied into a contract, it is only after the process of construing the express words is complete that the issue of an implied term falls to be considered. Until one has decided what the parties have expressly agreed, it is difficult to see how one can set about deciding whether a term should be implied and if so what term. This appeal is just such a case. Further, given that it is a cardinal rule that no term can be implied into a contract if it contradicts an express term, it would seem logically to follow that, until the express terms of a contract have been construed, it is, at least normally, not sensibly possible to decide whether a further term should be implied. Having said that, I accept Lord Carnwath's point in para 71 to the extent that in some cases it could conceivably be appropriate to reconsider the interpretation of the express terms of a contract once one has decided whether to imply a term, but, even if that is right, it does not alter the fact that the express terms of a contract must be interpreted before one can consider any question of implication.

..."

38. The fundamental principle governing the implication of a term is also explained in the judgment of Lord Leggatt in *Tesco v USDAW* at [102] – [106]:

"102. The main rule governing the implication of a term is that, to be implied, the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract. The first of these tests is sometimes called the "officious bystander test", referring to a personification of it described by MacKinnon LJ in Shirlaw v Southern Foundries (1926) Ltd [1939] 2 KB 206, 227. He imagined an "officious bystander" present while the parties were making their agreement who suggests that they should include a term as an express provision. The test for implication is met if the parties "would testily suppress [the bystander] with a common 'Oh, of course!'." As was rightly pointed out in Belize Telecom, para 25, this thought experiment, colourful as it is, is unhelpful because it invites speculation about how the actual parties to the contract might have responded rather than adopting the objective approach which the law requires. The law is not concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in their position at the time of contracting: see eg Marks and Spencer, para 21. This may account for why judges sometimes imagine the officious bystander answering the relevant question rather than posing it to the parties (as the original version of the test envisages): see eg Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56; [2012] SLT 205, para 33, where Lord Clarke of Stone-cum-Ebony (with whom Baroness Hale of Richmond, Lord Mance and Lord Kerr of Tonaghmore agreed) said:

> "If the officious bystander had been asked whether such a term should be implied, he or she would have said 'of course'."

103. A broader criticism is that a test of obviousness is purely impressionistic and unreasoned. Perhaps this contributes to the enduring attraction of the officious bystander, who may be felt to give a semblance of objectivity to what is really no more than the judge's own hunch. It may also explain why judges seldom rely on the test of obviousness alone. Although a separate test, it is generally applied in combination with the second, "business efficacy" test. In Marks and Spencer, para 21, Lord Neuberger suggested that in practice it would be a rare case where only one of those two requirements would be satisfied.

104. The business efficacy test has its origin in Bowen LJ's classic statement in The Moorcock (1889) 14 PD 64, 68, that "if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have." Bowen LJ further explained that "what the law desires to effect by the implication is … to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of [the] perils or chances [of the transaction]."

105. In Marks and Spencer, para 21, Lord Neuberger aired a suggestion made by Lord Sumption in argument in that case that another way of putting the business efficacy test might be to say that "a term can only be implied if, without the term, the contract would lack commercial or practical coherence." While that would no doubt be a sufficient reason to imply a term, it seems to me to invite consideration of the wrong question. The question is not whether the contract would work at all without the implied term, but whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work. I agree with Sir Kim Lewison that that is the idea that Lord Steyn was expressing in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, when he described the implication of a term as "essential to give effect to the reasonable expectations of the parties": see Lewison, The Interpretation of Contracts, 8th ed (2024), para 6.85; Equitas Insurance Ltd v Municipal Mutual Insurance Ltd [2019] EWCA Civ 718; [2020] QB 418, para 150. It also accords with the original statement of the test in The Moorcock. as seeking to give to the transaction "such efficacy as both parties must have intended that at all events it should have." I agree too with the Supreme Court of New Zealand that formulating the test in terms of commercial or practical coherence risks distracting from the purpose of implication, which is to give effect to the parties' bargain as objectively assessed. It is the parties' bargain, not some broader concept of business coherence, that is the focus of implication: see Bathurst Resources Ltd v L & M Coal Holdings Ltd [2021] NZSC 85; [2021] 1 NZLR 696, para 110.

106. Properly understood, Bowen LJ's famous statement of the law describes a more analytical approach. The first step is to identify, from one or more express terms of the contract construed in their factual setting, a relevant contractual purpose. The question then is whether the implication of a term is necessary to

give effect to that purpose and prevent it from being defeated. Any term implied must be both strictly necessary and no wider than is necessary give the contract such efficacy. It must also, of course, be consistent with the express terms of the contract."

39. The relevant principles are drawn together by Lady Justice Carr DBE in *Yoo Design Services v Iliv Realty Pte* [2021] EWCA Civ 560 at [51]:

> 51. In summary, the relevant principles can be drawn together as follows:
>
> i) A term will not be implied unless, on an objective assessment of the terms of the contract, it is necessary to give business efficacy to the contract and/or on the basis of the obviousness test;
> ii) The business efficacy and the obviousness tests are alternative tests. However, it will be a rare (or unusual) case where one, but not the other, is satisfied;
> iii) The business efficacy test will only be satisfied if, without the term, the contract would lack commercial or practical coherence. Its application involves a value judgment;
> iv) The obviousness test will only be met when the implied term is so obvious that it goes without saying. It needs to be obvious not only that a term is to be implied, but precisely what that term (which must be capable of clear expression) is. It is vital to formulate the question to be posed by the officious bystander with the utmost care;
> v) A term will not be implied if it is inconsistent with an express term of the contract;
> vi) The implication of a term is not critically dependent on proof of an actual intention of the parties. If one is approaching the question by reference to what the parties would have agreed, one is not strictly concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in the position of the parties at the time;
> vii) The question is to be assessed at the time that the contract was made: it is wrong to approach the question with the benefit of hindsight in the light of the particular issue that has in fact arisen. Nor is it enough to show that, had the parties foreseen the eventuality which in fact occurred, they would have wished to make provision for it, unless it can also be shown either that there was only one contractual solution or that one of several possible solutions would without doubt have been preferred;
> viii) The equity of a suggested implied term is an essential but not sufficient pre-condition for inclusion. A term should not be implied into a detailed commercial contract merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them. The test is one of necessity, not reasonableness. That is a stringent test."

40. An *ad hoc* term is not to be implied simply because it is reasonable. At the same time, as Lord Leggatt observed in *Tesco v USDAW* at [105] (in a passage discussing Lord Steyn's statement in *Equitable Life Assurance v Hyman* [2002] 12 AC 408 at 459 that the term should be "*essential to give effect to the reasonable expectations of the parties) whether to imply a term may depend on "whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work*"."

Terms and Principles Creating and Controlling Rights of Determination and Their Exercise

41. The LPA contains an array of express provisions affording to or imposing on one or more of the parties a right or obligation to determine something for the purposes of the LPA and, in some cases, these provisions spell out how far the party or party concerned is fettered in their exercise or performance of that right or obligation.

42. Examples of such provisions which include express fetters are: LPA ¶ 9(a) (requiring the General Partner to value assets "in good faith"); and Amendment 3 ¶ 5(a)(ii) (conditioning acceleration of budgets on the General Partner's representation "that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor.").

43. The LPA is a lengthy and detailed document. However, this does not prevent the court from reading implied terms into it.

44. The fact that the draftsman has included fetters in some provisions but not others in the LPA does not mean that the parties intended the exercise of the other rights and obligations to be unfettered. This is a matter for the interpretation of the agreement as a whole informed by the fetters which have, and have not, been read into or applied to the performance of instruments with similar features in other cases.

45. There are many implied terms and principles which have been held to serve and prayed in aid to curb the scope for abuse in the performance of contractual obligations and the exercise of contractual rights.

46. First, there is the general principle that a party should not be allowed to benefit from its own wrong. This is referred to in the context of the consequences of termination in a passage from the speech of Lord Diplock in *Cheall v A.P.E.X* [1983] 2 A.C. 180, at [188-189]:

> "My Lords, the New Zealand Shipping case [1919] A.C. 1, from which, it is contended, the supposed rule of law can be extracted, was an appeal upon a case stated by an umpire in an arbitration of a phrase in a shipbuilding contract: " thereupon this contract shall become void," where the events to the occurrence of which " thereupon " referred were of different kinds; some of them could only be brought about by some breach of the contract by the shipbuilder, others could happen without any breach of contract by either party. The umpire had found as a fact that the event relied upon by the shipbuilders as bringing the clause into operation so as to render the contract void happened without any breach of the shipbuilding contract by either party, and the actual decision of this House, was that the shipbuilder was entitled to treat the contract as void. In the course of the speeches, which are not entirely consistent with one another, reference was made by all their Lordships to the well known rule of construction that, except in the unlikely case that the contract contains clear express provisions to the contrary, it is to be presumed that it was not the intention of the parties that either party should be entitled to rely upon his own breaches of his primary obligations as bringing the contract to an end, i.e. as terminating any further primary obligations on his part then remaining unperformed. This rule of construction, which is paralleled by the rule of law that a contracting party cannot rely upon an event brought about by his own breach of contract as having terminated a contract by frustration, is often expressed in broad language as: "A man cannot be permitted to take advantage of his own wrong." But this may be misleading if it is adopted without defining the breach of duty to which the pejorative word " wrong " is intended to refer and the person to whom the duty is owed.
>
> The breach of duty which it is suggested disentitled A.P.E.X. in the instant case to rely upon rule 14 as against Cheall was its duty under the Bridlington principles not to poach members from A.CT.S.S. This duty, though moral only and not legally enforceable, it owed to A.CT.S.S. and T.G.W.U. and, may be, other trade unions that are members of the T.U.C.; but plainly it cannot have owed such duty to individual members" of trade unions, since only trade unions were parties to the agreement embodied in the Bridlington principles.

> Since rule 14 can only come into effect when there has been a breach by A.P.E.X. of the duty owed by it to another trade union under the Bridlington principles, it is hopeless to argue that A.P.E.X. is debarred from relying on the rule to terminate the membership of a poached member, merely because it acted in breach of the Bridlington principles in poaching him. So counsel for Cheall felt constrained to introduce the concept of a distinction to be drawn between a "conscious and deliberate" breach of the Bridlington principles and a breach that was merely inadvertent. The former it was argued disentitled A.P.E.X., as a matter of law, ever to rely upon rule 14 to terminate the membership of the person in respect of whom the conscious and deliberate breach was committed, while an inadvertent breach did entitle it to do so.
>
> My Lords, I know of no principle of law which justifies this distinction. The New Zealand Shipping case [1919] A.C. 1, the only authority relied upon for it, contains no hint that any such distinction between deliberate and inadvertent breaches of duty is to be drawn in applying the rule that was the subject of discussion in that case. To attract the principle, whether it be one of construction or one of law, that a party to a contract is not permitted to take advantage of his own breach of duty, the duty must be one that is owed to the other party under that contract; breach of a duty whether contractual or non-contractual owed to a stranger to the contract does not suffice. I have no hesitation in rejecting the argument based upon the supposed rule of law."

47. Second, there is the prevention principle pursuant to which a term may be implied that a party should do nothing to prevent the circumstances for the performance of its obligations under the contract arising. *In Duval v 11-13 Randolph Crescent* [2020] UKSC 18 at [48] Lord Kitchin (with whom Lady Hale, Lord Carnwath, Lady Black and Lord Sales agree) refers to it being “well established that a party who undertakes a contingent or conditional obligation may, depending upon the circumstances, be under a further obligation not to prevent the contingency from occurring; or from putting it out of his power to discharge the obligation if and when the contingency arises.”

48. Third, there is the cooperation principle pursuant to which a term may be implied that a party will cooperate in bringing about the circumstances in which the contract may call for performance. In *Compagnie Noga d’Importation et d’Exportation SA v Abacha (No 3)* [2002] CLC 207 at [103] – [107] Rix LJ refers to the duty of cooperation as found by Devlin J (as he then was) in *Mona Oil*

Equipment and Supply Company Ltd v Rhodesia Railways Ltd (1949) 83 L1 L Rep 178 and to the classic case of *Mackay v Dick (1881) 6 App Cas 251*.

49. Fourth, there may be an implied term to exercise a power or right in a way which is consistent with the purpose for which it is conferred. In *British Telecommunications v Telefonica 02 UK* [2014] UKSC 42 at [37] Lord Sumption (with whom Lord Neuberger, Lord Mance, Lord Toulson and Lord Hodge agree) states: "it is well established that in the absence of very clear language to the contrary, a contractual discretion must be exercised in good faith and not arbitrarily or capriciously... This will normally mean that it must be exercised consistently with its contractual purpose ...".

50. Fifth, in some circumstances, as Rix LJ (with whom Laws & Lloyd agree) held in *Socimer International Bank v Standard Bank* [2008] EWCA Civ 116 at [60] – [66] "a decision maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality".

51. Sixth, there may be an implied duty of good faith. In *Sheikh Al Nehayan v Kent* [2018] EWHC 333 Leggatt LJ (as he then was) sitting at first instance identifies the characteristic relational nature of those contracts in which it may be appropriate to imply a general duty of good faith going beyond that discussed in the *Compass* and *Product Star* cases. Full reviews of the relevant jurisprudence are to be found in the judgment of Fancourt J in *UTB v Sheffield* [2019] EWHC 2322 (Ch) at [196] – [205] and Fraser J in *Bates v Post Office (No.3)* [2019] EWHC 606 at [702] – [710].

52. Seventh, there may be implied fiduciary duties. I note that section 19(2) of the Exempted Limited Partnership Act provides as follows.

"Subject to any express provisions of the partnership agreement to the contrary, a limited partner of an exempted limited partnership in that capacity does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in

performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner."

53. I am unaware of any case which explores the limits of the class of duties encompassed by the reference to fiduciary duties in section 19(2) of the Exempted Limited Partnership Act. In my view, it is arguable whether or to what extent it may encompass a duty of good faith in the sense that may arise in relational contracts such as those discussed in *Sheikh Al Nehayan v Kent*. However, I do not read section 19(2) of the Exempted Limited Partnership Act as precluding the implication of a term which serves to fetter the exercise of a right or the performance of an obligation honestly, rationally or for the purpose for which the contract provides for it.

53. As a matter of principle, even if one is satisfied that there is some such fetter, it is necessary to consider how it operates in the context of the agreement at issue, and, in practice, there may be no magic to the taxonomy which I have adopted here. In many of the cases in this area of the law more than one rationale may be given for implying the same term.

54. In considering the content of the term to be implied in any particular case, it will be necessary to consider, for example, how far it is consistent with the agreement as a whole for the party to or on whom the right or obligation is conferred to have regard to its own interests, circumstances, whims or animus. In some cases, as the Privy Council held in the decision given by Lord Millett in *Reda v Flagg* [2002] UKPC 38 at [45] and [52], the express terms leave no room for any such implied term.

Braganza

55. The judgment of Lady Hale (with whom Lord Kerr agrees) in *Braganza v BP Shipping* [2015] UKSC 17 [17] – [31] has given its name to a class of implied terms which fetter the exercise of a right or power in circumstances where a conflict of interest

may arise, and, in particular, require the right or power to be exercised rationally in the sense explained in the obiter dicta of Lord Sumption in *Hayes v Willoughby* [2013] UKSC 17 at [14]:

> "I do not doubt that in the context of section 1(3)(a) purpose is a subjective state of mind. But in my opinion, the necessary control mechanism is to be found in the concept of rationality, which Eady J touched on in Howlett v Holding [2006] EWHC 41 (QB) and Moses LJ seems to have been reaching for in his judgment in the present case. Rationality is a familiar concept in public law. It has also in recent years played an increasingly significant role in the law relating to contractual discretions, where the law's object is also to limit the decision-maker to some relevant contractual purpose: see Ludgate Insurance Co Ltd v Citibank NA [1998] Lloyds Rep IR 221, para 35 and Socimer International Bank Ltd v Standard Bank Ltd [2008] Bus LR1304 , para 66. Rationality is not the same as reasonableness. Reasonableness is an external, objective standard applied to the outcome of a person's thoughts or intentions. The question is whether a notional hypothetically reasonable person in his position would have engaged in the relevant conduct for the purpose of preventing or detecting crime. A test of rationality, by comparison, applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse. For the avoidance of doubt, I should make it clear that, since we are concerned with the alleged harasser's state of mind, I am not talking about the broader categories of Wednesbury unreasonableness, a legal construct referring to a decision lying beyond the furthest reaches of objective reasonableness."

56. The underlying principles are not new. However, *Braganza* is recognised as the leading case, for example, in the judgement of Males and Leggatt LJJ (with both of whom Patten LJ agrees) in *Equitas Insurance v Municipal Mutual Insurance* [2019] EWCA Civ 718 at [106] – [113] and [148] – [154].

Consequences

57. It is, perhaps, unsurprising that the law has found ways of defeating the antics of those who would breach a contract in order to evade performance of their primary obligations under it.

58. The law on consequences of breach in such cases has been recently reviewed by Popplewell LJ in *King Crude Carriers v Ridgebury* [2024] EWCA Civ 719. The key paragraphs are as follows:-

(1) As regards the wrongful prevention of the fulfilment of a condition precedent depriving a party of the right to rely upon it at [48]:

> "48. In the Court of Appeal in *Panamena* ((1943) 76 Lloyd's Rep 113) Goddard LJ had articulated the principle in the following terms at p. 127:
>
> "It is and must be conceded that if a party desires to rely on the non-performance of a condition precedent, he must do nothing to prevent the condition from being performed, and if there is anything that must be done by him to render possible the performance of the condition, a failure by him to do what is required disentitles him from insisting on performance of the condition.""

(2) As regards a condition precedent being treated as fulfilled where its fulfilment has been prevented by breach of an implied term at [52]:

> "52. In Mona v Rhodesia Railways, Devlin J identified the two propositions for which Mackay v Dick was authority at pp. 186-7. The first was the implied term of cooperation identified by Lord Blackburn, breach of which gives rise to a claim for damages. The second was that of Lord Watson:
>
> "The second proposition, based on the opinion of Lord Watson, advances a stage further and gives the plaintiff in appropriate cases an additional form of relief. If the breach of the implied term prevents the plaintiff from performing a condition binding upon him, he is to be taken as having fulfilled that condition: and if the condition is one on which his right to payment depends, he may therefore sue for payment instead of damages. That these propositions are distinct is shown by the fact that Lord Blackburn's reasoning does not involve the second at all. His construction of the contract does not require it. He says at p. 264 "...". On this view, there was no question of the defender preventing the pursuers from claiming payment; he prevented himself from escaping from the liability to pay. ..... Lord Watson, Mackay v Dick, sup.at p. 270, proceeded on a different construction of the contract and so invoked the principle I have stated. He rested it upon well-established doctrine (see also the authorities cited by McCardie, J., in Colley v Overseas Exporters, sup., at p. 308) and not upon any implication in the contract.""

(3) As regards the similar effect of a breach of the implied duty of cooperation at [61]:

> "*61. In* Geys v Société Générale [2013] AC 523 at [131] *, Lord Sumption JSC referred to*
>
> > *"the doctrine of deemed performance endorsed by the House of Lords in* Mackay v Dick (1881) 6 App Cas 251 *, according to which a party who is prevented by the non-cooperation of the counterparty from satisfying a condition precedent to his right to receive remuneration may be deemed to have earned it notwithstanding the condition"*."

(4) By way of conclusion at [78] – [85], with reference to the recognition of the principle in the opinion of the Privy Council given by Sir Harry Gibbs in *Newmont Property Ltd v Laverton Nickel NL* (1982) 44 ALR 588 at 606:

> " 78. Unlike the Judge, and contrary to Mr Eaton's submissions, I consider that the Mackay v Dick principle, as so formulated, involves no inconsistency with established tenets of contract law, but on the contrary, gives effect to them.
>
> 79. It is first helpful to seek to identify a juridical basis for the principle. It arises from the concept that a person should not be permitted to take advantage of their own wrong, but that is a statement of policy, or as the Judge described it, a 'maxim', rather than a juridical basis for the rule. It is not a freestanding principle of universal application even in contract law. It may be very profitable for a party to break its contract without inflicting an equivalent loss on a defendant, but generally speaking in such cases the law does permit it to take advantage of its own wrong and to keep the profit: damages are generally compensatory and, save in limited circumstances, do not involve disgorgement of profits.
>
> 80. The authorities use a series of different epithets to describe how the principle takes effect. In some cases the language is that of deemed fulfilment of the condition: Lord Watson in Mackay v Dick (the condition is "held as accomplished"); Ashurst J in Hotham ("equal to performance"); Parker LJ in The Aello ("condition deemed to have been fulfilled"); Lord Sumption in Geys ("deemed performance"). In others it is that the condition is dispensed with: Lord Thankerton in Panamena ("absolved from the necessity of obtaining the surveyor's certificate"); Goddard LJ in Panamena ("disentitles him from insisting on performance of the condition"). In others it is the language of estoppel or quasi estoppel or waiver: Lord Donaldson MR in Cory v LRB ("quasi estoppel"); Devlin J in Tiberghien ("not permitted to assert" non fulfilment of the condition and

"in effect waiver"); Millett LJ in Little v Courage ("precluded from claiming that the condition has not been fulfilled"). These, however, are merely descriptors of the effect of the principle, not by way of identification of a legal doctrine whose ingredients must be fulfilled and are then applied. None of the authorities, with their various descriptions of the effect of the principle, seeks expressly to identify its legal basis.

81. In my view, the legal basis of the rule is that it represents the presumed contractual intention of the parties. That is a principled basis for it, because in order for it to apply there must be (1) an agreement capable of giving rise to a debt rather than damages; (2) an agreement that the debt will accrue and/or be payable subject to fulfilment of a condition precedent; and (crucially) (3) an agreement that the obligor will not do the thing which prevents the condition precedent being fulfilled so as to prevent the debt accruing and/or becoming payable, whether that agreement takes the form of the implied term of cooperation identified by Lord Blackburn in Mackay v Dick , or an express term, as in this case. Unless (3) exists, the principle has no application, as Cheall confirms. The natural presumption arising out of that combination of ingredients is that the parties intend that in those circumstances the obligee will have the benefit of the debt for which it has bargained. The presumption is not, as Mr Eaton would have it, merely that the breach of element (3) should give rise to a claim in damages, because that ignores the bargain that in certain circumstances the obligee should have the benefit of a right in debt, which is recognised by elements (1) and (2). Put another way, the agreement that the obligor will not engage in the conduct which prevents the debt accruing and/or becoming payable implicitly carries with it an agreement that the consequence should be that the debt accrues and is payable.

82. That contractual intention is the juridical basis for the principle was recognised in Newmont Property Ltd v Laverton Nickel NL (1982) 44 ALR 588, a decision of the Privy Council on an Australian appeal about an agreement between provisional liquidators of mining companies which was conditional on approval by the court. It was held that the principle in Mackay v Dick had no application in such circumstances, because the condition was not one for the benefit of the parties only, but by way of statutory supervision whose main purpose was the protection of the contributors and creditors against the background of insolvency; and not one which the provisional liquidators could fulfil or the fulfilment of which they could procure. The Opinion of the Board, comprising Lords Diplock, Keith and Roskill, Sir John Megaw and Sir Harry Gibbs was given by Sir Harry Gibbs who said at p. 606:

"In argument counsel for the appellant cited cases such as Mackay v Dick (1881) 6 App Cas 251 in support of the submission that where one party makes it impossible for a condition of the contract to be fulfilled, the condition is to be taken as satisfied. That is true in some cases, but not in

> all; whether performance of a condition precedent is excused where a party has prevented its performance must depend upon the nature of the condition and circumstances of the case. In some cases the nature and purposes of the condition will themselves be sufficient to indicate that the parties must have intended that the obligations which are expressed to be dependent on the fulfilment of the condition will come into existence only if the condition is fulfilled, and that it will not be enough that performance of the condition has been prevented by the wrongful act of one of the parties."
>
> 83. For these reasons I am unable to accept Mr Eaton's argument that the principle interferes with freedom of contract. It is a principle which gives effect to contractual intention, not one which frustrates it. If a contrary intention is sufficiently clearly expressed or can be implied from the circumstances of the case, the principle will not apply.
>
> 84. This accords with the approach to the maxim that a party should not be entitled to take advantage of their own wrong in the contractual field more generally. As I have explained, it has regularly been applied as a matter of construction since at least the early 18th century, but it has always been treated as a principle of construction, not of law, and as subject to a sufficiently clearly expressed contrary intention: see, for example, Cheall at pp.188H-189A, Alghussein Establishment v Eton College [1988] 1 WLR 587 at p. 595G; and BDW Trading ltd v JM Rowe (Investments) Ltd [2011] EWCA Civ 548 at [31] .
>
> 85. I would therefore formulate the principle as being that an obligor is not permitted to rely upon the non-fulfilment of a condition precedent to its debt obligation where it has caused such non-fulfilment by its own breach of contract, at least where such condition is not the performance of a principal obligation by the obligee, nor one which it is necessary for the obligee to plead and prove as an ingredient of its cause of action, and save insofar as a contrary intention is sufficiently clearly expressed, or is implicit because the nature of the condition or the circumstances of the case make it inappropriate."

59. Put simply, in an appropriate case, the court may find that the objective intention of the parties is that, where a precondition is not satisfied as a result of a breach of the contract by the party which would rely upon it, the benefit of the precondition may be deemed to have been waived or lost, and the innocent party may proceed as if the precondition had been satisfied.

E. THE LPA

60. An essential characteristic of an exempted limited partnership as the Exempted Limited Partnership Act envisages such partnerships is that the conduct of the business of the partnership is vested in the general partner and the limited partners have neither control over, nor liability for, what is done in the partnership's name.

61. In the ordinary way, the limited partnership agreement which constitutes an exempted limited partnership will specify, *inter alia*, the objects of the partnership, the capital which the limited partners are committed to provide, and the circumstances in which the general partner may call upon the limited partners to provide it.

62. The LPA has all these features.

(1) The object of the Partnership is "to invest, directly or indirectly through one or more entities directly or indirectly owned in whole or in part by the Partnership (each such entity, an 'Intermediary'), in pharmaceutical medical device and other medically related companies and business projects." LPA Am1 ¶1(c) (restating Paragraph 1(c) of the LPA).

(2) The duties and powers of the General Partner cover "The management, policies, and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner." LPA ¶ 2(b).

(3) The LPA authorizes the General Partner to call capital for Projects within an approved Project budget. LPA Am3 ¶5(a)(ii).[3]

[3] LPA Am3 ¶ 5(a)(ii) ("the "General Partner may only call capital … to … (D) invest in Projects approved … in accordance with a Board-approved budget," and "(E) invest in Projects approved by holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders."). *See also* LPA Am2 Sched. C; LPA Am13; LPA Am20 ¶ 21(e); LPA Am20 ¶ 22(e).

(4) The LPA also affords the Limited Partners or the Subject Limited Partners, who hold the majority of the Preferred Units in the Partnership, certain voting and approval rights, including a right to approve budgets for Partnership Projects.[4]

63. Provided that a budget has been approved, consistent with the power and authority granted to the General Partner to manage the conduct of the business, LPA ¶ 2(b), the General Partner then has the discretion to call capital within that budget. LPA ¶ 5(a)(i) (authorizing the General Partner to call capital in amounts equal to or in instalments of the Contingent Subscription); LPA Am3 ¶ 5(a)(ii) (authorizing the General Partner to call capital to cover an approved budget). Paragraph 5 requires the Limited Partner to make a capital contribution after the General Partner has exercised its discretionary right to call the capital within an approval Project budget. *See* LPA ¶ 5(a)(i); LPA Am3 ¶ 5(a)(ii). The General Partner may call a default "If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due." LPA ¶ 5(c).

64. The purpose of the Partnership as stated in the LPA is to invest in medical science projects of a kind which may, as I understand it, take many years to reach a point at which they will either attract third party investors or be cash-positive and, hence, self-sustaining. However, for the purposes of my opinion the details of this do not matter.

Amendment 22

65. Amendment 22 Paragraph 26 deals with the budgets for the certain clinical-stage portfolio companies, including Ascidian, Aulos, and Replicate and certain early-stage companies, including Nereid and Nine Square. The amendment establishes

[4] Amendment 2 Schedule C outlines the "project budget process." Schedule C refers to "ATC" and the "Board" of ATC. The "Board" refers to the board of directors of ATC. LPA ¶ 2(n). However, Amendment 14 Section 10 to the LPA provides that "All references in the Agreement to 'ATC' and 'Apple Tree Consolidated, SPRL,' … are … deleted from the Agreement." And, as I understand it, it is common ground that the right to approve budgets now resides with the Subject Limited Partners, that is, Rigmora. See also LPA Am3 ¶ 5(a)(ii); LPA Am13 Introduction; LPA Am2 Sched. C; LPA Am20 ¶ 20(e); LPA Am22 ¶ 26.

budget contingencies for these five portfolio companies, providing twelve-month operating budgets with specific timelines through 2025-2026. It also makes the implementation of any budget approval contingent upon the Subject Limited Partner realizing at least $300 million from an ATP LLC sale or financing. The pertinent terms amend Paragraph 26 of the LPA to provide as follows:

> "26. Budgets for Certain Other Portfolio Companies. From and after the date of this Amendment, the General Partner and the Subject Limited Partner shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Therapeutics Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized, i.e., January 2025, in the case of Aulos Bioscience, Inc.; February 2025, in the case of Replicate Bioscience, Inc.; April 2025, in the case of Nereid Therapeutics Incorporated; May 2025, in the case of Nine Square Therapeutics Corporation and the first quarter of 2026, in the case of Ascidian Therapeutics, Inc. (provided that the General Partner and the Subject Limited Partner shall discuss, in the near term, a new budget to fund a major clinical trial of Ascidian Therapeutics, Inc.). If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC."

66. I note the following textual indications as to the meaning and effect of Paragraph 26.

(1) The words "shall discuss" as used in the phrase "the Subject Limited Partner shall discuss new budgets for the Partnership" are apt to denote a discussion in which both parties are obliged to engage.

(2) The words "in accordance with the process set forth in this Agreement" stipulate how the discussion in which the parties are to engage is to be conducted by them.

(3) The words "to allow it to" as used in the phrase "to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Therapeutics Incorporated,

Nine Square Therapeutics Corporation and Replicate Bioscience, Inc." are apt to denote a purpose.

(4) The words "sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized …" are apt to describe facts and matters which are to be taken into account in considering whether or not budgets reflect the specified purpose.

(5) The words "(provided that the General Partner and the Subject Limited Partner shall discuss, in the near term, a new budget to fund a major clinical trial of Ascidian Therapeutics, Inc.)" are apt to indicate that a further discussion in relation to the budget for "a major clinical trial of Ascidian Therapeutics, Inc." must also take place.

(6) The words "If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC" are apt to indicate what facts or matters unrelated to the specified purpose of a new Ascidian clinical trial budget may be taken into account and in what way.

(7) The words "such approval shall be contingent upon" are apt to indicate that the collateral consideration which Paragraph 26 goes on to specify is not to be taken into account as part of the new budget approval process but rather as a condition to putting any such approved new budget into effect.

(8) The fact that Paragraph 26 provides for the fund-raising issue and only the fund-raising issue to operate as a contingency is apt to indicate that no other collateral issue should affect the approval of new budgets.

67. In my view, at least, on a textual analysis of LPA Am22, in order for the LPA Am22 to work as the parties objectively intended it to work, it would appear to be necessary that the Subject Limited Partners engage in good faith discussions regarding the approval of budget proposals for the companies referred to there.

The Meaning and Effect of LPA Am22

68. As I understand it, the issues in these proceedings relate to matters occurring since the partners entered into LPA Am22, and, consequently, that what matters for the purposes of these proceedings is the meaning and effect of LPA Am22.

69. What is critical, as I see it, is that, if the budget approval provisions in the LPA Am22 were to be interpreted as affording the Subject Limited Partners an unfettered right to decline to approve budgets, the Subject Limited Partners would have a power over the conduct of the Partnership which would be at odds with the right and responsibility to control the conduct of the Partnership afforded to the General Partner.

70. Moreover, if the budget approval provisions in the LPA Am22 were to be interpreted as affording the Subject Limited Partners a right which they had no obligation to exercise, or were free to exercise for any reason whatsoever, any contingent capital commitment would be meaningless.

71. The LPA provides that "[a] Partner may not make less than the full amount of any required capital contribution." LPA ¶ 5(a)(i), and, if a Partner fails to make less than the full amount of any required capital contribution, it will be at risk that the General Partner make exercise the powers granted to it to treat the Partner as a Defaulting Partner. None of these provisions would have any force if the Limited Partners have an absolute right under LPA Am22 to refuse to approve budgets and, thereby, avoid the circumstances in which they might apply from arising.

Scenarios

72. As I understand it, the factual scenarios which may arise in these proceedings include the following:

(1) First, Rigmora may be found to have failed to engage in one or more of the budget approval processes for which LPA Am22 provides;

(2) Second, Rigmora may be found to have failed to approve one or more budgets otherwise than as a result of a rational and genuine assessment of the best interests of the Partnership in the entities to which the budgets relate;

(3) Third, Rigmora may be found to have made their approval of one or budgets for particular portfolio entities conditional on the General Partner doing something else in relation to the Partnership which the LPA did not oblige him to do and which he genuinely considered contrary to the interests of the Partnership;

(4) Fourth, Rigmora may be found to have failed to meet a capital call in respect of an amount covered by a budget or budgets which were approved by them;

(5) Fifth, Rigmora may have represented to the General Partner that they would do one or more of these things.

Scenarios 1 - 3

73. Were an unfettered right to decline to approve budgets to exist, the basic scheme of the LPA Am22 would lack coherence, and, accordingly, in my view, in the absence of clear language to the contrary, it is necessary to read into the approval provisions in the LPA Am22 an obligation on the Subject Limited Partners to engage with the process and exercise their power of approval properly.

74. I have used the term “properly” as a place holder. The extent of the fetter on the manner in which the Subject Limited Partners exercise their approval powers in

relation to particular budgets may be affected by the circumstances in which the amendments to the LPA under which those budgets have been presented to the Subject Limited Partners and their powers of approval arise.

75. As I understand it, the vast majority of the capital contributed to the Partnership has been contributed, and always was going to be contributed, directly or indirectly, by the ultimate beneficial owner or owners of the Subject Limited Partners and, as I understand it, the Subject Limited Partners may contend that this 'reality' should inform the meaning and effect to given to the LPA, and, in particular, the need to imply any constraints on the manner in which the Subject Limited Partners may exercise and discharge their rights and obligations under the LPA.

76. I do not find this argument compelling. The fact that any rights afforded to the holders of the majority of the Preferred Units or the Subject Limited Partners would be so readily exercisable by them might be thought to render it all the more important that they should be precluded from exercising them in a way which would undermine the operation of the Partnership or the ability of the general partner to manage the Partnership effectively.

77. It is true that the ownership of the vast majority of the units in a Partnership may inform the exercised of the court's discretion on a petition to wind up a partnership. However, this is only on the assumption that such limited partners have established an appropriate ground on which the court may do so. The fact that the majority owner of an exempted limited partnership would prefer the general partner to do its bidding, rather than manage the partnership on the terms agreed by all the partners, is not to be treated as giving rise to a breakdown in trust and confidence however unused the majority owner might be to anyone disregarding its wishes.

78. What is clear, in my opinion, is, as a matter of principle:

(1) First, that the constraint on the exercise of the budget-approval powers of the Subject Limited Partners to be read into the LPA Am22 should have the essential characteristics of such constraints recognised in such authorities as *Braganza*, *Socimer* and *British Telecommunications*;

(2) Second, that, as a failure to engage in the approval process could be self-serving and, on its face, prevent the satisfaction of a pre-condition to the General Partner's right to make a capital call on the Subject Limited Partners, a breach by the Subject Limited Partners of their obligation to engage and engage properly in the budget approval procedures would engage the principles recognised in the authorities cited in *King Crude Carriers v Ridgebury* in relation to a part's reliance on its own wrong, the prevention principle and the cooperation principle; and

(3) Third, that, if the Subject Limited Partners either have failed to engage with the approval process in breach of an express or implied obligation to do so, or have failed to engage in the process in the manner required of them, the Subject Limited Partners may be taken to have lost or waived their power to approve the budgets in issue with the consequences recognised in *King Crude Carriers v Ridgebury* and the cases cited there.

79. As I understand it, there is a dispute between the parties as to the amount, if any, of the Subject Limited Partners' outstanding capital commitment. I have not been asked to consider this, and I have not formed an opinion on it. If and insofar as I discuss the circumstances in which the General Partner may be entitled to make a capital call, it is, of course, subject to there being a commitment on which to make it.

80. In my view scenarios 1 – 3 would all be caught by the kind of implied term or terms which I have been addressing.

Scenario 4

81. Scenario 4 is one in which Rigmora have approved one or more budgets and, as I understand it, there is no further condition precedent to the making of a capital call for the General Partner to satisfy. In Scenario 4 it is Rigmora which may seek to have a constraint read into the LPA to fetter the power of the General Partner.

82. On its face, the fourth of these scenarios would involve a breach of the LPA unless it is also found that the merits of making a call to cover the approved budgets had so materially changed that the General Partner could not honestly or rationally rely upon it or that, in making the call the General Partner was abusing his power.[5]

83. The General Partner owes fiduciary duties to the Partnership; it is not obliged to make a capital call simply because budgets have been approved in respect of them; its power to make a call is to be exercised rationally and in good faith; and it is incumbent on the General Partner to ensure that it does not exercise it in furtherance of interests of its own which conflict with those the Partnership.

84. However, the framework of the Partnership proceeds on the basis that the General Partner should be able to exercise his powers without regard to any interests of its own which conflict with those the Partnership, and, accordingly, the mere fact that the exercise of a power may affect conflicting interests cannot begin to impugn that exercise.

[5] Or, of course, that Rigmora had fully discharged it capital commitment.

Scenario 5

85. Scenario 5 relates to what, as I understand it, is referred to in the Complaint as an "anticipatory breach". The term 'anticipatory breach" is used in the contract law of England and Wales and of the Cayman Islands to refer to a representation of an intention not to perform an obligation in the future, and, in the ordinary way, an anticipatory breach which goes to the fundamentals of the bargain between the parties will afford the innocent party the option to rescind the contract and seek repudiatory damages.

86. An anticipatory breach in the sense in which it gives rise to a right to rescind the contract need not be a breach in itself. However, there is no reason why, in an appropriate case, the court should not imply a term that a party will not commit an anticipatory breach if, for example, the innocent party will be obliged to make alternative arrangements once it has been put on notice of an anticipatory breach and, consequently, suffer damages even if the wrongdoer ultimately performs the obligation which it has represented it will not perform.

87. Moreover, if and insofar as the anticipatory breach evinces an intention on the part of one party to a contract not to engage in a process with the other party to the contract, the other party may be excused from attempting to engage any further itself, as long as it remains ready and able to do so if the party which has evinced an intention not to engage were to change its mind.

F. THE MEANING AND EFFECT OF THE BOGDANOV EMAIL

88. My attention has been drawn to an email from Yuri F. Bogdanov, who I understand to be the co-CEO of the entity which controls Rigmora, to Seth Harrison, who I understand to be the managing director of the General Partner dated May 15, 2025 ("**the Bogdanov Email**"). *See* Compl. Ex. 10.

89. As I understand it, the Bogdanov Email is relied upon by the General Partner as constituting and evidencing a failure to engage or engage properly in the approval process for either the seven "early-stage companies", or the "clinical stage companies" referred to there.

90. In my view, if the Subject Limited Partners remained under a contingent obligation to commit further capital to the Partnership, the Bogdanov Email may be read as disclosing (1) an intention on the part of Rigmora not to engage with the approval process or meet capital calls in accordance with their obligations under the LPA, and (2) a disregard for any *Braganza* type restraints that might be found to fetter the exercise of their rights and the performance of their obligations in connection with the budget approval process.

91. In my opinion, this is the "natural and ordinary" way in which to read the Bogdanov Email. However, the Bogdanov Email should be read with an understanding of any circumstances known to both parties which may have informed or given rise to it, and, as I may lack such an understanding, I cannot say whether such considerations would tend to confirm or point away from the natural and ordinary reading.

92. As I understand it, the Bogdanov Email refers to two groups of portfolio entities, that is, the early-stage companies in respect of which there were approved budgets and the clinical stage companies in respect of which the General Partner was seeking to obtain the approval of Rigmora in accordance with the LPA.

93. It is unclear to me if Rigmora claim an unfettered right to grant or withhold the approval of budgets as they think fit and if they consider it properly open to them to use the actual or threatened withholding of approval of budgets as a means of wresting the effective management of the Partnership from the General Partner, or if Rigmora contend that the position presented in the Bogdanov Email is consistent with any *King Crude* and/or *Braganza* type obligations on them.

94. I am unable to express a firm view on this, as it is always possible that either the commercial circumstances or prospects of the portfolio entities or the Partnership as a whole, or the context in which the Bogdanov Email was sent, or some other factors which will emerge in the course of the trial will cast a different light on this. However, on the face of it, the Bogdanov Email appears to me to disclose a refusal to engage or to engage in a genuine way with the approval of budgets for the clinical stage companies, and that the demand that the General Partner should not invest further in the early-stage companies, notwithstanding the approval of their budgets, evidences an attempt to exert a control over the effective management of the Partnership which is at odds with the way in which the LPA and, in particular, LPA Am22 is meant to work.

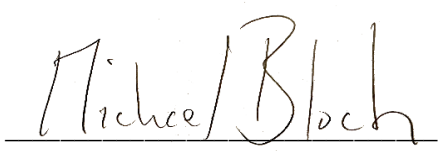
G. CONCLUSION

95. Having regard to the general law which I have addressed in this report, having regard to my reading of LPA Am22 as I have explained it in this report, and in the absence of contextual considerations to the contrary of which I am unaware, I would conclude that the role which LPA Am22 affords to the Subject Limited Partners is, as a matter of necessity, fettered in its exercise and performance in accordance with and for the reasons given in the Braganza case and the cases cited there.

96. Whether the same can be said in relation to the LPA prior to Amendment 22 is another matter. Initially, the Board of ATC could grant the Partnership the approvals it required to make capital calls. Subsequently, the operation of the

Partnership depended on the engagement of the Subject Limited Partners, that is Rigmora.

97. If Rigmora have failed to engage with the budget approval processes under LPA Am22 or failed to do so in an honest and rational manner, whether pursuant to the Bogdanov Email or otherwise, the General Partner may, in my opinion, be entitled to treat any requirement for Rigmora's approval of the budgets referred to in Paragraph 26 of the LPA Am22 as satisfied and any right which Rigmora may have had to refuse such approval as lost.



Michael Bloch KC

August 15, 2025

Appendix A
Curriculum vitae

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Michael Bloch KC



"Michael is an extremely experienced and tactical silk. You don't want him ever to be against you."

— CHAMBERS AND PARTNERS, 2025

Year of call: **1979**
Appointed to silk: **1998**
Degree: **MA (CANTAB), MPhil UEA**

Michael Bloch KC is a trial and appellate advocate who has advised and appeared in a wide range of high value and high profile domestic and international disputes; he is accomplished and at ease whether analysing esoteric points of law or cross-examining on dense or technically complex factual issues; and, whilst he is sensitive to what the court is thinking, he is also forceful and, where appropriate, fearless.

Michael is a registered Advocate before DIFC Courts (Dubai International Financial Centre) and called to the Bar in the BVI.

Michael is recognised as a leading silk in the latest editions of both the leading legal directories, Chambers and Partners and Legal 500, for his expertise in intellectual property, commercial litigation and international arbitration. He was also highlighted as a Recommended Individual in JUVE Patent Rankings 2021, 2022 and 2023.

- "Michael is an extremely experienced and tactical silk. You don't want him ever to be against you." - Chambers UK, 2025
- "Michael has a phenomenal intellect and a rigorous advocacy style. He is also phenomenally bright, he will test arguments until they are robust, and he carries the room easily when speaking." - Legal 500, 2025

Previous comments include:

- "One of the top advocates at the Bar. His grasp of both strategy and practicalities is superb, and his mind is razor sharp."- Chambers UK, 2024
- "A superb advocate. Able to grasp the most complex fact patterns and distil them into simple arguments. A true silver-tongued speaker, who is able to command the bench and be robust when needed." - Legal 500, 2024
- "We have been blown away by Michael's advocacy skills and his ability to react with alacrity despite only having been instructed a short time before a hearing."- Chambers UK, 2023

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- "From an advocacy point of view, he is excellent – a more mellifluous and silver-tongued counsel solicitors cannot think of, and he is not afraid to take on the judge if required."- Legal 500, 2023
- "An absolutely outstanding commercial lawyer, who is very user-friendly and a really, really good trial advocate. He is an amazing cross-examiner."- Chambers UK, 2022

In the field of commercial litigation, Michael is advising and representing several high net worth individuals in relation to offshore disputes, including Abdulhameed Dhia Jafar in proceedings in the Cayman Islands relating to the collapse of the Abraaj investment platform, he is advising several private equity funds in connection with claims relating to distressed debt against the Republic of Mozambique and the sale of debt by Credit Suisse, he has advised and represented Koza in a dispute with the Erdogan regime and he has acted for and is advising a global petrochemical refinery enterprise in connection with a series of ongoing disputes, as well as a private equity enterprise in connection it its control of a Scandinavian gold mine.

Michael's recent telecoms experience includes advising and representing ZTE in the Conversant case at first instance, in the Court of Appeal and the Supreme Court; he has advised and represented Lenovo, ZyXel and Xiami in connection with anti-suit and jurisdiction disputes, he is advising and representing Apple in its dispute with Unwired Planet and Pan Optis, and he is also acting for several other SEP owners and cellular telecommunication providers in relation to anti-suit, jurisisdictional and FRAND issues.

Michael's specialist Intellectual Property work includes advising and representing two automobile manufacturers in connection with an ongoing registered design right cases concerning new and vintage vehicle designs (which may be seen as building on his work in relation to the Land Rover Defender); he is advising and representing garment manufacturers in the Oh Polly copyright dispute; he is acting for multi-national entertainment and media conglomerate in connection with a copyright and trade mark dispute (which may be seen as building on his work in relation to the StarWars case); he has advised and represented American Eagle in a global licensing and trade mark dispute with Lyle & Scott; and he has advised and represented a multinational US based technology enterprise in pursuing breach of confidence claims against ex-employees involved in the development of satellite communication systems, as well as a host of FRAND cases in which Michael has dealt with both IP and commercial aspects in dispute.

Michael is also advising and representing several major undertakings in the pharmaceutical space on licensing and other IP related commercial issues.

EXPERIENCE

Commercial

Michael is versed in the law and practice of commercial disputes generally. He has advised and appeared in many proceedings concerning pre-emptive, interim and ancillary relief, as well as jurisdictional, justiciability and forum challenges in addition to trials in the Commercial Court and Chancery Division and Antigua, BVI, Cayman Islands and appeals to the Court of Appeal, the Supreme Court and the Cayman Court of Appeals in relation to banking, company law, confidence, contract, fiduciary duty, oil and gas, partnership, proprietary, restitutionary, tort and trust claims.

"Michael is fiercely smart and great at strategy."

— CHAMBERS AND PARTNERS, 2025

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The company law matters on which Michael has been recently and is currently working include disputes as regards the validity and interpretation of UK company articles, shareholder disputes relating to the control, dilution and management of UK and off-shore companies and the contested position of the directors of and professional advisers to UK and non-UK companies in the context of international undertakings and multi-jurisdictional disputes.

Michael is at home in the courts and before arbitrable panels in jurisdictions and territories throughout the Caribbean where he has/is currently working on a wide range of corporate and commercial disputes relating to financial services, private equity and other businesses; he also has hands-on experience of acting in proceedings in Canada, Hong-Kong, Russia and the United States; and is familiar with the procedural rules, as well as the substantive law, of the jurisdictions in which he practices, having advised and appeared in high value cases at all stages of the litigation from anti-suits, anti-anti-suits and jurisdiction challenges to final trials, appellate proceedings and settlement processes.

Michael is advising and representing several high net worth individuals in relation to offshore disputes, including Abdulhameed Dhia Jafar in proceedings in the Cayman Islands relating to the collapse of the Abraaj investment platform, he is advising several private equity funds in connection with claims relating to distressed debt against the Republic of Mozambique and the sale of debt by Credit Suisse, he has advised and represented Koza in a dispute with the Erdogan regime and he has acted for and is advising a global petrochemical refinery enterprise in connection with a series of ongoing disputes, as well as a private equity enterprise in connection it its control of a Scandinavian gold mine.

Cases

IPCom GmbH v Lenovo Technology UK Ltd

Chancery Division, 2019

Resisting an application for an anti-anti suit injunction in the English court following an application for an anti-suit injunction in the United States court in relation to a worldwide technology patent dispute.

Interdigital Technology Corporation v Lenovo Group Ltd

[2021] EWHC 3401 (Pat); [2021] EWHC 3192 (Pat); [2021] EWHC 89 (Pat); [2020] EWHC 1318 (Pat)

Acting for Lenovo in FRAND jurisdictional and anti-suit proceedings.

Philips v Xiaomi Technologies

Chancery Division, 2021

Jurisdiction challenge in relation to a claim for global FRAND damages for alleged breaches of patents.

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Jafar v Abraaj Holding & Ors

[2022] (Grand Court of the Cayman Islands, Financial Services Division; FSD 203 of 2020)

This claim arises out of the notorious and widely-publicised collapse of the Abraaj Group, believed to be the largest ever collapse of a private equity platform (valued at over $13.6 billion) as a result of years' worth of alleged financial mismanagement and fraud, whilst the Group purported to act as a world leader in ethical, impact investing. Acted for Mr Jafar, the Founder of Crescent Petroleum, who brings claims in deceit against certain Abraaj Group entities in respect of loans of over US$300 million procured in a belated attempt to rescue the business.

Teva Pharma v Eli Lilly

Contractual construction and patent dispute.

Pan Optis & Ors v Apple

Patents Court, ongoing

Instructed by Apple in its FRAND dispute with Pan Optis.

Brunswick Gold v Otso Gold

Acting for a private equity enterprise in connection to its control of a Scandinavian gold mine.

Republic of Mozambique fraud dispute

Commercial Court, ongoing

Substantial fraud proceedings involving allegations of fraudulent wrongdoing against former officials of the Republic of Mozambique. Acting for two secondary market purchasers in multiple claims against Credit Suisse International and the Republic of Mozambique arising out of the US$2 billion so called "tuna bonds" scandal.

Conversant Wireless Licensing v Huawei

A jurisdiction dispute over the forum for the determination of FRAND licences. Acted for ZTE at first instance, in the Court of Appeal and in the Supreme Court.

Iokovleva v Zakharov & Another

A case concerning the enforcement of a foreign judgment agaisnt assets in the possession of a non party.

Eaton Partners v Esso Cayman Partners

An LCIA arbitration arising out of the breakdown in the relationship between a Cayman based carried interest partner for certain special opportunity funds and a U.S. based placement agency.

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Antiguan Power Company v the Attorney General & others

A case in the High Court of Antigua and Barbuda relating to the repudiation of a power purchase agreement by the public utilities authority.

Midtown v EGFL

A case concerning the enforcement of a foreign judgment and the operation of CPR 71, 83 & 85, the Tribunals, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013.

Payment Platform

A case concerning an unlawful means conspiracy to manipulate the share price of a payment platform.

Process Components v Kason Kek-Gardner

A case in the Court of Appeal concerning the termination of a joint venture.

Takahata Precision v Sentec

A case concerning the development and cross-licensing of intellectual property.

Cattles v PwC

An auditor's negligence case in the Commercial Court concerning the collapse of a sub-prime lender.

Burlington Resources (Irish Sea) v Hydrocarbon Resources

A Commercial Court case concerning the termination of a suit of agreements relating to the supply of gas infrastructure and processing services.

Crown Bidco v Vertu

A commercial court case concerning breach of warranty claims under an SPA relating to a global handset business.

Nedgroup v Renova

A derivative action in the Grand Court of the Cayman Islands concerning the alleged diversion of a partnership opportunity in breach of fiduciary duty.

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Cavendish v Madkessi
[2013] EWHC 421 (Comm)

A commercial court case concerning the sale and purchase of an international advertising business, the enforceability of the restrictive covenants imposed on the sellers and the application of the penalties doctrine to adjustments to the Consideration and Call and Put Options.

Cavendish v Madkessi
[2012] EWHC 4305 (Comm)

An application for leave to apply to commit a party for contempt of court in connection with the signing of a Statement of Truth.

HTC v Nokia
Ch D (Patents Ct) 12/09/2013

An application in the Chancery Division concerning the recognition of the terms of the protective orders granted by US courts in relation to evidence obtained for use in English proceedings.

Renova v Gilbertson
Grand Court, Cayman Islands 21/08/2012

A Cayman Islands case concerning alleged breaches of fiduciary duties allegedly owed to a company within a structure created to operate a hedge fund or joint venture in connection with the intended acquisition of metals and mining assets and the actual acquisition from Unilever of world-wide rights in FABERGE. The decision of the Appeals Court in Cayman is pending.

Coward v Phaestos Ltd and Ors
[2013] EWHC 1292 (Ch)

A case in the Chancery Division concerning the ownership of the rights in quantitative trading software used by a hedge fund operated through a series of partnerships and international corporate structures.

Coward v MFB
A case in the BVI concerning the impression of trusts on distributed profits of a family business and the status of a “Letter of Wishes”.

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Civil Fraud, Asset Recovery & Injunctive Relief

Michael has advised and appeared in a series of cases in which it was necessary to master, debate and cross-examine on substantial quantities of accounting, corporate and transactional documentation, as well as expert testimony relating to BVI, Cayman, Cypriot, French, German, Greek, Russian, US and other systems of foreign law. He is widely recognized as a formidable and effective cross-examiner, as well as for his deep interest and understanding of the proprietary and trust aspects of fraud disputes.

Cases

Private equity dispute

ICC Arbitration

A private equity dispute worth $1billion involving telecommunication assets in the United States. Related proceedings in Hong Kong and the Cayman Islands seeking worldwide injunctive and Norwich Pharmacal relief.

Jafar v Abraaj Holding & Ors

[2022] (Grand Court of the Cayman Islands, Financial Services Division; FSD 203 of 2020)

This claim arises out of the notorious and widely-publicised collapse of the Abraaj Group, believed to be the largest ever collapse of a private equity platform (valued at over $13.6 billion) as a result of years' worth of alleged financial mismanagement and fraud, whilst the Group purported to act as a world leader in ethical, impact investing. Acted for Mr Jafar, the Founder of Crescent Petroleum, who brings claims in deceit against certain Abraaj Group entities in respect of loans of over US$300 million procured in a belated attempt to rescue the business.

Republic of Mozambique fraud dispute

Commercial Court, ongoing

Substantial fraud proceedings involving allegations of fraudulent wrongdoing against former officials of the Republic of Mozambique. Acting for two secondary market purchasers in multiple claims against Credit Suisse International and the Republic of Mozambique arising out of the US$2 billion so called "tuna bonds" scandal.

Niru Battery v CAI

[2002] EWHC 1425 (Comm)

A case at first instance and on appeal to the Court of Appeal concerning a letter of credit fraud raising issues of contribution, recoupment and subrogation.

The Jyske Bank case

A case concerning a rogue bank manager making fraudulent investments in Spanish property.

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Bankers Trust v City of Moscow
A case concerning the diversion of a syndicated loan.

ICB v Akingbola
A fraud case in the commercial court raising Nigerian law issues and Carl Zeiss issues.

Kaiser v Silverbrook
A commercial court case concerning an anti-suit injunction and other related relief founded on alleged breaches of a joint venture agreement between a US foundation and an Australian inventor.

Protank Orinoco
A commercial court case concerning the falsification of survey records in connection with the sale of an oil tanker.

Arbitration

Michael has appeared and acted in several substantial UNCITRAL, ICC, LCIA, ad hoc and other arbitrations over the last couple of years seated in the Isle of Man, London, Paris, Russia and the US.

"Lateral thinking, very bright, great with clients, good fun."
— LEGAL 500, 2023

Cases

Private equity dispute
ICC Arbitration

A private equity dispute worth $1billion involving telecommunication assets in the United States. Related proceedings in Hong Kong and the Cayman Islands seeking worldwide injunctive and Norwich Pharmacal relief.

Axis Bank v Republic of the Maldives
Axis Bank v Republic of the Maldives.

InterDigital v Intel
An UNCITRAL arbitration for one of the world's largest computer and telecommunication CHIP and software businesses in relation to the cross licences granted in connection with a joint venture.

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GSK v Novartis
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

GMR v Republic of the Maldives
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

GMR v Republic of the Maldives
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

Eaton Partners v Esso Cayman Partners
An LCIA arbitration arising out of the breakdown in the relationship between a Cayman based carried interest partner for certain special opportunity funds and a U.S. based placement agency.

GMIAL v MACL
An UNCITRAL arbitration raising issues concerning the operation of the doctrine of abuse of process in arbitration proceedings.

Concession Agreement Arbitration
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement relating to development and operation of the main international airport of the state at issue.

Cross Border Energy
An UNCITRAL arbitration relating to cross border energy supplies.

Payment of Agency Fees
An LCIA arbitration relating to the payment of placement agency fees.

Preclusive Defences
An UNCITRAL raising issues as to the availability in arbitration of preclusive defences.

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Loan Repayment
An arbitration under the Singapore Arbitration Act concerning the liability of a sovereign state and state owned company to repay loans under a quasi guarantee.

Border & Customs Control System
An ICSID arbitration relating to a border and customs control system.

Cross Licence
An UNCITRAL arbitration for one of the world's largest computer and telecommunication CHIP and software businesses in relation to the cross licences granted in connection with a joint venture.

Development, Manufacture and Supply of Vaccines
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

Breach of Lock Out Provisions
An ICC arbitration for a major Asian supplier of electric power in relation to the breach of the lock out provisions in an agreement concerning the acquisition of an interest in a power station from one the world's largest engineering groups.

Leveraged Acquisition
An LCIA arbitration brought under the SPA for the leveraged acquisition of a Greek chemicals conglomerate.

Co-operation and Distribution Agreement
An LCIA arbitration brought under a co-operation and distribution agreement raising intellectual property rights in a pharmaceutical MAB platform.

Intellectual Property

Michael has advised and appeared in a host of substantial breach of confidence, copyright, design right, IP licensing, passing off, patent and trademark cases in the Chancery Division, the Court of Appeal, the Supreme Court and the CJEU.

The independent legal directories credit Michael as one of a handful of leading silks in this field, noting his expertise in copyright and trade mark cases, as well as IP-related commercial contracts disputes.

"Michael's legal abilities are beyond question and he is a very effective advocate."

— CHAMBERS AND PARTNERS, 2025

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Cases

Philips v Xiaomi Technologies
Chancery Division, 2021

Jurisdiction challenge in relation to a claim for global FRAND damages for alleged breaches of patents.

Original Beauty v G4K
Advising and representing garment manufacturers in the Oh Polly copyright dispute.

Ineos v Jaguar Land Rover
Advising and representing two automobile manufacturers in connection with an ongoing registered design right dispute concerning new and vintage vehicle designs.

Interdigital Technology Corporation v Lenovo Group Ltd
[2021] EWHC 3401 (Pat); [2021] EWHC 3192 (Pat); [2021] EWHC 89 (Pat); [2020] EWHC 1318 (Pat)

Acting for Lenovo in FRAND jurisdictional and anti-suit proceedings.

IPCom GmbH v Lenovo Technology UK Ltd
Chancery Division, 2019

Resisting an application for an anti-anti suit injunction in the English court following an application for an anti-suit injunction in the United States court in relation to a worldwide technology patent dispute.

Teva Pharma v Eli Lilly
Contractual construction and patent dispute.

Conversant Wireless Licensing v Huawei
A jurisdiction dispute over the forum for the determination of FRAND licences. Acted for ZTE at first instance, in the Court of Appeal and in the Supreme Court.

GSK v Novartis
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

UPL v ACA
A case concerning trade mark infringement in connection with the licensing and marketing of pesticides.

Lush v Amazon

A trade mark infringement case relating to the use of Google AdWords and the results of organic searches on the Amazon.co.uk website. The case was settled in the course of the Court of Appeal hearing.

GMR v Republic of the Maldives

An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

Warner-Lambert v Generics UK

An appeal case relating to whether the pursuit of a proposed patent amendment would be an abuse of process.

Merck Sharp & Dohne Ltd & Another v ONO Pharmaceutical Co Ltd & Others

A case concerning, amongst other things, the determination of royalties in respect of the use in or in relation to the U.K. of a patented invention practised directly or indirectly by joint venture partners globally.

Saatchi v Saatchi Online

A Chancery case concerning rights in the Saatchi name.

GNIC v NBTY-EU

A Chancery case concerning the alleged breach of a trademark licence and the infringement of the licensed marks by allegedly unlicensed use.

Jack Wills v House of Fraser

A passing off and trade mark infringement case relating to a logo or sign appearing on articles of clothing.

Nestle v Cadbury

[2013] EWCA Civ 1174

A Court of Appeal case concerned with the registration of colour marks and, in particular, a shade of the colour purple.

Sky & Microsoft

[2013] EWHC 1826 (Ch)

A trademark infringement case concern with the use of the name “SKYDRIVE” on the Microsoft Windows Platform.

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Generics & Actavis v Warner-Lambert

A patent case at first instance and on appeal to the Court of Appeal concerning post trial amendments and abuse of process.

Generics (UK) v Yeda

[2012] EWCA Civ 726

A Court of Appeal case concerning the duties of in-house patent attorneys to former and current employers and the potential conflicts of interest that may arise.

Powerchord v Peeks

A case concerning the application of trade mark law and the law of passing off to start ups in the music and social media spheres.

The Racing Partnership v SIS & Others

A case concerning database right, confidence and conspiracy in relation to betting data.

Ineos v Jaguar

A trade mark case concerning the registration of vehicle shapes.

Generics v Actavis

[2015] EWHC 3370 (Pat)

A Court of Appeal case concerning, among other things, the legal principles applicable to the test of abuse of process in relation to post trial applications to amend patent claims.

Gloucester Place Music LTD v Simon Le Bon & 11 ORS (Duran v Duran)

[2016] EWHC 3091 (Ch)

A case concerning the interplay between English and foreign law in the assignment of musical copyrights governed by English law.

GSK v Wyeth

A case concerning, among other things, the principles applicable to the taking of an account of profits and assessing user based damages.

Societe Des Produits Nestle SA v Cadbury UK LTD (2017)

[2017] EWCA Civ 358

A trade mark case in the Court of Appeal concerning the registration of the KITKAT shape.

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Media & Entertainment

Michael has advised and appeared in many media and entertainment cases calling for both commercial and IP experience and expertise. He has also advised and/or appeared in defamation and confidence cases for most of the major media groups, including the BBC, The Times, The Guardian, Time Out and The Express, as well as for many politicians, journalists and celebrities. Cases include Lion Laboratories v Evans [1985] QB 526 and Hyde Park Residence v Yelland [2001] Ch. 143

ACHIEVEMENTS

Selected earlier reported cases

Commercial

- Lehman Brothers US bankruptcy
- Yukos v Rosneft [2010] EWHC 784 (Comm), [2011] 1 All ER (Comm) 172
- easyGroup v easyJet [2009] EWHC 895 (Pat)
- I-CD Publishing v Popkov / The Odnoklassniki case (2009)
- GSK v Abbott
- Welcome Break Group Acquisition
- Celltech v Medimmune
- Virgin Atlantic Airways v British Airways
- Co-Operative Wholesale Society v Green
- Advising one of the principal utility providers in the UK in relation to contractual disputes relating to the provision of an integrated IT system.
- Acting on behalf of Deutsche Bank in Commercial Court proceedings against the Norwegian export guarantee department in relation to a dispute relating to ISDA form derivatives.
- A dispute concerned with the winding-up of an offshore hedge fund.
- Bayer Cropscience v DEFRA and Friends of the Earth
- Bugging Cases
- A series of disputes raising acquiescence, estoppel, laches and waiver issues in connection with agreements governing commercial partnerships and joint ventures.

Civil Fraud, Asset Recovery & Injunctive Relief

- Niru Battery v CAI [2002] EWHC 1425 (Comm)
- The Jyske Bank case
- The Canada Trust case
- Bankers Trust v The City Of Moscow

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Arbitration

- An arbitration arising out of a military procurement partnership dispute.
- An arbitration concerning the introduction of new technologies in the coatings and cosmetics industries.
- An arbitration between one of the former CIS countries and a U.S. power supplier in respect of the use of the national grid to export power to other countries.
- Bankers Trust v City of Moscow
- Pilkington v PPG Industries

Intellectual Property

- Numatic v Qualtex [2010] EWHC 1237 (Ch)
- Specsavers v ASDA [2010] EWHC 2035 (Ch)
- BUD and Budweiser cases [2002] EWCA Civ 1534
- Lucasfilm Ltd v Ainsworth, The Star Wars case [2011] UKSC 39, [2012] 1 A.C. 208
- Inter Digital Technology Corp v Nokia
- United Biscuits v ASDA [1997] RPC 513
- Chocosuisse v Cadbury [1999] ETMR 1020
- Aspinal v Kiki James
- Philip Morris v BAT
- The European v The Economist [1998] ETMR 307
- Royal Mail
- Mars v Nestle [2005] 3 CMLR 12

VAT registration number: 245722267

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Appendix B

Materials Relied Upon

Case law from England and other common law jurisdictions

1. *Mackay v Dick* (1881) 6 App Cas 251
2. *Mona Oil Equipment and Supply Company Ltd v Rhodesia Railways Ltd (1949) 83 L1 L Rep*
3. *Newmont Property Ltd v Laverton Nickel NL* (1982) 44 ALR 588
4. *Cheall v A.P.E.X* [1983] 2 A.C. 180
5. *Abu Dhabi National Tanker Co v Product Star Shipping Ltd* [1993] 1 Lloyd's LR 397
6. *Compagnie Noga d'Importation et d'Exportation SA v Abacha (No 3)* [2002] CLC 207
7. *Stena Line Ltd v MNRPF Trustees Ltd* [2011] EWCA Civ 543; [2011] Pens. L.R. 223
8. *Reda v Flagg* [2002] UKPC 38
9. *Equitable Life v Hyman* [2002] 1 AC 408
10. *Socimer International Bank v Standard Bank* [2008] EWCA Civ 116; [2008] Bus LR 1304
11. *Chartbrook v Persimmon* [2009] UKHL 38; [2009] 1 AC 1101
12. *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935
13. *Braganza v BP Shipping* [2015] UKSC 17; [2015] 1 WLR 1661
14. *Societe Generale v Geys* [2012] UKSC 63; [2013] 1 AC 523
15. *British Telecommunications v Telefonica 02 UK* [2014] UKSC 42; [2014] 4 All ER 907
16. *Arnold v Brittan* [2015] UKSC 36; [2015] AC 1619
17. *Marks & Spencer v BNP Paribas* [2015] UKSC 72; [2016] AC 742
18. *Wood v Capita* [2017] UKSC 24; [2017] AC 1173
19. *Sheikh Al Nehayan v Kent* [2018] EWHC 333; [2018] 1 CLC 216
20. *Equitas Insurance v Municipal Mutual Insurance* [2019] EWCA Civ 718; [2020] QB 418
21. *UTB v Sheffield* [2019] EWHC 2322
22. *Bates v Post Office (No.3)* [2019] EWHC 606

23. *Duval v 11-13 Randolph Crescent* [2020] UKSC 18; [2020] AC 845
24. *Yoo Design Services v Iliv Realty Pte* [2021] EWCA Civ 560
25. *Barton v Morris* [2023] UKSC 3; [2023] AC 684
26. *King Crude Carriers v Ridgebury* [2024] EWCA Civ 719; [2025] KB 311
27. *Tesco Stores v USDAW* [2024] UKSC 28; [2025] 2 All ER 565

Cayman Islands case law

1. *Primeo Fund (In Official Liquidation) v Bank of Bermuda (Cayman) Limited* (2017 (2) CILR 334)
2. *Cayman Shores v Registrar of Lands* (2021 (2) CILR 1)
3. *Kuwait Port Authority v Williams* (2023 1 CILR 50)
4. *Cayman Shores v Registrar of Lands* (2023 (1) CILR 252)
5. *Kuwait Port Authority v Williams* [2024] UKPC 32
6. *Re Tyr Capital Partners SPC* (unreported, 21 June 2024, Doyle J)
7. *Aquapoint v Xiaohu Fan* (unreported, 4 October 2024, CICA)

Cayman Islands legislation

1. Exempted Limited Partnership Act (2025 Revision)

Bates-stamped documents

1. First Amended and Restated Limited Partnership Agreement (Nov. 1, 2012), ATP_00202247
2. Amendment No. 1 to the First Amended and Restated Limited Partnership Agreement (Jan. 1, 2014), ATP_00202344
3. Amendment No. 2 to the First Amended and Restated Limited Partnership Agreement (Aug. 15, 2014), ATP_00202349
4. Amendment No. 3 to the First Amended and Restated Limited Partnership Agreement (Sept. 1, 2014), ATP_00202357

5. Amendment No. 4 to the First Amended and Restated Limited Partnership Agreement (Apr. 1, 2015), ATP_00202362
6. Amendment No. 5 to the First Amended and Restated Limited Partnership Agreement (May 11, 2015), ATP_00202365
7. Amendment No. 6 to the First Amended and Restated Limited Partnership Agreement (Dec. 31, 2015), ATP_00202375
8. Amendment No. 7 to the First Amended and Restated Limited Partnership Agreement (May 31, 2017), ATP_00202378
9. Amendment No. 8 to the First Amended and Restated Limited Partnership Agreement (Aug. 9, 2017), ATP_00202383
10. Amendment No. 9 to the First Amended and Restated Limited Partnership Agreement (Dec. 22, 2017), ATP_00202388
11. Amendment No. 10 to the First Amended and Restated Limited Partnership Agreement (Jul. 1, 2018), ATP_00202407
12. Amendment No. 11 to the First Amended and Restated Limited Partnership Agreement (Oct. 26, 2018), ATP_00202412
13. Amendment No. 12 to the First Amended and Restated Limited Partnership Agreement (Dec. 1, 2018), ATP_00202416
14. Amendment No. 13 to the First Amended and Restated Limited Partnership Agreement (Feb. 4, 2019), ATP_00202424
15. Amendment No. 14 to the First Amended and Restated Limited Partnership Agreement (Apr. 17, 2019), ATP_00202429
16. Amendment No. 15 to the First Amended and Restated Limited Partnership Agreement (Jul. 10, 2019), ATP_00202437
17. Amendment No. 16 to the First Amended and Restated Limited Partnership Agreement (Feb. 1, 2020), ATP_00202440
18. Amendment No. 17 to the First Amended and Restated Limited Partnership Agreement (Sept. 9, 2020), ATP_00202444

19. Amendment No. 18 to the First Amended and Restated Limited Partnership Agreement (Nov. 5, 2020), ATP_00202461
20. Amendment No. 19 to the First Amended and Restated Limited Partnership Agreement (Nov. 27, 2020), ATP_00202477
21. Amendment No. 20 to the First Amended and Restated Limited Partnership Agreement (Jun. 21, 2021), ATP_00024441
22. Amendment No. 21 to the First Amended and Restated Limited Partnership Agreement (Dec. 05, 2022), ATP_00202482
23. Amendment No. 22 to the First Amended and Restated Limited Partnership Agreement (Dec. 20, 2024), ATP_00202487
24. Email from Yuri Bogdanov to Seth Harrison et al., May 15, 2025 - RIGMORA00023359 (reproduced as Exhibit 10 to the Complaint)

Pleading

1. Verified Complaint, *ATP III GP, LTD., in its capacity as general partner of ATP Life Sciences Ventures, L.P., v. Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP*, Case No. 2025-0607-KSJM, May 30, 2025

EXHIBIT O

[2023 (1) CILR 50]

KUWAIT PORTS AUTHORITY, PUBLIC INSTITUTION FOR SOCIAL SECURITY and THE PORT FUND L.P. v. PORT LINK GP LIMITED, WILLIAMS, WELLSPRING CAPITAL GROUP INCORPORATED and KGL INVESTMENT COMPANY ASIA

C.A. (Field, Birt and Beatson, JJ.A.) January 20th, 2023

Partnership — exempted limited partnership — derivative action by limited partners — derivative action by limited partner against general partner struck out where exempted limited partnership had no claim against general partner and limited partner had adequate alternative remedy, namely direct claim against general partner for breach of duty

Partnership — exempted limited partnership — derivative action by limited partners — derivative action by limited partner against shareholder of general partner and others not struck out — general partner alleged to be involved in wrongdoing had conflict of interest in relation to whether to institute proceedings

The plaintiffs/respondents brought claims concerning an exempted limited partnership.

The first and second plaintiffs were Kuwaiti state-owned enterprises financed by Kuwaiti public funds. They were two of the eleven limited partners in an exempted limited partnership, The Port Fund L.P. ("TPF"). The first and second plaintiffs had invested US$125m. in TPF, which was almost two-thirds of the total investment. The first defendant/appellant, a Cayman Islands exempted limited company, was the general partner of TPF ("D1" or "the GP"). The second defendant/appellant ("D2") was the sole shareholder of Port Link Holdings USA Inc., which was the sole shareholder of the GP. D2 was the CEO, CFO, President, Vice-President, Treasurer and Secretary of the third defendant/appellant ("D3"), a company incorporated in the United States. D2 was also closely involved in the management of the fourth defendant/appellant ("D4"), a Cayman Islands incorporated company, now in voluntary liquidation, which had provided administrative support to TPF.

The plaintiffs pleaded that in breach of statutory, contractual, common law and fiduciary duties owed by the GP to TPF and the limited partners and pursuant to a conspiracy to injure TPF and the limited partners by

unlawful means, the GP had made very substantial payments using TPF moneys that were not for the benefit of TPF and the limited partners. The plaintiffs alleged that the defendants' wrongdoing had caused TPF and its limited partners losses in excess of US$100m. The plaintiffs claimed to be entitled to bring their claims against the GP alleging systematic unlawful conduct in relation to the assets and affairs of TPF on their own behalf, but in the alternative they also advanced the claims as derivative claims on behalf of TPF. Similarly, the plaintiffs' primary case was that they were entitled to bring claims against D2 and D3 on their own behalf, but they also sought to advance like claims as derivative claims on behalf of TPF. The plaintiffs' claims against D4 were advanced solely on the derivative basis.

The plaintiffs' direct claims against D2 and D3 were for relief under the Fraudulent Dispositions Act (1996 Revision). They claimed that those defendants culpably participated in the improper payments made by the GP and/or dishonestly received such payments or the traceable proceeds thereof. They claimed that D3 was party to an unlawful means conspiracy, dishonestly assisted in a breach of trust/duty by the GP, knowingly procured a breach of the contractual obligations the GP owed to the limited partners and was liable in knowing receipt. The plaintiffs claimed that D2 conspired and dishonestly assisted in the GP's breaches of duty and was in breach of the fiduciary duties to TPF and the GP.

The derivative claims were brought pursuant to s.33(3) of the Exempted Limited Partnership Act ("the ELPA") on the basis that the GP had without cause failed or refused to initiate the proceedings and there was no real prospect of it doing so. Section 33 provided:

"(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings.

…

(3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

The GP's current directors claimed to have conducted an extensive investigation into the alleged wrongdoing and to have concluded that there was not cause to bring the claims advanced by the plaintiffs as derivative claims. The plaintiffs submitted that the current directors, although not implicated in the defendants' alleged wrongdoing, were not independent and had not investigated matters properly.

The GP applied to strike out the direct and derivative claims against it. It accepted that the pleaded allegations were arguable but contended in relation to the direct claims that it was impermissible for two of eleven limited partners to claim damages from the GP to be paid directly to themselves except by seeking partnership accounts that would require the joinder of the other limited partners. D2–D4 applied to strike out the

derivative claims against them. D2 and D3 did not apply to strike out the direct claims against them but they did not admit that the plaintiffs had standing to bring the claims and maintained that they should have been pursued by way of a partnership account as against the GP.

In the Grand Court, the judge rejected the submission that direct claims by a limited partner could only be vindicated by the taking of partnership accounts. The judge accepted the plaintiffs' submission that the claims advanced were principally direct claims vested in the individual limited partners rather than in TPF and that the taking of partnership accounts was not the only procedural route available to the plaintiffs.

The GP submitted that (a) the application of the partnership accounts rule/principle to limited partnerships was not inconsistent with the provisions of the ELPA and therefore was not disapplied by s.3; (b) the GP relied on authorities which held that claims by partners *inter se* could only be brought in the context of the taking of partnership accounts; (c) there were sound practical reasons for the application of the partnership account rule/principle to Cayman Islands exempted limited partnerships; (d) the judge's holding that the property of an exempted limited partnership was held "on trust for each of the limited partners" was a misreading of s.16(1) of the ELPA which provided that the rights and property of an exempted limited partnership, including all choses in action, were held "by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement."

The plaintiffs submitted that (a) the reasons given by the judge for concluding that the partnership rule/principle was disapplied by s.3 of the Act and was inconsistent with the scheme of the ELPA were correct; (b) the authorities relied on by the GP emphasized the reciprocity of personal obligation and trust and the mutuality of personal liability in an ordinary partnership, which was absent in a limited partnership; (c) the plaintiffs relied on authority to show that in a partnership dispute it was not always necessary to have a claim for a partnership account at the outset; and (d) because an exempted limited partnership had no separate legal personality, the only sensible construction of s.16(1) of the ELPA was that the general partner of an exempted limited partnership held its assets on trust for all the limited partners. The judge was correct so to hold. Because the general partner owed fiduciary duties to all the limited partners, any breaches of those duties must be enforceable by the limited partners themselves. Where there was a claim against the general partner itself, it could not be only the general partner who could institute proceedings.

The Grand Court did not strike out the plaintiffs' claims. The judge rejected the defendants' submission that, when considering s.33(3), the court had to apply principles derived from cases dealing with derivative claims in other contexts. The judge considered s.33(3) to be ***sui generis.*** On appeal, the defendants submitted that the judge erred in stating that the principles applicable in other contexts, such as trusts and companies, were not applicable in relation to the statutory test. The plaintiffs submitted that the judge was correct to hold that s.33(3) "occupies the field" and that there

was no scope or reason to import any "special circumstances" test or other common law or equitable principles that applied to derivative claims in respect of other entities or structures. The GP submitted that, regardless of whether the test in s.33(3) was otherwise met, the derivative claim against the GP should be struck out because, on the judge's finding, TPF had suffered no loss or damage and therefore had no claim of its own to bring. The judge held that s.33(3) required a finding as to whether the GP had failed or refused to institute the proceedings without cause, not the directors at the relevant time. The judge concluded that there was a good arguable case that the GP had a relevant inhibition because it was conflicted in relation to the plaintiffs' claims. Its decision not to bring the claims against D2–D4 was made unsafe by the facts giving rise to its conflict of interest. (The Grand Court judgment is reported at 2022 (1) CILR 12.)

Held, judgment as follows:

(1) The GP's appeal against the refusal of the judge to strike out the plaintiffs' direct claims against it would be dismissed. The differences between ordinary partnerships and exempted limited partnerships meant that it was not appropriate to require that a direct claim by a limited partner against the general partner must always be initially brought by way of a claim for partnership accounts and that it was not necessary to protect the positions of the creditors and other limited partners by requiring this. The scheme of the ELPA with the absence of reciprocity and mutuality of rights and obligations was inconsistent with requiring claims by a limited partner to be brought by taking partnership accounts in proceedings to which all the limited partners were party. The court accepted the submission that because an exempted limited partnership had no separate legal personality the only sensible construction of the words in ELPA s.16(1) was that the general partner of an exempted limited partnership held its assets on trust for all the limited partners. Because a trust also had no separate legal personality, thus making the position similar to the statutory trust created by ELPA s.16(1), the court regarded the position of a claim by a beneficiary of a trust against the trustee as important. The beneficiary of a subsisting trust including a discretionary trust was entitled to bring a claim against the trustee to recover loss suffered by the trustee's breach of trust, but the remedy was for an order to restore to the trust what ought to have been there. The partnership accounts rule/principle was inconsistent with the ELPA and the judge was correct in his conclusion. In proceedings against the GP, a limited partner could recover for loss suffered by the breach of the statutory trust but the remedy would be the restoration of the exempted limited partnership's fund thus compensating the direct losses suffered by all the limited partners. This remedy prevented a limited partner claimant from benefitting alone from any recovery either at the expense of the other limited partners or of the exempted limited partnership's creditors. The problem of multiplicity of actions could be dealt with by robust case management. The court's rejection of the submission that the direct claims were defective in not at the outset joining all partners and seeking

partnership accounts did not mean that the court could not direct that there be such a procedure at a later stage as part of its case management powers if that proved necessary (paras. 53–64).

(2) If D2 and D3 had applied to strike out the plaintiffs' direct claims against them, the court's preliminary view was that the objections raised to the plaintiffs' standing to bring the claims were unfounded. The question was whether, if D2 and D3 were held liable to the plaintiffs for breach of their statutory, equitable and other obligations, it was open to the court to order that those defendants restored the fund rather than paid the plaintiffs. The court's preliminary view was that the plaintiffs had a good arguable case that, where third parties were liable for breaches such as those claimed against D2 and D3, the court could order those defendants to restore the fund rather than pay the plaintiffs and thus avoid the risk of prejudice to other limited partners or creditors. As in the case of a claim against the general partner, the starting point was the position of a claim by a beneficiary of a trust. It was clear that the interest of a beneficiary of a discretionary trust was enforceable against a third party who received trust property which the trustee did not have authority to transfer and the third party knew enough to make it unconscionable to retain the asset for his own benefit. The beneficiary's only right would be to have the asset or its proceeds reinstated to the trustee. Given the analogy between a non-partnership trust, an exempted limited partnership with no separate legal personality and the statutory trust imposed by s.16(1) of the ELPA, it was possible to order third parties such as D2 and D3 to restore the fund where the claim against them succeeded. The analogy rested on the fact that, in cases of knowingly assisting a trustee in a fraudulent and dishonest disposition of trust property, although the third party was not in fact a trustee, he was made liable in equity as if he were a trustee. This reflected the fact that it was the fund which had suffered the loss and an order to restore was the only way in which all beneficiaries' rights could be protected. For these reasons, had D2 and D3 applied to strike out the plaintiffs' direct claims against them, the court's preliminary view was that the objections raised to the plaintiffs' standing to bring the claims were unfounded. It would be for the court hearing the claims to decide whether they were made out on the merits and whether, in the circumstances of this case, an order to restore the fund should be made and, given that the GP would be implicated in the wrongdoing, steps such as placing the assets in escrow, the appointment of a receiver or the taking of partnership accounts were necessary (paras. 65–72).

(3) The legislature had prescribed in s.33(3) of the ELPA when a derivative action could be brought in respect of an exempted limited partnership, *i.e.* "if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings." Where the legislature established a statutory test for bringing a derivative action in respect of an exempted limited partnership, the courts were duty bound to apply that statutory test. The test could not be replaced by

common law and equitable principles developed in other contexts even if, in the absence of a statutory test, the courts would no doubt have applied those principles to an exempted limited partnership. Nor could those principles form an additional threshold beyond the statutory test. The statutory test was in general and imprecise terms and left open how the test should be applied in practice. However, the expression "without cause" must carry the implication of "good" cause. The court was entitled to have regard to and could derive assistance from the developed principles in other contexts. In particular, given the existence of the statutory trust imposed by s.16(1) of the ELPA, the court was likely to derive assistance from considering whether special circumstances (as established in the contexts of trusts and English limited partnerships) existed. If special circumstances existed, this was likely to assist the court in deciding whether a general partner's decision not to institute proceedings was "without cause." However, the court emphasized that its duty was to apply the statutory test of "without cause"; it was not sufficient simply to consider whether there were special circumstances and, if so, then to allow a claim under s.33(3). If the court decided that the facts would satisfy the special circumstances test, it must nevertheless go on and consider whether they therefore satisfied the "without cause" test in s.33(3). Conversely, the facts of a case might enable the court to find that the general partner's decision was "without cause" without consideration of whether there were special circumstances. The two tests were not to be equated although it was envisaged that consideration of whether there were special circumstances was likely in most cases to be of considerable assistance in determining whether the decision was "without cause" (paras. 94–99).

(4) The court summarized its conclusions in relation to s.33(3): (i) There was no requirement for leave to bring derivative proceedings under s.33(3). A limited partner could simply institute such proceedings. (ii) A limited partner must however plead the facts and matters relied upon as showing that he could bring himself within the requirements of the subsection because this formed an essential part of his cause of action. (iii) If a defendant wished to raise an issue as to the standing of a limited partner to bring such derivative proceedings, he should do so by means of a strike out application or seek the trial of a preliminary issue. (iv) Whichever route was chosen did not affect the test that had to be applied in deciding whether s.33(3) was complied with and whether a limited partner should be permitted to continue with the derivative claim. (v) The decision of the court on such an application or preliminary issue was determinative (subject to appeal). If the court held that the derivative claim could be continued, the limited partner thereafter had the necessary standing to pursue the claim. It was not an issue which was deferred until or revisited at trial (save possibly in the context of costs at the end of the trial). (vi) The court should not conduct a mini trial as to whether the requirements of s.33(3) were satisfied. The court had to reach its decision on the basis of the material before it, which would be more limited than it would be following discovery and trial. (vii) At the hearing, the onus was on the

limited partner to satisfy the court that the requirements of s.33(3) were met. Reference to "onus" was not to be mistaken as a reference to a "burden" in the sense of having to show something on the balance of probabilities. (viii) The essential task for the court at such a hearing was to determine whether the limited partner had failed or refused to bring the relevant proceedings without cause. (ix) In determining this issue, the court was likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) existed, but the court's task remained one of applying the statutory test set out in s.33(3). (x) Whilst reference to a "good arguable case" might be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of s.33(3) were met, the court's task was essentially an evaluative one having regard to the facts as they appeared to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action was an exception to the general principle in the ELPA that management (including decisions as to litigation) of an exempted limited partnership was for the general partner not the limited partners. The court should consider, *inter alia*, the strength of the evidence that the general partner had failed or refused to institute proceedings without cause, the strength of the underlying claim that was sought to be brought and the likelihood and nature of any injustice if the derivative claim was not permitted. (xi) The court should reach its decision as to standing by reference to the facts as they appeared at the date of the hearing of the strike out or preliminary issue. (xii) Even where the requirements of s.33(3) were met, the court had a discretion as to whether to permit a derivative claim to continue. One of the factors which was likely to be relevant in exercising that discretion was whether the plaintiff had an alternative remedy (para. 140).

(5) The GP's appeal against the refusal of the judge to strike out the plaintiffs' derivative claims against it would be allowed and the claims would be struck out. A derivative action allowed a party to bring a claim in the name of and on behalf of a second party against a third party. It followed that the second party must have a claim against the third party before the first party could be permitted to bring such a claim derivatively. Section 33(3) presupposed that there was a claim to be brought by the GP on behalf of the partnership. If, as the judge held, the partnership had no claim against the GP, there could be no failure by the GP to bring such a claim without cause. Even if this were wrong, the derivative claim against the GP would not be permitted because the plaintiffs as limited partners had an adequate alternative remedy. A limited partner had the right to claim against a general partner for breach of duty on the part of the general partner. In the event of such a claim succeeding, the appropriate remedy would almost certainly not be an award of equitable compensation to the particular limited partners who had sued but instead an order that the general partner restore the trust fund. In these circumstances, exactly the same would be achieved by a direct claim as would be the case in a

derivative action. In the event of the plaintiffs succeeding in their direct claim, the estate of TPF would be made whole by payment from the GP pursuant to an order for restoration of the trust fund. Success in a derivative action would have the same result. Accordingly, there was simply no need for a derivative action; it would add nothing to the direct claims brought by the limited partners coupled with an order for restoration of the trust fund in the event of such claims succeeding. Therefore, as a matter of discretion, the derivative claim against the GP should not be permitted (paras. 141–151).

(6) The appeals of D2, D3 and D4 against the refusal of the judge to strike out the plaintiffs' derivative claims against them would be dismissed. The GP had a conflict of interest in relation to whether to institute proceedings against D2–D4. On the plaintiffs' case, D1 as the GP was deeply involved in all the alleged wrongdoing, as was D2. D1 had to decide whether to institute proceedings against D2–D4 in circumstances where (i) the essential wrongdoing giving rise to the claims against D2–D4 was that of D1 itself in making the various payments and where it was said to be part of the unlawful means conspiracy to injure TPF involving D2 and D3; (ii) the contemplated proceedings would have to be brought against the beneficial owner of the GP and against two companies in which D2 was deeply and closely involved, namely D3 and D4; and (iii) D1 would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy. On the face of it, by reason of the obvious and serious conflict of interest, D1 was under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also meant that the failure by D1 to bring proceedings against D2–D4 was without cause for the purposes of s.33(3). The defendants' submissions that this was not the position because (i) the current directors of D1 were wholly independent and were not in office at the time of the alleged wrongdoing on the part of D1, and (ii) the independence of the current directors was fortified by the fact that D2 had given an undertaking that the shareholder of the GP would not exercise any powers so as to remove the current directors or interfere in any way in the exercise of their functions did not overcome the inhibition. In relation to the first point, the judge was correct to focus on the entity which was the general partner rather than the directors for the time being of that entity. Section 33(3) referred to the "general partner" having failed or refused to bring proceedings without cause. The general partner was the legal entity D1. D1 was subject to the conflicts of interest and thus could not be seen to be in a position to take a fair and independent decision about the potential litigation. New directors were not in the same position as a liquidator, who was appointed by and subject to the supervision of the court and therefore clearly independent of the company, its directors and shareholders. The current directors owed a fiduciary duty to act in the best interests of D1. The defendants submitted that because D1 owed fiduciary duties to act in the best interests of the partnership, the current directors therefore had a duty to act in the best

interests of TPF. However, there was certainly the potential for conflict between acting in the best interests of TPF (which might include taking action against D1 as a co-conspirator) and acting in the best interests of D1 (which might be said to include the avoidance of being sued). The undertaking given by D2 was insufficient to overcome the inhibition from which D1 as general partner suffered. The plaintiffs, who alleged that there had been serious wrongdoing by the defendants which had cost TPF over US$100m., would have a justified lack of confidence that a fair and independent decision was taken by D1 as to whether to seek recompense from any one or more of the defendants, even following the appointment of the current directors. There was no doubt that D1 suffered from an inhibition which led to the conclusion that, subject to the exercise of any discretion, it was appropriate for the plaintiffs to bring derivative claims on behalf of TPF pursuant to s.33(3) against D2–D4. As to discretion, the defendants submitted that because the plaintiffs were bringing direct claims against D2 and D3, they had an alternative remedy in respect of those two defendants and there was no need for them to bring a derivative action. However, D2–D4 expressly reserved the right to challenge the plaintiffs' standing to bring such claims. It would be inconsistent with the overriding objective and highly undesirable to run the risk of the court eventually finding against D2 and D3 on the underlying merits of the claims but also finding that the plaintiffs did not have standing for the direct claims or that it could not make an order for restoration of the trust fund in the absence of a derivative claim on behalf of TPF. There was sufficient uncertainty about whether the plaintiffs had direct claims against D2 and D3 or whether the court could order restoration of the trust fund on the success of such claims that, as a matter of discretion, it was just and fair to allow the derivative claims to proceed alongside the direct claims so that they were all heard at the same time. If, following a trial, the direct claims were upheld and the court also held that it could order restoration of the trust fund as a remedy for such claims, there would be no need to make any award on the derivative claims; if, on the other hand, the direct claims were found not to be maintainable or restoration of the trust fund could not be ordered, the derivative claims would be necessary to provide a remedy, assuming that the underlying allegations against the defendants were upheld (paras. 158–170).

(7) The GP's appeal against the refusal of the judge to order the plaintiffs to provide security for costs would be dismissed. The judge erred in proceeding on the basis that there was a presumption arising from comity and common sense that security for costs should not be awarded against the plaintiffs, although each case would be decided on its own facts. When dealing with a security for costs application against a foreign state or foreign state agency that enjoyed good standing in the international community, the court should treat this as a factor in favour of such a plaintiff to be weighed with all the other factors when the court exercised its discretion. The judge also erred in stating that a foreign plaintiff did not have to establish that it had fixed and permanent property within the

jurisdiction. Evidence that a foreign plaintiff had valuable property within the jurisdiction would obviously be of relevance but the significance of this evidence would depend on all the facts of the case, including any evidence as to the permanency of the property and its freedom from encumbrances (or the lack of such evidence) and other evidence tending to show that the plaintiff could be trusted to honour an adverse costs order. The judge's errors played such a significant role in the exercise of his discretion that his decision must be set aside. In the circumstances it was open to the court to exercise the discretion conferred by GCR O.23, r.1(1). The court proceeded on the assumption that the defendants were correct that there would be very real difficulties in enforcing in Kuwait costs orders made against the plaintiffs if their claims against the defendants were dismissed. Although it was a necessary condition for the ordering of security for costs that there was a real risk that an adverse costs order would not be enforced against a foreign plaintiff in his/its home jurisdiction, this was not a sufficient condition for ordering security for costs whatever the other circumstances of the case. Instead, it was open to the court, if there was sufficient evidence to support such a conclusion, to find that there was no real risk that the plaintiff would not honour an adverse costs order and to decline to order security for costs. The present case was such a case. The plaintiffs were agencies of a foreign state, Kuwait, which was of good standing in the international community and enjoyed diplomatic relations with HM Government. Further, a formal letter had been sent to the judge on behalf of the State of Kuwait, among others, confirming that the plaintiffs were wholly owned by the State of Kuwait and attaching letters by the plaintiffs confirming that they would comply with any final and binding costs orders made against them in the proceedings. The letters amounted to a representation intended to be relied on by the Grand Court that the plaintiffs would honour any final and binding costs orders made against them. The letters provided strong support for the conclusion that there was no real risk that such costs orders would not be paid. Further support for this conclusion came from the evidence as to the financial resources of the plaintiffs, which showed that they could be expected to have the ready funds to pay an adverse costs award (paras. 188–217).

Cases cited:

(1) *Ahmad Hamad Algosaibi & Bros. Co.* v. *Saad Invs. Co. Ltd.*, 2017 (2) CILR 602, referred to.
(2) *Autumn Hldgs. Asset Inc.* v. *Renova Resources Private Equity Ltd.*, 2017 (2) CILR 136, referred to.
(3) *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.*, 1998 CILR 102, considered.
(4) *Barnes* v. *Addy* (1873–74), 9 Ch. App. 244, referred to.
(5) *Barrett* v. *Duckett*, [1995] 1 BCLC 243; [1995] BCC 362, considered.
(6) *Chief Commr. of Stamp Duties* v. *Buckle*, [1998] HCA 4; (1998), 192 CLR 226; 38 NSWLR 574; 151 ALR 1, considered.

(7) *Commr. of State Revenue* v. *Rojoda Pty. Ltd.*, [2020] HCA 7; (2020), 268 CLR 281; 94 ALJR 423; 376 ALR 378, considered.
(8) *Costa Rica (Rep.)* v. *Erlanger* (1876), 3 Ch. D. 62, referred to.
(9) *Cybervest Fund, In re*, 2006 CILR 80, followed.
(10) *Elliott* v. *Cayman Islands Health Serv. Auth.*, 2007 CILR 163, referred to.
(11) *Foss* v. *Harbottle* (1843), 2 Hare 461; 67 E.R. 189, referred to.
(12) *Golstein* v. *Bishop*, [2013] EWHC 881 (Ch); [2014] 1 Ch. 131; [2013] 3 W.L.R. 572; on appeal, [2014] EWCA Civ 10; [2014] 1 Ch. 455; [2014] 2 W.L.R. 1448; [2014] 3 All E.R. 397, considered.
(13) *Henderson PFI Secondary Fund II LLP* v. *Henderson Equity Partners (GP) Ltd.*, [2012] EWHC 3259 (Comm); [2013] 1 Q.B. 934; [2013] 2 W.L.R. 1297; [2013] 3 All E.R. 887; [2012] 2 CLC 905, followed.
(14) *Hugh Stevenson & Sons* v. *Akt. für Cartonnagen-Industrie*, [1918] A.C. 239, referred to.
(15) *Hughes* v. *Colin Richards & Co.*, [2004] EWCA Civ 266; [2004] PNLR 35, referred to.
(16) *Hurst* v. *Bryk*, [2000] UKHL 19; [2002] 1 A.C. 185; [2000] 2 All E.R. 193, referred to.
(17) *Iesini* v. *Westrip Holdings Ltd.*, [2009] EWHC 2526 (Ch); [2010] BCC 420, considered.
(18) *Kleanthous* v. *Paphitis*, [2011] EWHC 2287 (Ch), referred to.
(19) *Knight & Tabernacle, &c., Socy., In re* (1892), 2 Q.B. 613; 62 L.J.Q.B. 33, considered.
(20) *Leyvand* v. *Barasch*, [2000] WL 191256, considered.
(21) *Meyer* v. *Faber (No. 2)*, [1923] 2 Ch. 421, referred to.
(22) *Ministère de la Culture &c. de France* v. *Lielb*, [1981] 1 WLUK 253, considered.
(23) *Ministry of Foreign Affairs (Italy)* v. *Simeone*, [2016] QDC 160, referred to.
(24) *Ninemia Maritime Corp.* v. *Trave Schiffahrts G.m.b.H. und Co. K.G., The Niedersachsen*, [1984] 1 All E.R. 398; [1983] 2 Lloyd's Rep. 600; [1983] Com. L.R. 234, considered.
(25) *PJSC Tatneft* v. *Bogolyubov*, [2019] Costs L.R. 977, referred to.
(26) *Papua New Guinea* v. *Sandline*, [1998] QDC 298, referred to.
(27) *Pisante* v. *Logothetis*, [2020] EWHC 3332 (Comm), referred to.
(28) *Prudential Assur. Co. Ltd.* v. *Newman Indus. Ltd.*, [1982] Ch. 204; [1982] 2 W.L.R. 31; [1982] 1 All E.R. 354, followed.
(29) *Public Trustee* v. *Elder*, [1926] 1 Ch. 776, referred to.
(30) *Roberts* v. *Gill & Co. Solicitors*, [2010] UKSC 22; [2011] 1 A.C. 240; [2010] 2 W.L.R. 1227; [2010] PNLR 30; [2010] WTLR 1223, considered.
(31) *St. John's Trust Co. (PVT) Ltd.* v. *Medlands (PTC) Ltd.*, [2021] CA (Bda) 20 Civ, Bermuda C.A., December 12th, 2021, followed.
(32) *Scully Royalty Ltd.* v. *Raiffeisen Bank Intl. Ltd.*, 2022 (1) CILR 118, referred to.

(33) *Selangor United Rubber Estates Ltd.* v. *Craddock (No. 3)*, [1968] 1 W.L.R. 1555; [1968] 2 All E.R. 1073, referred to.
(34) *Sierra Leone Govt.* v. *Davenport*, [2003] EWHC 1913 (Ch); [2003] All E.R. (D.) 183; 2003 WL 21047383, referred to.
(35) *Smith* v. *Croft (No. 2)*, [1988] Ch. 114; [1987] 3 All E.R. 909; 1987 PCC 209; [1987] 1 FTLR 319, considered.
(36) *Soar* v. *Ashwell*, [1893] 2 Q.B. 390, referred to.
(37) *SPhinX Group, In re*, 2010 (1) CILR 234, referred to.
(38) *Target Hldgs. Ltd.* v. *Redferns*, [1996] A.C. 421; [1995] 3 W.L.R. 352; [1995] 3 All E.R. 785; [1995] CLC 1052; [1995] N.P.C. 136; [1995] 3 LRC 162, considered.
(39) *Tasarruf Mevduati Sigorta Fonu* v. *Wisteria Bay Ltd.*, 2006 CILR 351, considered.
(40) *Top Jet Enterprises Ltd.* v. *Sino Jet Holding Ltd.*, 2018 (1) CILR 18, referred to.
(41) *Waddington Ltd.* v. *Chan Chun Hoo Thomas*, [2008] HKCFA 63; (2008), 11 HKCFAR 370; [2009] 4 HKC 381; [2008] HKCU 1381; [2009] 2 BCLC 82, considered.

Legislation construed:
Exempted Limited Partnership Act (2021 Revision), s.3: The relevant terms of this section are set out at para. 34, fn. 7.
s.16(1): The relevant terms of this subsection are set out at para. 19.
s.32(12): The relevant terms of this subsection are set out at para. 36, fn. 9.
s.33: The relevant terms of this section are set out at para. 20.

Grand Court Rules 1995, O.23, r.1(1): The relevant terms of this subrule are set out at para. 176.
C. Stanley, K.C., P. Tyers-Smith and *T. Wright* for the first appellant;
G. Chapman, K.C., A. Pullinger and *H. Shaw* for the second to fourth appellants;
D. Allison, K.C., J. Fox, O. Green and *H. Clark* for the respondents.

1 **FIELD, J.A.:**

Introduction

This is the judgment of the court to which each member has contributed.

2 There are two appeals before the court. The first is brought by all the appellants from the order made by Parker, J. ("the judge") dismissing their summonses to strike out certain claims in the amended statement of claim[1] ("the ASOC") ("the strike out appeal," reported at 2022 (1) CILR 12). The second appeal is brought by the first appellant against the dismissal of its

1 The defendants' application to strike out those paragraphs of the ASOC that pleaded the criminal convictions in Kuwait of a Ms. Lazareva and a Mr. Dashti was not opposed and the judge so ordered.

summons for security for costs ("the SFC appeal"). Hereinafter, we refer to the appellants as "the defendants" or "D1," "D2," "D3" and "D4" and to the respondents as "the plaintiffs."

The strike out appeal

3 This appeal raises important issues concerned with: (a) the nature of a Cayman Islands exempted limited partnership ("ELP") established under the Exempted Limited Partnership Act (2021 Revision) ("the ELPA"); (b) whether a limited partner of an ELP can sue, independently of any of the other limited partners, alleged wrongdoers, including the ELP's general partner, who are alleged to have been parties to the wrongful misappropriation of the ELP's assets held on trust by the general partner and, if so, what is the appropriate remedy to be granted by the court; and (c) the circumstances in which a limited partner can bring a derivative action under s.33(3) of the ELPA in the name of the ELP against the general partner for breaches of contractual, statutory and fiduciary duty.

4 The ELP in question is The Port Fund L.P. ("TPF") which was registered on March 21st, 2007. It was established as a vehicle for investments in port-related assets around the world. It has one general partner and eleven limited partners including the two plaintiffs, the Kuwait Ports Authority ("KPA"), which it is alleged has invested US$85m. giving it at least a 41% interest in TPF and the Public Institution for Social Security ("PIFSS"), which it is alleged invested US$40m. (giving it a 23.77% interest in TPF). The total invested in TPF by the limited partners was US$188,152,000.

5 The first defendant, Port Link GP Ltd. ("the GP" or "D1"), is a Cayman Islands exempted limited company incorporated on March 8th, 2007. It was appointed the general partner of TPF pursuant to a limited partnership agreement ("the LPA") made on March 21st, 2007 between it and the original limited partners of TPF. The whole of the GP's share capital is held by Port Link Holdings USA Inc. ("PLH"), a Delaware company; and the whole of PLH's share capital is held by the second defendant ("Mr. Williams"). Mr. Williams is also CEO, CFO, President, Vice President, Treasurer and Secretary of the third defendant, Wellspring Capital Group Inc. ("Wellspring"), a company incorporated in the US State of Georgia. Wellspring is owned by the Mark E. Williams Living Trust, the trustees of which are Mr. Williams, his wife, Laura Williams, and his brother, Dylan Williams.

6 TPF's sponsor and placement agent was KGL Investment Co. KSCC, a Kuwaiti company ("KGLI Kuwait"). From September 2007 until 2008, Mr. Williams was KGLI Kuwait's Vice President and he was its Investment Director from 2009 to 2011. He was also a member of TPF's Investment Committee in the years 2009–2013.

7 Pursuant to an agreement with the GP dated June 28th, 2007 ("the IMA"), KGL Investment Cayman Ltd. was appointed TPF's investment manager. In July 2018, KGL Investment Cayman Ltd. changed its name to Emerging Markets PE Management Ltd. ("EMPEML"). The ultimate beneficial owner of EMPEML as at the date of the IMA and until around January 2018 was KGLI Kuwait, which is the 100% shareholder of the fourth defendant ("KGLI Asia"). KGLI Asia is said by the defendants to have provided administrative support to TPF between December 2017 and August 2020 pursuant to an agreement for the provision of such services dated December 1st, 2017 ("the ASA").

8 Briefly put, the plaintiffs plead in the ASOC that assets of TPF worth hundreds of millions of US dollars held on trust by the GP have been misappropriated as part of an unlawful means conspiracy and/or dishonest breaches of trust and fiduciary duty and that each of the defendants has wrongfully participated in some or all of these defalcations, in some cases having knowingly received some or all of the proceeds thereof. Amongst the allegations made against the defendants is a claim that the GP made substantial improper payments using TPF moneys that were not for the benefit of TPF.

9 Two of the other limited partners in TPF, Gulf Investment Corp. ("GIC") and General Retirement and Social Insurance Authority of Qatar ("GRSIA"), who between them it is alleged invested 15.14% of the total alleged investment in TPF, have brought claims against the second and third defendants in the US State of Georgia alleging that those parties are guilty of dishonesty, deliberate breaches of fiduciary and unlawful means conspiracy. GIC and GRSIA have consented to a stay of their claims in the courts of Georgia pending determination of the instant proceedings which they support.

10 The two current directors of the GP ("the FFP directors") are individuals recruited from FFP (Directors) Ltd. Mr. Andrew Childe ("Mr. Childe") was appointed on January 29th, 2020 and Mr. Richard Lewis ("Mr. Lewis") on October 28th, 2020, replacing Mr. Christopher Rowland ("Mr. Rowland") who had been appointed at the same time as was Mr. Childe.

11 The FFP directors have no connection to any of the wrongdoing alleged in the ASOC and describe themselves as "independent directors." In his third affidavit, Mr. Lewis states that, fully cognisant of their fiduciary duties, they have conducted an intensive, forensic investigation into the actions of the GP and the former management team of TPF for the benefit of all the limited partners and not just the plaintiffs. The stated results of the FFP directors' forensic investigation are set out in a series of memoranda issued to the limited partners in an update to the limited partners dated May 29th, 2021, save for their investigations into the DIFC

proceedings claim and the Lazareva lobbying campaign which are respectively dealt with in paras. 300–345 and 346–399 of Mr. Lewis's third affidavit. In their view, there is currently no cause to bring the derivative claims and even if TPF had meritorious claims, it would be necessary to consider whether the claims were worth pursuing on a cost/benefit analysis and, if so, whether TPF was in a position to pursue them or could raise funding to do so, and whether it would be in the best interests of TPF to do so.

12 The plaintiffs plead individual direct claims against the defendants for losses each has suffered as a limited partner in TPF by reason of the defendants' actionable involvement in the wrongful misappropriation of assets held on trust by the GP. Relying on s.33(3) ELPA, they also plead derivative claims against the GP and the other defendants on behalf of TPF in respect of the aforesaid alleged misappropriation of assets.

The direct claims and the applications to strike them out

13 We first consider the direct claims brought against the GP (D1), Mr. Williams (D2), and Wellspring (D3). It is not necessary to consider the plaintiffs' claims against KGLI Asia (D4) for their losses from payments made to that entity under the ASA because the plaintiffs' counsel, Mr. Allison, K.C., accepted that there is no direct claim against D4 (see respondents' skeleton, para. 48).

14 The plaintiffs plead that in breach of the statutory, contractual, common law and fiduciary duties owed by the GP to TPF and the limited partners and pursuant to a conspiracy to injure TPF and the limited partners by unlawful means, the GP made very substantial payments using TPF moneys that were not for the benefit of TPF and the limited partners. These payments were allegedly made to the following five recipients and/or for the following purposes: (i) Apache Asia Ltd. and its related Macau entity, Apache Asia Ltda. ("Apache") which received US$58,528,399 from the GP, of which US$45,850,000 was purportedly for services under an advisory agreement and US$14,550,000 was directed to be paid to KGLI Kuwait; (ii) Wilfredo Placino who received US$2,920,000 purportedly by way of "advisor fees"; (iii) lawyers and lobbyists acting for Ms. Marsha Lazareva (a director of the GP from March 8th, 2007 to May 24th, 2018), and Mr. Saeed Dashti (a director of the GP from April 16th, 2007 to May 24th, 2018); (iv) a group of Kuwaiti service providers, allegedly for services rendered, of which US$14,070,000 was paid to Golden Shahin General & Trading Contracting Co. ("Golden Shahin"), which is part of a group of companies associated with KGLI Kuwait and Mr. Dashti; and (v) Wellspring, which received US$59,990,461.30 ("the Wellspring payment") by way of a payment alleged to be due under a judgment given

in proceedings brought by EMPEML against the GP and TPF in the Dubai International Finance Centre Court ("the DIFCC").

15 The alleged background to (v) is that on November 15th, 2017, US$496,429,767 (representing part of the net proceeds resulting from the sale by the GP of a TPF asset in the Philippines called "Clark City") were transferred to the GP's account with Noor Bank PJSC ("Noor Bank"). The same day, Noor Bank made a suspicious transaction report to the Financial Intelligence Function of the UAE which issued a report to the Dubai Public Prosecutor who successfully moved to freeze the transferred money, an order that remained in place until February 2019. On July 9th, 2018, EMPEML commenced proceedings ("the DIFC proceedings") against the GP and TPF in the DIFCC of First Instance claiming unpaid carry in the sum of US$45,462,000, compound interest on the unpaid carry sum, and unpaid management fees of US$8,106,386 with compound interest thereon at 8% pa. The GP acknowledged service of the claim, submitted to the jurisdiction of the DIFCC and admitted the claim in the sum of US$56,808,005. The DIFCC then entered judgment ordering the GP and TPF to pay US$56,999,978 and, at the request of EMPEML, the GP transferred US$59,990,461.30 to Wellspring in satisfaction of the judgment. The plaintiffs claim, *inter alia*, that this payment was made by the GP in wilful and negligent breach of trust in that EMPEML had no entitlement to the claimed management fees having assigned its rights therein to KGLI Kuwait; there was no contractual right to interest; it was wrong to submit to the jurisdiction of the DIFCC when the law of the Cayman Islands governed the relationship between the GP and EMPEML; and the IMA contained an exclusive jurisdiction clause in favour of the courts of the Cayman Islands. The plaintiffs also allege that the payment made in satisfaction of the DIFCC judgment was made on the advice of the same legal counsel who, to the GP's knowledge, was also advising EMPEML with respect to its entitlement.

16 The plaintiffs' direct claims against D1 and D3 are for relief under the Fraudulent Dispositions Act (1996 Revision) (see ASOC, paras. 179 and 189). They claim that these defendants culpably participated in the aforementioned improper payments made by the GP that are related in paras. 14 and 15 above and/or dishonestly received such payments or the traceable proceeds thereof. They maintain that Wellspring was party to an unlawful means conspiracy, dishonestly assisted in a breach of trust/duty by the GP, knowingly procured a breach of the contractual obligations the GP owes the limited partners, and is liable in knowing receipt for the Wellspring payment, holding the Wellspring payment or its traceable proceeds on constructive trust for TPF. The plaintiffs also claim that Mr. Williams conspired and dishonestly assisted in the GP's breaches of duty and was in breach of his fiduciary duties to TPF and the GP by orchestrating the DIFC proceedings and the Wellspring payment.

17 The GP applied to strike out the direct and the derivative claims against it but not on the ground that they lacked merit. Instead, it accepted that the pleaded allegations were arguable, but contended in relation to the direct claims that it is impermissible for two members of a class of eleven limited partners to claim damages from the GP to be paid directly to themselves except by seeking partnership accounts that would require the joinder of the other limited partners.

18 D2–D4 applied to strike out the derivative claims against them but D2 and D3 did not apply to strike out the direct claims against them. They have not appealed the judge's decision, but do not admit that the plaintiffs have standing to bring the direct claims that they face. Like D1, they maintain that these claims "ought to be pursued by way of a partnership account as against the GP."

The general rule as to who may bring proceedings by or against an ELP

19 Section 16 ELPA provides that all rights or property of an ELP shall be held on trust by the GP as an asset of the ELP and s.33 contains the general rule as to who can bring proceedings by or against an ELP. Section 16(1) reads:

> "Any rights or property of every description of the exempted limited partnership, including all choses in action … shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, *upon trust as an asset of the exempted limited partnership* in accordance with the terms of the partnership agreement." [Emphasis added.]

20 The material provisions of s.33 are:

> "(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings.
>
> (2) If the court considers it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 20(1) or to enforce the return of the contribution, if any, required by section 34(1).
>
> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

21 It is important to note that, as recognized in paras. 2 and 6 of D2–D4's skeleton argument for the appeal, the effect of ELPA s.33 is that "ordinarily, actions *for and on behalf of an ELP* must by statute be brought by the general partner of that ELP" and "*a claim belonging to a limited partnership must be brought by the GP acting for and on behalf of the ELP*." [Emphasis added.] Sections 33(1) and (3) thus apply only to claims brought by or on behalf of an ELP, that is to derivative claims. They therefore do not apply to direct claims brought by a limited partner in respect of its own right of action against the GP and others.

The judge's decision on the direct claims

22 The judge dealt with direct claims by a limited partner at 2022 (1) CILR 12, paras. 61–65. Before doing so (*ibid.*, at paras. 46–60) he helpfully considered and analysed the characteristics of an ELP, how it differs from an ordinary partnership and a company, and the statutory regime established by the ELPA.

23 He stated (*ibid.*, at paras. 46–47) that the rights and obligations of the limited partners and the general partner (or partners) *inter se* are regulated by the ELPA, the express provisions of which are to prevail where they are inconsistent with the rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision). He also referred (*ibid.*, at para. 46) to the provision in s.3 of the ELPA that absent such inconsistency those rules "shall apply to an exempted limited partnership."

(a) *Characteristics of an ELP that differ from those of an ordinary partnership*

24 The judge identified the following characteristics of ELPs which he considered to be important points of distinction from an ordinary partnership, and which create different rights and obligations between the partners to those in an ordinary partnership (*ibid.*, at paras. 46–53):

(1) By ss. 4(2) and 20 of the ELPA, the limited partners in an ELP have limited liability whereas the general partner is liable for all debts and obligations of the ELP (para. 48).

(2) By s.14 of the ELPA limited partners have no active involvement in the business in their capacity as limited partners. The business is carried out by the general partner who enters into all contracts by or on behalf of the ELP (paras. 49 and 52).

(3) Section 19(1) of the ELPA imposes an express duty of good faith on the general partner of an ELP requiring the general partner to act in the interests of the ELP (para. 50).[2]

2 The judge did not mention, but must have been aware, that this statutory duty is subject to any express provisions to the contrary in the partnership agreement.

(4) Whereas in an ordinary partnership, mutual and reciprocal rights and obligations are owed to each other by partners, s.19(2) of the ELPA provides that, unless the partnership agreement provides to the contrary, a limited partner owes no fiduciary duty either to the ELP or to other partners (para. 51).

(b) ***Characteristics of an ELP that differ from those of a company***

25 The judge stated (*ibid.*, at paras. 54–55) that the fundamental legal distinction is that an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right. He stated that the consequence of the ELP not having a separate legal personality is that its general partner holds its rights and property, including choses in action, on trust for each of the partners. Because a limited partnership has no legal personality, the partnership as a whole is not able to enforce the general partner's obligations as trustee.

26 The judge then identified other characteristics of ELPs which he considered to be important points of distinction from those of companies:

(1) The general partner of an ELP owes its duties to all of the individual limited partners whereas the board of directors of a company only owe duties to the company (as the legal entity) and not to its shareholders (paras. 56–57).

(2) Because in the case of a company directors' duties are owed to the company, any breach by them is generally only actionable by or on behalf of the company and not by shareholders, although there are important exceptions where the wrongdoer directors are in control of the company (paras. 57–59).

(3) By s.33(1) of the ELPA, the general partner in an ELP is the only entity who can institute proceedings *on behalf of the partnership*, whereas in the case of a company there are exceptions to the rule in *Foss* v. *Harbottle* (11) where the wrongful directors are in control of the company. The judge stated that (2022 (1) CILR 12, at para. 60):[3]

> "If the limited partners have claims against the GP, it is in practice unworkable for it to bring proceedings against itself for breach of duty. If the GP is the arbiter of whether to bring claims against itself that clearly gives rise to a conflict of interest."

3 In para. 60, the judge does not mention s.33(3) of the ELPA which, as we have seen, permits a limited partner to bring a derivative action: "an action on behalf of an [ELP] if any one or more of the general partners with authority to do so have, without cause, failed or refused to do so."

(c) ***Direct claims by a limited partner***

27 The judge accepted the submissions of counsel for the plaintiffs, Mr. Allison, K.C., based on the characteristics of an ELP which differ from those of an ordinary partnership and a company, in particular that an ELP has no separate legal personality and that a limited partner does not owe fiduciary duties to the ELP or to the other limited partners. He stated that (*ibid.*, at paras. 61–62):

> "[T]he logical consequence of the aforesaid analysis of the nature and characteristics of an ELP is that the GP's obligations must be capable of enforcement by each of the partners to whom it owes duties individually. That is to be contrasted with the situation where directors of a company hold the company's assets and are treated as trustees because they owe fiduciary duties to the company. In that situation they hold the assets for the company, rather than the shareholders.
>
> 62 … [T]he GP of an ELP owes fiduciary duties to each of the limited partners and any breaches are therefore enforceable by the limited partners themselves."

28 The judge then stated (*ibid.*, at para. 63):

> "It follows that where an ELP is alleged to have suffered loss, as in this case, that is the loss of each of the limited partners. There is no distinct or separate loss in respect of 'the partnership' (TPF), which as an entity does not exist at law. The limited partners in enforcing their individual claims do not owe duties to each other: …"[4]

29 He concluded that (*ibid.*, at para. 64):

> "[T]he direct claims in respect of the individual partners' losses are vested in the limited *partners* alone, and are not claims that can be brought on behalf of TPF derivatively, except in the circumstances permitted by s.33(3) of the ELPA where the limited partners who wish to obtain redress for TPF are in effect put in the place of the GP, and bring claims on behalf of TPF."

30 The judge rejected the submission on behalf of the GP and the other defendants that s.16(1) of the ELPA and cll. 3.1 and 3.3 of the LPA prevented such direct claims because the limited partners cannot usurp the function of the GP, who is the only authorized agent of the partnership, here TPF, able to sue. He stated (*ibid.*, at para. 76) that: "the practical difficulty with that submission is that in practice the GP could obviously

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4 The last sentence, stating that, in enforcing their individual claims, limited partners do not owe duties to each other, contains a footnote referring to s.19(2) of the ELPA, on which see para. 24(4) above.

not sue itself and suffers from the conflict of interest" that arises if the GP is the arbiter of whether to bring claims against itself which clearly gives rise to a conflict of interest (see *ibid.*, at para. 60).

(d) ***The Henderson case***

31 The judge considered (*ibid.*, at paras. 66–78) the decision of Cooke, J. in the English Commercial Court in *Henderson PFI Secondary Fund II LLP* v. *Henderson Equity Partners (GP) Ltd.* (13) (hereafter "*Henderson*"). That case concerned the similar but by no means identical UK statutory regime in the Limited Partnerships Act 1907 under which such partnerships also have no legal existence independent of their constituent partners. The focus of *Henderson* was whether limited partners were entitled to pursue derivative claims on behalf of the partnership, and, if so, the consequence of doing so.[5] We therefore primarily consider it when giving our conclusion and reasons about the derivative claim against D1 at paras. 147–148 below. But in considering entitlement to pursue a derivative claim, Cooke, J. also considered whether a limited partner could sue the general partner for "its own loss on its own claim" under the limited partnership agreement ([2012] EWHC 3259 (Comm), at para. 32). He stated that it could because it "has its own contractual or fiduciary claim for its own loss" (*ibid.*, at para. 28).

32 In the present case, the judge stated that Cooke, J. held that:

(i) "each limited partner could in its own individual capacity sue … the general partner, for its own losses in respect of liabilities under the limited partnership agreement" (2022 (1) CILR 12, at para. 69);

(ii) "any claim brought by each limited partner as an individual contractual or fiduciary claim would not involve management of the partnership business" (*ibid.*, at para. 72); and

(iii) "the partnership which consisted of the limited partners and the general partner together, had no form of joint right or claim against the general partner" (*ibid.*, at para. 72).

(e) ***Must direct claims by a limited partner be by seeking an order for partnership accounts?***

33 The judge considered the GP's submission that direct claims by a limited partner can *only* be vindicated by the taking of partnership accounts (*ibid.*, at para. 79ff.). He rejected it and accepted the plaintiffs' submission that the claims advanced were principally direct claims vested in the individual limited partners rather than in TPF (the ELP itself) and that the

5 *I.e.* whether the pursuit of derivative claims constituted taking part in the management of the business of the partnership so that, under s.6(1) of the 1907 Act, claimants doing so would forfeit their limited liability.

taking of partnership accounts was not the only procedural route available to the plaintiffs (*ibid.*, at paras. 86–87).[6]

34 The judge took into account the distinct characteristics of an ELP and the provisions of the ELPA (*ibid.*, at paras. 80–81). He considered that the English authorities on ordinary partnerships which Ms. Stanley submitted were "pellucidly clear" in requiring rights and obligations between partners only to be procedurally adjudicated by the taking of partnership accounts had no direct application to Cayman Islands' ELPs. His reasons were that, unlike ordinary partnerships, under a Cayman Islands' ELP:

(i) there are no reciprocal fiduciary obligations or reciprocal duties between the limited partners unless the LPA provides otherwise (*ibid.*, at para. 84);

(ii) the absence of reciprocal fiduciary obligations between the limited partners means that the joinder of all partners to any proceedings so that the necessary accounting for any monetary claims required by *Public Trustee* v. *Elder* (29) ([1926] 1 Ch. at 789) does not apply to a Cayman Islands' ELP (2022 (1) CILR 12, at para. 82, fn. 18);

(iii) the general partner owes fiduciary and contractual duties directly to the limited partners and those duties are enforceable directly by the limited partners (*ibid.*, at para. 83);

(iv) each limited partner is not, as is the case in an ordinary partnership, jointly and several liable for the partnership's liabilities; referring to ss. 3,[7] 4(3), 16(1) and 19(2) of the ELPA, the judge stated that "The rules of equity and common law applicable to ordinary partnerships are in this respect inconsistent with express provisions of the ELP …" (*ibid.*, at para. 85);

(v) claims against the general partner for a breach of the statutory, equitable, common law or contractual duties owed to the limited partners are vested in the limited partners themselves and may be brought directly (*ibid.*, at para. 87).

The questions before us and the submissions

35 We have stated that D2 and D3 did not apply to strike out the direct claims against them but do not accept that the plaintiffs have standing to bring such claims against them and, although D2 and D3 were not partners, maintain that their direct claims "ought to be pursued by way of a partnership account as against the GP." The result was that the focus of the submissions before us was on the judge's rejection of the application to

6 His summary of the GP's submissions is at para. 32(i)–(ii).

7 "The rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding ss. 31, 45–54 and 56–57 shall apply to an exempted limited partnership, except where they are inconsistent with the express provisions of this Act."

strike out the direct claims against the GP. Little was said specifically about the direct claims against D2 and D3. Ms. Stanley for D1, accepted in substance, that there are direct claims against the GP. But, supported by Mr. Chapman, she submitted that the judge erred in two respects. The first was his finding that the rule/principle that claims by partners *inter se* can only be brought by the taking of partnership accounts does not apply to a limited partnership. She maintained that the judge erred in holding (*ibid.*, at para. 85) that the application of the rule/principle is inconsistent with the express provisions of the ELPA and that it has therefore been disapplied by s.3 of the ELPA. She submitted that his second error was in holding (*ibid.*, at para. 55) that the GP holds the property of the ELP "on trust for each of the partners." That, she submitted, was a clear misreading of ELPA s.16(1). However, she accepted that before the dissolution of a partnership, although there is jurisdiction to obtain a partnership account, "it is an exceptional jurisdiction to allow an account pre-dissolution."

36 On behalf of the plaintiffs, Mr. Allison submitted that the partnership accounts rule/principle does not apply to ELPs in this jurisdiction, in the same way that it does not apply to limited partnerships in England and Wales.[8] This, he maintained, is because the element of reciprocity of fiduciary duties in an ordinary partnership is absent in an ELP. Moreover, in an ordinary partnership, but not an ELP, all the partners have unlimited liability for the partnership's liabilities, and (subject to contrary agreement) are entitled to take part in the management of the partnership business. Mr. Allison further argued that to apply the rule/principle would be inconsistent with ELPA s.32(12)(c)[9] which makes it clear that partners in an ELP have a right to an account. Here the pleaded claims against the GP and D2 and D3 include claims for accounts and equitable compensation for the plaintiffs' individual losses. Mr. Allison submitted that they are entitled to bring these against the GP because of the GP's position as a fiduciary and statutory trustee and its overarching duty to account. Although less clearly stated, it appears that the basis for the plaintiffs' entitlement to bring direct claims against D2 and D3 is their knowing receipt of TPF's property or moneys which the GP transferred to them in breach of its statutory, equitable and other obligations, and their participation in a conspiracy to cause loss to the plaintiffs by unlawful means. During Ms. Stanley's oral submissions there was some debate as to whether, in a claim by a limited partner against the GP or against a third party, the court could order that the remedy against an unsuccessful defendant should be the restoration of

8 In fact the Limited Partnership Act 2007 applies throughout the UK.

9 "A partnership agreement may provide that, as against any other partner, any assignment or other disposition by a partner of any right, debt or other chose in action arising under a partnership agreement shall confer economic rights only and for the purposes of this section 'economic rights' are … The right to an account for the purpose of ascertaining the amount of share of any of the foregoing …"

the trust fund by analogy with the position where a claim is brought by the beneficiary of a trust: *Target Hldgs. Ltd.* v. *Redferns* (38) (hereafter "*Target* v. *Redferns*"). Ms. Stanley accepted that this was possible in a claim against the GP but did not accept that it was possible in a claim against a third party such as D2 and D3. She stated that the obvious way for a limited partner to make a claim against a third party would not be by a direct claim but, using the trust analogy, by a claim on behalf of the trust. That appears to be a submission that the claim must be a derivative claim and thus subject to the requirements of ELPA s.33(3). Mr. Chapman's written submissions on behalf of D2 and D3, to which we have referred, are to the same effect.

37 In principle, two main questions arise in respect of the direct claims although, in the light of the way the appeal has proceeded, the second does not in fact arise. The first question is whether a direct claim by a limited partner against the general partner must be made by claiming partnership accounts in proceedings to which all the partners are parties as it must in an ordinary partnership. Can a limited partner claim an account against a general partner for breach of fiduciary or other duty without at the outset joining the other partners and, if the breach is established, may a limited partner obtain an order that the general partner restore the fund?

38 The second question is whether the ELP itself, although not a legal entity, also has a claim against the GP or a third party such as D2 and D3 for breach of their fiduciary and other obligations. The judge stated (2022 (1) CILR 12, at para. 63) (set out at para. 29 above) that there is no distinct or separate loss in respect of "the partnership" which does not exist in law as an entity. When dealing with the derivative claims later in this judgment, we state that, for the reasons we give at para. 145 below, we are not to be taken as agreeing that the judge was correct in concluding that the partnership has no claim against the GP. However, absent a respondents' notice in respect of the judge's finding or any submission by the plaintiffs that the judge was wrong, the question is not properly before us. But since it is accepted that a limited partner may have a direct claim against the GP for breach of its fiduciary and other duties, albeit only in the context of partnership accounts, uncertainty as to whether TPF itself also has a claim *qua* ELP does not affect our resolution of the dispute about the plaintiffs' direct claims.

39 There were three limbs to Ms. Stanley's submissions. The first was that the application of the partnership accounts rule/principle to limited partnerships is not inconsistent with the provisions of the ELPA and therefore is not disapplied by s.3. She accepted that there are obvious examples of inconsistency between the rules of equity and common law that apply to ordinary partnerships and the provisions of the ELPA governing limited partnerships. She gave three examples. The first is the disapplication by ELPA ss. 4(2) and 16(2) of the rule that in ordinary

partnerships each partner is liable jointly and severally with the other partners for all partnership liabilities. The second is s.32(11)'s provision that in limited partnerships the rule that a partner cannot assign its partnership interest to a third party without the consent of the other partners does not apply. The third is that, in the case of limited partnerships, the rule in ordinary partnerships that certain events cause a dissolution of the partnership does not apply to the events specified in ELPA s.35(a)(i)–(vi). But she submitted that none of these "shed light on the fundamental question at issue on Grounds 2 and 3, namely whether limited partners are entitled to bring direct claims against the GP." It would appear this may require some reformulation in the light of her acceptance during her oral submissions in response to questions by Birt, J.A. that in a claim by a limited partner against the GP the court could order that the defendant restore the fund and that it is exceptional to obtain partnership accounts whilst the partnership is continuing.

40 As to the meaning of "inconsistent," Ms. Stanley relied on *In re Knight & Tabernacle, &c., Socy.* (19) ([1891] 2 Q.B. at 69). That case concerned a statutory provision that its provisions were to apply except where those provisions were inconsistent with those of another statute. She submitted that this approach applied where, as in the case of s.3 of the ELPA, the question is whether non-statutory rules and principles are inconsistent with the express provisions of a statute and that the partnership accounts rule/principle is not inconsistent with these provisions in the sense used in *Re Knight & Tabernacle.* That case stated that to be "inconsistent," the rule/principle must be so at variance with the machinery and procedure indicated by the statute that, if it is applied, the statute would not work. Ms. Stanley argued that this shows that "inconsistent" means "irreconcilable" rather than "different from," and that there is no such irreconcilability between the partnership accounts rule/principle and the provisions of the ELPA.

41 Ms. Stanley also referred to the judge's statement (2022 (1) CILR 12, at para. 86) that there is "no good reason why the taking of partnership accounts should be the only procedural route available to the plaintiffs to obtain redress under the ELPA." She submitted that the judge thus "accepted that partnership accounts *were* a means of redress available" which showed that there is no irreconcilability or inconsistency between the partnership accounts rule/principle and the provisions of the ELPA.

42 Mr. Allison's response to these submissions was that the reasons given by the judge (*ibid.*, at paras. 82–85) (summarized at para. 34 above) for concluding that the partnership rule/principle was disapplied by ELPA s.3 and is inconsistent with the scheme of the ELPA were correct. As to the scheme of the ELPA, he also submitted that the inconsistency is shown *inter alia* by s.16(1) which makes the GP trustee of an ELP's assets, and

by s.32(11) which permits the assignment of a limited partner's interest without the consent of the other partners, and s.32(12)(c) which gives a limited partner the right to claim an account.

43 The second limb of Ms. Stanley's submissions were the authorities which hold that claims by partners *inter se* can *only* be brought in the context of the taking of partnership accounts. She referred to the statements in *Meyer* v. *Faber (No. 2)* (21) ([1923] 2 Ch. at 439) and *Hurst* v. *Bryk* (16) ([2002] 1 A.C. at 194) respectively that in an action against a co-partner "the only relief which the plaintiff could obtain would be an account" and that "the amount owing to a partner by his fellow partners is recoverable only by the taking of an account in equity after the partnership has been dissolved." Mr. Allison's response was that the cases relied on by Ms. Stanley emphasize the reciprocity of personal obligation and trust and the mutuality of personal liability in an ordinary partnership, and Cooke, J. in *Henderson* (13) ([2012] EWHC 3259 (Comm), at para. 28) emphasized the absence of this in a limited partnership.

44 The third limb of Ms. Stanley's submissions were considerations of "practicality and policy." She maintained that there were sound practical reasons for the application of the partnership account rule/principle to Cayman Islands ELPs. The rule/principle ensures that the creditors of the partnership are paid first before the partners (as they should be) and that all the limited partners will be bound by the outcome. It, she argued, prevents a multiplicity of proceedings with resulting chaos by providing a mechanism for the orderly winding up of the affairs of the ELP.

45 Ms. Stanley submitted that if the partnership accounts rule/principle does not apply "the limited partners would have to bear the additional burden of the costs of the GP dealing with a multiplicity of proceedings, rather than one." There was, she argued, no prejudice to the partners of an ELP by the application of the rule/principle because "claims can all be dealt with in the managed process of the taking of partnership accounts." She relied on the statements in *Public Trustee* v. *Elder* (29) ([1926] Ch. at 784) that all partners needed to be joined "to avoid multiplicity of actions," in *Hugh Stevenson & Sons* v. *Akt. für Cartonnagen-Industrie* (14) ([1918] A.C. at 247) that partners "cannot sue each other excepting for the balance of the account taken in accordance with the principles which the courts of equity apply in working out the results of dissolution," and on "Partnerships, Limited Partnerships and LLPs," 29(1) *Atkins Court Forms*, at para. 15.

46 In his oral submissions, Mr. Allison relied on *Golstein* v. *Bishop* (12) to show that in a partnership dispute it is not always necessary to have a claim for a partnership account at the outset. Mr. Christopher Nugee, Q.C., sitting as a Deputy High Court judge, stated ([2013] EWHC 881 (Ch), at paras. 2 and 24) that factual matters and the merits of the claim in that case, which included a claim for damages for breach of the partnership

agreement,[10] would be determined but that dissolution accounts would be taken at a later stage. In the Court of Appeal, Briggs, L.J., with whom Kay and Sullivan, L.JJ. agreed, recognized that there are remedies other than the taking of a partnership account that might be available for breaches of duty in an ordinary partnership (see [2014] EWCA Civ 10, at para. 11). Ms. Stanley submitted that *Golstein* v. *Bishop* was distinguishable for two reasons. The first was that the point before us did not arise in that case because the parties had agreed to this being dealt with by way of preliminary issue. Secondly, the substance of the partnership rule/principle was satisfied in that case because there were only two partners, and they were both before the court. Notwithstanding the force of those points, the case shows that, even in the case of an ordinary partnership, there is room for flexibility.

47 As to misreading ELPA s.16(1), its material provisions are set out at para. 19 above. It expressly provides that the rights and property of an ELP, including all choses in action are held "***by the general partners jointly, upon trust as an asset of the exempted limited partnership*** in accordance with the terms of the partnership agreement." [Emphasis added.] Ms. Stanley compared its wording with the judge's holding (2022 (1) CILR 12, at para. 55) that the property of an ELP is held "***on*** trust for each of the limited partners." [Emphasis added.]

48 She submitted that the judge's holding was clearly a misreading of s.16(1). The legislature has directed that the assets are those of "the partnership." Thus, giving full recognition to the fact that whilst an ELP has no independent legal personality, it provided for there to be a first call on the assets by the creditors of limited partnerships and that the limited partners stand behind those creditors. She argued that s.16(1) is consistent with the preservation of the operation of the partnership accounts rule/principle which enables the court to identify the assets of the ELP which are "actually available" for distribution to limited partners after the creditors had been paid.

49 Drawing on the analogy of the position under a non-partnership trust, she also relied on the statements in the decisions of the High Court of Australia in *Chief Commr. of Stamp Duties* v. *Buckle* (6) and *Commr. of State Revenue* v. *Rojoda* (7). In *Buckle's* case the High Court stated ([1998] HCA 4, at para. 48) that:

> "The entitlement of the beneficiaries is confined to so much of those assets as is available after the liabilities in question had been discharged or provision has been made for them."

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10 The Chancery Report omits paras. 178–214 of the judgment which deal with the claim for damages for breach of the partnership agreement but those paragraphs are included in the neutral citation version available on the BAILII website.

In *Rojoda*, the High Court stated that ([2020] HCA 7, at para. 33):

> "unlike a beneficiary of a fixed trust, it was well established that a partner's interest was not an interest in, or in relation to, any specific asset other than an entitlement to the partner's share of the net proceeds from the sale of each asset at the completion of winding up. In other words, the only right that the partners have, both before and after dissolution, in relation to each asset is a right to the account and distribution after sale of the proceeds of that asset—'not to an individual proportion of a specific article, but to an account: the property to be made the most of, and divided.'"

50 In *Buckle's* case, the High Court also stated ([1998] HCA 4, at para. 47) that in aid of the right of a trustee to reimbursement or exoneration for liabilities properly incurred by the trustee in the administration of the trust, "the trustee cannot be compelled to surrender the trust property to the beneficiaries until the claim has been satisfied." It stated that (*ibid.*, at para. 48), until such reimbursement or exoneration, "it is impossible to say what the trust fund is."

51 Mr. Allison submitted that because an ELP has no separate legal personality the only sensible construction of the words in ELPA s.16(1) is that the general partner of an ELP holds its assets on trust for all the limited partners. The judge was correct so to hold. Because the general partner owes fiduciary duties to all the limited partners, any breaches of those duties must be enforceable by the limited partners themselves. Where there is a claim against the general partner itself it cannot be only the general partner who can institute proceedings. The absence of separate legal personality means that, legally, it is the ELP's constituent limited partners who suffer loss directly and the general partner's fiduciary obligations "must be capable of enforcement by the other partners (just as the obligations of any other trustee are enforceable at the suit of the beneficiaries)."

Conclusions on the direct claims

52 We first consider the direct claims brought by the plaintiffs against the GP and then consider the direct claims brought against D2 and D3.

(a) *Direct claims by a limited partner against the GP*

53 There is considerable force in the considerations of "practicality and policy" relied on by Ms. Stanley and the need to protect the positions of the creditors of an ELP and of the other limited partners. But we have concluded that the differences between ordinary partnerships and ELPs mean that it is not appropriate to require that a direct claim by a limited partner against the GP must always be initially brought by way of a claim for partnership accounts and that it is not necessary to protect the positions

of the creditors and of the other limited partners by requiring this. We have so concluded for the following reasons.

54 First, we have borne in mind two related factors based on the wording of the ELPA. One is the inconsistency of the proposition that such a claim must be by way of partnership accounts with the right given to a limited partner under ELPA s.32(12)(c) to claim "an account." The legislature addressed the question and used the word "account" but not the term "partnership account." We agree with Mr. Allison's submission that it is difficult to see a principled justification for refusing a limited partner a claim to "an account" but permitting such a partner to claim "a partnership account" although there are no mutual and reciprocal rights and obligations between limited partners or fiduciary duties. The other is that ELPA s.16(1) provides that the general partner holds or is deemed to hold "[a]ny rights or property of every description of the exempted limited partnership, including all choses in action … ***upon trust as an asset of the exempted limited partnership*** in accordance with the terms of the partnership agreement." [Emphasis added.] That in substance (see para. 56 below), provides that the assets of an ELP are held by the general partner on a statutory trust for the limited partners.

55 Secondly, an ELP does not have the mutuality and reciprocity of obligations that are the hallmark of an ordinary partnership. This is because ELPA s.19(2) provides that, absent express provision in the partnership agreement, the limited partners owe no fiduciary duties. The statements in the cases relied on by Ms. Stanley requiring the claim to be brought by way of a partnership account emphasize the reciprocity and mutuality that exists between conventional partners.

56 We turn to Ms. Stanley's submissions based on s.3 of the ELPA that, absent inconsistency with the rules of equity and of common law applicable to partnerships, those rules "shall apply to an exempted limited partnership" and *Re Knight & Tabernacle* (19). We bear in mind the modern purposive approach to statutory interpretation. We consider that, as well as provisions such as ss. 16(1), 19(2) and 32(12)(c), the scheme of the ELPA with the absence of reciprocity and mutuality of rights and obligations is inconsistent with requiring claims by a limited partner to be brought by taking partnership accounts in proceedings to which all the limited partners are party. We accept Mr. Allison's submission that because an ELP has no separate legal personality the only sensible construction of the words in ELPA s.16(1) is that the GP of an ELP holds its assets on trust for all the limited partners. On its own, the judge's use of the phrase "on trust for each of the partners" (2022 (1) CILR 12, at para. 55) may leave some uncertainty as to whether he meant to treat the entitlement of each of the partners as totally individuated, but (*ibid.*, at 61) what he said was

"capable of enforcement by each of the partners to whom [the GP] owes duties individually."

57 Because a trust also has no separate legal personality, thus making the position similar to the statutory trust created by ELPA s.16(1), we also regard the position of a claim by a beneficiary of a trust against the trustee as important. The beneficiary of a subsisting trust including a discretionary trust is entitled to bring a claim against the trustee to recover loss suffered by the trustee's breach of trust, but the remedy is for an order to restore to the trust what ought to have been there: see *Target* v. *Redferns* (38); *Lewin on Trusts*, 20th ed., para. 21–046 (2020) and *Snell's Equity*, 34th ed., paras. 2–003 – 2–004, and 21–046 (2022).

58 In *Target* v. *Redferns* ([1996] A.C. at 436D–E), Lord Browne-Wilkinson stated that the rule developed by equity reflected the fact that while each beneficiary had the right to claim, "no one beneficiary was entitled to the trust property" and there was a "need to compensate all beneficiaries for the breach." He had earlier stated (*ibid.*, at 434C–D) that an order to restore was "the only way in which *all* beneficiaries' rights [could] be protected" [Emphasis added]. The remedy thus ensured that all the beneficiaries' rights were protected and that the beneficiary who issued the proceedings did not steal a march on the others and scoop the pool. There is no inconsistency between such an order and what was stated in *Chief Commrs. of Stamp Duties* v. *Buckle* (6) and *Rojoda* (7) because all that is ordered at that stage is restoration of the fund. Should there be a claim against the ELP, it can then be determined. There is also no inconsistency between such an order and what was said by the High Court of Australia in *Rojoda* about the nature of the partnership trust in an ordinary partnership and the difference between that and that of the beneficiary of a fixed trust because ordering restoration of the fund does not give an individual limited partner an interest in any specific asset.

59 We consider that this approach and remedy is equally applicable in the case of the statutory trust created by s.16(1) ELPA. We have had regard to the two factors based on the wording of the ELPA referred to at paras. 54 and 55 above; the inconsistency of the proposition that such a claim must be by way of a partnership account with the right expressly given to a limited partner under ELPA s.32(12)(c) to claim "an account" and the absence in an ELP of the mutuality and reciprocity of obligations that is the hallmark of an ordinary partnership. Whilst, as Ms. Stanley submitted at paras. 20–25 of her reply skeleton by reference to *Rojoda*, assets held by a partner of an ordinary partnership are also held on trust for the partnership, these factors lead to the conclusion that the partnership accounts rule/principle is inconsistent with the ELPA and the judge was correct in his conclusion. Mr. Allison accepted that it was likely that the plaintiffs could not have as a remedy equitable compensation payable directly to them because that took no account of the other limited partners

and of the ELP's creditors. We have concluded that in proceedings against the GP, a limited partner can recover for loss suffered by the breach of the statutory trust but that the remedy would be the restoration of the ELP's fund thus compensating the direct losses suffered by all the constituent limited partners. We discuss further aspects of ordering the restoration of the fund and its doctrinal underpinning when considering the plaintiffs' direct claims against D2 and D3. The important point is that while the individual partners, like the beneficiaries of a discretionary trust, have a direct claim, if established, the remedy for that claim reflects the fact that no one partner is entitled to all of the fund.

60 This remedy prevents a limited partner claimant from benefitting alone from any recovery either at the expense of the other limited partners or of the ELP's creditors. It thus directly meets the "stealing a march" and "scooping the pool" elements of the practical and policy reasons relied on by Ms. Stanley, the substantive elements of her case for requiring a claim by a limited partner against the GP to be by way of partnership accounts from the outset. As we have stated, *Golstein* v. *Bishop* (12) shows that even in the case of an ordinary partnership there is room for flexibility and that a trial of the merits of the claim may be held before taking a partnership account. It suggests that where there is no prejudice either to the creditors of the partnership or to other third parties it is possible to have a trial of the merits of a claim brought by a partner before a partnership account is taken.

61 We consider that the problem of multiplicity of actions and what Mr. Chapman referred to as an "ungated litigation superhighway" can be dealt with by robust case management. Later claims brought in a single jurisdiction can be stayed or consolidated and ordered to be heard together. Where claims are brought in more than one jurisdiction, stays or anti-suit injunctions can also be used to avoid the problems identified by Ms. Stanley and Mr. Chapman.

62 Mr. Allison's description (see skeleton, at para. 89) of the insistence on the joinder of all the limited partners from the outset as "unedifyingly formalistic" may put it too highly. We, however, consider that insistence that a claim for partnership accounts always be made at the outset reflects an entirely technical procedural approach. In her responses to questions by the court, Ms. Stanley at one stage suggested that the plaintiffs in effect should start again and now seek the taking of partnership accounts and that this either be by the court now directing further pleadings or an inquiry to identify what is being alleged by the limited partners. She argued that the taking of partnership accounts occurs "in a much more court managed process than a fraud trial where anything goes …"

63 Our rejection of the submission that the direct claims are defective in not at the outset joining all partners and seeking partnership accounts does not mean that the court cannot direct that there be such a procedure at a

later stage as part of its case management powers if that proves necessary. If, after the merits of the plaintiffs' claims against the GP have been determined, it appears that an order to restore the fund should be made but that, given the GP's wrongdoing, steps such as placing the assets in escrow, appointing a receiver, or taking partnership accounts are necessary, the court can make appropriate directions. Alternatively, if the plaintiffs so apply, we would allow them now to add a prayer for the taking of partnership accounts to their pleading, but that such accounting should take place only after the resolution of the issues in their current claims and only if, at that time, it appears necessary.

64 In summary, for the reasons we have given, we dismiss the GP's appeal against the judge's refusal to strike out the plaintiffs' direct claims against the GP. The consequence is that the plaintiffs may bring their direct claim against the GP. We wish to make it clear that, in the event of success, the likely remedy would be an order to restore the trust fund rather than equitable compensation payable directly to the relevant limited partner.

(b) ***Direct claims by a limited partner against third parties such as D2 and D3***

65 We have stated that there was no application by D2 and D3 to strike out the direct claims against them on the merits but they submit that the plaintiffs do not have standing to bring the direct claims against them and ought to have brought the claims against the GP seeking the taking of partnership accounts.

66 The question is whether, if D2 and D3 are held liable to the plaintiffs for breach of their statutory, equitable and other obligations, it is open to the court to order that those defendants restore the fund rather than pay the plaintiffs. If the court is not able to order this, there will be a risk of prejudice to the creditors of the ELP and/or to the other limited partners in the ways we have discussed in the context of claims against the GP but concluded it did not exist in that context. Indeed, since different limited partners may bring claims against different third parties, there may be a multiplicity of both plaintiffs and defendants and the risk of chaos referred to by Ms. Stanley and Mr. Chapman might well be greater. That risk would be avoided by a derivative action where the requirements of s.33(3), discussed at paras. 94–98 below, are satisfied.

67 Ms. Stanley submitted that it is not possible to order D2 and D3 to restore the fund and that the only way that TPF would be entitled to anything is if the plaintiffs' claims are made on its behalf and are thus derivative claims. During an exchange primarily about the claims against the GP, it was put to Mr. Allison that against the other defendants he might not be able to get an order restoring the trust. His response was "arguably

not" but it is not altogether clear whether the exchanges related to the direct or the derivative claims against D2 and D3.

68 Since D2 and D3 did not apply to strike out the direct claims against them, strictly the question of whether it is possible for the court to order D2 and D3 to restore the fund is one which falls for determination after the merits of the claims against them have been determined. Although we did not hear full argument on this question, in the light of the points that were made, we consider it appropriate to give our preliminary view on the question. We consider that the plaintiffs have a good arguable case that, where third parties are liable for breaches such as those claimed against D2 and D3, the court may order those defendants to restore the fund rather than pay the plaintiffs and thus avoid the risk of prejudice to other limited partners or creditors.

69 As in the case of a claim against the general partner, the starting point is the position of a claim by a beneficiary of a trust. It is clear that the interest of the beneficiary of a discretionary trust is enforceable against a third party who received trust property which the trustee did not have authority to transfer and the third party knew enough to make it unconscionable to retain the asset for his own benefit: see *Lewin on Trusts*, 20th ed., para. 21–046, at 901 (2020), and *Snell's Equity*, 34th ed., paras. 2–003 – 2–004, at 22–23, and para. 21–046, at 650 (2022).

70 *Snell* also states (*op. cit.*, para. 21–045, at 650) that "the beneficiary's only right would be to have the asset or its proceeds reinstated to the trustee" (to the same effect, see para. 22–005, at 655–656, and para. 30–015, at 845–846). The reason given is that the beneficiary "could not compel the third party to transfer the asset directly to himself since this would give him a greater equitable right against the third party than he had against the trustee …" In para. 2–004, at 22–23 of *Snell*, it is stated that "the third party's duty is to restore the trust asset to the properly appointed trustee" and that this would happen "if the original trust involved continuing duties to manage a fund and if the beneficiary did not have the entire beneficial interest in the trust asset." Nolan, "Equitable Property" (2006) 122 LQR 232, at 242–243 states that the cases on the rights of a beneficiary against the recipients of misapplied trust assets all acknowledge that a recipient is bound to restore the assets and their proceeds to the relevant trustees, or else transfer them at the direction of a beneficiary or beneficiaries who, being absolutely entitled to the assets in equity, may terminate the trust and direct such a transfer. He states (*op. cit.*, at 255) that the cases provide a doctrinal basis for actions to restore the integrity of a pool of assets held in trust, should it be depleted without authority.

71 That doctrinal basis explains why, given the analogy between a non-partnership trust, an ELP with no separate legal personality, and the

statutory trust imposed by s.16(1) of the ELPA, it is possible to order third parties such as D2 and D3 to restore the fund where the claim against them succeeds. The analogy rests on the fact that, in cases of knowingly assisting a trustee in a fraudulent and dishonest disposition of the trust property, although the third party is not in fact a trustee, he is made liable in equity "as if he were" a trustee: *Selangor United Rubber Estates Ltd.* v. *Craddock* (33) ([1968] 1 W.L.R. at 1580 and 1582), citing Lord Esher, M.R. in *Soar* v. *Ashwell* (36) ([1893] 2 Q.B. at 394–395), and Lord Selborne, L.C. in *Barnes* v. *Addy* (4) (9 Ch. App. at 251). This reflects the fact that it is the fund which has suffered the loss and, in the words of Lord Browne-Wilkinson in *Target* v. *Redferns* (38), an order to restore is "the only way in which *all* beneficiaries' rights" could be protected ([1996] A.C. at 434).

72 For these reasons, had D2 and D3 applied to strike out the plaintiffs' direct claims against them, our preliminary view is that the objections raised to the plaintiffs' standing to bring the claims are unfounded. The consequence is that the plaintiffs may bring these claims against D2 and D3. It will be for the court hearing the claims to decide whether they are in fact made out on the merits and, if they are, whether, in the circumstances of this case, an order to restore the fund should be made and, given that the GP would be implicated in the wrongdoing, steps such as placing the assets in escrow, the appointment of a receiver, or the taking of partnership accounts are necessary.

The derivative claims

73 We turn to consider the derivative claims brought against D1 and D2–4. This is the first occasion on which one or more limited partners of a Cayman Islands ELP have sought to bring a derivative claim pursuant to s.33(3) ELPA and accordingly we shall proceed to review the approach adopted by the judge and consider if we can provide any guidance for the future.

74 We begin with a brief discussion of derivative claims generally before turning to consider the interpretation of s.33(3). We shall then consider a number of specific matters of principle raised by the parties before turning to apply our conclusions on the law to the facts of this case.

(a) *Derivative claims in general*

75 The general rule is that the only person who can bring an action against another who has caused injury or damage is the person who has suffered that injury or damage. As the Court of Appeal put it in the leading case of *Prudential Assur. Co. Ltd.* v. *Newman Indus. Ltd.* (28) ([1982] 1 Ch. at 210):

> "A derivative action is an exception to the elementary principle that A cannot, as a general rule, bring an action against B to recover

damages or secure other relief on behalf of C for an injury done by B to C. C is the proper plaintiff because C is the party injured, and, therefore, the person in whom the cause of action is vested. This is sometimes referred to as the rule in *Foss v Harbottle* (1843) 2 Hare 461 when applied to corporations, but it has a wider scope and is fundamental to any rational system of jurisprudence."

76 The court went on to outline an exception to the rule in *Foss* v. *Harbottle* (11) in the following terms (*ibid.*, at 211):

"There is an exception to the rule where what has been done amounts to fraud and the wrongdoers are themselves in control of the company. In this case the rule is relaxed in favour of the aggrieved minority, who are allowed to bring a minority shareholders' action on behalf of themselves and all others. The reason for this is that, if they were denied that right, their grievance could never reach the court because the wrongdoers themselves, being in control, would not allow the company to sue."

77 A further helpful general description of a derivative claim in the context of companies is to be found in the judgment of Lewison, J. in *Iesini* v. *Westrip Hldgs. Ltd.* (17) ([2009] EWHC 2526 (Ch), at para. 73):

"I should begin by saying a little about derivative claims generally. In the first place the new code has replaced the common law derivative action. A derivative claim may 'only' be brought under the [Companies Act 2006]. As section 260 (1) makes clear a derivative claim is one in which the cause of action is vested in the company, but where the claim is brought by a member of the company. This reflects the old law in which a derivative action was an exception to the general principle (known as the rule in *Foss v Harbottle* … that where an injury is done to a company only the company may bring proceedings to redress the wrong. Allied to this principle was the principle that whether a company should bring proceedings to redress a wrong was a matter that was to be decided by the company internally; that is to say by its board of directors, or by a majority of its shareholders if dissatisfied by the board's decision. The court would not second guess a decision made by the company in accordance with its own constitution. The exception to these principles was necessitated where the company's own constitution could not be properly operated. If the wrongdoers were in control of the company (because they were a majority of the shareholders) they would not in practice vote in favour of taking proceedings against themselves, even though the taking of proceedings would be in the company's best interests …"

78 Derivative claims are not restricted to companies. They can also be brought, for example, in connection with trusts and limited partnerships.

79 In relation to trusts, it is well-established that, although in general terms the only person who may bring an action against a third party on behalf of a trust is the trustee, a beneficiary can, in special circumstances, bring a derivative action so as to stand in the place of the trustee. In ***Roberts*** v. ***Gill & Co. Solicitors*** (30), Lord Collins of Mapesbury summarized the position as follows ([2011] 1 A.C. 240, at para. 46):

> "The cases go back to the 18th century, and many of them were reviewed in ***Hayim v Citibank NA*** [1987] AC 730. The special circumstances which were identified in the earliest authorities as justifying a beneficiary's action were fraud on the part of the trustee, or collusion between the trustee and the third party, or the insolvency of the trustee, but it has always been clear that these are merely examples of special circumstances, and that the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy …"

80 To like effect is the observation of Lord Walker of Gestingthorpe (***ibid.***, at para. 110) (omitting references):

> "There is ample authority, comprehensively reviewed in the judgment of Lord Collins JSC, as to the need for special circumstances before the court will countenance a derivative action. Such actions are now relatively common in cases concerned with mismanaged companies, and in many jurisdictions actions by or on behalf of minority shareholders are now regulated by a statutory code … Derivative actions by beneficiaries under inter vivos trusts or wills are less common … But in all these cases the unifying factor—what has to be special about the circumstances—is that the derivative action is needed to avoid injustice …"

81 A helpful summary of the position in relation to trusts under the law of England and Wales is to be found in ***Lewin on Trusts***, 20th ed., at paras. 47–006 and 47–008, at 1024–1026:

> "47–006. However, as an alternative to proceedings brought in the name of trustees, a beneficiary may, sometimes, bring an action in his name on behalf of the trust against a third party. The fact that the action is brought in the name of the beneficiary rather than the name of the trustee does not alter its character. The action is a derivative action in which the beneficiary stands in the place of the trustees and sues in right of the trust, and does not enforce duties owed to him rather than the trustees; a beneficiary can be in no better position than trustees carrying out their duties in a proper manner …

> 47–008. A beneficiary can bring a derivative action only in special circumstances, *for example circumstances which tend to disable the trustees from suing (as where their acts and conduct with reference to the trust fund are impeached), or circumstances rendering it difficult or inconvenient for the trustees to sue, as where there is a conflict between their interest and duty.* Special circumstances are not confined to circumstances of these kinds. The guiding principle is that there must be exceptional circumstances, which embrace a failure, excusable or inexcusable, by the trustees in the performance of a duty to the beneficiaries to protect the trust estate, or to protect the interests of the beneficiaries in the trust estate. The special circumstances relied on must have something to do with the willingness or ability of the trustee or alleged trustees to bring the action." [Emphasis added]

As can be seen from the emphasized passage, circumstances where the trustees are inhibited from suing because their own conduct in relation to the trust is impeached or they are under a conflict of interest are leading examples of "special circumstances."

82 Turning to English limited partnerships, the question of whether and, if so, in what circumstances a limited partner can bring a derivative claim on behalf of the limited partnership arose in *Henderson* (13) referred to above in para. 31. As we have already stated, although by no means identical, there are similarities between an English limited partnership and an ELP. In particular, neither is a separate legal entity and, as in an ELP, the limited partners in an English limited partnership may not take part in the management of the partnership business which is to be left in the exclusive hands of the general partner. Thus, in the ordinary way, a limited partner cannot sue a third party in the name of the limited partnership; such action can only be taken by the general partner.

83 In *Henderson*, a majority of limited partners instituted derivative proceedings on behalf of the partnership against the general partner and the manager of the partnership (who had been appointed as manager by the general partner on behalf of the partnership). The manager was a sister company of the general partner. The claims sought compensation in respect of various alleged breaches of duty by both the general partner and the manager. It was directed that a preliminary issue should be tried as to whether the claimants could bring derivative claims on behalf of the partnership against the general partner and the manager, and it was this issue which came before Cooke, J.

84 For reasons discussed below, Cooke, J. held that the limited partners could not bring a derivative claim against the general partner. However, having referred to *Roberts* v. *Gill* (30) and to the equivalent passage in the 18th edition of *Lewin* (2007) to that referred to at para. 81 above, he held that special circumstances existed which enabled the derivative claim to be

brought against the manager. The special circumstances were that the general partner had an irremediable conflict of interest because it was a sister company of the manager and was therefore not in a position to be seen fairly to determine whether to sue the manager. Cooke, J. therefore allowed the derivative claim against the manager to proceed, but went on to hold that, under the relevant provision of the English statute, the limited partners would lose their limited liability as a consequence.

85 In summary, Cooke, J. applied the "special circumstances" test concerning trusts (as summarized in *Lewin*) to limited partnerships.

86 Although the ability to bring a derivative action in respect of a company is now governed by statute in England and by the Grand Court Rules in this jurisdiction, the principles governing such claims were developed as a matter of common law. Similarly, the requirement of special circumstances in connection with trusts and limited partnerships has been developed entirely by the courts.

87 The position is different in relation to ELPs because of the terms of s.33(3) of the Act and accordingly we turn next to consider the correct interpretation of that provision.

Interpretation of s.33(3) of the ELPA

88 Unlike in the case of trusts or English limited partnerships, the legislature has prescribed in s.33 ELPA when a derivative action may be brought in respect of an ELP. For convenience we repeat the relevant provisions of s.33 at this stage:

> "(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings.
>
> (2) …
>
> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

As can be seen, the key requirement is that the general partner must have "without cause, failed or refused to institute proceedings."

89 Before the Grand Court, the defendants argued that, when considering s.33(3), the court had to apply principles derived from cases dealing with derivative claims in other contexts. The judge rejected this submission. His conclusion is expressed in his judgment (2022 (1) CILR 12, at paras. 98–101):

> "98 The terms of s.33(3) ELPA which allows a limited partner in an ELP to bring proceedings on behalf of the ELP if the general partner has *without cause failed or refused* to do so has no language requiring permission or special circumstances. In my view the principles taken from the common law or equity for bringing derivative claims whether as regards companies, trusts, limited partnerships or associations are not applicable.
>
> 99 In my judgment s.33(3) is *sui generis* and is not subject to the rules relating to permission or for special circumstances for derivative actions in other contexts. I accept Mr. Allison, Q.C.'s submission that to this extent it can be said to 'occupy the field' in the Cayman Islands with respect to ELPs and there is no room for a case-by-case judge led formulation of a common law or equitable test.
>
> 100 I have, in coming to this view, had regard to the principles Ms. Stanley, Q.C. and Mr. Chapman, Q.C. referred me to relating to cases which dealt with failures or refusals to bring claims in other contexts, for example where the board of the company or the trustee had the relevant inhibition which prevented a decision to bring claims. Whilst these principles provide helpful guidance, the company and trusts law cases to which I was referred do not directly apply to the position in this case which involves the application of a specific statutory test for Cayman Islands ELPs.
>
> 101 I note, however, that the common thread running through those cases is that where the authorized decision maker is inhibited, the court may permit, in the interests of justice, derivative claims." [Emphasis in original.]

90 On appeal, the defendants have argued that the judge fell into error in stating (*ibid.*, at paras. 98 and 99) that the principles applicable in other contexts, such as trusts and companies, are not applicable in relation to the statutory test. At para. 68 of her skeleton argument, Ms. Stanley submitted that "without cause" should be interpreted by reference to the well-established tests applied in all other derivative actions. Similarly, at para. 8 of his skeleton argument, Mr. Chapman submitted that the statutory gateway prescribed by s.33 did not oust the ordinary rules of common law and equity. On the contrary, it provided a *further* statutory hurdle or threshold that had to be met, together with those imposed by the common law and equity, before a derivative claim would be permitted. He submitted that this was a fundamental error in the judge's approach.

91 Conversely, in his skeleton argument, Mr. Allison submitted at paras. 124 and 125 that the judge was correct to hold that s.33(3) "occupies the field" and that there was no scope or reason to import any "special circumstances" test or other common law or equitable principles that apply

to derivative claims in respect of other entities or structures. There was no reason to imply any requirements for derivative claims beyond those explicitly mentioned in s.33(3).

92 It seems to us that, during the course of the hearing, both sides rather modified their submissions and were eventually not very far apart in relation to the proper construction of s.33(3). Thus Mr. Chapman (who by agreement with Ms. Stanley presented the main argument on the derivative claims on behalf of all the defendants) conceded that, to the extent that his written submissions had suggested that one imported wholesale the common law and equitable principles on derivative claims, this might go too far. He accepted that one had to apply the statutory test set out in s.33(3), but submitted that this test was consistent with the established principles and that one derived assistance from those principles when construing and applying the statutory test.

93 Similarly, Mr. Allison accepted that, when applying the statutory test and determining whether the failure by the general partner to institute proceedings was "without cause," one could have regard to the principles established in other contexts, such as whether special circumstances existed.

94 In our judgment, in circumstances where the legislature has established a statutory criterion for bringing a derivative action in respect of an ELP, the courts are duty bound to apply that statutory test. The test cannot be replaced by common law and equitable principles developed in other contexts even if, in the absence of a statutory test, the courts would no doubt have applied those principles to an ELP. Nor can those principles form an additional threshold beyond the statutory test, as submitted by Mr. Chapman in his skeleton argument referred to at para. 90 above.

95 The statutory test is in general and imprecise terms and leaves open how the test should be applied in practice. However, we think that the expression "without cause" must carry the implication of "good" cause. The legislature cannot have intended that a decision for ***any*** cause, no matter how inhibited or conflicted the decision-maker, would be sufficient to prevent a derivative action. This is so notwithstanding the fact that, as originally enacted, the legislation referred to "good cause" whereas, in its current form, the word "good" is omitted. No guidance as to the reason for this change is to be found in the legislative materials produced in relation to the revision of the statute and we cannot attribute any significance to the change.

96 In these circumstances, we are of the view that the court is entitled to have regard to and may derive assistance from the developed principles in other contexts. In particular, given the existence of the statutory trust imposed by s.16(1) of the ELPA (namely that the general partner holds the property of the ELP "upon trust as an asset of the exempted limited

partnership in accordance with the terms of the partnership agreement"), the court is likely to derive assistance from considering whether special circumstances (as established in the contexts of trusts and English limited partnerships) exist.

97 If special circumstances exist, this is likely to assist the court in deciding whether a general partner's decision not to institute proceedings is "without cause." Indeed, in opening his oral submissions on appeal, Mr. Allison (rightly in our view) accepted that, if a general partner were under a relevant inhibition or conflict of interest—concepts which emerge strongly from consideration of special circumstances as stated in the emphasized passage from para. 47–008 of *Lewin* quoted at para. 81 above—his decision would necessarily and unavoidably be "without cause."

98 We emphasize, however, that the court's duty is to apply the statutory test of "without cause"; it is not sufficient simply to consider whether there are special circumstances and, if so, then to allow a claim under s.33(3). Consideration of whether there are special circumstances, if it assists at all, is simply a step on the road to determining the statutory test. If the court decides that the facts would satisfy the special circumstances test, it must nevertheless go on and consider whether they therefore satisfy the "without cause" test in s.33(3). Conversely, we do not rule out the possibility of a case in which the facts enable the court to find that the general partner's decision is "without cause" without consideration of whether there are special circumstances. The two tests are not to be equated, although we envisage that consideration of whether there are special circumstances is likely in most cases to be of considerable assistance in determining whether the decision is "without cause." Indeed, it was common ground before us that a decision by a decision-maker which is made under a relevant inhibition will be a decision "without cause."

99 Although there is some ambiguity and possible inconsistency between paras. 98 and 99 of the judge's judgment on the one hand and para. 100 on the other, we do not see the judge's decision on this aspect as being essentially any different from our own. Paragraphs 98 and 99, when read in context, simply state that the court's duty is to apply the statutory test, not the common law and equitable principles, but para. 100 goes on to explain that, although they are not directly applicable, these principles provide helpful guidance. The fact that such helpful guidance may be obtained is emphasized by the fact that, when he goes on to consider the application of the statutory test to the facts of this case, the judge concentrates exclusively on the fact that, in his view, the GP was subject to an inhibition because of its conflict of interest. Inhibition is not a word which appears in s.33 but, as the judge correctly states at para. 101 of his judgment, it is a concept which is a common thread in the cases which

allows the court to permit derivative claims in other contexts in the interests of justice.

100 Having expressed our view as to the correct interpretation of s.33(3), we turn next to consider a number of supplementary points which were argued before us in relation to the statutory test.

Procedure for determining the statutory test

101 Unlike in the case of companies, there is no requirement under s.33 for a limited partner to seek leave from the court to bring derivative proceedings under s.33(3). It follows that a limited partner is free to commence derivative proceedings without leave.

102 In this respect, the position is the same as derivative claims in respect of companies prior to the introduction by statute and/or rules of court of a requirement for leave and is the same as it remains in respect of trusts and English limited partnerships. But, despite the historical lack of a requirement for leave in respect of companies, it was established as long ago as 1982 in *Prudential* (28) that the question of whether a plaintiff should be permitted to bring a derivative action on behalf of a company should be determined at an early stage rather than left until trial. In *Prudential,* the defendant applied by summons to have heard as a preliminary issue whether the plaintiff was entitled to maintain the derivative action. The judge dismissed the summons on the ground that it was more convenient to decide the issue after the action had been heard. The Court of Appeal was very critical of this decision saying ([1982] Ch. at 221):

> "First, as we have already said, we have no doubt whatever that Vinelott J. erred in dismissing the summons of May 10, 1979. He ought to have determined as a preliminary issue whether the plaintiffs were entitled to sue on behalf of Newman by bringing a derivative action. It cannot have been right to have subjected the company to a 30-day action (as it was then estimated to be) in order to enable him to decide whether the plaintiffs were entitled in law to subject the company to a 30-day action. Such an approach defeats the whole purpose of the rule in *Foss v. Harbottle* and sanctions the very mischief that the rule is designed to prevent."

103 Following *Prudential*, it has been the practice that a plaintiff's standing to bring a derivative action is determined at an early stage in the proceedings rather than the issue being left to trial, with all the disadvantages which that course would bring as described in *Prudential.* Where there is a leave requirement (*e.g.* for companies) the issue is dealt with on the application for leave. Where there is no requirement to obtain leave, the matter is traditionally dealt with on an application by the defendant to strike out the proceedings on the ground of a lack of standing

on the part of the plaintiff or by the court ordering, at the request of the defendant, the trial of a preliminary issue as to whether the plaintiff has the necessary standing to bring a derivative action.

104 The practice was conveniently summarized by Chadwick, P. in this court in the case of *Autumn Hldgs. Asset Inc.* v. *Renova Resources Private Equity Ltd.* (2) (2017 (2) CILR 136, at para. 26), where he quoted with approval from the judgment of Ribeiro, P.J. in the Hong Kong Final Court of Appeal in the case of *Waddington Ltd.* v. *Chan Chun Hoo Thomas* (41) where that learned judge said ([2009] 2 BCLC 82, at paras. 13–14):

> "[13] … Procedurally, there is no requirement at common law for a person seeking to sue derivatively first to obtain the leave of the court …
>
> [14] The time honoured practice at common law is for the plaintiff to issue proceedings 'on behalf of himself and the other shareholders other than the defendants', naming the company on whose behalf the proceedings are brought as one of the defendants. A challenge to the plaintiff's locus generally takes the form of an application by the relevant defendants to strike out the claim or to have the court determine as a preliminary issue that the plaintiff has no locus to sue on the company's behalf."

105 In our judgment, this is also the appropriate procedure to be followed in relation to proceedings brought under s.33(3). The subsection is clear that a limited partner may only *bring* a derivative claim if the general partner has refused or failed to do so without cause. It is therefore necessary for the court to decide at an early stage of the proceedings whether the limited partner can indeed bring himself within s.33(3) and therefore "bring" the claim. For the reasons set out so graphically in *Prudential* (28), this is not a matter which should normally be left until trial. We agree therefore that a defendant wishing to challenge the right of a limited partner to have instituted proceedings on behalf of an ELP pursuant to s.33(3) should do so either by applying to strike out the proceedings on the ground of a lack of standing (as was done in this case) or by applying for the court to direct the trial of a preliminary issue as to the limited partner's ability to bring himself within subs. (3).

106 The question then arises as to the approach which the court should adopt on such an application. In the first place, it is clear that the outcome cannot depend on which of the two courses a defendant chooses to follow. The court's approach must therefore be the same whether there is a strike out application or the trial of a preliminary issue.

107 The judge held that, as this was a strike out application, the normal approach on such an application should be adopted, with the result that the defendants had to show that it was certain that, at trial, the plaintiffs would

fail to bring themselves within the terms of s.33(3); see *Hughes* v. *Colin Richards & Co.* (15), cited with approval in *In re SPhinX Group* (37) (2010 (1) CILR 234, at para. 37). The burden lay upon the defendants to show this and there was no burden on the plaintiffs to show that they came within s.33(3). If there was an arguable case that at trial the plaintiffs would be able to satisfy the requirements of that subsection, that was sufficient to enable the case to proceed.[11] It would only be at trial that it would be finally resolved whether the plaintiffs had brought themselves within s.33(3).[12] Although at times the judge used slightly inconsistent language about his approach,[13] we are satisfied that he essentially applied the test we have just described and which he spelt out at 2022 (1) CILR 12, para. 33. Mr. Allison submitted that the judge had followed the right approach.

108 Mr. Chapman, on the other hand, submitted that this was the wrong approach. In his submission, the onus lay upon the plaintiffs to satisfy the court that they came within s.33(3), *i.e.* that the GP had refused or failed to institute proceedings without cause.

109 In other contexts, the onus lies upon a plaintiff to satisfy the court that he should be permitted to bring a derivative action. Thus in *Prudential* (28), after the passage cited above, the Court of Appeal went on to say ([1982] 1 Ch. at 221–222):

> "… [W]e do not think that the right to bring a derivative action should be decided as a preliminary issue upon the hypothesis that all the allegations in the statement of claim of 'fraud' and 'control' are facts, as they would be on the trial of a preliminary point of law. In our view, whatever may be the properly defined boundaries of the exception to the rule, the plaintiff ought at least to be required before proceeding with his action to establish a prima facie case (i) that the company is entitled to the relief claimed, and (ii) that the action falls within the proper boundaries of the exception to the rule in *Foss v. Harbottle.*"

This approach has been followed in this jurisdiction in relation to companies; see *Top Jet Enterprises Ltd.* v. *Sino Jet Holding Ltd.* (40) (2018 (1) CILR 18, at para. 29, *per* Segal, J.).

110 It is not entirely clear what standard the Court of Appeal in *Prudential* was intending to set by referring to a plaintiff "at least" being required to establish a "prima facie" case that he falls within the exception to the rule in *Foss* v. *Harbottle* (11). Some assistance can be derived from

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11 2022 (1) CILR 12, paras. 33, 119, 123.
12 2022 (1) CILR 12, paras. 33(ii), 138.
13 Thus at 2022 (1) CILR 12, para. 102 the judge refers to "good arguable case" and paras. 106 and 136 might be said to suggest that he was in fact making a clear finding that D1 had failed without cause to bring proceedings rather than that it was simply arguable.

the subsequent judgment of Knox, J. in *Smith* v. *Croft (No. 2)* (35) ([1988] Ch. at 138–139), approved in *Top Jet* (2018 (1) CILR 18, at para. 30) as follows:

> "My conclusion is that it is the question stated by the Court of Appeal that has to be decided as a preliminary matter, that it is a special form of procedure concerned with giving sensible operation to the rule in *Foss v Harbottle* … and which is concerned with avoiding the Scylla and Charybdis, on the hand of having a preliminary issue which effectively requires one to try the whole action where the rules serves no useful purpose, and on the other side of the strait, of assuming that everything the plaintiffs allege is necessarily correct as a matter of fact, which is of course the technique the court adopts when it has was called a strict demurrer. The Court of Appeal has laid down a halfway house for this very special type of case, one in which the legal issues in this particular case are sufficiently well defined for the parties to be able to argue them."

In other words, the approach should be a halfway house between a strike out application and a full trial.

111 When pressed during the hearing as to what he thought the Court of Appeal meant by a *prima facie* case, Mr. Allison suggested that it meant a good arguable case and that was in fact an expression the judge used at para. 102 of his judgment, despite his references (see para. 107 above) to mere arguability being the test. This court recently had occasion to consider what was meant by the expression "good arguable case" in *Scully Royalty Ltd.* v. *Raiffeisen Bank Intl. Ltd.* (32) (2022 (1) CILR 118, at paras. 47–52). In particular, the court approved the observation of Mustill, J. in *Ninemia Maritime Corp.* v. *Trave Schiffahrts G.m.b.H. und Co., The Niedersachsen* (24) ([1983] 2 Lloyd's Rep. at 605) where he said:

> "I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes to have a better than 50 per cent chance of success."

112 During the hearing, the court invited counsel to ascertain whether recent English decisions in relation to derivative actions offered any assistance as to the standard to be applied when considering whether the grounds for permitting a derivative action had been made out. However, counsel's researches were unable to come up with anything of significant assistance.

113 Mr. Chapman referred us to the decision of the English Court of Appeal in *Barrett* v. *Duckett* (5), which was decided before the requirement for leave in relation to companies was introduced by statute. This was a case where B & D each held a 50% shareholding in a company. B instituted

a derivative action against D and others on behalf of the company alleging wrongdoing by D and others, D being the sole director of the company. The defendants applied to strike out the claim on the basis that it was not a proper case for a derivative action. In the course of his judgment, Peter Gibson, L.J. sought ([1995] 1 BCLC at 249) to summarize the principles in relation to derivative actions concerning companies in the following terms (omitting passages not relevant for our purposes):

> "The general principles governing actions in respect of wrongs done to a company or irregularities in the conduct of its affairs are not in dispute:
>
> 1. The proper plaintiff is prima facie the company.
>
> 2. …
>
> 3. There are however recognised exceptions, one of which is where the wrongdoer has control which is or would be exercised to prevent a proper action being brought against the wrongdoer: in such a case the shareholder may bring a derivative action (his rights being derived from the company) on behalf of the company.
>
> 4. When a challenge is made to the right claimed by a shareholder to bring a derivative action on behalf of the company, it is the duty of the court to decide as a preliminary issue the question whether or not the plaintiff should be allowed to sue in that capacity.
>
> 5. In taking that decision it is not enough for the court to say that there is no plain and obvious case for striking out; it is for the shareholder to establish to the satisfaction of the court that he should be allowed to sue on behalf of the company.
>
> 6. …"

114 Mr. Chapman relied in particular on the second part of 5 above, namely that it is for the shareholder to establish to the satisfaction of the court that he should be allowed to sue on behalf of the company. He submitted not simply that this places the onus on the shareholder, which we accept, but that it means that the shareholder must establish his ability to sue on the balance of probabilities. He says that *Barrett* changed the test set out in *Prudential* (28), with its reference to a *prima facie* case.

115 We are unable to place such weight on the decision in *Barrett*. Peter Gibson, L.J. was simply recording general principles, which were not in dispute. We do not think that it assists on how a shareholder satisfies the court that he should be allowed to sue on behalf the company. What is made clear, however, in the first part of 5 above is that the court should not apply the normal strike out test. It is therefore inconsistent with the approach which the judge adopted in the present case.

116 It is perhaps of note that the relevant provisions of the English Companies Act set out a number of factors which the court should consider when deciding whether it should allow a derivative action, but the matter is ultimately left to the court as a matter of evaluation. In our judgment, that approach is consistent with the observation of Lord Collins ("the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy") and Lord Walker ("the unifying factor—what has to be special about the circumstances—is that the derivative action is needed to avoid injustice") in *Roberts* v. *Gill* (30) quoted above in relation to special circumstances.

117 It is clear that, whether the matter is being considered on a strike out application or on the trial of a preliminary issue, the court should not hold a mini trial in order to decide whether the criterion in s.33(3) is met. However, it should, as in the present case, permit the parties to adduce affidavit evidence on the topic. Ultimately, the court must then reach a view on the material provided to it.

118 Whilst reference to a "good arguable case" may in some cases be a helpful criterion, in our judgment the task is ultimately an evaluative one. The court must decide, on the basis of the material before it, whether the likelihood of the general partner having failed or refused to institute proceedings without cause is sufficient to lead the court to conclude that a derivative action should be permitted in the interests of justice. In reaching this evaluative conclusion, the court will no doubt have regard, *inter alia*, to the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.

119 For these reasons, we respectfully disagree with the judge that, because this was a strike out application, the burden was on the defendants and he only had to consider whether it was merely arguable that the plaintiffs met the statutory criterion in s.33(3). That was to set the bar too low. It follows that, as Mr. Chapman submitted, he erred in this respect.

120 However, we have before us the same affidavit evidence that was before the judge and accordingly we propose to reach our own decision, applying the approach we have just described.

Timing

121 As occurred in this case, and as will invariably be the position, given that there is no requirement for leave before commencing an action in reliance on s.33(3), the hearing of a strike-out application or a preliminary issue as to whether the claim falls within s.33(3) will take place at some point after the action is begun. The question then arises as to whether the

court should assess compliance with s.33(3) by reference to the facts at the time of commencement of the action or as at the date of the hearing of the strike out or preliminary issue.

122 The judge held (2022 (1) CILR 12, at paras. 127–128) that the question of whether the general partner had failed or refused to bring a claim without cause was to be judged on the relevant facts as they were at the time the proceedings were commenced.

123 The plaintiffs support the judge's decision. They point out that the words "failed or refused" in s.33(3) are in the past tense, which suggests that the relevant failure or refusal must have taken place before the date of institution of the derivative claim.

124 We do not agree with the judge's decision on this point, essentially for the reasons advanced by Mr. Chapman. The plaintiffs' approach would require the court to ignore anything that has happened between the institution of the proceedings and the hearing of the relevant strike out application/preliminary issue. This could lead to highly unsatisfactory results. Thus, suppose that, after the institution of the proceedings, a new general partner was appointed with completely separate ownership, so there was no longer any question of an inhibition or conflict of interest. Suppose further that the new general partner has reviewed the alleged claim and decided in good faith on commercial grounds to maintain the decision of the former general partner not to institute proceedings against the alleged wrongdoer.

125 In our judgment, the legislature cannot have intended that the court should allow a derivative claim to proceed in circumstances where, as at the date of the hearing of the strike out or preliminary issue, the requirements of s.33(3) are not met because, for example, any inhibition of the general partner has disappeared. In our judgment, the natural meaning of s.33(3) is that the court should consider the issue of whether the requirements of the subsection are met by reference to the facts as they are at the time of the hearing of the strike out or preliminary issue. Mr. Allison submitted that the court could surmount any difficulty which his construction of s.33(3) might cause by taking any change of circumstances into account when considering whether to exercise its discretion to allow the derivative claim to proceed. However, we do not see that as a satisfactory solution, nor is it in our view consistent with the natural meaning of s.33(3).

126 Whilst by no means determinative—because the legislation is not the same—we note that in England and Wales, in the context of derivative actions for companies, the court does take into account events which have occurred between the institution of the proceedings and the hearing before the court as to whether the derivative action should be allowed to proceed: see, for example, the decision of Newey, J. in *Kleanthous* v. *Paphitis* (18), where the judge placed great weight on the fact that, since the institution

of the proceedings, the company had appointed a special committee of independent directors which had decided that the company should not bring or continue the claim which the plaintiff was seeking to bring derivatively.

127 In our judgment therefore, a judge hearing a strike out application or preliminary issue in relation to an ELP should consider whether the test in s.33(3) is met by reference to the facts as they appear at the time of the relevant hearing.

Pleading

128 In relation to the derivative claim against D1, para. 25 of the ASOC pleads:

> "In the alternative, if and to the extent that the claims set out in this Statement of Claim (or any of them) are properly regarded as and/or must be brought as derivative claims on behalf of TPF, the Plaintiffs will contend that Port Link has without cause failed to initiate proceedings on behalf of TPF against itself (and there is no real prospect of it doing so) such that the requirements of section 33(3) of the Exempted Limited Partnership Act (2020 Revision) (the 'ELP Act') are satisfied, such that the Plaintiffs should be permitted to prosecute the relevant claims on behalf of and in the name of TPF."

129 In relation to the derivative claims against D2, D3 and D4, para. 25B of the ASOC pleads:

> "The balance of the claims against Mr Williams and Wellspring and the claim against KGLI Asia are brought by the Plaintiffs as derivative claims on behalf of TPF in circumstances where Port Link has without cause failed to initiate proceedings on behalf of TPF against those parties and there is no real prospect of it doing so. Not only did Port Link fail to commence such claims; as described in paragraph 4 above, it deliberately withheld from the Limited Partners the information upon which the claims are based. In the premises, the requirements of section 33(3) of the ELP Act are satisfied such that the Plaintiffs should be permitted to prosecute these claims on behalf of and in the name of TPF."

130 The judge held (2022 (1) CILR 12, at para. 127) that para. 25B of the ASOC was sufficient to enable the defendants to understand the gist of the case, which had also been factually set out in the detailed evidence filed in the strike out applications.

131 That conclusion was criticized by Mr. Chapman. He submitted that it was necessary for a limited partner to plead the facts and matters relied upon as allowing the limited partner to bring a derivative claim pursuant to

s.33(3) and that the particulars in this case were wholly inadequate to serve that purpose. Thus, there was no pleading of the facts and matters relied upon to show that D1 as general partner was under an inhibition or suffered from a conflict of interest.

132 Mr. Allison, on the other hand, submitted that the facts and matters relied upon emerged with sufficient clarity from the detailed allegations of wrongdoing against D1 and the other defendants set out in the ASOC.

133 In our judgment, the ASOC was inadequately pleaded in this respect. In *Roberts* v. *Gill* (30), Lord Walker, in relation to a derivative claim on the grounds of special circumstances concerning an estate or trust, said this (2011] 1 A.C. 240, at para. 103):

> "So while he need not obtain prior leave from the court, he must plead the special circumstances entitling him to the court's indulgence. Those special circumstances are part of his cause of action."

134 In our judgment, the position is analogous in cases brought pursuant to s.33(3). There is no requirement for leave but a limited partner may only bring a claim where the general partner has failed or refused to bring proceedings without cause. The failure or refusal without cause is part of the cause of action brought by the limited partner and must therefore be pleaded. In our judgment, it is not sufficient simply to plead the wording of s.33(3) as was done by the plaintiffs in this case. A limited partner must plead the facts and matters relied upon as showing that he comes within the provisions of s.33(3).

135 What is relied upon by the plaintiffs in this case is that D1 as general partner is under a clear inhibition arising from its conflict of interest. The facts and matters relied upon as showing that this was so should therefore have been pleaded. Accordingly, we differ from the judge's assessment that the pleading was adequate. However, we are satisfied that no prejudice has been caused to the defendants by this failure. As the judge correctly stated, the points of issue emerge very clearly from the evidence filed during the strike out applications and it is clear that the defendants knew the case which they had to meet. We therefore decline to decide this case on a technical pleading point, although we emphasize, for the future, that simply pleading that a claim is brought pursuant to s.33(3) is not sufficient and that a plaintiff must plead the facts and matters relied upon as showing that he falls within the subsection.

Need for a request to sue

136 It is common ground that the plaintiffs in this case did not request or demand that D1 as general partner bring proceedings against D2–D4. Mr. Chapman submits that there must be such a request before a general partner

can be said to have failed or refused to bring such proceedings. We agree that the word "refused" implies the existence of a request. However, this is not so in relation to the word "failed." A general partner can be said to have "failed" to bring proceedings if he simply has not brought such proceedings.

137 Whilst it will often be the case that, before instituting derivative proceedings under s.33(3), a limited partner will have requested the general partner to institute the relevant proceedings, it is not a necessary pre-condition that he has done so. In this case, it is perfectly apparent from the evidence that D1 has not brought the relevant proceedings and has no intention of doing so. As outlined earlier, it has reached a decision not to institute proceedings even following the change in the board of directors by the appointment of the FFP directors. The requirement of s.33(3) that the general partner has failed to bring proceedings on behalf of TPF has obviously been satisfied.

Discretion

138 It is well established in other contexts that the court has a discretion whether or not to allow a derivative claim even where the relevant ground for the bringing of such an action (*e.g.* an exception to the rule in *Foss* v. *Harbottle* (11) in the case of companies and "special circumstances" in the case of trusts or limited partnerships) is met. Although there is no reference to the existence of a discretion in s.33(3) itself, the judge considered that he had such a discretion and it was common ground before us that there is such a discretion.

139 Thus, even if it be satisfied that a plaintiff can bring himself within s.33(3), the court may in its discretion decide that he should not be permitted to continue the derivative claim. One relevant factor in the exercise of this discretion is likely to be whether the plaintiff has an alternative remedy, so that a derivative action is not required in order to avoid injustice.

Summary

140 Pulling the threads of the above discussion together, we would attempt to summarize our conclusions in relation to s.33(3) as follows:

(i) There is no requirement for leave to bring derivative proceedings under s.33(3). A limited partner may simply institute such proceedings.

(ii) A limited partner must however plead the facts and matters relied upon as showing that he can bring himself within the requirements of the subsection because this forms an essential part of his cause of action.

(iii) If a defendant wishes to raise an issue as to the standing of a limited partner to bring such derivative proceedings, he should do so by means of a strike out application or seek the trial of a preliminary issue.

(iv) Whichever of these routes is chosen does not affect the test which has to be applied in deciding whether s.33(3) is complied with and whether a limited partner should be permitted to continue with the derivative claim.

(v) The decision of the court on such an application or preliminary issue is determinative (subject to appeal). If the court holds that the derivative claim may be continued, the limited partner thereafter has the necessary standing to pursue the claim. It is not an issue which is deferred until or revisited at trial (save possibly in the context of costs at the end of the trial).

(vi) The court should not conduct a mini trial as to whether the requirements of s.33(3) are satisfied. The court has to reach its decision on the basis of the material before it, which will be more limited than it will be following discovery and trial.

(vii) At the hearing, the onus is on the limited partner to satisfy the court that the requirements of s.33(3) are met. Reference to "onus" is not to be mistaken as a reference to a "burden" in the sense of having to show something on the balance of probabilities.

(viii) The essential task for the court at such a hearing is to determine whether the limited partner has brought himself within the terms of s.33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.

(ix) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in s.33(3).

(x) Whilst reference to a "good arguable case" may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of s.33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the ELPA that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. As stated at para. 118 above, the court should consider, *inter alia*, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.

(xi) The court should reach its decision as to standing by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.

(xii) Even where the requirements of s.33(3) are met, the court has a discretion as to whether to permit a derivative claim to continue. One of the factors which is likely to be relevant in exercising that discretion is whether the plaintiff has an alternative remedy.

Application to the facts

(a) ***The claim against D1***

141 It is to be recalled that, as described at para. 75 above, a derivative action allows a party to bring a claim in the name of and on behalf of a second party against a third party for loss and damage caused to the second party. It follows that the second party must have a claim against the third party before the first party can be permitted to bring such a claim derivatively.

142 Ms. Stanley submits that, regardless of whether the test in s.33(3) is otherwise met (*i.e.* that D1 is subject to an inhibition which makes its decision in relation to potential proceedings one which is without cause), there is a more fundamental reason why the derivative claim against D1 should be struck out, namely that, on the judge's finding, the ELP has suffered no loss or damage and therefore has no claim of its own to bring.

143 The judge said (2022 (1) CILR 12, at para. 63):

> "It follows that where an ELP is alleged to have suffered loss, as in this case, that is the loss of each of the limited partners. There is no distinct or separate loss in respect of 'the partnership' (TPF), which as an entity does not exist at law."

144 To similar effect is the decision of Cooke, J. in *Henderson* (13) in relation to limited partnerships ([2012] EWHC 3259 (Comm), at paras. 28–32). Thus at para. 28 he said:

> "The Partnership, unlike a limited company, does not possess a corporate legal personality. Like an ordinary partnership under the Partnership Act, 'the Partnership' is simply a convenient way of referring to the body of partners as a whole. In my judgment therefore, no difficulty arises for a Limited Partner's claim against the General Partner, regardless of whether or not removal and substitution of the General Partner is possible. The claim to be made against the General Partner is that of the individual Limited Partners and is not a Partnership Asset. Each Limited Partner has its own contractual or fiduciary claim for its own loss, where the inter-relationship with the General Partner is governed by the RPA. *The Partnership, which*

> *consists of the Limited Partners and the General Partner together has no form of joint right or claim against the General Partner, as the claimants suggest.*" [Emphasis added.]

145 We are not to be taken as agreeing that this is correct. As already stated, s.16(1) of the Act provides that the general partner will hold the assets of the ELP upon trust. In the case of a trust, whilst a beneficiary undoubtedly has a direct claim against the trustee for breach of trust, the appropriate remedy (as discussed above by reference to *Target* v. *Redferns* (38)) is for an order that the trustee restore the trust fund to what it would have been had the breach not been committed. Such a claim may be brought by one or more beneficiaries, but a successor trustee will often bring such a claim against a former trustee for breach of trust on behalf of the trust as a whole and will hold any sums recovered from the former trustee upon the terms of the trust. Thus, even though like an ELP, a trust is not a separate legal entity, it can properly be said that the trust as well as a beneficiary has a claim against a trustee for breach of trust and that such a claim can be considered as an asset of the trust. It seems to us strongly arguable that the position is the same in relation to an ELP, particularly given that the general partner is also a trustee.

146 However, there has been no respondents' notice in respect of the above finding of the judge and indeed the plaintiffs have not sought to argue that the judge was wrong in this respect. What they say is that the judge was correct in what he said (2022 (1) CILR 12, at para. 64) where, immediately following the passage quoted above in para. 143 above from para. 63, he said:

> "64 I therefore find that the direct claims in respect of the individual partners' losses are vested in the limited *partners* alone, and are not claims that can be brought on behalf of TPF derivatively, except in the circumstances permitted by s.33(3) of the ELPA where the limited partners who wish to obtain redress for TPF are in effect put in the place of the GP, and bring claims on behalf of TPF." [Emphasis in original.]

147 With respect to the learned judge we cannot accept that s.33(3) permits a claim in such circumstances. The subsection presupposes that there is a claim to be brought by the general partner on behalf of the partnership. If, as the judge held, the partnership has no claim against the general partner, there can be no failure by the general partner to bring such a claim without cause.

148 Even if we are wrong on this point, there is a second reason for not permitting the derivative claim against D1 as a matter of discretion; that is because the plaintiffs as limited partners have an adequate alternative remedy.

149 As we have held earlier in this judgment, a limited partner has the right to claim against a general partner for breach of duty on the part of the general partner. In the event of such a claim succeeding, the appropriate remedy will almost certainly not be an award of equitable compensation to the particular limited partners who have sued (thereby potentially causing difficulties in relation to those who have not also joined in the action and in respect of creditors of the ELP), but instead an order that the general partner restore the trust fund as outlined in *Target* v. *Redferns*.

150 In these circumstances, exactly the same will be achieved by a direct claim as would be the case in a derivative action. In the event of the plaintiffs succeeding in their direct claim, the estate of the ELP will be made whole by payment from the general partner pursuant to an order for restoration of the trust fund. Success in a derivative action would have the same result. Accordingly, there is simply no need for a derivative action; it would add nothing to the direct claims brought by the limited partners coupled with an order for restoration of the trust fund in the event of such claims succeeding. Indeed, during oral argument, Mr. Allison accepted that, if the plaintiffs have a valid direct claim against D1 for which restoration of the trust fund can be awarded, there would be no need for the derivative action. In those circumstances, we conclude that, as a matter of discretion, the derivative claim against D1 should not be permitted.

151 Accordingly, for both of the above reasons, we strike out the derivative claim of the plaintiffs against D1.

(b) ***The claims against D2–D4***

152 We have described the claims brought against the various defendants at paras. 13–16 above. The relevant features for present purposes can be summarized as follows:

(i) The plaintiffs invested some 65% of the total amount invested in TPF.

(ii) Other limited partners, who invested 15.14%, have instituted broadly similar claims against D2 and D3 in the State of Georgia, USA. Thus a total of 80.3% by value of limited partners are litigating on the basis of alleged serious wrongdoing on the part of the GP.

(iii) Of the remaining 19.7% (by value), 14% are associated with the GP.

(iv) The plaintiffs allege that D1 as the general partner has been guilty of wrongdoing which has caused TPF loss said to be well in excess of US$100m.

(v) The claims against D1 essentially allege that, in breach of its fiduciary, contractual and other duties, it acted contrary to the interests of TPF and the limited partners by making substantial payments, using TPF's moneys, that were not for the benefit of TPF and/or the limited partners.

Amongst these is the alleged sham settlement of the DIFC proceedings brought against it in the DIFCC as a result of which the Wellspring payment of US$59,990,461.30 was paid to D3. The ASOC alleges that D1 conspired with, amongst others, D2 (Mr. Williams) and D3 (Wellspring) to cause loss to TPF and/or the limited partners by unlawful means in relation to the DIFC proceedings and the Wellspring payment.

(vi) The claims against D2 are that he orchestrated the DIFC proceedings and the Wellspring payment and was accordingly party to the above conspiracy. It is further alleged that he dishonestly assisted in D1's breach of trust/fiduciary duty, knowingly procured D1 to breach its contractual duties and was in breach of fiduciary duties he owed to TPF and/or D1.

(vii) The claims against D3 are for knowing receipt of the Wellspring payment, conspiracy in relation to the Wellspring payment and the DIFC proceedings and for repayment of the Wellspring payment pursuant to s.4 of the Fraudulent Dispositions Act (1996 Revision).

(viii) The claim against D4 is for knowing receipt in respect of a number of payments said to have been made to it in breach of trust and/or fiduciary duty by D1 as general partner.

153 The judge held (2022 (1) CILR 12, at para. 106) that s.33(3) required a finding as to whether the GP (*i.e.* the relevant corporate entity) has failed or refused to institute the proceedings without cause, not the directors at the relevant time. He concluded (*ibid.*, at para. 102) that there was a good arguable case that D1 had and still has a relevant inhibition because it is conflicted in relation to the plaintiffs' claims. Its decision not to bring the claims against D2–D4 was infected and made unsafe by the facts giving rise to its conflict of interest.

154 The underlying facts in relation to the inhibition were not disputed before us and would appear to be as follows:

(i) Mr. Williams, D2, is the sole shareholder of PLH, a Delaware company, which in turn is the sole shareholder of D1. Thus Mr. Williams is the sole ultimate beneficial owner of the general partner of TPF. He was the investment director of TPF's sponsor and placement agent from 2009–2011 and a member of the Investment Committee of TPF from 2009–2013.

(ii) On January 23rd, 2020, he was appointed as the authorized representative of D1 in relation to proceedings against D1 by certain limited partners (including the first plaintiff) pursuant to s.22 of the ELPA seeking disclosure of full information regarding the state of the business and financial condition of TPF. The resolution conferred full authority on Mr. Williams to take all necessary actions in relation to the s.22 proceedings. The application of the limited partners under s.22 was opposed by D1 at a time when the FFP directors were in post and eventually Parker, J. ruled against D1 and ordered it to make disclosure. Thereafter, D1 sought to

appeal that decision but the appeal was eventually compromised and D1 agreed to provide the necessary information.

(iii) Mr. Williams is the CEO, CFO, President, Vice-President, Treasurer and Secretary of D3, Wellspring. The company is owned by the Mark E. Williams Living Trust, of which Mr. Williams, his wife and brother are the trustees. The ASOC pleads that it is to be inferred that the beneficiaries are also Mr. Williams' family.

(iv) D4, KGLI Asia is a company incorporated in the Cayman Islands and Mr. Williams was its CEO from January 1st, 2012.

155 As can be seen therefore, Mr. Williams is the ultimate beneficial owner of the GP and has very close connections with Wellspring and KGLI Asia.

156 In considering whether D1 as the general partner would be under an inhibition in relation to the taking of proceedings against D2–D4, it is useful to refer to the case of *Henderson* (13). The facts of that case are summarized at paras. 83–84 above. Certain limited partners of an English limited partnership sought to bring a derivative action against, *inter alia*, the manager, who had been appointed by the general partner and was a sister company of the general partner.

157 Cooke, J. held ([2012] EWHC 3259 (Comm), at para. 59) that as a result the general partner had an irreconcilable conflict of interest in relation to whether to institute proceedings against the manager and this constituted "special circumstances" which therefore justified the limited partners being able to bring a derivative claim. In coming to that conclusion, he held that (i) the ability (which was not straightforward) under the limited partnership agreement for the limited partners to remove and replace the general partner, and (ii) the ability of the limited partners to sue the general partner for wrongly failing to institute proceedings against the manager, were not satisfactory alternative remedies so as to refuse the limited partners the ability to bring a derivative claim.

158 We respectfully agree with the decision of Cooke, J. in *Henderson.* In our judgment there is a similar conflict of interest in the present case. On the plaintiffs' case, D1 as the general partner was deeply involved in all the alleged wrongdoing, as was Mr. Williams. D1 has to decide whether to institute proceedings against D2–D4 in circumstances where:

(i) The essential wrongdoing giving rise to the claims against D2–D4 was that of D1 itself in making the various payments and where it is said to be part of the unlawful means conspiracy to injure TPF involving Mr. Williams and Wellspring.

(ii) The contemplated proceedings would have to be brought against the beneficial owner of the GP and against two companies in which Mr.

Williams is deeply and closely involved, namely Wellspring and KGLI Asia.

(iii) D1 would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy.

159 On the face of it, by reason of the obvious and serious conflict of interest, D1 is under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also means that the failure by D1 to bring proceedings against D2–D4 is without cause for the purposes of s.33(3).

160 However, the defendants say that this is not the position for two associated reasons. First, they point out that the present directors of D1, namely the FFP directors, are wholly independent and were not in office at the time of the alleged wrongdoing on the part of D1. They do not therefore suffer from any conflict of interest. They are in a position to bring an independent and impartial view to bear on whether claims should be brought against D2–D4 and in this respect are in the same position as a liquidator of a company who has to decide whether to bring a claim against former directors or other parties for injury caused to a company. The defendants point out that, as summarized in the third affidavit of Mr. Lewis, the FFP directors have reviewed the position thoroughly with the benefit of legal advice and have concluded that the interests of TPF are best served by not instituting any claims against D2–D4 for the reasons there set out.

161 It is clear, submit the defendants, that the court must give great weight to the commercial judgment of those who have responsibility for the management of the relevant entity under the constitutive documents; see for example the observation of the Lewison, J. in *Iesini* (17) quoted at para. 77 above.

162 Secondly, they submit that the independence of the FFP directors is fortified by the fact that Mr. Williams has given an undertaking that the shareholder of the GP will not exercise any powers so as to remove the FFP directors or interfere in any way in the exercise of their functions. Thus, submit the defendants, the FFP directors are, and are seen to be, free to act independently.

163 In our judgment, these submissions do not overcome the inhibition referred to earlier. In relation to the first point, the judge was in our view correct to focus on the entity which is the general partner rather than the directors for the time being of that entity. Section 33(3) refers to the "general partner" having failed or refused to bring proceedings without cause. The general partner is the legal entity D1. D1 is subject to the conflicts of interest we have summarized above and thus cannot be seen to be in a position to take a fair and independent decision about the potential

litigation. New directors are not in the same position as a liquidator, who is appointed by and subject to the supervision of the court and therefore clearly is and is seen to be independent of the company, its directors and shareholders. The FFP directors owe a fiduciary duty to act in the best interests of D1. The defendants submitted that because D1 owes fiduciary duties to act in the best interests of the partnership, the FFP directors therefore have a duty to act in the best interests of TPF. However, there is certainly the potential for conflict between acting in the best interests of TPF (which might include taking action against D1 as a co-conspirator) and acting in the best interests of D1 (which might be said to include the avoidance of being sued).

164 In connection with the undertaking, we were referred to the case of *St. John's Trust Co. (PVT) Ltd.* v. *Medlands (PTC) Ltd.* (31) ("*B Trust*"), a decision of the Court of Appeal of Bermuda. That was a case which involved a number of issues but for present purposes it is sufficient to say that one of the issues before that court was whether it would be appropriate to reappoint St. John's Trust Co. (PVT) Ltd. ("SJTC") as trustee of the B Trust. SJTC was wholly owned by a company, Cabarita, which was in turn wholly owned by a Mr. T. Mr. T was said to have misappropriated funds from the B Trust and there were ongoing proceedings against him in this respect.

165 Mr. T had appointed two independent directors of SJTC and, before the Bermuda Court of Appeal, he proffered an undertaking not to interfere with the appointment of these two individuals. Despite this, the Bermuda Court of Appeal held ([2021] CA (Bda) 20 Civ, at para. 62) that it was clearly not appropriate for SJTC to be trustee. It would be contrary to the interests of the beneficiaries for Mr. T to have any control or influence over the B Trust. This would be possible, despite his undertaking, by reason of his ownership of Cabarita which owned SJTC. The undertaking did not meet the fundamental issue of Mr. T's potential influence.

166 Mr. Chapman sought to distinguish *B Trust* on three grounds. First, he pointed out that Mr. Williams is only an *indirect* beneficial owner of D1, but that was also the case in *B Trust* as Mr. T owned Cabarita which owned SJTC. Secondly, he referred to the undertaking by Mr. Williams not to interfere. However, an undertaking was also given by Mr. T in *B Trust* and this did not persuade the Bermuda Court of Appeal that his potential influence was thereby negated. Thirdly, he submitted that *B Trust* was concerned with whether there might be interference in the future by Mr. T whereas the present case was concerned with a decision (namely not to issue proceedings) which had already been taken. However, we do not see that this is a significant point of difference. The fact is that the decision as to whether to institute proceedings on behalf of TPF involved consideration by the GP of whether to sue itself as an alleged co-conspirator and whether

to sue its beneficial owner and two closely linked companies in circumstances where the claims were said to arise on the basis of the wrongdoing of the GP and its beneficial owner.

167 We find the reasoning of the Court of Appeal of Bermuda to be persuasive. In our judgment, the undertaking given by Mr. Williams is insufficient to overcome the inhibition from which D1 as general partner suffers. If one stands back and considers how it would appear to the plaintiffs (who allege that there has been serious wrongdoing by D1–D4 which has cost TPF over US$100m.) for the decision as to whether to seek recompense from any one or more of D1–D4 to be left in the hands of D1, they would have no confidence that a fair and independent decision had been taken, even following the appointment of the FFP directors. In our judgment, they would be justified in this lack of confidence. There is no doubt in our view that D1 was and is suffering from an inhibition which leads to the conclusion that, subject to the exercise of any discretion, it is appropriate for the plaintiffs to bring derivative claims on behalf of TPF pursuant to s.33(3) against D2–D4.

168 Given our decision to uphold the judge's conclusion that it is the position of D1 as the general partner which must be considered in relation to any inhibition rather than the position of the directors from time to time, it is not necessary for us to address his finding about the position of the FFP directors. Suffice it to say that, if we had found it necessary to do so, we would have considered that the judge was entitled to reach the conclusions which he did in this respect.

169 As to discretion, the defendants submit that, because the plaintiffs are bringing direct claims against D2 and D3, they have an alternative remedy in respect of those two defendants and there is no need for them to bring a derivative action. They point out that they have not sought to strike out the direct claims against D2 and D3. That is so, but it is of note that footnote 10 at para. 15 of the skeleton argument of D2–D4 states:

> "For the avoidance of doubt, [D2–D4] do not admit that the Respondents, in particular KPA, have standing to bring the direct claims, and expressly reserve the right to challenge the Respondents' standing to bring such claims, including on the basis of a lack of authority in the case of KPA."

170 As stated at para. 67 above, Ms. Stanley asserted in oral argument that the only way to get the proceeds of any successful claim against D2 and D3 into TPF is by way of a derivative claim. Furthermore, despite the defendants' explanation, submitted in response to the draft of this judgment, that footnote 10 was only intended to cover the KPA lack of authority point and the partnership accounting point, the fact remains that the footnote expressly reserves the right to challenge the plaintiffs' standing to bring the direct claims in general terms and the KPA point is

merely mentioned by way of inclusion as a ground of challenge. We bear in mind the overriding objective and, in our view, it would be inconsistent with that objective and highly undesirable to run the risk of the court eventually finding against D2 and D3 on the underlying merits of the claims but finding that the plaintiffs did not have standing for the direct claims or that it could not make an order for restoration of the trust fund in the absence of a derivative claim on behalf of TPF. The existence of an alternative remedy is a matter to be taken into account when determining whether to allow a derivative claim to proceed although its existence is not conclusive of the matter; see *Henderson* (13) ([2012] EWHC 3259 (Comm), at para. 39). In our judgment, whilst we have expressed certain preliminary views at paras. 65–72 above, in the light of the above matters there is sufficient uncertainty about whether the plaintiffs have direct claims against D2 and D3 or whether the court could order restoration of the trust fund on the success of such claims that, as a matter of discretion, it is just and fair to allow the derivative claims to proceed alongside the direct claims so that they are all heard at the same time. If, following a trial, the direct claims are upheld and the court also holds that it can order restoration of the trust fund as a remedy for such claims, then there will be no need to make any award on the derivative claims; if on the other hand the direct claims are found not to be maintainable or restoration of the trust fund cannot be ordered, the derivative claims will be necessary to provide a remedy, assuming that the underlying allegations against the defendants are upheld.

171 We add by way of postscript, that both sides sought to raise arguments based on the position of the Cayman Islands as a leading centre for the establishment of investment funds. Thus the defendants argued that, by setting the bar for derivative actions too low, the judge had rendered it less likely that promoters of investment funds in the form of ELPs would choose the Cayman Islands as the location of their funds because of the comparatively easy exposure to derivative claims.

172 Conversely, the plaintiffs argued that it was important for the reputation of the Cayman Islands as a centre for investment funds that persons who have invested in ELPs should have a remedy when the general partner is alleged to have been guilty of wrongdoing and that a derivative action is the only remedy in such circumstances. It should not therefore be too difficult to bring such an action.

173 Whilst noting these arguments, we have not decided this case by reference to the arguments' respective merits, which are more matters for the legislature. We have confined ourselves to construing s.33(3) in the light of the words used against the background of the law on derivative claims generally.

Summary of conclusions reached on the derivative claims

174 In respect of D1, for the reasons which we have given above, we allow the appeal to the extent of striking out the plaintiffs' derivative claims against it.

175 In relation to the derivative claims against D2–D4, we dismiss the appeals brought by these defendants, with the consequence that the plaintiffs may bring those claims under s.33(3).

The SFC appeal

176 At the hearing below, the GP (D1) applied for security of costs ("SFC") in the sum of US$5,536,025.50 and the sum sought by D2–D4 was US$2,720,000. It is and was common ground that the plaintiffs are both Kuwait state-owned enterprises ordinarily resident out of the jurisdiction and accordingly the judge had jurisdiction to exercise the discretion conferred on the court by GCR O.23 r.1(1), which reads in relevant part:

> "Where, on the application of a defendant to an action or other proceedings it appears to the Court—
>
> (a) that the plaintiff is ordinarily resident out of the jurisdiction …
>
> then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just."

177 Briefly summarized, the defendants' case was that there were substantial obstacles to the enforcement in Kuwait of an adverse costs order since there was no treaty between Kuwait and the Cayman Islands for the mutual enforcement of judgments and as a matter of Kuwaiti law even a judgment of the Kuwaiti courts was incapable of enforcement against the plaintiffs because they were state entities.

178 In dismissing the SFC applications, the judge began by setting out the legal principles he found to be applicable. He then analysed the principles and applied them to the case before him and then proceeded to give the reasons for his decision. The key elements of this part of his judgment can be summarized as follows:

The applicable principles

179 (i) There is no presumption that the court will ordinarily require a foreign plaintiff to give SFC; rather the discretion "is to be exercised on a case-by-case basis, as the rule states, having regard to all the circumstances

of the case"; see *In re Cybervest Fund* (9) (2006 CILR 80, at para. 24, *per* Smellie, C.J.) (para. 149).

(ii) The court should follow the guidance on the interpretation of O.23 r.1(1) provided by the following passage in the judgment of Smellie, C.J. in *Tasarruf Mevduati Sigorta Fonu* v. *Wisteria Bay Ltd.* (39) (2006 CILR 351, at para. 14) (para. 150):

> "There is no hard and fast rule that every foreign plaintiff must be required to put up security. The matter is one, as already stated, of discretion to be exercised in every case. All the circumstances will be considered including the means and ability of the plaintiff to pay and even, in an appropriate case, the relative strength or weakness of the case for each side provided those factors are clearly discernable from the evidence. See, for these propositions, the leading case of *Sir Lindsay Parkinson & Co. Ltd.* v. *Triplan Ltd.* …"

(iii) The court's discretion must be exercised impartially and must not be exercised discriminately; see *e.g. Ahmad Hamad Algosaibi & Bros. Co. Ltd.* v. *Saad Invs. Co. Ltd.* (1) (2017 (2) CILR 602, at para. 21) (para. 151).

(iv) The merits of the case will only be relevant if: (i) either party can clearly demonstrate a strong probability of success, or (ii) the court is considering a summary judgment application at the same time (para. 152).

Analysis and application of the principles to this case

(v) In this case, the merits could not be properly determined at this stage (para. 153).

(vi) The issue to be decided was whether the defendants had shown there are objectively justified grounds for concluding that there are obstacles or burdens to the enforcement of a costs order against the plaintiffs, such that there is a real risk of non-enforcement and whether, if there are such real risks, it is just in the circumstances to order security and if so, on what terms (para. 154). (This proposition, like principle (iii) above, is based on *AHAB* v. *Saad*, where Smellie, C.J. stated (2017 (2) CILR 602, at paras. 15–16):

> "… the focal concern of the modern case law is not to ensure that a plaintiff is seldom required to provide security or that orders for security are only exceptionally made but to ensure that such orders are not imposed in an arbitrary or discriminatory manner. Accordingly, the making of such orders against a non-resident plaintiff would be appropriate, and may now be justified, not simply on the discriminatory basis of the plaintiff's foreign status but because real risks of unenforceability are shown 'on objectively justified

> grounds' to exist: *per* Gloster, L.J. in her *dictum* cited above from *Bestfort* …, applying the *dictum* of Mance, L.J. from *Nasser* …
>
> 16 This approach dictated by the modern cases is aimed at addressing not only basic tenets of fairness but more particularly, the requirements of the Constitutional Bill of Rights where, in s.16, it is mandated that 'government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution'—the most directly operative here being that right to a fair and public trial guaranteed by s.7 which states that 'Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.'"

(vii) Where the plaintiff is a foreign government or state agency, there is a presumption that SFC should not be awarded, although each case will turn on its own facts. The presumption arises from comity and common sense and may be displaced by the evidence; see *Tasarruf* (39) (2006 CILR 351, at para. 22) (para. 156).

(viii) As Smellie, C.J. observed in *Tasarruf*, the only modern reported case in which SFC had been ordered against a foreign government was *Sierra Leone Govt.* v. *Davenport* (34) where the circumstances were exceptional in that Sierra Leone had recently emerged from a civil war (para. 157).

(ix) PIFSS (the second plaintiff) was the subject of the SFC application determined in *Cybervest* (9), where PIFSS was petitioning as a shareholder for the winding up of a Cayman incorporated investment fund. In giving judgment in this case, Smellie, C.J. noted that PIFSS had "immensely valuable assets to be regarded as being within the jurisdiction" and so if PIFSS failed to pay an order for costs it would be open to the applicant to seek recourse. The SFC application was dismissed on the grounds that: (a) PIFSS's very valuable shareholding in the fund was to be treated as assets within the jurisdiction; and (b) PIFSS was (2006 CILR 80, at para. 27):

> "a state agency of a foreign government of undoubted resources and enjoying a high reputation in the global financial and commercial community. This is relevant insofar as it would tend to negate any concern that the plaintiff would be unlikely to obey an order for costs made in favour of the respondent."

(x) Security will not be required of a foreign plaintiff who has substantial assets within the jurisdiction: see *Cybervest* (*ibid.*, at para. 25) (para. 160).

(xi) Where any liability for costs on the plaintiffs' part will inevitably be joint and several, security will not be required if at least one plaintiff has substantial assets within the jurisdiction (para. 160).

(xii) A foreign plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction (para. 161). See the following extract from the judgment of Lightman, J. in *Leyvand* v. *Amnon Barasch* (20) ([2000] WL 191256, at para. 6):

> "The common sense principle applies that the existence of assets within the jurisdiction, their fixity and performance, are among a number of potentially relevant factors, their importance depending on the particular facts of the case. The Court will not infer the existence of a real risk that assets within this country will be dissipated or shipped abroad to avoid their being available to satisfy a judgement for costs unless there is a reason to question the probity of the claimant: there is no such reason in this case. If there is a reason to question the claimant's probity, the character of his property within the jurisdiction is relevant in assessing the risk: the risk may be greater if the property is cash or immediately realisable or transportable, and less if fixed and permanent."

(xiii) Undertakings given by a plaintiff that it will not raise any of the potential defences in their home jurisdiction should an award of costs be made against it would be very persuasive evidence in any court in the plaintiff's home jurisdiction (para. 162). See Sanderson, Ag. J. in *Elliott* v. *Cayman Islands Health Serv. Auth.* (10) (2007 CILR 163, at para. 18).

The judge's reasons why, on the application of the foregoing principles, the SFC application would be refused

(xiv) The plaintiffs are both wholly owned by, and are the agents of, the State of Kuwait. There is therefore on the decided cases a rebuttable presumption that security for costs should not be ordered (see *Tasarruf* (39) (2006 CILR 351, at para. 23)). This presumption has not been rebutted on the evidence adduced. The plaintiffs appeared to have ready access to funds and would be able to satisfy any adverse costs order in a timely manner (paras. 164–166).

(xv) KPA is an internationally recognized commercial organization and relies on its international reputation to do business. Its profit for the financial year 2020–2021 was KWD56,450,000 (about US$187,522,553 based on the exchange rate on August 9th, 2021). The Director General of KPA has confirmed that it has sufficient resources to meet any costs order made against it in these proceedings, and will comply with any such costs orders in a timely fashion, a position that has been reconfirmed by the Kuwaiti Department for Legal Advice and Legislation ("DLAL"). In addition, KPA has provided a written undertaking to this effect to the court on May 27th, 2021 (paras. 167–169).

(xvi) PIFSS is a public institution which administers Kuwait's pension fund for all Kuwaiti citizens in the workforce, both in public and private sectors. It operates independently from the State of Kuwait and has its own budget and board of directors. It has a global investment asset portfolio worth approximately US$133.7bn. (as at March 31st, 2021). Its profit for the period March 2020 to December was US$18.9bn. An officer in PIFSS's Compliance and Government Department had confirmed that PIFSS had sufficient resources to meet any costs order made in these proceedings and will comply with any such orders in a timely fashion. PIFSS has provided a written undertaking to this effect to the court. In addition, PIFSS has been party to several sets of proceedings before the Cayman Islands courts and has never failed to comply with any costs order (paras. 170–172).

(xvii) It would be clearly detrimental to PIFSS's ongoing commercial reputation and business to be in breach of an order of the Cayman Islands courts (para. 173).

(xviii) Accordingly, after a careful consideration of the evidence, the presumption against ordering security against agents of a foreign state has not been rebutted. Accordingly, it would not be just to grant the SFC applications against the plaintiffs (para. 174).

(xix) It is well established that security will not be ordered against a foreign plaintiff who has substantial assets within the jurisdiction (see *Cybervest* (9)) and PIFSS is such a plaintiff by reason of its interest valued at €35,074,942 as a March 31st, 2021 in the Jermyn Street Commercial Real Estate Fund ("the Jermyn Street Fund"), of which PIFSS is a limited partner (paras. 175–176).

(xx) There is no reason to doubt the probity of PIFSS, which is an agent of the State of Kuwait and familiar with conducting international litigation (including in the Cayman Islands) (para. 177).

(xxi) There is no reason to conclude that PIFSS's interest in the Jermyn Street Fund is encumbered, or not amenable to enforcement if necessary, and no reason to conclude that PIFSS would dispose of or otherwise encumber its interest to attempt to defeat an order as to costs (para. 177).

(xxii) Accordingly, since PIFSS has sufficient assets within the jurisdiction to cover any costs order that is made against the plaintiffs (in respect of which they would be jointly and severally liable), and in circumstances where both plaintiffs have given written undertakings to the court, it would not be just to require the plaintiffs to pay security for costs (even if they were not agents of the State of Kuwait) (para. 178).

(xxiii) In light of the correspondence between Campbells (for D2–D4) and Ogier (for the plaintiffs) there was no basis to form the view that PIFSS would seek to frustrate the enforcement of a cost order against it by

disposing of its interest in the Jermyn Street Fund, even if it were able to do so (para. 179).

(xxiv) The enforceability of Cayman Islands judgments in Kuwait does not therefore arise for determination (para. 189).

The case advanced by the GP (D1)

180 (i) By reason of the errors made by the judge in reaching his decision to refuse to order SFC, his decision should be set aside and the SFC summons remitted to another judge of the Grand Court or alternatively the judge himself.

(ii) Although the discretion under GCR O.23, r.1(a) is at large, it can only be properly exercised when *all* of the circumstances are taken into account, and this the judge failed to do because he did not consider the obstacles of enforcement in Kuwait. Instead, he appears to have been satisfied that the plaintiffs could and would pay adverse costs order without question and the defendants had not proved otherwise.

(iii) The judge erred in principle in proceeding on the basis that there was a presumption that a foreign government or state agency will not be ordered to provide security for costs unless the applicant "rebuts" the presumption. The authorities the judge relied for the presumption—*Cybervest* (9) and *Tasarruf* (39)—laid down no such principle. Instead, Smellie, C.J. in the former case decided it on the basis that the court had a wide discretion which fell to be exercised on a case-by-case basis and in the latter case, Smellie, C.J. highlighted that it was all a matter of discretion taking into account all the circumstances. The true ratio was that the court does not apply the rules for SFC differently depending on whether the plaintiff is a state or an individual but on the basis that all plaintiffs who seek to engage the court's jurisdiction must play by the same rules. This, after all, is the position in England (see *Sierra Leone (Govt.)* v. *Davenport* (34)) and in Australia (see *e.g. Papua New Guinea* v. *Sandline* (26) ([1998] QDC 298, *per* Andrews, J.) and *Ministry of Foreign Affairs (Italy)* v. *Simeone* (23)).

(iv) Where there is joint and several liability between plaintiffs for costs and one of them is in the jurisdiction, it is the practice not to make a SFC order against the plaintiff who is resident outside the jurisdiction if it is inevitably to be inferred by the court that there will be joint liability for costs between the plaintiffs. Assuming that this practice can apply to a situation where both plaintiffs are outside the jurisdiction but one has substantial assets within the jurisdiction, D1 submits that there were no sufficient grounds for the judge to have concluded that the plaintiffs would be jointly and severally liable for the costs. Indeed, D1 pleads a defence against KPA that it commenced and carried on its claims against them

without due authority, and ratification of these acts is not possible under Kuwaiti law.

(v) The judge erred in taking into account the confirmation from the Director General of KPA, Mr. Al-Sabah, which was related to Mr. Florent, who in turn related it in para. 18 of his third affidavit, that KPA had sufficient resources to meet a costs order made against it in these proceedings, and would comply with any such costs order in a timely fashion. Mr. Florent's third affidavit was sworn on August 27th, 2021 but Mr. Al Sabah had been suspended from the position of Director General of KPA by the Minister of Commerce and Industry on October 24th, 2021 pending investigations of "violations" attributed to him. The expert evidence before the judge was that during his suspension Mr. Al-Sabah was not authorized to represent KPA in any capacity or exercise any powers on behalf of KPA.

(vi) The judge erred in treating the letters he called "undertakings" to pay an adverse costs order as if they were indeed "undertakings" when they were merely "comfort letters" since they contained the words, "Without prejudice to the exercise of KPA's legal rights" and stated "*we confirm* that KPA will comply with any final and binding costs orders …" Even if the letters had contained express undertakings on behalf of the plaintiffs to pay an adverse costs order, the judge should have considered whether there remained a significant risk that such a costs order would not be paid and gone on to find that there was such a risk because the undertaking could only be enforced by committal or sequestration proceedings in the jurisdiction and such an order would not be enforceable in any other court. Nor was it clear that the comfort letters would be enforced by the courts of Kuwait.

(vii) The judge erred in placing reliance on the evidence given in Mr. Florent's third affidavit to the effect that PIFSS had never failed to comply with any costs order made in proceedings before the courts of the Cayman Islands when there was no evidence that any adverse costs order had ever been made against PIFSS in any Cayman Island proceedings. What the judge should have done was to require production of examples of Cayman Islands costs orders that had been honoured by PIFSS.

(viii) The judge made the following errors in giving the weight he did to PIFSS's assets within the jurisdiction:

(a) He stated that the plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction when that burden in fact lay upon the plaintiffs and he should have taken note of the fact that PIFSS's interest in the Jermyn Street Fund was not of a fixed or permanent nature but was in the nature of a receivable in the event that a distribution were to be made and/or the Fund were wound up.

(b) He was wrong to consider whether there was any reason to doubt the probity of PIFSS when the question to be considered was whether there was a real risk that the assets in the jurisdiction may not be available if and when a case of enforcement arises; see Butcher, J. in *PJSC Tatneft* v. *Bogolyubov* (25) ([2019] Costs L.R. 977, at para. 49) and Henshaw, J. in *Pisante* v. *Logothetis* (27) ([2020] EWHC 3332 (Comm), at paras. 65–66).

Discussion and decision

181 We deal first with D1's submission that the judge erred in proceeding on the basis there was a presumption that a foreign government or state agency will not be ordered to provide security for costs unless the applicant "rebuts" the presumption.

182 The principal authority relied on by the judge for the aforesaid presumption was *Tasarruf* (39). Here, as related in Smellie, C.J.'s judgment (2006 CILR 351, at paras. 2–3), in that case, the plaintiff was a Turkish state entity authorized by statute to recover deficiencies in the accounts of insolvent banks by, among other things, the seizure and sale of the assets of their managers, shareholders or auditors. This authorization was given as part of a regulatory scheme to protect depositors against bank failure. In March 2004, the plaintiff seized in Turkish waters two motor yachts registered in the Cayman Islands Shipping Registry in the names of the corporate defendants. These yachts were said to belong to the controlling shareholders of a leading Turkish bank now in the administration of the plaintiff. In December 2004, the plaintiff brought an action in the Grand Court to prevent the completion of registration of mortgages for amounts in excess of their total value, granted against each vessel in favour of the third defendant in person.

183 On the question whether the plaintiff should be ordered to provide SFC, in *Tasarruf* the Chief Justice said that the fundamental question was whether an agency of a friendly foreign state, enjoying good standing in the international community and which has invoked the jurisdiction of this court, should be required to put up security for a defendant's costs of the action (*ibid.*, at para. 14). In earlier times there had been a practice that a foreign plaintiff should be ordered to provide SFC[14] but given the changes to the Rules since then and the discretionary nature of the exercise requiring the court to consider all the circumstances, a modern and different approach where the plaintiff is a foreign state, was discernible from the judgments in *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.* (3) and *Ministère de la Culture &c. de France* v. *Lielb* (22) ([1981] 1 WLUK 253, at paras. 16–18). This modern principle (*ibid.*, at para. 22) was—

14 See *e.g. Costa Rica (Republic)* v. *Erlanger* (8).

> "that where the plaintiff is the government (or a state agency) of a foreign state enjoying good standing in the international community (in particular from this court's point of view, enjoying diplomatic relations with H.M. Government) it should be assumed as a matter of comity and common sense, in the absence of anything to the contrary, that it will honour its obligations for costs made against it. Nonetheless, as the question remains one to be decided on a case by case basis in the discretion of the court, an order for security for costs could undoubtedly be made against a foreign state in appropriate circumstances."

184 In *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.* (3), the plaintiff, a Brazilian bank, itself in liquidation and under the control of a liquidator appointed by the Brazilian Government, petitioned for the winding up of the respondent. Mr. Justice Smellie (as he then was) was of the *prima facie* view that there was merit in the petition (1998 CILR at 112–113) and he concluded:

> "that the proper balance is struck when account is taken of the consideration that the petitioner is now under the control of a liquidator who is appointed by the Brazilian Government. Even in the ordinary case, the fact of insolvency will not by itself dictate an order for security. When the entity is a large bank, as the petitioner is, any such presumption becomes even less appropriate as grounds for ordering security for costs: see *Dartmouth Harbour Commrs.* v. *Mayor of Dartmouth Hardness* … and the notes in 1 *The Supreme Court Practice 1997*, para. 23/1–3/13, at 412.
>
> Although Ms. Collins (who argued the aspect of the matter for the petitioner) had no instructions to give an undertaking as to costs, I have nothing at all before me to support any suggestion that the Brazilian Government would not ensure that its obligations for costs (to be incurred if its appointed officer proves unsuccessful before this court) would not be honoured. In the interest of comity, I would consider that any presumptions would arise in favour of such obligations being met and not the other way around. The rule in the *Dartmouth Harbour Commrs.* case applies, *a fortiori*, to the present circumstances."

185 As related at para. 179 (ix) above, *Cybervest* (9) concerned a petition to wind up a fund incorporated in the Cayman Islands presented by PIFSS which faced a SFC application. In his judgment, Smellie, C.J. said (2006 CILR 80, at paras. 22–24):

> "The wording of [O.23, r.1(1)] plainly reveals the wide discretion to be exercised in the making of an order.

> 23 The wording does not admit any judicial policy that would mandate the making of an order simply because the plaintiff is a foreign plaintiff; the requirement that the plaintiff is ordinarily resident outside the jurisdiction is simply a pre-condition to the making of an order under the particular O.23, r.1(1)(a). It is a precondition just like those stipulated in (b)–(d), the other sub-rules, which are aimed at plaintiffs who may not ordinarily reside out of the jurisdiction …
>
> 24 … I would simply add that discretion is to be exercised on a case-by-case basis, as the rule states, having regard to all the circumstances of the case."

186 After noting the significant fact that PIFSS had immensely valuable assets (its shares in the fund PIFSS was seeking to have wound up) that were to be regarded as being within the jurisdiction, Smellie, C.J. went on to say (*ibid.*, at para. 27):

> "Another circumstance, of some weight, is the fact that the petitioner is a state agency of a foreign government of undoubted resources and enjoying a high reputation in the global financial and commercial community. This is relevant insofar as it would tend to negate any concern that the plaintiff would be unlikely to obey an order for costs made in favour of the respondent. To my mind, it also addresses the concern raised by Mr. Farrow, that efforts to enforce an order in Kuwait, if it ever came to that, could be met with a plea of state immunity."

187 The judge supported his statement in his judgment (2022 (1) CILR 12, at para. 165) that there was a rebuttable presumption that SFC should not be ordered by reason of the plaintiffs being the agent of, and wholly owned by, the State of Kuwait by footnote 28 which reads "*TMSF* v. *Wisteria Bay Ltd.* … (2006 CILR 351, at para. 23)." However, it is clear that the paragraph of the judgment in *Tasarruf* (39) to which the judge intended to refer was para. 22 which reads:

> "Taken together, there is a common practical principle to be discerned from these last cited three cases which is that where the plaintiff is the government (or a state agency) of a foreign state enjoying good standing in the international community (in particular from this court's point of view, enjoying diplomatic relations with H.M. Government) *it should be assumed* as a matter of comity and common sense, *in the absence of anything to the contrary*, that it will honour its obligations for costs made against it. Nonetheless, as the question remains one to be decided on a case by case basis in the discretion of the court, an order for security for costs could undoubtedly be made

against a foreign state in appropriate circumstances." [Emphasis added.]

188 It was no doubt in light of the emphasized words in this passage that the judge expressed himself as he did in para. 165 of his judgment. In our view, with respect to the judge, the Chief Justice is not to be taken here as laying down a principle based on a presumption that was to prevail unless it was rebutted. We say this having regard to the words used in the following sentence in the quoted passage that stress that the court is exercising a broad discretion on a case-by-case basis. It follows, in our opinion, that the judge erred in law in proceeding as he did on the basis that there was a presumption arising from comity and common sense that security for costs should not be awarded against the plaintiffs, although each case will be decided on its own facts.

189 In our opinion, the approach of the court when dealing with an SFC application against a foreign state or foreign state agency that enjoys good standing in the international community should be that it can treat this as a factor in favour of such of a plaintiff to go into the scales but on the basis that it is just one amongst all the other factors that must be weighed by the court when exercising the discretion conferred upon it.

190 We also accept Ms. Stanley's submission that the judge erred in stating that a foreign plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction. The judge supported this statement by citing Lightman, J.'s *dictum* in *Leyvand* v. *Barasch* (20) that the court will not infer a real risk that assets within the jurisdiction will be dissipated or moved abroad in the absence of a question over the plaintiff's probity. Whilst the judge clearly intended this statement to apply to a situation where the evidence showed that a foreign plaintiff had property within the jurisdiction but there was nothing or very little about the property's permanency or freedom from encumbrances, we find it to have been too broadly expressed. Evidence that a foreign plaintiff has valuable property within the jurisdiction will obviously be of relevance but the significance of this evidence will depend on all the facts of the case, including any evidence as to the permanency of the property and its freedom from encumbrances (or the lack of such evidence) and other evidence tending to show that the plaintiff can be trusted to honour an adverse costs order. We also respectfully disagree with Lightman, J.'s *dictum* in *Leyland* v. *Barasch.* In our view, the approach adopted by Butcher, J. in *PJSC Tatneft* v. *Bogolyubov* (25) ([2019] Costs L.R. 977, at para. 49) and Henshaw, J. in *Pisante* v. *Logothetis* (27) ([2020] EWHC 3332 (Comm), at para. 65): "the question is not whether a lack of probity has been shown, but whether there is a real risk that the assets in a Contracting State may no longer be available if and when an asset enforcement arises," is to be preferred.

191 We turn to Ms. Stanley's submission challenging the finding by the judge (2022 (1) CILR 12, at para. 178) that, if the plaintiffs' claims against the defendants all fail, there will be a costs order in respect of which KPA and PIFSS will be jointly and severally liable, the latter having substantial assets within the jurisdiction. Ms. Stanley's submission is based on the contention now pleaded in para. 12 of D1's defence that KPA's claim is a nullity because it was not authorized by the Chairman of KPA, who, as a matter of Kuwaiti law (having regard to KPA's constitution) is the only officer of KPA who can authorize the bringing of claims by the company and who has no authority to delegate this power or to ratify an earlier unauthorized issue of proceedings.

192 D1's defence and counterclaim to KPA's claim was served and filed on January 31st, 2022, over three months after the hearing below. In her skeleton argument for this appeal, Ms. Stanley submits that:

> "As recorded in the evidence [the fourth affidavit of Mr. Lewis] and then set out in the GP's Defence at [12], there is a major factual dispute in this case as between KPA and the Appellants as to whether these proceedings have been commenced and continued on behalf of KPA with its authority (there being no power under Kuwaiti law to ratify proceedings if brought without authority.)"

193 Attention was first drawn to the significance of the plaintiffs being joint and several debtors under an adverse costs order in para. 20 of Mr. Florent's third affidavit, dated August 27th, 2021, where he deposed that he had alerted PIFSS to the possibility that, owing to the joint and several nature of costs orders in the Cayman Islands, it was possible that PIFSS would be required to satisfy any costs order that may be made in these proceedings in full from its own resources.

194 In paras. 42–47 of his fourth affidavit, dated September 17th, 2021, Mr. Lewis deposed that the FFP directors had been sent an opinion of Mr. Omar Al Qahtani of the Turkey office of Al Tamimi & Co. ("the Al Tamimi opinion") stating that only the Chairman of KPA had authority to approve the issuance of proceedings by KPA and this authority was not capable of being delegated; nor could an unauthorized issuance of proceedings be ratified by the KPA's Chairman. Reference was also made to the suspension of Mr. Al Sabah on August 24th, 2021 from his position as Director General KPA.

195 Curious as to how this lack of authority contention was deployed below, the court has perused the skeleton arguments relied on before the judge and the transcript of the oral submissions advanced below by Ms. Stanley for D1, Mr. Chapman for D2–D3 and Mr. Allison for the plaintiffs.

196 In para. 245 of his skeleton argument for the hearing below, Mr. Allison contended that PIFSS had sufficient assets within the jurisdiction

to cover any costs order that might be made against the plaintiffs in respect of which they would be jointly and severally liable.

197 Mr. Chapman did not contend in either his skeleton argument or his oral opening submissions that one of the consequences of the Tamimi opinion was that it was not inevitable that if the plaintiffs' claims were dismissed they would both be jointly and severally liable for the costs of the proceedings.

198 Ms. Stanley also did not contend in her skeleton argument or in her opening or closing submissions that, in light of the Tamimi opinion, KPA's claim was a nullity so that it could not be said that it was inevitable that if KPA's and PIFSS's respective claims were dismissed, the plaintiffs would be jointly and severally liable for the costs of the proceedings. Instead, she contended that the effect of the Tamimi opinion was that it undermined the plaintiffs' contention that an adverse costs order would be enforceable in Kuwait and undermined KPA's reliance on assurances given by KPA's Director General, Mr. Al Sabah, both before and after he was suspended from that office, that KPA would honour any costs order made against it.

199 In his oral submissions in reply, Mr. Allison observed that the defendants had not taken the point that it was only one of the plaintiffs, PIFSS, that had assets within the jurisdiction and contended that, even if it had been taken, as Mr. Florent explained in para. 30 of his third affidavit, PIFSS was well aware of the joint and several nature of costs orders so that it may have to pay the whole sum from its own resources. Mr. Allison also submitted that the "lack of authority issue" was not a live issue in the proceedings before the court because there had been no application to strike out KPA's claim on that basis or to seek the determination of a preliminary issue.

200 In the course of his reply submissions made ahead of Ms. Stanley's reply submissions, Mr. Chapman accepted that, if the plaintiffs' claims were dismissed, the likely costs order would be a joint and several one, subject to the possibility that PIFSS might well argue that joint and several liability should not apply if KPA's claim was found to have been brought without authority.

201 Whilst Ms. Stanley had expressly adopted Mr. Chapman's opening oral submissions when she made her own opening oral submissions, she did not adopt the same course when she delivered her oral closing submissions, in the course of which she said she was going to deal just with the Al Tamimi/authority/suspension point and the point she wished to make was not the lack of authority to commence KPA's proceedings but the suspension of Mr. Al Sabah as Director General of KPA and the resulting loss of his authority to provide information to Mr. Florent upon which Mr. Florent had purported to rely in advancing KPA's case.

202 In our judgment, since the point now taken by D1[15] as to the impact of the lack of authority contention on what the judge said (2022 (1) CILR 12, at para. 178) was not taken on behalf of D1 below, when it plainly could have been, it is not open to D1 to take the point in this appeal in support of D1's case that the judge's decision refusing the defendants' SFC applications should be set aside.

203 In our judgment, the errors of the judge identified in paras. 188 and 190 above played such a significant role in the exercise of his discretion (see *e.g.* paras. 155, 165, 166 and 176) that his decision must be set aside.

204 In these circumstances, it is open to us to exercise the discretion conferred by GCR O.23, r.1(1) and since we have before us all the evidence and the parties' skeleton arguments that were before the judge and the transcript of the oral submissions the judge heard on the SFC issue, we propose to decide whether SFC should or should not be ordered against each of the plaintiffs.

205 We proceed on the assumption that the defendants are correct in their submission that there would be very real difficulties indeed in enforcing in Kuwait costs orders made against the plaintiffs if their claims against the defendants are dismissed.

206 Although it is a necessary condition for the ordering of SFC that there is a real risk that an adverse costs order would not be enforced against the postulated foreign plaintiff in his/its home jurisdiction, this is not a sufficient condition for ordering SFC whatever the other circumstances of the case. Instead, it is open to the court, if there is sufficient evidence to support such a conclusion, to find that there is no real risk that the plaintiff will not honour an adverse costs order and for this reason to decline to order SFC. In our judgment, this is such a case having regard to the following matters.

207 As is common ground, the plaintiffs are agencies of a foreign state, Kuwait, which is of good standing in the international community and enjoys diplomatic relations with HM Government. Further, as related above, an instrumentality of the State of Kuwait, the DLAL, acting by the Head of its International Arbitration and Litigation Sector, sent a formal letter to the judge on behalf not only of KPA and PIFSS but also the State of Kuwait that reads in relevant part:

> "Dear Sirs.
>
> Cause No. FSD 236 of 2020 (RPJ)—(1) Kuwait Ports Authority and (2) The Public institution for Social Security v (1) Port Link GP Ltd.,

15 See para. 180(iv) above.

(2) Mark Eric Williams, (3) Wellspring Capital Group, Inc and (4) KGL Investment Company Asia (the 'Proceedings')

I am the Head of the International Arbitration and Litigation Sector for the Department of Legal Advice and Legislation (the 'Department') of the State of Kuwait.

One of the responsibilities of the Department is to act as legal adviser to the State of Kuwait as well as to certain State entities and/or incarnations of the State. In particular, the Department currently advises and represents each of the Kuwait Ports Authority ('KPA') and The Public Institution for Social Security ('PIFSS') in connection with the Proceedings.

I hereby confirm, on behalf of the Department, that KPA and PIFSS are wholly owned by the State of Kuwait and bring to your attention the attached letters, duly signed by authorised representatives of KPA and PIFSS confirming that they will comply with any final and binding costs orders made against them in the Proceedings ('Costs Orders').

We respectfully request, on behalf of KPA and PIFSS [and the State of Kuwait][16] that the Grand Court take these letters into consideration in determining whether or not KPA and/or PIFSS should be required to provide security for costs in the Proceedings."

208 The letters (also addressed to the judge) that were sent with the DLAL letter on behalf of PIFSS and KPA were in common form. In relevant part, they read:

"Dear Sirs

We refer to the abovementioned Proceedings before the Grand Court of the Cayman Islands, in which Kuwait Ports Authority ('KPA') [PIFSS] is a Plaintiff.

Without prejudice to the exercise of KPA's [PIFSS's] legal rights, including without limitation its right to appeal, or to seek leave to appeal, any decision of the Grand Court, we confirm that KPA will comply with any final and binding costs order(s) made against KPA in the course of the Proceedings ('Costs Orders').

Yours faithfully"

209 The KPA letter is signed by Mr. Al Sabah in his capacity as KPA's Director General. The letter is dated May 27th, 2021, which was at least

16 The brackets do not signify that the words they contain were not part of the original letter: they were.

two months before Mr. Al Sabah was suspended from this office on August 24th, 2021.

210 Ms. Stanley criticizes the judge for placing the reliance he did on these letters. Focusing on the words, "Without prejudice to the exercise of KPA's [PIFSS's] legal rights, including without limitation to its right to appeal, or to seek leave to appeal, any decision of the Grand Court," she submits that the letters were merely "comfort letters" and further contends that the judge should have found there remained a significant risk that an adverse costs order would not be paid because the confirmation expressed in the letters could only be enforced by committal or sequestration proceedings in the jurisdiction and such an order would not be enforceable in any other court; nor was it clear that the comfort letters would be enforced by the courts of Kuwait.

211 We do not accept these criticisms. In our judgment, the three letters amount to a representation intended to be relied on by the Grand Court that the plaintiffs would honour any final and binding costs order made against them and we regard the letters as providing strong support for the conclusion that there is no real risk that such costs orders would not be paid. We say this because we have no doubt that the State of Kuwait and its agencies, KPA and PIFSS, would suffer very significant reputational damage if the plaintiffs were to depart from the confirmations given in the letters. Also, further support for this "no real risk" conclusion comes from the evidence as to the financial resources of the plaintiffs that shows that each could be expected to have the ready funds to honour an adverse costs award.

212 As related by the judge, the unchallenged evidence is that PIFSS, which administers independently Kuwait's pension fund for all Kuwaiti citizens in the workforce, had a global investment asset portfolio worth approximately US$133.7bn. as at March 31st, 2021 and earned a profit for the period March 2020 to December 2020 of US$18.9bn. Included in these assets is its investment in the Jermyn Street Fund, a Cayman Islands ELP, which was valued at €35,074,942 as at March 31st, 2021. It is true that PIFSS is likely to be entitled to redeem this investment under the partnership agreement and to do so without publicity but there are no reasons to think that PIFSS would set about redeeming its investment and transferring the proceeds out of the jurisdiction to avoid having to satisfy a costs order: accordingly its existence provides reassurance that PIFSS is going to have amply sufficient resources over at least the next five to six years to meet an adverse costs order should its claims against the defendants be dismissed.

213 When setting out KPA's financial details that are recorded in para. 179(xv) above when relating his reasons why the SFC applications should be dismissed, the judge was relying on the evidence given in Mr. Florent's

third affidavit which was based in part on information that had come from Mr. Al Sabah. Ms. Stanley submits that this evidence was and is inadmissible because it is hearsay and Mr. Florent's third affidavit was sworn on August 27th, 2021 after Mr. Al Sabah was suspended on August 24th, 2021. We are not impressed by this submission. Even assuming that the information from Mr. Al Sabah was provided to Mr. Florent after Mr. Al Sabah had been suspended (which we think unlikely), Mr. Al Sabah would have been in a position to provide reliable figures showing that KPA's profit for the financial year 2020–2021 was KWD56,450,000, the equivalent to c.US$187,522,553 (based on a foreign exchange currency conversion of KWD1: US$3.32 as at August 9th, 2021). Further, Mr. Florent exhibits a public announcement made by KPA on April 4th, 2021 that KPA's profit for the financial year 2020–2021 was KWD56,450,000.

214 Apart from its interest in the assets held on trust for it and TPF by the GP, KPA has no assets within the jurisdiction but it is clear to us from the level of profit earned by KPA for the year 2020–2021 that it is extremely likely to have ample resources to honour an adverse costs order over the next five to six years.

215 It was argued below by the defendants that the plaintiffs could not be trusted to honour an adverse costs order on two particular grounds: the attempts by the Attorney General of Kuwait to obtain the moneys that had been paid into the account held at the Noor Bank that were part of the proceeds from the sale of Clark City, TPF's asset in the Philippines; and the manner in which the defendants had conducted the proceedings, including the bringing of proceedings against Walkers, the defendants' previous attorneys, the bringing of derivative claims for proceeds that would be paid to the plaintiffs and the plaintiffs' alleged refusal to compromise the SFC issue. These contentions are not advanced by Ms. Stanley. Had they been, they would have found no favour with the court.

216 For the reasons given in paras. 205–215 above, we find that there is no real risk that the plaintiffs will not honour their confirmations that they will pay any final and binding costs order made against them and accordingly we order that the plaintiffs should not be ordered to provide security for costs.

217 It follows that D1's appeal against the judge's refusal to order SFC must be and is dismissed.

Summary of conclusions

218 We would summarize our conclusions as follows:

(i) D1's appeal against the refusal of the judge to strike out the plaintiffs' direct claims against D1 is dismissed.

(ii) D1's appeal against the refusal of the judge to strike out the plaintiffs' derivative claims against D1 is allowed and the claims are struck out.

(iii) The appeals of D2, D3 and D4 against the refusal of the judge to strike out the plaintiffs' derivative claims against them are dismissed.

(iv) The appeal of D1 against the refusal of the judge to order the plaintiffs to provide security for costs is dismissed.

219 Our preliminary view as to costs is:

(i) There should be no order as to costs in respect of D1's strike out appeal. Although D1 succeeded in having the derivative claim against it struck out, it did not succeed on its argument that the plaintiffs' claims were misconceived because they were not in the form of an application for partnership accounts.

(ii) D2, D3 and D4 should pay the costs of their strike out appeals.

(iii) D1 should pay the costs of its SFC appeal.

(iv) The parties are at liberty to contend for different costs orders than those set out in (i)–(iii) but they must serve (concise) written submissions in support thereof within 10 days of the issuance of this judgment.

220 **BIRT, J.A.:** I agree.

221 **BEATSON, J.A.:** I also agree.

Judgment accordingly.

Attorneys: *Kobre & Kim* for the first appellant; *Campbells LLP* for the second to fourth appellants; *Ogier* for the respondents.

EXHIBIT P

ND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

WINDING UP PETITION

To the Grand Court

The humble petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP ("**RBI One**")) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP ("**RBI Two**")) shows that:

A. Introduction

1. This is the petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of RBI One) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of RBI Two) (together, the "**Petitioners**"), each with its registered office at 3076 Sir Francis Drake's Highway, PO Box 3463, Road Town, Tortola, British Virgin Islands.

2. The Petitioners present this Petition against (i) ATP Life Science Ventures, L.P. (formerly named Apple Tree Partners IV, L.P.) (the "**Partnership**") and (ii) ATP III GP, Ltd. (the "**GP**") in its capacity as the general partner of the Partnership, for the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Act (2025 Revision) (the "**ELP Act**") and Section 92(e) of the Companies Act (2025 Revision) (the "**Companies Act**"), and/or in the alternative pursuant to section 35 of the Partnership Act (2025 Revision).

This **WINDING UP PETITION** was presented by Campbells LLP, Attorneys for the Petitioners, whose address for service is that of its Attorneys at Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 (ref: PDK/JFI/19135-44991).

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3. The Petition is presented because, as described in detail below, there has been continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP. The GP is a Cayman Islands exempted company with registration number 252582 and its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

4. As a result of the GP's mismanagement and lack of probity, there is a justifiable loss of trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole. In particular:

    a. The GP has issued capital call notices in violation of the LPA seeking to compel the contribution of over USD 100 million in additional capital in excess of maximum subscription commitments and in breach of the terms of the LPA.

    b. The GP has launched proceedings in Delaware seeking to compel the Petitioners to provide vast sums of further funding to the Partnership, in breach of the express provisions of the LPA (defined in paragraph 16 below) whilst simultaneously seeking to apply a penal default charge in order to confiscate 50% of the Petitioners' interest in the Partnership, in order to take control of the Partnership and billions of dollars of the Petitioners' assets.

    c. The GP has also improperly charged its expenses to the portfolio companies and failed to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

    d. The GP also has a conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as it has been acting in the interests of the portfolio companies by exposing the Partnership to open-ended, binding commitments thereto and in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA.

5. In all the circumstances, the substratum of the Partnership has also been lost, and there is a need for independent investigation into the Partnership's affairs.

B. <u>The Partnership</u>

6. The Partnership is a Cayman Islands exempted limited partnership established pursuant to the ELP Act and registered on 29 October 2012. The registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

7. The Partnership was formed following discussions between Dr Seth Harrison ("**Dr Harrison**") and Dr Dmitry Rybolovlev ("**Dr Rybolovlev**") concerning the formation of a vehicle to make investments in the life science industry using capital provided from entities owned by the Rybolovlev family trust (the "**Trust**"). Dr Rybolovlev is a highly successful businessman of Cypriot nationality and settlor of the Trust.

8. Upon the Partnership's formation, its limited partners were Blue Horizon Enterprise Ltd ("**Blue Horizon"**) Ezbon International Ltd ("**Ezbon**") and Dr Harrison. Blue Horizon and Ezbon are special purpose vehicles ultimately owned and controlled by the Trust.

9. The GP is part of a life sciences venture capital firm called Apple Tree Partners ("**ATP**"), which operates out of the United States. Dr Harrison is the founder and managing director of ATP. ATP has no meaningful business interests or capital under management other than that belonging to the Partnership. Apple Tree Life Sciences, Inc. ("**ATLS**") serves as a management company for the Partnership and an annual fee is paid to it in connection with certain Partnership expenses.

10. The Petitioners are limited partners of the Partnership. Unicorn Biotech Ventures One Limited and Unicorn Biotech Ventures Two Limited are the sole general partners of RBI One and RBI Two, respectively. The sole limited partner of both RBI One and RBI Two is Rigmora Holdings Ltd ("**Rigmora Holdings**"). Rigmora Holdings is a holding company for the Trust and also acts as an advisor to the trustees of the Trust.

11. As of June 2025, the contingent subscriptions of the Petitioners total US$2.425 billion (US$1,188,250,000.00 for RBI One and US$1,236,750,000.00 for RBI Two), and the total

capital contributions of the Petitioners are in excess of US$2.6 billion, which represents c. 99% of all capital contributions made to the Partnership.

12. The Petitioners became limited partners of the Partnership as of 30 June 2024 by respectively taking over the limited partner positions of the two former limited partners, Blue Horizon and Ezbon.

13. The Petitioners are the only limited partners of the Partnership not affiliated with the GP. The other limited partners are Dr Harrison and Les Pommes LLC ("**Les Pommes**"). Les Pommes is a discretionary family trust for Dr Harrison's daughters. Ms Anna Batarina (an employee of ATP) is a carry holder and ultimately has an economic interest in the Partnership. The GP has claimed that various other employees of ATP are also limited partners of the Partnership. However, none of those persons are parties to the LPA (as defined below) and none of those individuals have ever contributed any capital to the Partnership. The Petitioners do not accept that they are in fact legitimate limited partners.

14. The Partnership has been built almost exclusively using capital belonging to the Petitioners. As of June 2025, c. 99% of the US$2.7 billion invested into the Partnership was capital contributed by the Petitioners. The remaining US$53.8m of capital has been contributed by Dr Harrison and Les Pommes, funded substantially by way of a loan from Ezbon.[1]

15. The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related companies and business projects.

Structure of the Partnership

16. The limited partners of the Partnership, and the GP are parties to a limited partnership agreement ("**LPA**"), the initial version of which was dated 29 October 2012. The LPA was restated on 1 November 2012 and has been amended a further 22 times since then: on 1 January 2014, 15 August 2014, 1 September 2014, 1 April 2015, 11 May 2015, 31 December

[1] The capital contributed to the Partnership by Dr Harrison was mostly made up of US$52.6m in capital that he had borrowed from Ezbon of which US$24.8 was repaid in cash (out of capital distributed by the Partnership to the GP), and the remaining US$27.8m was repaid by transferring part of his limited partner interests in the Partnership to Ezbon (as recorded in Paragraph 6(c) of Amendment No. 14 of the LPA).

2015, 31 May 2017, 9 August 2017, 22 December 2017, 1 July 2018, 26 October 2018, 1 December 2018, 4 February 2019, 17 April 2019, 10 July 2019, 1 February 2020, 9 September 2020, 5 November 2020, 27 November 2020, 21 June 2021, 5 December 2022 and 20 December 2024. Each of the amendments has been undertaken by way of a separate amendment agreement (each referred to herein as "Amendment X" where X represents the number of the amendment following the execution of the 1 November 2012 restated LPA).

17. Upon incorporation, the Partnership had a conventional fund structure consisting of a single set of assets and liabilities participated in by all limited partners. However, by way of subsequent amendments starting with Amendment 13 (executed on 4 February 2019) the structure of the Partnership was changed to consist of separate investment "pools" each of which "*to the maximum extent possible*" consisted of its own set of assets and liabilities.

18. Prior to the transfer of the limited partner interests in June 2024, Blue Horizon and Ezbon together were the "Subject Limited Partner" under the LPA and the holder of the majority of "Preferred Units" in the Partnership. Following the transfer of the limited partner interests, the Petitioners became the "Subject Limited Partner" and the holder of the majority of "Preferred Units" in the Partnership for the purposes of the LPA.

19. The LPA (as amended) provides, materially:

    a. Paragraph 5(a)(i) provides that each limited partner shall contribute to the Partnership an amount equal to but not in excess of the total amount of its "Contingent Subscription" specified in the "List of Partners". The amount of each limited partner's Contingent Subscription is in turn determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**") (Clause 1(e)).

    b. Paragraph 5(a)(ii) provides that the GP may only call capital for the purposes specified therein unless otherwise approved by holders of a majority of the Preferred Units in writing. In particular, Paragraph5(a)(ii)(E) provides that the GP may only "*invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units*".

c. Paragraph 5(a)(ii) also provides, materially: *"… in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities.*"

d. Schedule C to the LPA (as amended by Amendment 2) provides, materially: "[t]*he General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter* […] *This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs along with at least the following:*

- *Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter* […] *then ended and including explanations of major variances to budget* […]
- *Detailed budget by major Project by quarter* […] *for the next twelve months* […]
- *Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow*.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets".

e. Paragraph 20 (e)(ii) provides that the GP "*shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the '<u>ATLS Fee</u>'). Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year … The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as*

required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee".

f. Amendment 9, section 11 provides: "*ATLS shall pay the following expenses of the Partnership from the ATLS Fee: (i) except as set forth in Section 12, below, all compensation and benefits for employees (except to the extent paid from the Management Fee), (ii) all facilities and related overhead expenses, including rent, utilities, charges assessed by the lessor, property and general liability insurance, and communications, including phone and internet, (iii) office supplies and equipment, information technology support and software, (iv) publications, dues and charitable contributions, (v) public relations, marketing and advertising expenses, (vi) travel and (vii) capital expenditures, including for furniture, fixtures, computers and other equipment, in each case, except as expressly provided in the following sentence*."

20. The Petitioners are the holders of a majority of the "Preferred Units". The GP is therefore required to obtain the Petitioners' approval for any budget for investments in "Projects".

21. The Petitioners' total contingent subscriptions for the purposes of Paragraph 5(a) of the LPA is US$2.425 billion (the "**Contingent Subscriptions**"). In particular:

a. Pursuant to a subscription agreement between Ezbon and the Partnership dated 1 November 2012, Ezbon agreed that the amount of its contingent subscriptions would be US$726,750,000 (the "**Ezbon Subscription Agreement**").

b. Pursuant to a subscription agreement between Blue Horizon and the Partnership dated 1 November 2012, Blue Horizon agreed that the amount of its contingent subscriptions would be US$698,250,000 (the "**Blue Horizon Subscription Agreement**").

c. On 20 September 2020:

i. Ezbon executed an amendment to the Ezbon Subscription Agreement which increased its contingent subscription by US$510,000,000 to US$1,236,750,000; and

ii. Blue Horizon executed any amendment to the Blue Horizon Subscription Agreement which increased its contingent subscription by US$490,000,000 to US$1,188,250,000,

(the "**Subscription Amendments**").

d. Other than the subscription agreements identified above (the "**Subscription Agreements**") no other subscription agreements have been entered into by Ezbon, Blue Horizon or the Petitioners.

22. The Subscription Amendments were executed in the context of an amendment to the LPA executed on or around 9 September 2020 ("**Amendment 17**").

a. Amendment 17 increased the number of "pools" from 2 to 3 (referred to in Amendment 17 as "Pool A", "Pool B" and "Pool C" by inserting paragraph 20(a) into the LPA).

b. Paragraph 20(a) of the LPA envisaged that the Subject Limited Partners would have total contingent subscriptions in excess of those committed to under the Ezbon and Blue Horizon Subscription Agreements.

c. The Subscription Amendments were entered into shortly after Amendment 17 was executed to increase the Subject Limited Partners total contingent subscriptions in the manner contemplated by Paragraph 20(a) of the LPA.

23. By or on around 14 December 2023, the entirety of the Contingent Subscriptions had been paid out pursuant to capital calls made by the GP under Paragraph 5(a)(ii) of the LPA. Since then, neither the Petitioners (nor their predecessors) have been obliged to contribute further capital to the Partnership under Paragraph 5(a) of the LPA.

24. Further capital contributions totalling US$242 million have since been made by the Petitioners (or their predecessors), without any obligation to do so. As noted above, to date the total capital contributed by the Petitioners to the Partnership is in excess of US$2.6 billion, comprising approximately 99% of all capital contributions made to the Partnership.

C. Ground 1: Justifiable and irretrievable loss of trust and confidence

25. The Petitioners have justifiably and irretrievably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

26. The GP has seriously mismanaged the Partnership, acted in a manner calculated to prejudice the Petitioners and demonstrated a lack of probity in the conduct of its affairs by:

    a. Improperly (and in breach of duty) issuing capital calls on 30 May 2025 totalling over US$100 million (the "**May 2025 Capital Calls**"). The May 2025 Capital Calls were not made for proper purposes. They were made for improper purposes of placing commercial pressure on the Petitioners: (a) in circumstances where they are not obliged to make further capital contributions; and (b) in the context of a break-down of the relationship between the Petitioners. Further, the May 2025 Capital Calls were not made bona fide in the best interests of the Partnership as a whole (principally, the Petitioners) but were instead made in the interests of the GP and / or Dr Harrison. The Petitioners have brought separate proceedings in the Grand Court of the Cayman Islands by way of writ dated 2 June 2025 to establish (amongst other things) that they are not obliged to pay the May 2025 Capital Calls.

    b. Issuing the Delaware Proceedings (defined in paragraph 39(b) below), and making numerous unfounded and untruthful allegations therein, in order to take control of the Partnership;

    c. Improperly seeking to impose a penal default charge on the Petitioners. In the Delaware Proceedings the GP alleges it is entitled to take 50% of the Petitioners' interest in the Partnership (the GP estimates the Partnership to be worth approximately US$4 billion) and to reallocate those assets to the other limited partners (i.e. to Dr Harrison and his family trust, Les Pommes). In other words, Dr Harrison, acting via the GP, has commenced proceedings in Delaware in which he

seeks to take billions of dollars of assets from the Petitioners and transfer those assets to himself (in circumstances where he has contributed minimal capital into the Partnership and where the clear wording of the LPA does not entitle him to take such action, see paragraphs 40-41 below).

d. Seeking to compel the Petitioners to make further contributions to the portfolio companies and has sought to make accelerated capital calls and unbudgeted capital calls without complying with its obligations under the LPA. By issuing the Delaware Proceedings the GP is acting in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and is clearly acting out of self-interest, and has not exercised its powers for a proper purpose.

e. Improperly charging its expenses to the portfolio companies held by the Partnership.

f. Failing to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

g. Failing to act in the best interests of the limited partners as a whole by exposing the Partnership to open-ended, binding commitments to the portfolio companies and in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA. In this regard, the GP's decision making (through Dr Harrison (as the controlling mind and will of the GP, and a director of many of the portfolio companies owned by the Partnership)) is infected by a conflict of interest.

<u>Background to loss of trust and confidence</u>

27. As set out above, the Partnership was formed following discussions between Dr Harrison and Dr Rybolovlev to make investments in the life science industry using capital provided from entities owned by the Trust. It was agreed at the outset that the limited partners would have a substantial degree of oversight as to how capital is invested, by their ability to review and elect whether to approve budgets for investments required to be presented by the GP. As also set out above, the GP is part of ATP, which has no meaningful business interests or capital

under management other than that belonging to the Partnership and which was founded and is managed by Dr Harrison.

28. From around 2021, the GP started to improperly charge the employee costs of ATP investment professionals to the Partnership's portfolio companies (see paragraphs 53 to 56 below).
29. In September 2023, following a series of disagreements between the limited partners and the GP, the Petitioners' predecessors, Ezbon and Blue Horizon, made a request to the GP pursuant to their rights under the LPA for the distribution of assets in the "Pool Braeburn" investment pool. The "Pool Braeburn" investment pool is funded solely by capital contributed by the Subject Limited Partner. Upon the formation of "Pool Braeburn" (pursuant to Amendment 20 of the LPA), the Subject Limited Partner was granted a right (under paragraph 21(d) of the LPA) to require the Partnership to distribute the assets within that pool on demand. The Subject Limited Partner subsequently demanded the distribution of assets in Pool Braeburn.

30. The GP improperly refused to comply with this request. In doing so, the GP asserted that it was entitled and bound to retain the Braeburn assets within the Partnership to ensure Ezbon and Blue Horizon would continue contributing capital to the Partnership. That was not a proper basis for the GP to refuse to comply with the distribution request. The GP also claimed that compliance with the distribution request would impact the GP's ability to obtain third party funding, which would in turn impact the financial position of the Partnership. As a consequence of the GP's threats that the financial position of the Partnership would be affected, Ezbon and Blue Horizon agreed not to pursue the distribution request.

31. In July 2024, the Petitioners made another request to the GP under the LPA for the distribution of assets in Pool Braeburn. The GP failed to comply, and the Petitioners issued proceedings in the Grand Court of the Cayman Islands seeking a declaration that the GP must distribute the Braeburn assets in accordance with the distribution request (the "**Braeburn Proceedings**").

32. In those proceedings, the GP claimed that it was unable to distribute the Braeburn assets to the Petitioners including because Braeburn Inc, one of the major assets within Pool Braeburn (and of the Partnership as a whole), had an "internal policy" prohibiting the transfer of ownership of the company from the Partnership to the Petitioners. The GP contended that the "internal policies" of Braeburn Inc included whatever the Braeburn Inc board considered was in Braeburn Inc's best interests to occur. That was not a proper basis for refusing to comply with the distribution request. The GP also contended that such a transfer would also

trigger an event of default under a loan agreement between Braeburn Inc and a third party, which would have a significant knock-on negative impact on the Partnership. At the relevant time, the Partnership was the sole shareholder and Dr Harrison was the chairman of the board of directors of Braeburn Inc. He exercised significant influence over the other directors and members of senior management. It is therefore inconceivable to think that Dr Harrison would not have been involved in implementing the aforesaid arrangements.

33. The parties entered into a settlement agreement in respect of the Braeburn Proceedings on 20 December 2024 (the "**Settlement Agreement**"), which provided, amongst other things, that the GP would use commercially reasonable efforts to remove or mitigate any contractual blocks or economic costs that may inhibit the distribution of the Braeburn assets to the Petitioners Clause 5.1 of the Settlement Agreement:

    a. required the parties to bear their own legal costs and disbursements in respect of the proceedings and the Settlement Agreement, (notwithstanding any provision of the LPA which may provide otherwise); and

    b. expressly provided that the GP would not charge the Partnership or the portfolio companies for its legal costs and disbursements incurred in relation to the proceedings and the Settlement Agreement.

34. However, the relationship between the GP and the Petitioners has since continued to deteriorate substantially to a state of complete breakdown and there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership.

35. The catalyst for this loss of trust and confidence was the GP's behaviour in regards to seven (7) early-stage portfolio companies: (1) Deep Apple Therapeutics, Inc., (2) Apertor Pharmaceuticals, Inc., (3) Evercrisp Biosciences, Inc., (4) Marlinspike Therapeutics, Inc., (5) Red Queen Therapeutics, Inc., (6) Aethon Therapeutics, Inc. and (7) Initial Therapeutics, Inc. (the "**Early-Stage Companies**").

36. Dr Harrison is a director of each of the Early-Stage Companies. The GP has insisted on continuing to invest the Partnership's capital into the Early-Stage Companies even though the Petitioners consider them to be hopeless investments. The GP has also failed to adhere to the

milestones in the agreed budgets for the Early-Stage Companies and is seeking to call capital for these companies in breach of the LPA. Further and in addition, by virtue of the relief he seeks in the Delaware Proceedings, he is seeking capital on an accelerated basis in breach of the LPA.

37. The Petitioners maintain that they are not obliged to fund the Early-Stage Companies:

    a. First, the Partnership's limited partners' capital commitments are determined by the terms of the LPA, such that they are not required to make capital commitments to the Partnership which exceed their Contingent Subscription amount as set out in the Subscription Agreements (see paragraph 21 above). The Contingent Subscription amount is set out in the applicable Subscription Agreement(s). The Petitioners' total Contingent Subscription is US$2.425 billion, and they cannot be *required* to fund above that commitment. The GP's position is that the limited partners' capital commitments to the Partnership can be and have been increased above the Contingent Subscription amount through Amendments 17, 18 and 20 to the LPA. That is wrong. None of those amendment increased the Contingent Subscription amounts.

    b. Second, and in any event, under Paragraph 5(a)(ii) of the LPA, the GP may only invest in projects approved by the Petitioners "*in accordance with a budget therefor approved*" by the Petitioners. The budgets approved by the Petitioners provide for investments to be made into the Early-Stage Companies in certain specified amounts, subject to meeting certain specified milestones. The milestones under those respective budgets have not been met and no further capital commitment has been approved, in writing, by the Petitioners. The GP is also now seeking to call capital on an accelerated basis contrary to what is provided for in the budgets. The GP is not permitted to call for further capital absent written approval by the Petitioners, which the Petitioners have not provided. The GP's position is that the Petitioners have waived or forfeited their right to approve budgets and that, in any event, the GP is entitled to continue calling for capital irrespective of whether the milestones in an agreed budget have been complied with and regardless of whether it is calling capital on an accelerated basis to the budgets. There has however been no such waiver or forfeit and there is no such entitlement on the part of the GP.

38. The ongoing disagreement between the parties regarding budgeting issues resulted in Mr Yuri Bogdanov (CIO of Rigmora Holdings) emailing the GP on 15 May 2025. In that email, the Petitioners reiterated their position that they were not obliged to fund the Early-Stage Companies. In the same email, the Petitioners asked the GP to clarify its position, stating "*if you disagree with the above and consider that [the Petitioners are] obliged to contribute further capital to the Early-Stage Companies then please respond with a detailed explanation of your position. [The Petitioners] of course intend to comply with the requirements of the LPA and will be cooperative if you can demonstrate the LPA allows you to call further capital in regards to the Early-Stage Companies*" (the "**15 May Email**"). The GP did not respond to the 15 May Email, has refused to provide the requested information on the new budgets, and has accelerated capital calls when compared to forecasts sent shortly before issuing the said capital calls.

39. Rather than seek to consensually resolve the issues concerning the Early-Stage Companies and other budget issues that were being discussed between the parties, on 30 May 2025:

    a. The GP issued the May 2025 Capital Calls purportedly requiring the limited partners to contribute US$109,960,926.00 million of capital to the Partnership by 13 June 2025 (save for a capital call made in respect of Replicate which is due on 17 June 2025); and

    b. The GP peremptorily issued a complaint against the Petitioners in the Delaware Court of Chancery seeking specific performance and equitable and declaratory relief in respect of the GP's and the limited partners' rights and obligations in respect of the Partnership (the "**Delaware Complaint**" and the "**Delaware Proceedings**"). The GP did not refer to the May 2025 Capital calls in the Delaware Proceedings.

40. In the Delaware Proceedings, the GP alleges that the 15 May Email amounts to an anticipatory breach of the LPA and/or a repudiation of "*the [Petitioners'] obligation to respond to capital calls*", the GP seeks specific performance to compel the limited partners to contribute up to US$545 million to the Partnership, whilst simultaneously contending that the GP is entitled to apply a default charge to confiscate 50% of the limited partners' interest in the Partnership, block their voting powers and remove their budget approval rights. The GP also seeks to avoid complying with the contractual default process which includes provisions enabling the Petitioners to remedy any such default (i.e. by payment) on the basis that it would be "*futile*" to do so (see paragraph 171 of the Delaware Complaint). In other words, the GP seeks an

order whereby the Petitioners must provide the Partnership with further capital of up to US$545 million (which it is alleged is the Petitioners' total unfunded capital commitment) and nevertheless maintains that it can also issue a default charge against the Petitioners and confiscate billions of dollars of the Petitioners' assets even if they provide the capital sought.

41. As set out further below, the Delaware Complaint and the May 2025 Capital Calls are evidently designed to enable the GP to compel the Petitioners to contribute vast sums of further funding to the portfolio companies whilst engineering a default in order to impose a default charge to confiscate 50% of the Petitioners' interests in the Partnership (in the approximate sum of US$2 billion), which would fall to be redistributed to the remaining limited partners (i.e., Dr Harrison and his family trust) thereby allowing Dr Harrison to take control of the Partnership, notwithstanding the fact that he has contributed less than c. 1% of the Partnership's capital. The GP's intentions are laid bare in paragraph 192 of the Delaware Complaint, which states that the GP seeks an order preventing the Petitioners from "*interfering with [the GP] in the exercise of its discretion over the Fund once [the Petitioners are] deemed to be a Defaulting Partner*".

42. No GP acting reasonably and in good faith in the interests of Partnership would have commenced these proceedings in these circumstances.

43. Moreover, there is no basis for the GP's purported position. The 15 May Email is self-evidently not an anticipatory or repudiatory breach given that it said in terms that the Petitioners will comply with the terms of the LPA if the GP explains why it is entitled to call for further capital under the LPA. For the avoidance of any doubt, the Petitioners do not accept that the LPA entitles the GP to confiscate assets as alleged. The LPA is clear that the default charge enables the GP to reduce the number of preferred units and investor common units of a defaulting partner. Apart from Pool ATP IV, assets are not distributed by reference to the number of units held by a Limited Partner and are instead distributed in accordance with the specific distribution provisions for each pool as set out in the LPA.

<u>Mismanagement / prejudicial conduct / lack of probity in the conduct of the Partnership's affairs</u>

44. The GP has mismanaged the Partnership, acted prejudicially to the interests of the limited partners and demonstrated a serious lack of probity in the conduct of the Partnership's affairs, as detailed below.

The Delaware Proceedings

45. As set out above, rather than seeking to reach a consensual solution with the Petitioners, the GP issued the Delaware Proceedings in an improper attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership.

46. In the Delaware Complaint, the GP has made a number of extremely serious allegations that the Petitioners are concertedly acting to undermine the position of the Early-Stage Companies to enable them to gain personal control over those companies, outside of the Partnership. By way of example, the Delaware Complaint states:

    a. "*…the Defendants' [have engaged in] premeditated financial destruction of* [REDACTED] *Delaware portfolio companies*" (paragraph 1);

    b. "[the Defendants have] *arbitrarily and irrationally refusing to approve new budgets for* [REDACTED] *portfolio companies* [REDACTED*], but whose initial funding has run out*" (paragraph 1);

    c. "*The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve* [REDACTED] *of the financing needed to fund their respective missions*." (paragraph 6);

    d. "*The Family Office LP's stated goal is to drive* [REDACTED] *portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on* [REDACTED] *companies (if any) that they choose…The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments…*" (paragraph 7);

    e. "*Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for* [REDACTED] *companies and negotiate new budgets for* [REDACTED] *companies.*" (paragraph 12);

f. "*These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund*." (paragraph 69);

g. "*…the Family Office LP has capriciously withheld budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing*…" (paragraph 77);

h. "*…the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy* [the Partnership]." (paragraph 121); and

i. "*The* [Partnership] *has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies*." (paragraph 150).

47. These allegations made by the GP in the Delaware Complaint are untruthful and wholly unfounded. The Petitioners have paid out the entirety of their Contingent Subscription so they are not obliged to contribute further capital. Further and in the alternative, the Petitioners, as the holders of the majority of the Preferred Units, are entitled to refuse to invest more of their capital into particular projects if the relevant budgets and associated milestones have not been adhered to. In respect of certain of the Early-Stage Companies, the May 2025 Capital Calls are not in accordance with the approved budgets. The Early-Stage Companies have to date failed to meet any, or sufficient, milestones specified in the investment memoranda attached to the approved budgets and the Petitioners have formed the view that the relevant portfolio companies are not viable investments. It would plainly be illogical and irrational for the Petitioners, as the limited partners of the Partnership with a c. 99% stake in the Partnership's assets, to deliberately seek to "starve" otherwise viable portfolio companies, which have to date been funded exclusively by their capital contributions. Insofar as new budgets are concerned, the Petitioners have sought further information from the GP in order to assess the financial performance and merits of the proposed budgets but the GP has refused to provide the information sought.

48. The Delaware Proceedings and the unfounded, incendiary and wholly inappropriate allegations made therein evidence the GP's serious lack of probity and demonstrate its improper management of the affairs of the Partnership.

49. The Delaware Proceedings have also evidently been brought for an improper purpose, to enable the GP to compel the Petitioners to contribute up to US$545 million of further funding to the Partnership in complete disregard of the provisions of the LPA, such funding being substantially in excess of the Petitioners' Contingent Subscriptions, including US$331.3 million for which the GP has not presented any budget to the Petitioners for approval (let alone obtained such approval) (see paragraph 51 below). The GP simultaneously seeks to engineer a default in order to impose a default charge on the Petitioners to confiscate 50% of their interests in the Partnership and thereby take control of the Partnership and billions of dollars of the Petitioners' assets, which would fall to be redistributed to Dr Harrison and his family. The GP also wishes to remove the Petitioners' right to approve new budgets so as to obtain control without the need for the Petitioners' approval of such budgets.

Wilful and persistent breaches of the LPA

50. In the Delaware Complaint, the GP seeks specific performance to compel the limited partners to immediately fund prior approved but unfunded budgets in response to capital calls as and when they are received (see paragraph 14 of the Delaware Complaint). This amounts to an accelerated capital call, but the GP has wholly failed to comply with the requirements in clause 5(a)(ii) of the LPA (see paragraph 19(c) above) by providing any written assurances and/or diligenced presentation that the relevant project(s) will be completed within the aggregate amount budgeted therefor, and instead seeks to compel the Petitioners to meet accelerated capital calls in the absence of these assurances, by court order.

51. The GP also seeks specific performance to compel the Petitioners to provide further funding of up to US$331.3 million (see paragraph 164 of the Delaware Complaint). No budgets have been provided by the GP or approved by the Petitioners in respect of any such funding (which the GP accepts - see paragraph 5 of the Delaware Complaint). Indeed, the GP has not provided any information to the Petitioners about the intended use of the further funding, merely asserting in the Delaware Complaint that its use is "*including for those companies specifically named in Amendment No. 22 – Ascidian, Aulos, Nine Square, Nereid and Replicate*". This falls far short of the formal budget proposals which are required to be presented to the Petitioners

for approval under the LPA, which budgets serve the further purpose of enabling the Petitioners to ensure that their capital is being applied in a proper manner.

52. However, the GP seeks to circumvent the express provisions of the LPA in the Delaware Proceedings, to compel the Petitioners to provide vast sums of further funding, without specifying what those funds are to be used for and denying the Petitioners any oversight over how their funds are applied, contending that the Petitioners have "waived" or "forfeited" their right to approve budgets. The GP's attempts to obtain funding to be applied entirely at its own discretion without any oversight by the Petitioners demonstrates a serious lack of probity and mismanagement and has caused the Petitioners to lose trust and confidence in the GP's ability to manage the Partnership.

Recharging costs to the portfolio companies

53. Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17), ATLS receives an annual fee (the "**ATLS Fee**") payable during the term of the Partnership which is funded by capital contributions of limited partners holding preferred units. The ATLS Fee is required to be applied towards certain expenses of the Partnership incurred in managing the Partnership, including compensation and benefits for employees, and facilities and related overhead expenses (Section 11 of Amendment 9). Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20), the GP is required to prepare a yearly budget for the ATLS Fee which is presented to the "Subject Limited Partner" (i.e. the Petitioners) no later than 1 December on the previous year. The Petitioners then have sole authority to either approve or reject the ATLS Fee budget. In the event a budget for the ATLS Fee is not approved in a calendar year, the approved budget for such year will be the most recently approved budget (subject to some exceptions in relation to extraordinary, non-recurring expenses).

54. However, since 2021, the GP has improperly charged the employee costs of ATP investment professionals to the Partnership's portfolio companies, which costs ought to be covered by the ATLS Fee approved by the Petitioners. In particular:

    a. The Partnership's consolidated financial statements for the years ended 2023 and 2024 show that the Partnership's expenses exceeded the capital calls paid by the limited partners. To fund the gap between Partnership's expenses and capital calls

paid (principally by the Petitioners), the GP received investment income, comprising: (i) interest income; and (ii) service revenue from affiliated entities.

b. The Petitioners understand that the revenue in (ii) above comprises support service costs illegitimately charged to portfolio companies in breach of the LPA.[2]

c. Dr Harrison confirmed by email dated 8 December 2023 that "*ATP employees [are] filling critical roles at certain Portfolio Companies*" and "*those Portfolio Companies* [are] *reimbursing ATP for a portion of the employment costs incurred for those employees*". Dr Harrison also provided the Petitioners with a report from Price Waterhouse and Cooper dated 17 March 2023 (the "**PwC Report**") which confirmed that ATLS had entered into a services arrangement with the portfolio companies for the purposes of charging the portfolio companies costs associated with the provision of management and scientific research and advisory services.[3]

d. Further, the proposed, unapproved ATLS Fee budgets prepared by the GP for 2021 through 2025 included a credit for "*Investment Professionals – Portfolio Reimbursement*".

e. In December 2023, the Petitioners raised with Dr Harrison that the proposed ATLS Fee budgets for 2024 purported to assign costs which ought properly to be covered by the ATLS Fee, in breach of the LPA. Dr Harrison responded, stating that he disagreed but provided no reasons. The budget for the 2024 ATLS Fee was not agreed.

f. The GP's charging of ATP employee costs to the Partnership's portfolio companies is a breach of Paragraph 20(e)(ii) of the LPA (as amended by Amendments 10 and 17) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17). Further or in the alternative, the GP's recharging of expenses to the Partnership's portfolio

[2] "Service revenue from affiliated entities" is described in the notes to the Partnership's consolidated financial statements as "*ATLS, ATLS (UK), and ATPR provide administrative, technical and strategic consulting services to other entities within the Partnership group and the Partnership's portfolio companies. Revenue from services provided to the entities within the consolidated group are eliminated upon consolidation. Services provided may include internal costs, such as employee expenses and certain overhead expenses, and external costs incurred from third party providers.*"

[3] For the avoidance of doubt, the PwC Report was a transfer pricing study, which estimated an arm's length range of returns applicable to the provision of certain support services by ATLS to the Partnership's portfolio companies. The PwC Report did not concern whether the assignment of such costs to the Partnership's portfolio companies was permissible under terms of the LPA.

companies is a breach of Paragraph 8 of the LPA (as amended), as it deprives the Petitioners of income they would have received via the distribution mechanisms in the LPA.

55. The Petitioners are also concerned that the GP has been inappropriately incurring travel expenses for investment professionals which appear to be exorbitant. In particular, the ATLS Fee Budgets for 2024 and 2025 respectively budget for travel for investment professionals at US$690,000 for 2024 and US$625,000 for 2025.

56. The GP's recharging of expenses to the Partnership's portfolio companies, and charging exorbitant travel expenses, demonstrates a serious lack of probity and mismanagement. The charging of expenses to the portfolio companies also gives rise to a serious conflict of interest (see further below), which has resulted in the Petitioners' loss of trust and confidence in the GP.

Failure to provide information

57. The GP has failed or refused to provide the Petitioners with information about the operation of the Partnership that would otherwise enable the Petitioners to assess the financial position of the clinical stage companies in order to determine whether new budgets ought to be approved, and to determine whether those managing the Partnership are acting in accordance with their duties. In particular:

    a. The GP refused to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Aulos Bioscience Inc. and Ascidian Therapeutics Inc.

    b. The GP refused or failed to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Replicate Bioscience, Inc. ("**Replicate**"), which is developing self-replicating RNA immunotherapies. The GP is not entitled to call for capital in respect of Replicate because it has not complied with the various conditions that must be met before capital can be called under the current budget. Paragraph 26 of the LPA (introduced by Amendment 22) provides that any budget approved by the Petitioners for Replicate after the execution of Amendment 22 will be contingent upon certain realisations being achieved (through deemed

distributions) by the Petitioners on a sale or financing of its interest in the entity formerly known as ATP Life Science Sub LLC , now known as BBN Life Science Sub LLC, (the "**Royalty Refinancing**"). Such realisations have not been realised (including through deemed distributions) by the Petitioners. Despite this, the GP now contends and seeks an order from the Delaware Court confirming that the Petitioners have waived or forfeited their right to approve budgets (see paragraphs 23, 163 and 191 of the Delaware Complaint), in a further and altogether more ambitious attempt to deny the Petitioners access to information about the financial position of the portfolio companies. Separately, the GP contends that Paragraph 26 of the LPA (as amended by Amendment 22) required the Petitioners to pursue Royalty Financing in short order (see paragraph 122 of the Delaware Complaint).

c. The GP refused or failed to provide supporting information or an explanation as to why the capital call notice issued on 7 February 2025 in respect of uncalled Partnership expenses for the second half of 2024 was reduced from the previous call (and it falls to be inferred that the reduction was because the GP's legal expenses had been improperly charged to the Partnership – see further paragraph 65 below).

d. The GP has also failed to provide any further information about legal expenses charged to the Partnership in 2024 (see further paragraph 65 below).

e. The GP has failed to respond to requests for information regarding the purportedly binding nature of obligations purportedly owed by limited partners in their personal capacity to third parties, and of obligations owed by the Partnership to the portfolio companies (see further paragraph 63 below). The GP has also failed to provide copies of documentation evidencing such obligations, including the investment management agreements entered into between the Partnership and the portfolio companies.

f. The GP has failed or refused to respond to requests for information about the basis on which it contends that the limited partners are required to continue to fund the portfolio companies, notwithstanding those companies' failure to hit milestones or adhere to business plans set out in the agreed budgets. Rather than provide this information, the GP instead seeks to rely on the Petitioners' requests as an anticipatory breach of the LPA in the Delaware Complaint (see paragraph 170 of the Delaware Complaint).

58. The Petitioners have at all material times been entitled to information which enables them to determine whether the GP is acting in accordance with its duties and obligations, including the books, records, accounts and assets of the Partnership (see Clause 16(b)-(c) of the LPA, and section 22 of the ELP Act). The Petitioners are also entitled to receive (and the GP is obliged to provide) financial reports at least every calendar quarter in respect of all entities within the Partnership structure, which must include individual project income, expenses and operating costs, and must show actual versus budgeted results for the relevant period and explain any major variances to the budget (see Schedule C to the LPA). The GP has not only denied the Petitioners their rights to this information but seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings. Even the limited information provided by the GP to the Petitioners confirms that the GP has committed serious breaches of duty which has resulted in the Petitioners' loss of trust and confidence in the GP.

<u>Conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership</u>

59. The GP has a conflict of interest and/or has breached its fiduciary duties to act in good faith in the interests of the Partnership.

Improperly issuing capital calls

60. The GP's issuance of capital calls of over US$100 million on 30 May 2025 to be paid by 13 June 2025/17 June 2025 (i.e. the May 2025 Capital Calls - which are not referenced in the Delaware Proceedings) amounts to a further breach of the GP's duty to act in good faith in the interests of the Partnership. The May 2025 Capital Calls were not issued for proper purposes or *intra vires* under the LPA, as it is evident from the timing of the capital calls, coinciding with the issue of the Delaware Complaint, that the capital calls are part of the GP's litigation strategy to apply improper pressure to the Petitioners through threats of default and/or its broader strategy to take control of the Partnership. The scale and nature of the May 2025 Capital Calls is also inconsistent with the funding scenario prepared by the GP on 30 April 2025 in which the GP proposed to cut the budgets for the Early-Stage Companies so as to commit only $1 million to one Early-Stage Company (Red Queen) as part of an orderly winding down of those companies. It can be inferred that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying significant capital given the terms of that

funding proposal. Notwithstanding, the GP has called $47.8 million in capital for Early-Stage Companies pursuant to the May 2025 Capital Calls.

Attempt to compel the limited partners to provide further funding to the portfolio companies

61. As set out above, the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership. In particular, the GP seeks in the Delaware Complaint, amongst other things, "*a declaratory judgment that [the Petitioners are] currently in material breach of [their] contractual duties under the LPA and [have] waived [their] right to approve budgets*" (paragraph 163) or alternatively, specific performance requiring the Petitioners to fund capital calls in excess of the level of their Contingent Subscription and compelling the Petitioners to consider further budgets (paragraph 164). The GP also seeks a declaratory judgment that the Petitioners are in breach of their funding and budget approval obligations, and an order that the GP is entitled to impose a default charge against the Petitioners' interests in the Partnership or the investment pools to which its purported default relates (paragraphs 188-190).

62. The Petitioners' continued funding of the portfolio companies is in the interests of the GP and its employees, and ATP (not the Partnership's). The portfolio companies are co-founded and managed by executives from the GP, including by Dr Harrison himself, (see paragraph 32 of the Delaware Complaint) who would remain employed thereby, and the GP would be able to continue charging the portfolio companies for expenses which ought to be covered by the ATLS Fee. ATP, of which Dr Harrison is founder and Managing Director, is also wholly dependent on the continued funding of the Partnership (and ATP's continued involvement therein) as ATP has no meaningful business interests or capital under management other than that belonging to the Partnership, which has been almost entirely contributed by the Petitioners. The GP has a demonstrable conflict of interest, as a result of which the Petitioners have lost trust and confidence in its ability to manage the Partnership.

Exposure of the Partnership to binding and open-ended funding commitments to loss-making portfolio companies

63. The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the Delaware Complaint says as follows:

    a. The Complaint refers at paragraph 85 to a letter sent by Dr Harrison to the Petitioners on 29 November 2022 in which he stated that: "*a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages*"; and

    b. The Complaint states at paragraph 143:

    "*The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it,* ***because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) obligations for ATP to purchase additional shares at the request of the company board. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones.*** *For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company* [REDACTED] *on December 6, 2021 included (a) an initial* [REDACTED] *investment by ATP and (b) an obligation for ATP to purchase up to* [REDACTED] *in additional shares at the request of the* [REDACTED] *board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as* [REDACTED] *in* [REDACTED]*. To date, ATP has invested* [REDACTED] *in* [REDACTED]*, which is short of ATP's total potential obligation to the company under the agreement.* ***Should the additional funding obligations become due, then the Family Office LP's refusal to meet a*** [REDACTED] ***capital call would cause ATP to breach its agreement with the portfolio company***." (emphasis added)

64. As set out above, the continued funding of the portfolio companies is in the interests of the GP (and ATP), not the Partnership and the limited partners. The GP has also failed to provide information to the Petitioners about the Partnership's purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners' requests that it do so (see paragraph 57 above). The GP's apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims and is a fetter of the Petitioners' discretion to approve budgets, and the GP's subsequent lack of probity has justifiably caused the Petitioner to lose trust and confidence in the GP.

Charging personal legal expenses to the Partnership

65. The petitioners are also concerned that the GP's personal legal expenses have been charged to the Partnership, which also comprises a breach of the Settlement Agreement. This falls to be inferred from the following matters:

a. The expense report exhibited to the GP's December 2024 capital call notice dated 12 December 2024 included a line item for "Legal Expenses for Partnership". Mr Bogdanov queried these expenses in an email to Dr Harrison dated 23 December 2024, saying "[o]*ne item, '**Legal Expenses for Partnership**,' stands out as significantly higher compared to previous years (USD 1.9 million versus USD 0.56 million in H2 2023)*".

b. On 20 December 2024, Patrik Blochlinger, the Chief Legal Officer of Rigmora Holdings, emailed Daniel Finkelman (the General Counsel of Apple Tree Partners) to request details of the legal expenses, stating that he believed the GP's legal expenses of the Braeburn Proceedings had erroneously been charged to the Partnership.

c. Mr Finkelman responded on 23 December 2024, stating that the invoices had been reviewed, and that the GP had discovered that one invoice in the amount of US$30,692.50 was inadvertently paid by the Partnership when it should have been allocated to the GP. Mr Finkelman noted that this had been corrected and a revised capital call for fund expenses was issued. Mr Finkelman noted, however, that the GP wished to discuss with the Petitioners the "*allocation*" of various expenses incurred by the GP in relation to the Braeburn Proceedings.

d. Several further requests were made for and on behalf of the Petitioners for an explanation as to the Partnership's significantly higher legal expenses in 2024, together with supporting invoices and narratives from the relevant law firms.

e. Dr Harrison confirmed on 29 December 2024 that the GP would review the relevant expenses. However, the GP has refused to provide the Petitioners with underlying invoices and narratives on grounds of privilege. The GP agreed to reduce some legal expenses. Nevertheless, the Petitioners consider the legal expenses to be excessive. It falls to be inferred that the invoices and narratives concern legal expenses incurred

by the GP in relation to the Braeburn Proceedings, which expenses cannot be charged to the Partnership. The GP's lack of probity and conflict of interest has resulted in the Petitioners' loss of trust and confidence in the GP.

f. The expense report exhibited to one of the GP's May 2025 Capital Calls indicates that "Legal Expenses for Partnership" for January – May 2025 are US$7.86 million. These legal expenses are significantly higher than in prior periods and the Petitioners infer that the GP has sought to include legal costs in connection with the Delaware Proceedings and/or any other anticipated litigation costs in connection with the dispute between the GP and the Petitioners.

D. Ground 2: Loss of substratum

66. Given the GP's stated intention to pursue an investment strategy which involves the continued funding of the portfolio companies against the wishes and to the detriment of the Petitioners and without complying with the express provisions of the LPA to obtain limited partners' approval for budgets for investments, and the GP's evident intention to confiscate 50% of the Petitioners' interests in the Partnership and take control thereof, the substratum of the Partnership has been lost. The Partnership is no longer being run in accordance with the reasonable expectations of the limited partners or in accordance with the LPA.

E. Ground 3: Need for an independent investigation into the Partnership's affairs

67. For all of the reasons set out in Ground 1, there is evidently a need for a proper, independent investigation into the Partnership's affairs.

Conclusion

68. For the reasons set out above, it is respectfully submitted that it is just and equitable that the Partnership be wound up.

Nomination of Joint Official Liquidators

69. The Petitioners nominate **Mr Alexander Lawson** and **Mr Barry Lynch** of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George

Town, Grand Cayman KY1-1104, Cayman Islands for appointment as joint official liquidators of the Partnership.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The Partnership be wound up pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act, and/or pursuant to section 35 of the Partnership Act (2025 Revision).

2. Mr Alexander Lawson and Mr Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Joint Official Liquidators of the Partnership (the "**JOLs**") with such powers as the Court deems necessary for the orderly winding up of the Partnership.

3. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP shall vest in the JOLs without the requirement for further formalities and shall be held by the JOLs in accordance with the law.

4. The JOLs' powers are exercisable to the exclusion of the GP and the GP shall forthwith have no authority or power to act in relation to the Partnership or its property or affairs other than at the direction of and/or with the written consent of the JOLs.

5. The JOLs shall have leave to apply under section 36(3)(g) of the ELP Act for further orders and directions.

6. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.

7. Such further or other relief as this Honourable Court deems fit.

Dated this 6th day of June 2025

Campbells LLP

Campbells LLP
Attorneys-at-Law for the Petitioners

NOTE: This Petition is intended to be served on the Partnership and the GP at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on at am/pm.

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

EXHIBIT Q

Lingua Franca Ltd.
www.linguafrancaky.com

NAME

Neutral Citation Number: [2025] CIGC (FSD) 106
Cause No: FSD 2025-0151 (JAJ)
IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION),
THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)
AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

DATE

November 12, 2025

DURATION

5h 55m 38s

5 SPEAKERS

Marshall
The Honourable Justice Jalil Asif KC
Mr Andrew Scott KC of counsel, instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen, and Mr Jordie Fienberg of Campbells LLP for the Petitioner
Mr Andrew Ayres KC of counsel, instructed by Ms Shelley White and Ms Rebecca Moseley of Walkers for ATP III GP, Ltd
Ms Shelley White, Partner, of Walkers (Cayman) LLP for ATP III GP, Ltd

Start of Transcript

Marshall: [00:10:09] God save the King. FSD 146 of 2025 and the matter of Unicorn Biotech Ventures One versus ATP GT.

Justice Jalil Asif KC (Judge): [00:10:20] Yes. Good morning, Mr. Scott, Mr. Ayres.

Andrew Scott KC: [00:10:23] Hello. Good morning. I appear for the plaintiffs and petitioners, Rigmora LP and my learned friend, Mr. Ayres KC, Ms. White, for the defendant. Your Lordship also knows this is the CMC ahead of the trial of these related proceedings in January, in terms of matters that require decisions from your Lordship today, and that's what I want to focus on. There are three. There is first,

Justice Jalil Asif KC (Judge): [00:10:51] Mr. Scott, just before you get going.

Andrew Scott KC: [00:10:54] Yes.

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Justice Jalil Asif KC (Judge): [00:10:55] It occurred to me, um, in relation to the trial in January, I think we are going to lose at least half a day because, um, I think the 13th of January is going to be the official opening of the legal year at which, um, there is a ceremony that is going to take place, which I'm going to have to attend. And so at the very earliest, I will be able to get back into court, probably at 2:00 o'clock, um, uh, but even that is not guaranteed now. It may be, but in light of that, the parties just want to think whether, uh, we try and find an extra day either at the end of the week before or the beginning of the week after, um, or whether, uh, depending on how things develop. Both sides think that you can shoehorn the, um, material that needs to be covered into essentially four, perhaps four and a half days rather than five.

Andrew Scott KC: [00:11:55] Thank you. Can I ask this, um, so that I can?

Justice Jalil Asif KC (Judge): [00:11:58] And I'm sorry, Mr. Scott, to cut across you, but I'm also conscious that the, that if the amendments are allowed, then four and a half days may not be sufficient. So it may be advisable anyway to extend the time estimate.

Andrew Scott KC: [00:12:13] Even though any extension was necessary into the following week. Is that something your Lordship's diary could accommodate?

Justice Jalil Asif KC (Judge): [00:12:19] Yes, because at the moment I've set aside that week for writing the judgment.

Andrew Scott KC: [00:12:26] Well, we would of course not wish to encroach too much upon that, my Lord. Can I return to that point?

Justice Jalil Asif KC (Judge): [00:12:29] Yes, yes of course. I just flagged it now so that everyone has a chance to think about it during the course of the day. Um, I'm not expecting anyone to respond to that, to that new information, immediately.

Andrew Scott KC: [00:12:42] Okay. Um, the three matters that require decision today, my Lord. First, there is the question of whether your Lordship should give directions to the January trial today. Uh, we say, your Lordship should. The GP says your Lordship

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should not and should instead direct a two-day CMC at some later stage. And I will endeavour to persuade your Lordship. There is no justification for that. My Lord, second, there is the question of what direction should be given to deal with the amendment summons that we will need to issue, and with the mediation summons that the GP has recently issued. Uh, now we are keen to have those matters dealt with as expeditiously and fairly as possible, and I will explore with Your Lordship, later on, if I may, how that may best be achieved. Particularly mindful of what Your Lordship's diary looks like in the coming weeks. Third, there is the question left over from the 1st August hearing as to who the proper party proper respondent to the petition is. We ask Your Lordship to direct that the GP is the proper respondent, because the substance of this dispute is between Rigmore LPs and the GP. The partnership is its subject matter, but it has no separate interest. We say the GP objects to that direction primarily on the basis, as you will have seen from the skeleton, of a suggestion that your Lordship has no jurisdiction to make that direction, and I will seek to persuade your Lordship that that is wrong. Um, My Lord, before I turn to the first issue, um, trial direction.

Justice Jalil Asif KC (Judge): [00:14:32] I'm so sorry, Mr. Scott. I got distracted for a moment. Just tell me. Give me the second... Shirley

Andrew Scott KC: [00:14:37] The second issue is directions on the amendments and the mediations.

Justice Jalil Asif KC (Judge): [00:14:49] Thank you.

Andrew Scott KC: [00:14:50] Before I turn to trial directions, a very brief word, if I may, on the background. Uh, we have set out in our skeleton the recent developments in Delaware.

Justice Jalil Asif KC (Judge): [00:14:59] And I've read all of that, and I've read the transcripts that you've asked me to.

Andrew Scott KC: [00:15:02] I'm very grateful, my Lord. I wasn't proposing to say any more on that already today. But there is one matter I do want to update your Lordship on. It's the question of undertakings, because there has been some further correspondence

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on that yesterday that I want to show you. Um, now, the context here is your Lordship knows, is the petition in this case was issued on the 6th of June, so almost five months ago now. Issued on the basis that the relationship between the parties has broken down, and that we, as contributors of around 98% of the partnership capital, no longer trust the GP properly to manage it in line with its fiduciary and other duties. My Lord, if I could just ask you to take up the Joint Authorities Bundle, 13.

Justice Jalil Asif KC (Judge): [00:15:53] Mr. Scott, I should say I saw there were some emails coming yesterday with, I think, 1 or 2 additional affidavits. I've not looked at those yet, so you will need to take me through that.

Andrew Scott KC: [00:16:04] As I understand it, they are not substantive efforts. They merely exist as correspondence. And I will be taking your Lordship.

Unknown: [00:16:10] Your Lordship wants a hard copy of those now.

Justice Jalil Asif KC (Judge): [00:16:12] That would be helpful. Thank you very much.

Justice Jalil Asif KC (Judge): [00:16:31] And I should say the other thing I should say at the outset, just so everyone is aware of what I have read and what I haven't read, I have consciously taken the decision not to read Mr. Harrison's affidavit in support of the mediation summons, because I wasn't satisfied that it's appropriate for me to see matters that ought perhaps to be reserved until after trial on the merits. And so as soon as I saw he was seeking to put that material into evidence, I stopped reading.

Andrew Scott KC: [00:17:06] I'm grateful, my Lord. I will have a few brief words to say about mediation summons and how we ought to deal with it, but perhaps I can come on to that as we move through directions. If your Lordship has Tab 13 open.

Justice Jalil Asif KC (Judge): [00:17:21] I don't yet, but I will. Yes.

Andrew Scott KC: [00:17:25] Yes.

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Justice Jalil Asif KC (Judge): [00:17:34] I was complaining the other day that he's always pink. You know, today he can be blue. Except I can't find my orange tabs, so I'm afraid you're going to be out.

Andrew Scott KC: [00:17:49] Entirely. What colour, please?

Justice Jalil Asif KC (Judge): [00:17:55] Thank you. Yes.

Andrew Scott KC: [00:17:59] Your Lordship should have opened one of the decisions in 1001 policy litigation that was a voluntary winding up where the limited partners petitioned to have the GP replaced with alternative liquidators on the basis that they had lost trust and confidence in it. And the ruling was primarily concerned with a jurisdictional issue as to whether the court had the power to appoint.

Justice Jalil Asif KC (Judge): [00:18:22] I just had to give a judgment which very much addressed that jurisdictional question that Justice Kawaley decided in this case.

Andrew Scott KC: [00:18:32] Well, perhaps happily, for my purposes, I don't need to trouble your Lordship with that issue. What I want to show you, Lordship, is it's really a more fundamental point about this court's expectations of how GPs ought to behave when their conduct is impugned. And if your Lordship, please, will turn to page three, three, three, three, six of the report. Your Lordship, see at the foot of that page, paragraph 39, Justice Kawaley begins to express his provisional view on the merits of the petition.

Justice Jalil Asif KC (Judge): [00:19:11] I do.

Andrew Scott KC: [00:19:12] And of course, that was a petition much like ours, in which the petitioners held the overwhelming majority of the economic interest. I think it was 97% in that case. In fact, if I can ask, your Lordship, to just read 29 over the page down to 34, and particularly emphasise, whether in pink or otherwise. Paragraph 32.

Justice Jalil Asif KC (Judge): [00:21:36] Thank you.

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Andrew Scott KC: [00:21:37] Grateful, my Lord. Returning to the present case, there can be no doubt that the GP, and Dr. Harrison, who owns and controls it, no doubt that he has, in fact, lost the confidence of the investors, which is to say, as we who have entrusted more than $2.6 billion to the GP and him to manage. And there can likewise be no doubt that we have lost that trust and confidence. In the context of the serious allegations that are made in the petition about the GP's misconduct at Dr. Harrison's instigation. It is striking that the GP has avowedly not followed Justice Kawaley's guidance. It has not stepped aside so that its management may be exposed to independent scrutiny and its probity thereby demonstrated. The GP is instead determined to cling on, and not only that, the GP is using partnership monies, in eye-watering eight-figure sums, as we shall see, to wage a litigation campaign against us. Now, we'll come on to that, but that is part of the context for the direction we seek under the Companies Winding Up Rules. The legal cost principle that underlies it. Although the GP is also using partnership monies without any sanction or supervision from this Court. It has never sought a validation order from Your Lordship. And despite our repeated attempts to obtain them, the GP is not presently constrained by any undertakings to this Court regarding the use of partnership assets pending resolution of the petition. My Lord, whether that is part of the context in which we issued the PL Summons to justly hold the ring and protect against the risk, the partnership assets are dissipated come January. My learned friends say in their skeleton, paragraph four, that the PL summons was misguided and unjustified. I'm not going to take up Your Lordship's time.

Justice Jalil Asif KC (Judge): [00:23:43] But I saw the parties have agreed that the costs of that should be dealt with following the trial, so it doesn't seem to me that I need to hear about.

Andrew Scott KC: [00:23:50] c

Justice Jalil Asif KC (Judge): [00:25:37] It depends a bit on whether full value is received...unless if full value is received, then there's no distinction. It's just a conversion into money.

Andrew Scott KC: [00:25:49] Yes, but all we're seeking here is, your Lordship sees this notification. Um, if your Lordship then reads down to paragraph 2.2, um, this is a request

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for an undertaking that the GP give seven days' notice of, or else seek a validation order from your Lordship, permitting the dealings that are identified in the subparagraphs and over the page. I can perhaps just ask your Lordship to look over those. We do respectfully suggest that that is a modest task in the context of this dispute. It is more modest still, because, as your Lordship sees from paragraph 3 of the letter that we've carved-out, from the protection sought, payments by the GP of certain fees that ultimately go to Dr. Harrison's benefit. Likewise a carve out for the litigation that he is causing the GP to pursue. And, we asked for a response to this letter by 5 p.m. on Monday this week. And that was against the backdrop of the issue, having been debated since the 19th of September at the anti-suit motion. Um, it was also in circumstances where the GP's lawyers had told the Delaware court that the GP had, and I'm quoting now from the transcript, no intention whatsoever of selling assets without giving ample notice and seeking court approval of an asset sale. If I can just show your Lordship that it's Tab 50 in the same bundle. This is the trial transcript in Delaware for the final day or the second day on the 17th of October. And it's page 1361.

Justice Jalil Asif KC (Judge): [00:28:06] I'm very grateful that I was only given the relevant extracts rather than the entirety. Yes, 1361.

Andrew Scott KC: [00:28:16] And if your Lordship sees on line 12, um, Attorney Selden, she's a Debevoise & Plimpton acting for us. She's pleading with the Delaware judge for just a bit more time to put in the post-trial brief. She wants two more days, and your Lordship will see the Delaware judge's response from lines 16 to 20. Perhaps I just ask you, Lordship, to read that. Then goes on to explain over the page the repeated efforts to agree on such a stipulation with the GP. And she gives us an example of the concerns that have arisen here. Sale of a portfolio company or sale of an interest in the funds. And your Lordship sees, she refers at line 13 to what happened in the deposition. Um, she said, I asked again, Dr. Harrison at his deposition, if he was engaged in that. He told me at his deposition on October 6th, no, but on October 8th, they produced a list of companies that he is contacting to sell assets. And she goes on to explain why that is a real concern.

Justice Jalil Asif KC (Judge): [00:29:42] I think that the GP's attorneys responded to that, that it was a list of companies that had been in touch, rather than Mr. Harrison actively seeking.

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Andrew Scott KC: [00:29:53] And I was about to.

Justice Jalil Asif KC (Judge): [00:29:54] I can't resolve who's correct on that.

Andrew Scott KC: [00:29:57] No, I'm not at all asking your Lordship to make any decision on that issue today. The passage I do want to show your Lordship is over the page, it's a page 1363 at the foot of page line 23. Attorney Burden, Quinn Emanuel, from the GP, says this. It's not for lack of trying on the ATP's part, Your Honour. And I think that the status quo here that we're looking at, we have no intention whatsoever of selling assets without giving ample notice and seeking court approval of an asset sale. We have no interest in hiding the ball on that.

Justice Jalil Asif KC (Judge): [00:30:34] So you're saying, why can't you give the undertakings as you asked for?

Andrew Scott KC: [00:30:37] Indeed. And just to complete this picture, if we can go to the response we received from Walker's yesterday. That will be, um, I would think.

Justice Jalil Asif KC (Judge): [00:30:51] That in the new...

Andrew Scott KC: [00:30:53] There were two letters yesterday. We'll need to look at both of them. The one I'm concerned with begins at page seven of the exhibit. Now, much of this letter is taken up.

Justice Jalil Asif KC (Judge): [00:31:13] Can I... Let me just ask a question, and I don't know the answer to this. My experience when I was litigating in England is that people simply agree that there should be a section of the bundle that includes inter partes correspondence, which avoids the need for anyone having to swear affidavits. It doesn't seem to happen in Cayman. I don't understand why, because it seems it must be much quicker and more efficient just to be able to put documents into a correspondence tab in the bundle, if it is simply inter partes correspondence.

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Andrew Scott KC: [00:31:49] With respect, I wholeheartedly agree. I suspect all the people in this room would be in your Lordship's debt if you were to issue a direction pursuant to which the parties could proceed in that way.

Justice Jalil Asif KC (Judge): [00:32:01] Everyone is very happy to pass on to their colleagues on islands. From my point of view, I don't see the need to exhibit correspondence, and it can go in the bundle if it is truly inter partes' correspondence. It can just go into a tab in the bundle as inter partes correspondence, and it can be updated as needed before each hearing.

Andrew Scott KC: [00:32:22] My lord, I don't think there's anyone in this room who's going to be the difficulty with that. The real difficulty is your brother and sister judges.

Justice Jalil Asif KC (Judge): [00:32:31] Well, I suspect you'd find most of the FSD judges would be quite happy with that idea. But maybe it's something to raise at the next FSD Users Committee. Right?

Andrew Scott KC: [00:32:42] I'm returning to this letter, which is undoubtedly in evidence. Much of it is taken up with seeking to criticise us for the PL Summons, and I'm not going to respond to that today. What I want to focus on is the undertakings offered at the end of the letter. And if your Lordship will go, please, to page 11 in the exhibit, internal page five. This sets out what is proposed. Can I ask your Lordship to read it? It's at paragraph eight and continues over the page in italics, six onwards. I'm asked to invite your Lordship to read from six onwards, so perhaps your Lordship will do that. Three observations on this, if I may. The first is that your Lordship sees from paragraph 2.1 in the undertaking, the DPP is prepared to notify us only in respect of disposals of securities held by the partnership in the portfolio companies. So the GP is not undertaking to give any advance notice of disposals by the partnership companies themselves. And if it is right to say, as Mr. Burden said to the Delaware trial judge, that the GP has no intention whatsoever of selling assets without giving ample notice or seeking court approval, why is there no undertaking on offer to that effect? And we are concerned that the explanation is that, contrary to Mr. Burden's representation, the GP does want to hide the ball on disposals by portfolio companies of their assets, does not want to give us prior notice, and does not want to seek court approval. Although the second problem, your Lordship

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sees this from paragraph 2.2.1, in the undertaking, the GP only wants to give us notice or seek validation orders for funding portfolio companies of half $1 million or more. So, below about half a million threshold, there's carte blanche to fund portfolio companies without any prior notice at all, or even seeking your Lordship's approval. The third problem is this, the GP wants a carve-out without any financial limit at all. In the cases of those portfolio companies where there is remaining unused budget that had previously been agreed higher level. But with respect, that ignores our position in the dispute that there are contractual restrictions on the LPA and the LPA on using partnership funds for these portfolio companies replicate, for example, a case where even agreed budgets cannot be drawn upon unless certain conditions precedent have been met, and they never worked. It also ignores our position.

Justice Jalil Asif KC (Judge): [00:37:48] Just went out for a minute.

Andrew Scott KC: [00:38:03] It also ignores our position in the dispute that there are fiduciary restrictions in any event, upon using the funds, particularly in a context where a petition has been filed by substantially the whole owners of the economic interest in the partnership. And standing back, we are not seeking to prevent the GP from using partnership assets to fund the portfolio companies. We're not seeking to prevent the GP from disposing of assets at the level of the portfolio companies. We just want advance notice or a validation order where the sums at stake are $250,000 or more. And frankly, it is troubling that our fiduciary will not offer them. Now, obviously, I'm not asking your Lordship to make any order today. And unless the GP is prepared to confirm that it is contemp for your Lordship to determine the issue. And we're not going to be on, um, on the wrong end of an anti-suit injunction where it attempted. And all I can do is give your Lordship an update on the position. And your Lordship now has the current lay of the land. And it's a critical part of the context for why we attach such importance to keeping the January trial date. Perhaps I can turn to that next. On the question of where the directions for trial ought to be given today, we say the answer is quite simple. Your Lordship has directed that a trial will take place in January, and the Lordship has directed that this CMC will give directions for that purpose. Your Lordship gave those directions with the parties' agreement in the consent orders dated the 1st August, and we respectfully submit that your Lordship should do as we all agreed and as was ordered,

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and give directions today that will take us to the January trial. I can ask your Lordship to take up volume one of the Hearing Bundle.

Justice Jalil Asif KC (Judge): [00:40:17] I'm just going to put...his affidavit, and anyone brought an additional tab, did they?

Andrew Scott KC: [00:40:30] We did not. My learned friends may have brought some...

Justice Jalil Asif KC (Judge): [00:40:37] I was always told that the solicitors should be

Andrew Scott KC: [00:40:38] Make sure they bring extra tabs because these documents, they get stuck.

Justice Jalil Asif KC (Judge): [00:40:51] Yes, Mr. Scott. I'm sorry, where, where am I going to?

Andrew Scott KC: [00:40:54] Tab four, please...has here the 1st August consent order in the petition proceedings. Now, there is a materially identical one for the other proceeding in tab three. Um, but perhaps if I can just show, your Lordship, the provisions on the petition proceeding, if we can start, please, with paragraph one. There's a provision here for ADR. Now, I don't want to get too far into this today, but that direction was included at your Lordship's suggestion.

Justice Jalil Asif KC (Judge): [00:41:37] Yes, the standard provision I like to put in.

Andrew Scott KC: [00:41:39] And, my lord, we have actively considered settlement by ADR, and insofar as we have not been willing to engage with proposals from the other side, we say that is for good reason, and we will set those reasons out in a witness statement that will be filed, but not shown to your Lordship until we get to costs. And I just made that point at the outset of these directions, because it's really a critical part of the context in which the GP's mediation summonses fall to be assessed. It's a context in which your Lordship has already made provision with the parties' agreement for how ADR is to be dealt with in the present case.

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Justice Jalil Asif KC (Judge): [00:42:19] I'm sure Mr. Ernst will explain to me in due course what jurisdiction I have to force parties into mediation if they're not agreeable to it.

Andrew Scott KC: [00:42:28] Well, we look forward to hearing that explanation because we have been unable to find any such jurisdictional basis. My Lord, can I say this as well, on the mediation side? Even if there were jurisdiction to do it. It seems to us, with respect, it would be impossible for the court, fairly and justly, to do so, unless it had visibility of what has passed between the parties in their settlement negotiations. And that, of course, is privileged. We have invited the GP to waive privilege for the purpose of its mediation summonses, so that your Lordship can see what has passed between the parties, and that will, we say, enable your Lordship to form a view as to whether any mediation is realistically likely to result in a settlement in this case, the GP has so far refused to waive privilege. And that, it seems to us, is another fundamental reason why this mediation summons is misconceived. But that is all for another day. My Lord, returning to the directions order, if I can ask Your Lordship, please look next on page eight at the provisions for discovery. And if I can ask your Lordship, please, to read paragraph six.

Justice Jalil Asif KC (Judge): [00:43:52] Yes. Remember that provision.

Andrew Scott KC: [00:44:03] Your Lordship sees that a fundamental aspect of this process is that discovery in Delaware would automatically stand in the Cayman proceedings. That's how Mr. Vita explained the provision to your Lordship. Um, when we went through these directions, and it reflected the agreement we had reached, and it set out very clearly in paragraph six that for the documents identified at categories A to E from the Delaware proceedings, they shall be, and I quote, "deemed to have been disclosed in this petition shall be admissible and may be relied upon at trial. And the purpose of that provision, and a critically important one, when your Lordship is directing a trial on January 26th, was to ensure that the Delaware documents automatically came in, without the need for a separate discovery process in this jurisdiction. That will be an important part of the context in which your Lordship needs to consider the GP's privilege summons next month. A summons, the objective of which is to prevent your Lordship from seeing documents that have been disclosed in Delaware and which, pursuant to Your Lordship's order, are deemed disclosed here, are admissible here, and may be

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relied upon at the trial here. And we will say that it is utterly hopeless. The privilege summons and the contentions that underlie it. But again, that is for another day. What your Lordship sees in the balance of the discovery provisions in this directions order is a topping-up process, with further requests to be made and answered an inspection given to these proceedings by the end of September. My Lord, that date slipped somewhat with the Delaware trial. But the top-up discovery was given yesterday, and the parties exchanged lists of documents and made them available for inspection under the agreed discovery proposal. So the discovery that your Lordship ordered has now been given. If your Lordship then looks ahead to paragraph 12, your Lordship sees that this CMC was directed and the matters to be dealt with were identified at A through to D. Please turn to tab 12 here in the bundle. This is a mockup of the directions in the petition that Campbell's had circulated on October 23rd with our proposed amendments. There is a material identical draft for the writ proceedings at tab 11 of the bundle, and the blue text marks the amendments that Campbell's had proposed against the draft that Walkers had provided, I think on the 17th. Your Lordship can skip over the provisions at 1 to 4 dealing with amendments, and they have not been agreed upon, and they fall away. Given that the GP will not consent to the amendments, I will come back to that. The rest of it is either agreed or incapable of being seriously disputed. Your Lordship sees the provision in paragraph five on discovery. What this is seeking to do is to amend the existing directions under the 1st August order to align the position with what has, in fact, happened. So I can just give you Lordship a moment to look at that.

Justice Jalil Asif KC (Judge): [00:48:04] So 5A and B are essentially just extending the dates that are in the 1st of October list, right? Okay. My preference is that where an order is granted an extension of time to existing dates is actually to say that the original date is varied rather than simply imposing a new one. But I mean, that's just.

Andrew Scott KC: [00:48:29] Oh, we are very happy. Of course.

Justice Jalil Asif KC (Judge): [00:48:31] It just makes it clearer what's actually happened.

Andrew Scott KC: [00:48:38] So that's the direction we ask you to make today on discovery. There is then a series of directions on evidence of fact from paragraph 6 and

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paragraph 12. Although if I just draw specific attention to two points here, the first is the dates of witness statements, 5th December for first round statements, 15th December for any witness statements in reply. That strikes a balance between affording the parties time to prepare their witness statements and the witness statements not coming in too close to the trial so that they can be properly accommodated at the trial. We respectfully suggest that that is an appropriate provision to invite your Lordship to direct it. The other provision I need to draw your Lordship's attention to is paragraph 12. I can just invite you to read the second sentence in blue that we have added.

Justice Jalil Asif KC (Judge): [00:49:42] Yes, I saw that already.

Andrew Scott KC: [00:49:44] Now, we certainly intend to produce our witnesses for cross-examination. If the GP does not, no doubt my learned friends will tell your Lordship when Mr. Ayres gets on his feet. But it is appropriate to provision now for what will happen if a witness of fact does not attend the trial. The rest of the provisions from 13 down to 19 deal with the PTR and other matters in the run-up to trial. There is a very small dispute in relation to the listing of the PTR. We had proposed recommencing the 15th December 25. The GP, I think, wants two specific dates, either 17th or 18th, very much in the court's hands.

Justice Jalil Asif KC (Judge): [00:50:38] I can say now that 17th and 18th are not going to be feasible, because, actually, no, sorry, the 17th would be feasible. And in fact, that's the only day that week I can do because I have a two-day summons on Monday and Tuesday.

Andrew Scott KC: [00:51:00] I'm told by Mr Faulkner that he is seeing you on Monday, so maybe you'll see a good deal of each other. So have I correctly understood that of the days of that week, only the 17th?

Justice Jalil Asif KC (Judge): [00:51:14] Only the 17th. I'm on an airplane on the evening of the 17th. And as a result, I'll be out of action on the 18th, and the 19th is the first day of vacation.

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Andrew Scott KC: [00:51:25] Why not celebrate those matters with a half-day PTR? If you will allow me to to to regroup with my team on whether the 17th works, and I will indicate it if it does.

Justice Jalil Asif KC (Judge): [00:51:35] I mean, if not, I could actually do it. I don't have a problem with doing a hearing remotely. So it's either the 17th or the 19th.

Andrew Scott KC: [00:51:49] Perhaps I can come back to that. So ultimately, that's all we're asking your Lordship to do today in the petition with equivalent directions in the writ proceedings, but with respect to what your Lordship should not do is entertain the attempt by the GP in its skeleton argument to have these matters deferred to another occasion. My Lord, can I make three overarching submissions on that? The first is, as your Lordship has seen, there is already in place an order of this court and indeed a consent order requiring a trial in January, requiring directions for it to be given today. There is no application from the GP to vacate that trial. There is no application for it to adjourn this CMC. With respect, that provides a short and complete answer to the informal attempt made in the skeleton to avoid directions from being given today. My Lord, the second point is that we are concerned that the GP is seeking to disrupt these Cayman proceedings, and I hope in the light of your Lordship's pre-reading, you will understand why those concerns have arisen. There are concerns which are reinforced by the position that the GP took at the hearing before your Lordship at the start of this month. The October mentioned hearing, on that occasion, in its skeleton argument, the GP's position was that this CMC should await the judgment in Delaware. Your Lordships note that paragraphs 4.1, 10.3 and section D4, tab 23 of the bundle, pages 507, 511, 513 to 14. And your Lordship rejected that position at the October hearing. Your Lordship said on page nine of the transcript, line ten, I quote the "CMC should, it seems to me, go ahead, come what may, on 31st October, as per the consent order, tab 24, page 525, your Lordship said on page 11, line 12, as far as the CMC is concerned, your Lordship would be fixing a timetable, saying these are the dates on which certain steps have to be taken in order to achieve the January trial date, page 527 of the bundle. Consistent with that, your Lordship did not adjourn the CMC or otherwise vary provisions of the consent orders that we have seen. The third point is this, to pump things off to a two day CMC to be listed who knows when, as the CMC, as the GP suggests, would be, with respect, the antithesis of what the overriding objective requires of the parties and of the court, which is to deal

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with every cause or matter in a just, expeditious and economical way. That means ensuring that the normal advancement of the proceedings is facilitated rather than delayed. It means saving expense, allocating to the case an appropriate share of the court's resources while taking account of the needs of others, and all of those considerations point inexorably to giving directions to trial today that will enable the case to advance towards the January trial in the normal way, and it will avoid the risk of delay, additional cost, and additional court results that would result from putting things off to a two day CMC. My Lord, it is convenient at this point to examine the reason given by the GP for seeking to defer directions to trial. It is the fact that on the 23rd of October, we provided in draft proposed amendments to our petition and statement of case. We summarise those amendments in our skeleton at section C, that your Lordship will have read that, your Lordship will, I hope, understand why we don't accept the GP's characterization of them as late draft amendments, as it is put in paragraph 1 of the GP skeleton, and the timing of them ultimately is not a matter for today. It's a matter for determination on the summons, for leave to amend. I'll just make three short points here about the context. The first is an invitation to be realistic about this. We are on a tight timetable to trial. It's about five months between the August consent order and the January trial, discovery concluded yesterday. The idea that these are late amendments is, with respect, not realistic. And that is moreover so, this is the second point, where the GP itself wishes to amend and is proposing to do so at an even later stage when the Delaware judgment emerges. Now, we don't know with any certainty when that will be, but what is certain is that it won't be before the 21st of November, because that is when the parties are scheduled to deliver their oral closing submissions. So what the GP appears to be contemplating is proposing amendments to its case in late December, or more likely, December at the earliest. And it is therefore, with some irony, that GP seems to criticise us for proposing amendments in October. Third, in assessing the GP's complaint about these so-called late amendments, and we do submit to your Lordship that the matters addressed in the amendments are not new matters. My Lord, we prepared a table which summarises where the amendments originate from. Perhaps, I can hand it copy to the Lordship. This paper is intended to be helpful both to your Lordship and to the GP, because it identifies where in the prior correspondence, or in the existing pleadings, or in the prior evidence in this case, the matters addressed in the amendments have already been raised. Now, the GP has not consented to the proposed amendments and has said that it cannot agree to the bulk of them. It was put in paragraph 1 of my

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learned friend's skeleton. So we will need to obtain the Lordship's leave to amend in the usual way, and so we will promptly issue a summons for that purpose, and we hope to do so at the start of next week. I will address your Lordship in due course, if I may, when it might be possible to bring that summons on for hearing. But the point I'm addressing now is directions to trial. Possibility that pleadings might be amended always exists. It's not a reason to defer giving directions to trial. And if the GP wants to argue on the amendment sentence that the proposed amendments come too late to be accommodated within the time left to the January trial, that's an argument it can make on that occasion.

Andrew Scott KC: [00:59:36] We will say, don't think this will come as any surprise that any such argument would be utterly hopeless, given the nature of the amendments, given the point in the time in which, in this expedited proceeding at which we're in. Likewise, if the GP wants to say that the proposed amendments are bound to fail, that's an argument that it can make at the hearing of the summons for leave to amend. Again, we don't accept that for a moment, but it's for another day. To be constructive and to progress matters, we had identified, we'd asked the GP to identify which of the amendments it consented to, and which of them it opposed, so that the consented to ones could be pleaded back to now, and with the balance debated at a summons for leave at a later stage. The GP has objected to that which it sees that from paragraph 2. It's an objection repeated in correspondence from Walker's yesterday, to which we will come. GP says it doesn't want multiple rounds of pleading amendments. We are very much in the court's hands as to how many rounds of pleading amendments there ought to be.

Justice Jalil Asif KC (Judge): [01:00:46] You still need to know what's consented to... You know the scope of the argument on amendments.

Andrew Scott KC: [01:00:53] We were told in the GP skeleton that we would be given an answer to that question before today's hearing. We were told in the letter from Walker's yesterday that they hope to provide that update. It hasn't come. So I come before your Lordship in a remarkable position where all of these amendments appear to be in dispute. Even the first one on your Lordships' table, which simply pleads a position that the GP itself has taken as to who the other LPs in the fund are.

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- **Andrew Ayres KC :** [01:01:23] Although that's not quite right. The position Walkers has set out in correspondence is that, certainly, there will be some amendments that we consent to.

Andrew Scott KC: [01:01:32] With respect, it is quite right, because the point I was addressing your Lordship is whether we would receive an update in time for today's hearing. Walker said they endeavoured to do so, and they have not been put in a position by their client to achieve them. I'll come to the Walker's letter, so your Lordship will have the opportunity to take it in. My Lord, another objection that is raised by the GP is a suggestion that the proposed amendments would give rise to discovery requests. That's paragraph 2 of my learned friend's skeleton. For our part, we struggle to see why that would be so. The amendments arise from discovery that has already been given in Delaware for the GP's conduct of the litigation. And for our part, we don't intend to make any additional discovery requests in relation to our amendments. The GP would not, I think, have any additional discovery requests to make of us, given the nature of the allegations concerning the GP's conduct. And even if there were further discovery requests to emerge, they would of course need to be accommodated within the trial timetable in the usual way. How can I deal finally with the Walker's letter from yesterday? First of the two letters.

- **Andrew Ayres KC :** [01:03:17] Perhaps I shouldn't have put it in. Yes.

Andrew Scott KC: [01:03:37] Paragraphs 1 to 3 of the letter are another complaint about our approach. We're said to have created a procedural quagmire with the proposed amendments. The inescapable result is said to derail, disrupt and delay the proceedings. Said that we're trying to bully the GP into having everything our way, notwithstanding the enormous prejudice it will create, not just for the GP, but also for the interested parties. Now, my Lord, this is all high octane stuff, and perhaps the Walkers or Quinn Emanuel lawyer who took the pen enjoyed writing this sort of thing. Your Lordship will no doubt have his own view as to how far it furthers the overriding objective. But we don't for a moment accept any of these criticisms, but I'm not going to take up your Lordships' time with this, they don't go anywhere, in terms of the question for today, which is where the directions for trial should be given. If your Lordship will turn the page at paragraph 4 and following deal with the proposed amendments 4 and 5 are a complaint about timing.

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Complaint is that although we indicated in block 1 on the 17th of September that we wish to make amendments. We didn't provide them until the 23rd October, and that is mischaracterized as having sat on the foreshadowed amendments. And with respect, that ignores entirely the fact that in the intervening period, we were getting the case ready for trial in Delaware and dealing with the various roadblocks that the GP had thrown in the way of the PL samples, the anti-privilege claims. So ultimately, the complaints on timing don't go anywhere in terms of the directions that need to be made today. As I said, if the GP wants to rely upon them as an objection to leave to amend being granted, it could do so in due course. Paragraph 6 is the point I've already touched upon, about Walker's endeavouring to indicate which amendments were opposed. I ask Your Lordship to read paragraph 6, and 7 that says any other amendments not expressly agreed to would need to be the subject of a contested amendment application. We, of course, accept that. And over the page, they say this "your client should not be allowed to bypass the usual application and evidence process because they do not wish to acknowledge how their actions impact the trial date". We're not trying to bypass anything. Given the GP's position, there will have to be a contested application for leave. We will issue the summons promptly next week, and I will explore with your Lordship when it might be possible to bring that on. But with respect, none of that bears on the question for today, Directions for trial. And we deal with that in paragraph 8. Can I ask your Lordship to read paragraph 8, please? And I'll make some submissions on that.

Justice Jalil Asif KC (Judge): [01:07:49] Can you just remind me what is the recognition issue?

Andrew Scott KC: [01:07:53] The recognition issue is our contention...

Justice Jalil Asif KC (Judge): [01:07:58] Because they're in breach of the injunction, they can't rely on the Delaware judgment...one second

Andrew Scott KC: [01:08:15] My Lord, the criticisms here are entirely unfair, because the matters that it is suggested we should have provisioned for in the timetable are either outside our control or are entirely hypothetical at this stage. If we take the first item that is relied upon, the GP's ADR application, the Mediation Summons, we don't want it to disrupt the January trial, so we specifically sought, in correspondence, but have yet to

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receive from the GP an assurance that it would not rely upon the ADR application in an attempt to derail the January trial. So, as I say, we have not received that assurance, which is another problem with the application.

Justice Jalil Asif KC (Judge): [01:09:07] So, in other words, all the above, except one.

Andrew Scott KC: [01:09:12] Yes. Obviously, the GP's ADR application will need to be listed, but we're in your Lordship's hands as to when that might come. We can't provision for it in the timetable. Likewise, the second item relied upon by Walkers. The amendments that the GP says that it wishes to make following the hand-down of the Delaware judgment. That's an entirely hypothetical matter at this stage. We don't have a Delaware judgment, much less one in the GP's favour. We can't and don't have any proposed amendments from the GP on the basis of the Delaware judgment. With respect to how can we be criticized for not provisioning in the timetable for these entirely hypothetical matters? The third item is the recognition issue and the suggestion from Walkers, and I quote "they say it plainly cannot wait until trial", with respect, why on earth not? That's the ordinary point at which to determine the merits of issues in the case. And one of the issues in this case is whether the GP breached its Lordship's injunction by its conduct in Delaware, and if it did, the consequence that results as a matter of Cayman public policy. Now, if the GP wants to have a preliminary issue on that question, it needs to apply to have one directed, and the court can weigh the pros and cons of what that would involve, the potential disruption of appeals on the issue, and whether it would be a treacherous shortcut as preliminary issues so often are. But no application for a preliminary issue has been made. And that is despite the fact that the GP has known of our position on the recognition issue since Campbell wrote about it in September. Can I show your Lordship that letter, please? Tab 62, in the second volume, appears.

Justice Jalil Asif KC (Judge): [01:11:21] 67 or 62.

Andrew Scott KC: [01:11:22] 62. If your Lordship keeps the Walker's letter open because we'll need to go back to it. Perhaps I can just ask your Lordship to read from paragraph 2 at 1781 down to paragraph 11. We have a response from Walkers to these allegations in the next tab. Tab 63. Your Lordship sees from the letter that the allegations are denied. The denial is set out in paragraph 2 of the letter over several pages and concludes that

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paragraph 7 with an offer of undertakings. Of course, I'm not asking you to resolve this issue today. The only point I make is that it's an issue that has evolved since the 10th of September. So the GP has had ample opportunity in which to apply to your Lordship to have a preliminary issue directed, if it wishes to do that. It has not done so. But if we can go back, please, to the Walker's letter.

Justice Jalil Asif KC (Judge): [01:14:47] Yes.

Andrew Scott KC: [01:14:48] The fourth item that we are criticised for, not provision for in the timetable, is the privilege summons. Now the privilege summons are listed for hearing already at the end of November. I think the 28th. If they fail, there will certainly be more documentary evidence available to your Lordship at the trial. And that has no impact on the timetable to trial. As the skeleton noted, the possibility that further amendments may be required from us if the privilege summonses are dismissed. What I emphasise the word make, as matters presently stand, we don't propose any further amendments, and it seems unlikely that we will need to do so to address the material alleged to be privileged, it will certainly come into evidence in support of the allegations made. It does not seem likely to necessitate further amendments. But even if we do propose further amendments in reliance upon this material, we'll put them forward in the usual way. And if they are consented, they will go in. And if they are contested, the court will need to decide whether they can be accommodated within the time available to trial. These sorts of hypothetical matters again are no reason to withhold directions for trial today. The fifth item that Walkers mentioned here, your Lordship sees... Are, and I quote, "rounds of further discovery that will need to take place between the amended pleadings and the service of evidence consequent upon all of these items, with the exception of item one". I think that's the point. Mr.. Mr.. Ayres wanted to draw to my attention. I confess, I simply don't understand this point about further rounds of pleadings.

Andrew Scott KC: [01:16:51] Why would the hypothetical amendments in respect of a hypothetical Delaware judgment in the GP's favor necessitate further discovery? Why would the recognition issue do so? Why would the resolution of the privilege summons do so? None of these matters is likely to have any impact whatsoever on discovery. But even if they did, somehow generate additional discovery requests, it would need to be considered when those requests were made, whether they were justifiable and could be

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accommodated, bearing in mind the remaining time to trial. And with respect, we do say that what this paragraph is, is an attempt to manufacture problems that simply don't exist, and an attempt to do so to obscure the fact that the GP comes before your Lordship entirely unwilling to assist in laying down directions for the trial in general. So, continuing through the letter, paragraph 9 says that the upshot of the problems that the GP identifies is they say that pleadings will not be closed before the deadline for the witness evidence. With respect, that's entirely wrong. Pleadings have already closed. They closed on the 3rd of December, 3rd of September, when we served our reply. What we are talking about here is potential amendments, the ones that we have proposed in draft are hypothetical ones that the GP says it wants to make if it wins in Delaware, and whether those amendments can be accommodated. That will, of course, be informed by the trial timetable, but it is not a reason to defer imposing a timetable. If you, Lord, will look next, please, at paragraph.

Andrew Scott KC: [01:18:45] Paragraph 10 is the point about whether the parties always contemplated that amendments would be needed. Walker's position is that, I'm so sorry. The GP position amendments were always contemplated, but only after the judgment was handed down in Delaware. Now that may be the GP's position. It's not our position. It's not a position we have ever agreed to. Like any party making allegations such as the ones we make in this case, discovery is critical. We agreed on a process whereby the primary discovery would come from Delaware, and when it did, we reviewed it and proposed amendments accordingly. Paragraph 11 is the objection I've already addressed about multiple rounds of amendments. Said to be absurd that we are suggesting there should be four rounds. We're not suggesting that. All we're suggesting is that we be permitted to amend our case in ways that we have proposed to the GP. It does seem to us that it would be sensible for the GP to plead back to such of the amendments as it is prepared to consent to. But in some ways, that's a moot point because, as matters stand, we don't have their consent at all to any of them. As I say, we're very much in your Lordship's hands as to how many rounds of pleadings there ought to be on this. It does seem to us that the appropriate way to deal with it is simply to take what is on the table now. On the table now there are proposed amendments. GP should indicate which ones are consented to and which ones are objected to. And then we debate before your lordship whether the objected-to ones can come in. Paragraph 13 deals with the recognition issue. Perhaps I can ask Your lordship just to read paragraph 13. It appears

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that the GP plans to ask you, lordship, to determine on a summary basis. Question of Cayman public policy arising out of the alleged breach of the injunction, and to do that with a trial just a few months away. That does seem an ambitious stance to take on an application for leave to amend, but there it is. Obviously, we say the amendment is perfectly arguable indeed, and it is right. Your lordship will form a view when deciding whether to grant leave. Well, the balance of the letter deals with other topics, and I just want, very briefly, glance through those, 14 is a request for additional disclosure. I was about to make that point, but I'm very grateful to [01:22:48] Mr Ayres again. [01:22:49]

Justice Jalil Asif KC (Judge): [01:22:49] I already understood that paragraph.

Andrew Scott KC: [01:22:53] I'd rather thought allowing your lordship to read it would be more helpful than me paraphrasing it, but then paragraph 15, my Lord, deals with the correspondence about ADR. We're told that our client will respond to your letter dated 28th October, concerning ADR as soon as possible, once it has had the opportunity to consider the contents of that letter. Now, that's the letter in which we saw assurances that they would not rely on mediation summons to torpedo the January trials, that they would waive privilege rather than communications. They are pretty straightforward requests. It is surprising that we don't have an answer to them. My lord, we then have, um, a series of paragraphs on timetable. I can just ask your lordship to read what is said at 16 down to 19.

Justice Jalil Asif KC (Judge): [01:24:00] Okay.

Andrew Scott KC: [01:24:41] I'm sorry it's taken so long to go through the letter. It was a long one. I thought it right that your lordship should see it because it appears to be the case that is being put forward against directions to trial being granted today. With respect, we invite your lordship not to be dissuaded from that course. That is the right thing to do is to give the directions that are needed for to trial and in the form we propose. Can I turn then to directions for the amendment and mediation side? It seems to us that the mediation summons is not going to take more than half a day. The amendments ought not to take more than half a day, provided that the parties focus on the applicable test, because, of course, an amendment summons is not a dress rehearsal for the argument at trial. It's an argument about whether leave should be granted. And if your lordship were

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willing and able to indicate when there might be, if any, half-day slots over the next month or so, perhaps the parties could then take that away and come back with some proposals on directions this afternoon. Because until we know whether your lordship can accommodate hearings on those sentences it's it's really impossible to suggest what the directions will be.

Justice Jalil Asif KC (Judge): [01:26:21] Right, I could offer you the afternoon of the 14th. I could offer you an hour and a half on the 17th, in the afternoon. I could offer you the morning of the 18th, but I must be finished by midday because I've got an appointment. Possibly the 26th of November, but it's not ideal because I have something the following day and then the privilege summons on the 28th. Although, having said that, um, what I could possibly do is, the afternoon of the 27th, and then we could run that in onto the 28th to deal with everything on the 27th and 28th. That would be a possibility.

Andrew Scott KC: [01:27:33] Okay. Perhaps I...Then after that,

Justice Jalil Asif KC (Judge): [01:27:38] It's really too late to do anything useful. Even as late as the 28th is probably going to be, um, may may be too late in terms of holding a trial date.

Andrew Scott KC: [01:27:52] Can I explore that with my team? Yes. I mean, from our perspective, it seems to us that neither of these summons ought to have their listing dictated by the availability of leading counsel. I mean, each side has retained entirely competent local attorneys that I'm sure would be more than capable of dealing with these matters. So.

Justice Jalil Asif KC (Judge): [01:28:17] Well, certainly... certainly for the mediation summons, I think that's right on the amendment summons, um, it might be that, the parties would prefer leading counsel to attend, and if it's only half a day, then I don't have a difficulty with remote attendance. I sort of draw the line at half a day because after that it becomes too disruptive. It seems to me that the... Well, the earlier both sentences are determined, the better in terms of everyone knowing where they stand.

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Andrew Ayres KC : [01:28:54] And of course, there's no connection between the two of them. No, I'm not suggesting.

Justice Jalil Asif KC (Judge): [01:28:59] They don't have to be heard together. So, yeah!

Andrew Ayres KC : [01:29:05] That's very helpful. Perhaps I can come back with some more concrete proposals, which I've had the opportunity to speak to myself and indeed to my learned friend who's had the same opportunity.

Andrew Scott KC: [01:29:17] My Lord, can I turn then to the question of directions under rule 12, order 3 of the Companies' Winding Up Rules with proper respondentissy.

Justice Jalil Asif KC (Judge): [01:29:26] Yes.

Andrew Scott KC: [01:29:29] My Lord, I want to address three topics here. The first is the underlying concern which motivates the direction, which is that our fiduciary is using our assets to pursue litigation with us. Face of things, a striking proposition. Second, I'll address why we say the court has jurisdiction to make the direction we seek. We respectfully suggest that the GP's submission that the court has no jurisdiction is plainly contrary to the legislation. It is contrary to the legal principle that underlies it, and it is contrary to at least one decision of this court, in which a direction in the form that we are seeking was made. It would also, with respect, yield absurd consequences whereby the court is powerless to treat a petition in a way that reflects its substance.

Justice Jalil Asif KC (Judge): [01:30:35] Can I flag two things that I was looking at this? The first is, in Order 24, Rule 8, it looks to me like there's quite a significant typo or error in the drafting. If one looks at Order 24, Rule 8 (2) B, it means that if the court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company's respondents, which just makes absolutely no grammatical sense. It looks to me as if what has happened is that there's an attempt to track the wording of Order 3, Rule 12 and 12 B, and so, it's not 12 or 12 B, and the words, one or more members of the company as petitioners and have been omitted and that an s has been added on the end of members, so it should say, and

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the other member or members of the company. I raise that first, because when I come to Rule on this, it seems to me, unless anyone says that interpretation that I shouldn't treat that as Order 24, Rule 8 says, um, then I ought to hear argument on the proper interpretation of that provision. But it seems to me it's an obvious error looking at Order 3, Rule 12 B, and unless anyone wants to argue against it, I'm going to say that's how Order 24, 8, 2B should be interpreted.

Andrew Scott KC: [01:32:32] I'm grateful, my Lord, and that takes off one of the points I was going to address. We read the provision the same way.

Justice Jalil Asif KC (Judge): [01:32:39] The second thing that occurs to me, um, and I would like to hear, particularly from Mr. Ayres on this in due course, um, is that, uh, even if he's right, about 36.3, in the Exempted Limited Partnership Act and, uh, how that how that applies to the, Companies Winding Up Rules, 33, sorry. 36.3G in the Exempted Limited Partnership Act says on application by a partner, the creditor or liquidator, the court may make orders and give directions for the winding up and dissolution in exempted limited partnership, as may be just and equitable. So it seems to me that gives me a very wide discretion to do whatever I want, as long as it's just equitable in the context of winding up of an LP. So even if he's right on, uh, the statutory construction of, um. Section 33.3C and D, then I have a residual power under G to deal with it.

Andrew Scott KC: [01:33:55] We respectfully agree, my Lord. I'll focus on the argument as it is put by the GP in relation to 36.3. But there are, in any event, additional sources of power. What we see in G is identical.

Justice Jalil Asif KC (Judge): [01:34:16] Okay.

Andrew Scott KC: [01:34:19] So that's the second topic I'm going to address. And then the third is why it is appropriate to make the direction that we seek. And I can take that very shortly indeed because it doesn't appear there are a few points I need to pick up from the GP skeleton. It doesn't appear to be any serious attempt to dispute, because it cannot be disputed that the substance of this case is a dispute between the Rigmora LPs and the GP. As I say, I'll come to that.

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Andrew Scott KC: [01:34:52] My Lord, if I can begin with the concern that underlies the requested direction. I've already addressed your Lordship at the outset, and the fact that the GP is continuing to use partnership assets without sanction from the court or supervision or any undertakings. Um, the scale upon which our fiduciary is spending, what is beneficially ours to litigate against us is, with respect, extraordinary. And it's illustrated by the $20 million of partnership monies that the GP paid over to Quinn Emanuel just a few weeks after the hearing before your Lordship in August, to be used to pay their fees and Walker's fees in the litigation. Even more extraordinary that those funds were generated by realising the partnership assets at an undervalue. If I can ask you, please to go to Tab 17 of the bundle. This is Mr Blair's affirmation, served with PL Summons. If I can ask, your Lordship, please to go to page 186. Your Lordship will appreciate the redactions in this document to abide by the outcome of the privilege summons. Can I ask Your Lordship, please, to read? I'm so sorry. The wrong page reference here, 187. Can I ask your Lordship, please, to read paragraph 43, first of all? Your Lordship will note that these payments, some $61 million, enter on the 31st July and the 1st August alone. You will recall there was no mention of the whatsoever at the first August hearing before your Lordship. The matter is extraordinary. It is extraordinary because the GP's evidence on that occasion, through Dr Harrison, as the injunction your Lordship had made would, and I quote now, "his evidence on this occasion would bring an immediate and ongoing halt to the partnership's funding of the portfolio companies for the entire period the injunction order remains in place. Important to note that Harrison three in the written proceedings. Paragraph 125, tab 15, page 118. That evidence was relied upon by the GP's legal team at the 1st August hearing. Um, and I don't think Miss White was there on that occasion, um, Mr Ayres wasn't, because it was Mr Visa [as heard]. Um, but they did not tell your Lordship that 61 million had recently come into their client's hands. About 60% of the amount of the disputed capital calls themselves. And that can only be because Dr Harrison chose not to tell his team about it, because had they known about it, they would have been surely bound to tell your Lordship, to correct the misleading picture that his evidence would otherwise create. Your Lordship will return, please, to Mr Blotlinger's [as heard] affirmation. Can I ask you, please, to read 44 and 45?

Justice Jalil Asif KC (Judge): [01:41:00] Where do you want me to stop? At 45?

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Andrew Scott KC: [01:41:02] Yes, at 45.

Justice Jalil Asif KC (Judge): [01:41:02] Yes, okay.

Andrew Scott KC: [01:41:03] And one of the concerns that Mr Blotlinger [as heard] is articulating here is that this partnership asset was realized on a discounted basis, apparently to generate cash for use in the litigation, among other things. Can I ask your Lordship, please, to look at paragraph 47? Can I ask your Lordship, please, to read 47.1 over the page? 47.6?

Justice Jalil Asif KC (Judge): [01:42:01] Sorry, did you say 47.1 and 47.2?

Andrew Scott KC: [01:42:06] 47.1 down to 47.5 inclusive. I'm not asking the court to rule on any of this today. There would have been matters for consideration on the PL summons had we been able to pursue it. They will be matters for determination at the trial. For today's purposes, I refer to them only to illustrate the context in which our concern has arisen as to how the GP is funding this litigation at our expense, and what the direction that we seek will afford is the opportunity for the court to assert some oversight and to indicate its views as to the proper characterization of the dispute that will, in turn, bear upon the propriety or otherwise of the GP using partnership assets component. My learned friends say in their skeleton paragraphs 7, sorry, 5, 7 and 10. They say we are acting tactically to preempt the question of who would pay the costs of defending the petition should it succeed. That is wrong for three reasons. The first is that it overlooks the important oversight function that is served by the court, giving direction as to the proper parties to a petition, which is something the rules require the court to do in every case. So the Lordship sees from rule 12, Order 3. Second, my learned friends overlook the fact that we are not asking the court to make an order at this stage as to the incidence of costs. We're just asking the court to make directions that reflect the substance of the dispute, as the rules require. And it is with respect, nothing to the point for today's purposes, what costs orders are ultimately made at the end of the proceedings, and it is likewise nothing to the point where the non party costs orders could be sought and made against the GP under Order 24, rule 8(4), equally is nothing to the point whether there is a high hurdle non party cost order. They are all matters down the track. Your Lordship is concerned today with the prior question, and really a more fundamental question as to

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what the substance of the dispute is and who are the proper parties to it, as a result. The argument about pre-emptive costs orders is the same argument that this court rejected in the Freerider case. I show your Lordship, it's Tab 7 in the Joint Authority Bundle. That was a petition to wind up a company on just and equitable grounds. The Lordship see the context from the Headnote. Lordship sees over the page what Justice Foster held. Just give you Lordship a moment to read that.

Justice Jalil Asif KC (Judge): [01:47:13] Yes.

Andrew Scott KC: [01:47:14] Okay. So, if we take two things of importance from this decision. The first is that the rules which your Lordship is applying here. Rules of the companies winding up. They are founded upon the established principle that company money should not be used for a dispute between shareholders. Justice Foster held that the rules are a procedural tool by which to give effect to this fundamental and substantive principle of the law. The same principle applies to LPs, and as I will develop, the Lordship has the same procedural tools to ensure that the petition proceeds in line with its substance as a petition between the members of the partnership between whom the dispute has arisen. The Rigmora LPs, on the one hand, the GP on the other. The second thing we take from the Freerider decision is the rejection of the argument that only friends make about preempting decisions as to costs. I can just show your Lordship some of the key passages. Let me start, please, paragraph 17 on page 78. This records the submission made that there was no power to treat a company as the mere subject matter of the petition, rather than a party to it. A similar argument to the one the GP urges, when Lordship Justice Foster rejected that submission and he did so, said on the basis that the rules of procedural provisions are designed to give effect to the legal-cost principle. Dealt with that issue, having set out the legislative context at paragraph 20. Can I ask Your Lordship,

Justice Jalil Asif KC (Judge): [01:49:46] Yes.

Andrew Scott KC: [01:49:46] The judge then deals with the legal costs principal at 21. Can I ask you, Lordship, to read that, please?

Justice Jalil Asif KC (Judge): [01:50:44] Yes

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Andrew Scott KC: [01:50:44] And on 22 and several pages, there is a detailed consideration of the English cases.

Andrew Scott KC: [01:50:54] If your Lordship will jump please to page 88.

Justice Jalil Asif KC (Judge): [01:51:00] Yes,

Andrew Scott KC: [01:51:01] The records at 36, the submission that those English cases were distinguishable, on the basis that they were unfair prejudice cases, and he rejected that. Can I ask you, Lordship, please, to read 36? Sorry, 37 and 38 of the page to give the judge's reasons for rejecting that submission. Will then read 40 and 41. They record and reject the submission about preemptive costs.

Justice Jalil Asif KC (Judge): [01:53:44] Yes

Andrew Scott KC: [01:53:44] And finally, at 42 and 43, Justice Foster draws the threads together and explains that it fell to him to characterize the substance of the dispute and give directions accordingly. Finally, can I ask your Lordship should read those passages, please? We respectfully submit that exactly the same approach applies to the context of LPs. Your Lordship has the same broad procedural power to give effect to the same legal costs principle. That brings me to the second topic I wanted to address, which is your Lordship's jurisdiction. Can I ask you, please, to turn to Tab 3? Start, if we may, with the LP act and then turn to the winding-up rules. And our submission to your Lordship is that it is plain from the statutory language that there is jurisdiction under these provisions to grant the directions we seek. Go to page 54 in the bundle, which has 363. It provides that the provisions of Part Five of the Companies Act on winding up. The associated winding-up rules legislation shall apply to the winding up of an ELP. So your Lordship has on the face of the statute its purpose. Its purpose is to extend to LP the statutory winding up regime that exists for companies.

Andrew Scott KC: [01:57:12] I thought it was necessary for the legislature to do that because otherwise there would be no statutory winding-up regime at all for ELPs. The legislative technique adopted is not to reinvent the wheel simply to apply the regime that

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already exists and has long existed for companies. To achieve that purpose, section 36 (3) identifies um through sections A to C, how it is to be done. And the evident intention behind that is to modify the company winding-up provisions so that they make sense in an ELP context. You can just look through subsections A to C in turn. A provides that references in Part 5 to a company shall include references to an ELP. The consequence of that is that wherever you see the word company in Part Five or in the rules, it includes references to an ELP. Subsection B adopts a different technique. It does two things. It says, as your Lordship sees, that the limited partners shall be treated as if they were shareholders of a company. And then this, references to Contributories in Part Five shall be construed accordingly. So the legislation is telling you not, um, wherever you see the word shareholder in Part Five of the rules, that means limited partners. It's telling you what the word contributories means. It's not saying that shareholders in the Companies Act or the CWR means limited partners. Much less is it saying anything at all about members of the companies. And, with respect to my learned friends, the argument that they make at paragraph 13 of their skeleton is just wrong.

Justice Jalil Asif KC (Judge): [01:59:34] So, what's the difference between a contributory shareholder or a member?

Andrew Scott KC: [01:59:45] The difference for these purposes is that, what the legislature is seeking to do by subsection B is to identify that, yes, the LP will be treated as a contributory for the purpose of petitioning, but it will not be treated that way for the purpose of contributions in a manner which is inconsistent with the provision that is made on that issue in the end.

Justice Jalil Asif KC (Judge): [02:00:20] Subsection 3B says "shall be treated as if they were shareholders, and references to contributories shall be construed accordingly". Tends to suggest that the legislature assumed that shareholders mean contributories. Indeed, the terms are interchangeable. That was what my question was directed at. Whether you're saying there is a difference between shareholders, contributories and members or whether the terms are interchangeable.

Andrew Scott KC: [02:00:54] Indeed, and it may be that the terms are interchangeable. It would depend on the particular context in the Act in which they are. The point I'm

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making, for your Lordship's purposes, is that really what drives this provision is the word contributory. And what the legislature is seeking to do is to equate LPs with contributories for the purpose of petitions. And then, your Lordship sees, um, if I can put it this way, the sense behind that when we look at the provisions in Part 5 on who may petition, because the provisions of Part 5 distinguish between contributories' petitions, on the one hand, and creditors' petitions and then also directors' petitions. And that brings us on to subsection C, because what subsection C provides is that references to a director or officer of the company in Part 5 include references to a general partner. Now, that has various consequences because of the various references to 'director' and 'officer' in Part Five. One of those consequences I've just mentioned the possibility of a director's petition. There are various others: liability for the company's statement of affairs. With respect, it has no bearing on the question for your Lordship as to whether there is power to direct that a petition proceed on an inter partes basis between a limited partner and the general partner. That question, that party's question, the answer to that is provided by rule 12, read through the lens, as my learned friend said briefly in section 36(3). If your Lordship will go next to the rules, they're in the previous tab, tab 2. If your Lordship will go, please, to page 42.

Justice Jalil Asif KC (Judge): [02:02:50] I'm sorry, Mr Scott, just before I do that, I just need to deal with something. Do you mind if can we just rise for five minutes? (Court adjourned for a short break.)

Marshall: [02:13:01] (Court resumed) God save the King!

Justice Jalil Asif KC (Judge): [02:13:06] Thank you... Administrative issue.

Andrew Scott KC: [02:13:09] Just before we go to companies' winding-up rules, can I just invite your Lordship's attention to the definition of contributory in the Companies Act? Behind tab one, which has the definition of section 89.

Justice Jalil Asif KC (Judge): [02:13:33] So in 89.

Andrew Scott KC: [02:13:35] Yes, Sir.

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Justice Jalil Asif KC (Judge): [02:13:57] Is there anyone other than a fully paid-up shareholder or partially paid-up shareholder who might qualify as contributory, or is it going to depend on the nature of the company in question?

Andrew Scott KC: [02:14:12] It depends. So I don't think we have Section 49 in the company, but there's a long list of people that fall within the definition of contributory on that basis. And it seems to us that what the legislature is seeking to achieve in the provision we saw in the ELP Act is to treat a limited partner as a contributory within the category of shareholder and without prejudice to the extent of its liability, which is dealt with by the ELP Act, rather than the different provisions we see from various companies in the company act. It seems to us that this is the scheme that the legislature is seeking to achieve. Can we go next to the rules?

Justice Jalil Asif KC (Judge): [02:15:03] Yes.

Andrew Scott KC: [02:15:14] Those at Tab 2. If we can begin, please, with rule 12 (1)A, with the modifications that come from the ELP Act. The effect is that the matters in respect of which the court shall give such directions as it thinks appropriate include, if you will just read (a) with me, whether or not, as it says "the company" that becomes whether or not the LP is properly able to participate in the proceedings, or should be treated merely as the subject-matter of the proceedings. Pausing there, rule 12 (1)A, as modified, is a very broad one. It also posits an inquiry that is interrelated with the exercise under rule 12 (1)B. And, indeed, that's a point that my learned friends rightly make at paragraph 16 of their skeleton. They say these two inquiries under A and B are interdependent. We respectfully agree about that. But it follows that, if the court concludes, when applying A, that the case is one in which the partnership is merely the subject-matter of the proceeding rather than a participant itself, the court must be able to give directions to reflect that. And the obvious direction to give is that the preceding be treated as an inter partes proceeding between the members of the partnership who are in dispute with one another. And that is exactly what is provided for in B. Again, if we can do the same exercise of substituting the words in the way that section 36 requires, where it says "whether the proceedings should be treated as a proceeding against a company", that becomes ELP, and where it says "between one or more members of the company", that becomes "one or more members of the ELP". So the question of statutory construction, your Lordship, ultimately is a very

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simple one: who are the members of an ELP? That can only mean its partners, and that must mean both its limited partners and its general partners, too. We respectfully submit that that is the only available meaning of the words in this statutory context.

Justice Jalil Asif KC (Judge): [02:18:00] Isn't there a more fundamental problem, which is that ELP doesn't have a separate legal personality? It's simply shorthand for all of the various partners within the ELP. And I don't think, legally or procedurally, you can have a limited partner who is the petitioner or plaintiff pursuing a claim against itself as part of the ELP as respondent, stroke, defendant. So it seems to me, however you look at it, it has to be construed as a claim by one limited partner against either the GP and all other limited partners. There isn't any other whatever, whatever all three rules say. It just doesn't make sense in a circumstance, in a situation where you're not dealing with an entity that has a separate legal personality.

Andrew Scott KC: [02:19:01] We don't disagree at all. It may be that part of an answer to it is supplied by section 33 (1) of the Partnership Act. I think we have that. Perhaps we can...your Lordship is familiar with the provision for bringing of proceedings.

Justice Jalil Asif KC (Judge): [02:19:31] Just give me one second. I've got, um, I've got the ELP here. Let me just remind myself, you say 33.

Andrew Scott KC: [02:19:39] Yeah.

Justice Jalil Asif KC (Judge): [02:19:49] Yes. Funnily enough, I gave judgment on this as well. All to do with whether a claim by a limited partner against the GP is to be considered a derivative claim or not, which it isn't, in my view. The Court of Appeal will no doubt tell me I'm wrong...

Andrew Scott KC: [02:20:17] Essentially, your Lordship is right that the nature of an ELP, the fact that there is no separate legal personality, means that it has to be possible to direct a petition between the limited partners and the general public.

Justice Jalil Asif KC (Judge): [02:20:37] It seems to me it's the only way you can do it, because under the ELP, limited partners shouldn't be playing any management role at

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all. And so if there is an internal dispute, it is always going to be one between a limited partner on one hand and a general partner on the other, or perhaps a limited partner that is acting in breach of its obligation not to be involved in the management. And there really isn't any alternative.

Andrew Scott KC: [02:21:04] Respectfully agree. Your Lordship, if we will please take up my learner friend's skeleton for today. We will go to paragraph 15.

Justice Jalil Asif KC (Judge): [02:21:24] Yes.

Andrew Scott KC: [02:21:26] Your Lordship sees there the contrary obstruction that is urged upon you. What it involves is reading the words members of the company as limited partners. With respect, there is no textual basis for that, whether in the ELPA rules or otherwise.

Justice Jalil Asif KC (Judge): [02:22:18] I think what the GP is saying is that having regard to 36 (3)B. Where it says limited is to be construed as including general partner, that effectively excludes the general partner from being treated as a member within the meaning of the CWR, so that you have to read members within a B as meaning limited partners only. That's my understanding.

Andrew Scott KC: [02:23:05] Our response is with respect, that is a misreading of section 36 (3)C. Section 36(3)C provides that references to a director include a general partner. And if your Lordship were having to construe a provision in the rule referred to directors, that might be of some relevance, but your Lordship is not construing the phrase members of a company that becomes members of a partnership. The question, then, is who are the members of the partnership? It could only be the limited partners in the general partners. The argument I've been making so far is based entirely on the statutory language. And if your Lordship accepts our submission, that it is clear that the GP's construction is not an available meaning of the words, then that really ought to dispose of the issue on jurisdiction. But we go further, because, as your Lordship has seen from the Freerider case, these are procedural provisions that are designed to empower the court to give effect to the substantive principle of law on a matter of fundamental importance, the legal principle. So even if your Lordship were to accept that the GP's construction is an

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available one, it's not the right one, where the underlying principle is borne in mind. Whereas our construction results in the court having the procedural power to give effect to the legal cost principle, the GP's construction robs the court of procedural matters, or at least would do so unless the Lordship were to conclude that they, in any event, form part of the general procedural power under the law at the outset of the submissions. Ultimately, one way or another, there must be provision procedurally to give effect to the legal cost principle in this context. Standing back, we invite your Lordship to note this. The GP's construction results in an outcome whereby, however much the substance of the petition is a dispute between the GP and the limited partner, and however flagrant the misuse of partnership monies to defend it, the court is powerless to give directions as to the proper parties to the dispute. With respect, it is impossible to see why the legislature would have wished to tie the court's hands in that way. My friends cannot point to a single authority in which the rules have been construed to have such an absurd effect. I recognise that I equally cannot point to any authority in which the issue has received detailed consideration by the Cayman courts in the ELP context, but I can at least point to the Cybernaut case. The Cybernaut case is one in which a direction in the form that we seek was made by Justice Foster by consent. And as your Lordship will see, Justice Foster is a judge familiar with the issues that arise in this context concerning the legal problems. And obviously, if the judge had no jurisdiction to make the order, the fact that the parties consented to it would be neither here nor there. And what is more, Justice Jones later relied upon the direction having been made when it came to awarding costs. Likewise, had he or the parties to that case thought there was an issue of jurisdiction, it would have been raised. If I can ask your Lordship, please to go to Tab 8. If I can just ask your Lordship to read what the judge said on costs at paragraph 31 on page 112.

Justice Jalil Asif KC (Judge): [02:27:26] This is in Justice Jones.

Andrew Scott KC: [02:27:29] Yes, your Lordship.

Justice Jalil Asif KC (Judge): [02:27:29] I'm sorry. Give me that paragraph again.

Andrew Scott KC: [02:27:29] It's 31

Justice Jalil Asif KC (Judge): [02:27:33] Thank you.

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Andrew Scott KC: [02:29:00] This exceeds the legal cost principle and denies the judge's reasoning on that aspect. It would have applied even to deprive the right of indemnity which was being relied upon. Now, there's only so much I readily accept. There's only so much one can take from a judgment where the court did not squarely address the question of jurisdiction and confroncy, your Lordship. It would be surprising with respect if Justice Jones, Justice Foster, and all the counsel involved in arguing cases had missed that the court has no jurisdiction to do this. I address what my

Justice Jalil Asif KC (Judge): [02:29:47] I appreciate that, but at the same time, they all seem to have thought that partnership was a separate legal person.

Andrew Scott KC: [02:29:59] And as I say, one can only take this so far. What one could certainly see is that there is no authority in my learned friends' favour on this. There is a decision which is inconsistent with his submission. To accept that submission would require the court to say that this decision. Can I briefly address what my friend said and the legal cost principle in their skeleton, if you will go back to that?

Justice Jalil Asif KC (Judge): [02:30:26] Yes.

Andrew Scott KC: [02:30:28] There we go to 28(1), the submission I quote. There is no room for an argument from principle where the ELP Act expressly requires the court to read the CWA in the prescribed way. And your Lordship has my submission that the ELP Act does not expressly require or require in any way the reading of the GP urges upon your Lordship. As far as concerns the suggestion that there is no room for an argument from principle. In this context, we respectfully disagree. Indeed, to disregard the principle would be to disregard the purpose of what the rules are designed to achieve, as Justice Foster held, namely, procedural provisions to give effect to legal costs. I would finally turn to my third topic discretion. I can take this very briefly, because it is harder to imagine a clearer case than this one of a dispute that is in substance between the limited partners and the GP. Specifically, the limited partners who contributed 98% of the capital have lost trust and confidence in the GP's willingness and ability to manage it. Your Lordship will have seen from our skeleton, paragraphs 51 and 52, the applicable principles for characterising disputes.

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Justice Jalil Asif KC (Judge): [02:32:22] Can I just, sorry, just to take you back for a moment, Mr Scott. Is it agreed that your clients contributed 98% of the capital? The reason I'm asking this is that I remember at an earlier stage, there was a dispute whether their interest, which I appreciate is different from the capital that they've contributed, was 99% or 94%. I think it was being said because of the LP interests that had arisen as time went on. Their interest in the fund was 94%.

Andrew Scott KC: [02:32:55] Yes. Can I take instructions on that point? Because I don't know where that currently sits in in the Delaware proceedings. Lordship is certainly right. That was an issue raised by the GP in the August hearing. Yes. Um, but whether it is 94% or 98%.

Justice Jalil Asif KC (Judge): [02:33:14] I want to get it right.

Andrew Scott KC: [02:33:15] I entirely understand that, and perhaps Your Lordship will give me a moment when I sit down, I can I can give a more helpful response. As I say, Your Lordship will have seen in our skeleton the principles on characterising the substance of a dispute for the purposes of the winding up rule. I won't repeat that. I won't repeat the points we've made in writing at paragraph 52 as to why the substance of this dispute is, as we say it is. You would have read that. If I can just deal briefly with the points made the other way, such as they are in my friend's skeleton. If your Lordship will go to 29, please.

Justice Jalil Asif KC (Judge): [02:34:05] Yes.

Andrew Scott KC: [02:34:08] The point that's made there is that partnership is said to have assets built up over the years that generate financial benefits for its limited partners, including 14 limited partners other than the Rigmora LPs. Dr Harrison or his family trusts. Now those assets, of course, are very substantially our assets acquired with our capital. But I will then decide if the other limited partners wish to defend the petition on account of their interest in continuing to take money out of the partnership. The appropriate course is for them to seek to join the proceedings and make those arguments using their own funds, at their own risk, as the costs, and none has done so. What is not appropriate is

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for the GP, in effect, to side with those other limited partners to use partnership assets to further their position in the dispute at the expense of the Regmore LP. Then also, where it is Doctor Harrison who would be procuring the GP to side with LPs, which includes himself and his family trust in relation to a dispute between him and the LPs. Unless I can assist you, Lordship, further, that is what we say on the proper parties' direction and that brings me to the end of the submissions on the three issues identified.

Justice Jalil Asif KC (Judge): [02:35:41] All right. Thank you very much, Mr Scott. Mr Ayres.

Andrew Ayres KC : [02:35:48] I'm not going to address you at the same length as my learned friend, because a lot of what submissions he made orally and in writing simply go to other matters that we're going to hear in due course. So, for example, the skeleton argument. There's a long explanation, which my learned friend hasn't dealt with already, about why the provisional liquidation application was withdrawn. It's... To say, my Lord, for that and for all these other, uh, peripheral matters, that we don't accept that explanation, and you'll hear an argument about that in due course. Uh, or not, uh, in relation to the question of costs of the application. You've also heard from my learned friend a great deal of criticism of the GP and, implicitly, also of Dr Harrison. My lord, we don't accept any of that either. These are hardly matters which are matters for trial. And you shouldn't undertake the exercise of giving any directions that you do today or making any order, under the Companies' Winding-Up Rules, Order 3 (12), assuming that there's a good side to this coin, and there's a bad side to this coin. That's absolutely not the right approach. And we are, um, going to embrace, defending all these allegations at trial. So, turning to the question of CMC style questions as to what you do with respect to directions, my learned friend submitted to you that we have suggested that there be some two-day CMC in due course. Well, we haven't suggested that, and we also haven't said in any terms that you shouldn't give directions.

Justice Jalil Asif KC (Judge): [02:37:36] So sorry, to the final sentence of your skeleton, in which you say partnership suggests that a further two days be listed as soon as possible, and then your signature appears underneath.

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Andrew Ayres KC : [02:37:47] Yes. My Lord, he's construing that in terms of direction. The reality is that for the purposes of dealing with all these other applications but we haven't suggested that you should not give any specific directions today. The only question that we ask your Lordship to address yourself to is the question of a fair process with respect to all the matters that have occurred over the last few weeks. So, my lord, it wasn't the GP's fault, the Partnership's fault that Rigmora LPs sought to deploy privileged material in this court when they shouldn't do so, which has caused the privileged summons. It is not, uh, the GP or the partnership's fault that, um, the rigmarole LPs sought to amend. We say very, very late in the day, and it is not the GP and the partnership's fault that the Rigmora LPs are declining without qualification to engage in mediation, which we suggest would be highly fruitful for the purposes of settling this dispute. So there are all these applications. They're not applications which, um, are ultimately caused by by my clients, but they are things which need to be dealt with fairly for the purposes of the trial. So under no circumstances am I coming to your Lordship, saying you should necessarily adjourn the 12th of January trial. And I've heard what your Lordship said, but it is a matter that your Lordship should take into account when considering whether or not we can

Andrew Ayres KC : [02:39:50] Get all this done fairly, to give one example in relation to the question of if we have a hearing, for example, on the 27th and 28th of November, for the purposes of considering, for example, the amendments, the privilege summons, and the ADR summons. Well, let's say your Lordship grants some amendments, then, under the current scheme that's put forward by my learned friend in his draft directions, we have witness statements, which is the first set of witness statements before the reply witness statements on the 5th of December. My Lord, if one might say, well, we can extend that time a little bit, but Lord, there's going to be, in reality, very little time to have this all dealt with between the end of November.

Justice Jalil Asif KC (Judge): [02:40:40] Isn't the answer that, as Mr. Scott argued, that when the application's in front of me as a matter of fairness, which you say the court should take into account, If it's not fair to allow the amendments, to allow the discovery at that stage, or simply decide it's not fair and and the trial goes ahead on the basis of the existing pleaded case, for example.

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Andrew Ayres KC : [02:41:04] Yes, but I mean, obviously, Mr Scott isn't coming to you today, conceding that point. He's recognising that that's a point.

Justice Jalil Asif KC (Judge): [02:41:10] He's saying it's a point to be argued when the applications are made. Is that the right approach?

Andrew Ayres KC : [02:41:15] Yes, but that puts into context what you're actually going to do in relation to this CMC, whether in fact you are actually going to order directions, for example, set out in my learned friend's draft order because, um.

Justice Jalil Asif KC (Judge): [02:41:31] Until the summonses are heard and indeed issued to the extent they haven't been issued, isn't it my job just to make directions on the shape of the case as it currently stands?

Andrew Ayres KC : [02:41:45] That's that's right. But, your Lordship shouldn't ignore the fact that there are all these things that are going to be determined.

Justice Jalil Asif KC (Judge): [02:41:52] How do I take this into account?

Andrew Ayres KC : [02:41:54] Your Lordship's heard from me that there will undoubtedly be some amendments that are consented to, and that comes to, you know, how one actually deals with this because.

Justice Jalil Asif KC (Judge): [02:42:04] If they consented to it, they're not going to have an impact. So any stuff that's in that's contested, that's going to have an impact, and that's where I don't see how..., how I'm meant to take that into account in making directions now.

Andrew Ayres KC : [02:42:18] Well, all I'm asking your Lordship to do is to recognize the fact that my learned friend was putting forward at least a possibility that there might be four rounds of amendments with respect to with responsive pleadings, because one has to remember, first of all, he was asking for effectively consented amendments, which obviously we haven't yet addressed, um, be subject to responsive pleadings immediately. Um, then, of course, there's the contested amendments, and that would require further

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responsive amendments, and then with respect to the privilege summons, my learned friend has said to your Lordship at the moment that there's no intention by the Rigmora LPs that they would have met, but he's not committing to that. And we suspect that if the privilege summons is dismissed, that he won't stick to that submission, and that will make for further amendments with respect to that, and, my Lord, we of course, then have the amendments that we were going to contemplate all along, which is the amendments to add in if appropriate the impact of the Delaware judgment. So that's, that's potentially four different sets of amendments with different responsive pleadings, all to be done, uh, over the next six weeks. And that that is something that you, you can't ignore in terms of the particular shape of this case. It wouldn't be right for you simply to say, well, I'm just going to give directions on the basis of the claim now.

Justice Jalil Asif KC (Judge): [02:43:44] Everyone has been working since August towards a January trial. As Mr Scott said, it's a consent order. There's no application to break the trial or to, or to fix a new date. So it seems to me I have to work on the basis that the trial is going to happen, and I need to give directions to make sure, based on the shape of the case as it stands today, to make sure that the trial happens. If there are future summonses, then at that stage, those summonses come before me, and I will have to decide. Do I allow the relief that is sought? Bearing in mind the knock-on effect on the trial, um, and bearing in mind whether there are accommodations that can be made to the timetable at that stage. Once I know what is, what is actually an issue that allows the trial to go ahead, and if the adjustments, the timetable imperils the trial, and the likelihood is, as you've indicated a moment ago, it's not fair. And they shouldn't be allowed. Isn't that the short answer?

Andrew Ayres KC : [02:44:50] Yes. Well, I mean, that may well be an answer, but, my Lord, it's obviously a particular outcome from amending an application. If you say that effectively that they're all too late or too prejudicial or will prejudice the timetable. And your Lordship hasn't made that decision yet, and the reality is, all I can do is put down a marker for later on in terms of where we are in November or December.

Justice Jalil Asif KC (Judge): [02:45:19] Well, if you make an application to adjourn the trial, etc., and or when the summonses come in front of me, I'll deal with any adjustments of the timetabling that need to be made at that stage.

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Andrew Ayres KC : [02:45:35] So, my Lor,d in terms of the amendments, my learned friend, he didn't take you to the actual terms of the draft amended pleadings. They did, I think, hand up to you a table, uh, suggesting that, uh, certain periods of time from which the amendments had come. I don't know whether your Lordship has had a look through.

Justice Jalil Asif KC (Judge): [02:45:56] Yes, I read them all last night.

Andrew Ayres KC : [02:45:57] The draft amendments. Well, that's very helpful. I mean in terms of, um, the difficulties that we have, uh, with, with these draft amendments, is.

Justice Jalil Asif KC (Judge): [02:46:10] There's no application today. Why do I need to spend time on the amendments?

Andrew Ayres KC : [02:46:15] My Lord, you don't and indeed, you'll be dealing with that in due course, but for example, just just so in terms of one submission, my learned friend really made about discovery, and obviously in terms of discovery, that has two aspects to it. It's not simply just requests from documentation from one side to the other, but there's also the question of if a new issue is raised. Um, you might have to conduct searches yourselves, and that may be an issue, but.

Justice Jalil Asif KC (Judge): [02:46:44] I'm not unsympathetic in relation to discovery. When I looked at the draft amendments yesterday, it seemed to me there were certain of them that seemed pretty uncontentious and straightforward. Some of them, I could see, were likely to be contentious, but unlikely to give rise to additional discovery. And there are a few that, it seemed to me, might possibly give rise to additional discovery. But that's something we really need to explore. And the applications made, it seems to me.

Andrew Ayres KC : [02:47:11] Yes, and again, I suppose I should put down a marker. I mean, in terms of the draft order that's set out, I know your Lordship isn't going to give any permission for amendments today, but, for example, in the draft order, 14 days is suggested for our response time. The amendments are significant and substantial. We may well need longer than 14 days for purposes of dealing with all the amendments. So, all I ask your Lordship to do is to keep in mind, in relation to, um, the directions, um, is to

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try and keep the number of rounds of amendments and responsive pleadings to an absolute minimum. I mean, our suggestion would be effectively that there should really be one round of amended pleading. So, leaving aside the question of the court giving permission or consent being given, um, in terms of actually trying to make the January trial viable, it would be best if all the parties simply didn't have any.

Justice Jalil Asif KC (Judge): [02:48:17] Mr, if that's your approach, then we're not going to have amendments until December sometime, because you're not going to get the Delaware judgment until probably the early part of December, which, um, and so if if there's going to be no amendments until December, that really is completely jeopardizing the trial.

Andrew Ayres KC : [02:48:40] That's different from obviously, your Lordship may well be, um, deciding on contested amendments at the end of November, and that's a different thing. So we know what your Lordship has given permission for. It's a question of the practicalities of how many pleadings are produced.

Justice Jalil Asif KC (Judge): [02:48:55] That's right. That's my question. That's my question, Mr Ayres. Your side's position is that you want to amend once you've got the Delaware judgment, that is not going to happen until early December at best. And so if there is going to be only one round of amendments on both sides, that's not going to happen until the middle of December at best. How on earth are we going to hold a January trial date if the amendments don't take place until the middle of December?

Andrew Ayres KC : [02:49:24] Well, my Lord, that really just raises the problem of the fairness of this whole procedure and and how much time we've

Andrew Ayres KC : [02:49:31] really got before the January trial. Your Lordship will remember I wasn't here on the 1st of August, but I know this is this is disputed by the other side, but the parties knew the issues that they were dealing with, and there was a contemplation. We say it's a shared contemplation, but certainly it's a contemplation on our part that there would be one round of amendments or one set of amendments to deal effectively with the, um, the impact of the Delaware trial. Now, obviously, we now have a different landscape completely, because your Lordship has got a whole lot of

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amendments. But we also have the argument, so-called recognition issue, to the effect that, um, your Lordship shouldn't be looking at the Delaware judgment at all. And so, my Lord, we have a completely different landscape changed by the Rigmora LPs, um, and certainly as far as my client is concerned, it shouldn't be criticized, um, or penalized because, um, there was going to be one round of amendments because there were. So, my Lord. Um, I mean, the additional point to that, just to think things through, and I know your Lordship is trying your Lordship's patience to some degree with respect to considering what is going to happen. But I just ask your Lordship to think this this through. Let's imagine your Lordship gives complete, um, uh, consent or leave to amend on, say, the 28th of November. And then we've got to have amended defences and amended, uh, replies and all the other responsive pleadings, really, before the trial. And my Lord, it's difficult to see how that's actually going to operate. And the evidence, and then of course, as you've seen.

Justice Jalil Asif KC (Judge): [02:51:19] That would be a powerful reason why I should refuse any leave to amend, isn't it?

Andrew Ayres KC : [02:51:24] Well, I'll take that. My Lord, with respect to the question of giving directions, if you are going to give directions, um, if one looks at page 20 of the bundle, the first order that my learned friends are ordered to understand it.

Justice Jalil Asif KC (Judge): [02:51:45] Sorry. Just give me a moment to get the right bundle. Page 25, which is in the winding up. I think 20 might be in the writ action.

Andrew Ayres KC : [02:52:08] Yes.

Justice Jalil Asif KC (Judge): [02:52:08] Yeah. Okay. Which one draws me to look at the writ?

Andrew Ayres KC : [02:52:11] Well, let's look at the writ action one. So, as far as paragraph one is concerned, that is agreed between the parties pleading amendments. We will pass over that. I should just say, in relation to paragraph five, again, it's not a matter for now, but we wouldn't have accepted an order in those terms because, of course, the person who's undertaking the amendments should, unless there are very

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special circumstances, pay the costs of the amendments in the event. But that's that's a matter for later. Moving over discovery. Um, your Lordships got, uh, the question of evidence of fact and the, the question that my learned friend raised on paragraph 12, which is this question of if witnesses of fact do not attend a trial in person, we would object to that extra wording in relation to that simply on the basis that if evidence is, uh, filed in time, and, um, a witness does not attend, then your Lordship can effectively treat that as hearsay evidence and it goes to weight. So it's not a question of effectively dismissing their witness statement in its entirety.

Justice Jalil Asif KC (Judge): [02:53:31] I did...It did occur to me that this direction, proposed direction didn't deal with evidence effectively.

Andrew Ayres KC : [02:53:40] Yes. So, my Lord.

Justice Jalil Asif KC (Judge): [02:53:47] under the rules I think you're meant to serve the notice at the same time, the witness statement is, um, is filed. If you want to rely on it, just say.

Andrew Ayres KC : [02:54:01] So, that obviously needs to be. Yes. So there needs to be some addition, for example, in paragraph 11 of the the draft order that you're you're looking at.

Justice Jalil Asif KC (Judge): [02:54:13] Paragraph seven does say witnesses of fact and hearsay.

Andrew Ayres KC : [02:54:16] Yes.

Justice Jalil Asif KC (Judge): [02:54:17] When required should be filed in exchange. Yes. So I think it is, it is covered in seven.

Andrew Ayres KC : [02:54:23] Yes, but your Lordship's got my submission in relation to paragraph 12. Those points transpose their way through to the... And, my Lord, as far as the PTR is concerned, um, we suggest that simply be left out of account at the moment

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because or certainly, it will not be firmly fixed, because we simply just don't know what's going to happen at the end of next month or subsequent.

Justice Jalil Asif KC (Judge): [02:55:01] I'm saying, sorry, just say that again, please.

Andrew Ayres KC : [02:55:03] So that... This is page 27, paragraph 13, uh, and the listing of the PTR, the fixing of the PTR.

Justice Jalil Asif KC (Judge): [02:55:16] Unless it's fixed...Unless it's fixed for the 17th or the 19th, it's not going to happen.

Andrew Ayres KC : [02:55:23] Yes. So certainly as far as the 19th, uh, I haven't discussed it with my learned friend, but we are available on the 19th if your Lordship fixes that particular date.

Justice Jalil Asif KC (Judge): [02:55:33] Um, what about 17th? Because I would slightly prefer to do it before I go, if possible.

Andrew Ayres KC : [02:55:38] Um, well, I heard what my learned friend said about the council's availability. As far as I am concerned, yes, I can, I can do the 17th.

Justice Jalil Asif KC (Judge): [02:55:49] Uh, well, I'm not going to make a decision before lunch anyway in order to give everyone an opportunity to consult diaries, check, um, check what they're doing, etc., but I would, if it's possible to do it on the 17th. I would slightly prefer it just because I will still be visiting.

Andrew Ayres KC : [02:56:10] So, my Lord, in terms of, uh, the other things which are before the court not listed for today, um, as far as the...

Justice Jalil Asif KC (Judge): [02:56:19] I'm sorry, Mr Ayres, before you move on. So apart from the deletion in each paragraph 12 of the extra wording and the deletion of the directions for the amendments, which Mr Scott's not ready to to move. Can I take it, then, you're happy with the rest of the terms of the two draft directions?

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Andrew Ayres KC : [02:56:42] Happy? In the context of all the remarks I made earlier on? Yes...so there were they're not happy. It's the answer.

Justice Jalil Asif KC (Judge): [02:56:49] Not happy, but...

Andrew Ayres KC : [02:56:51] On the assumption your Lordship's going to do this, which I think your Lordship's indicated that you are. Um, that's the position we take.

Justice Jalil Asif KC (Judge): [02:56:57] Right.

Andrew Ayres KC : [02:56:58] But, my Lord, obviously, there is also the question of directions and the evidence timetable for certainly the ADR summons. And I think it should be absolutely clear to Rigmora LPs that we're not seeking in any way to derail the trial with respect to the ADR summons. And the reason for that is because the relief that we're seeking in the summons itself is for an order that mediation take place before the 12th of December. So we weren't seeking in any shape or form to, uh, say we can't have a... We should have ADR, um, and therefore we shouldn't have that heard until after the 12th of January. So the short point in relation to ADR is that we think that a formal mediation would be appropriate for this case. This is absolutely, seemingly hard-fought. Hard fought, certainly on the Rigmora side, litigation and in two jurisdictions. And I know your Lordship has said at the beginning of this hearing that you haven't read or you hadn't looked at Dr Harrison's affidavit in relation to the ADR and and the explanation I think you gave for why was potentially because it might include material that you shouldn't read or that that's a well-founded worry in relation to that, because all the evidence that, uh, Dr Harrison's putting forward and all the material that's in his exhibit is, are open communications, and that's the basis upon which we want.

Justice Jalil Asif KC (Judge): [02:58:44] I wasn't entirely sure. It looked as if he was putting forward material...

Andrew Ayres KC : [02:58:50] This isn't entirely normal, because I'm not saying there couldn't be a situation, for example, in England and Wales where the court might look at without prejudice material for the purposes of considering this question. But the normal situation looking at this question would be, um, to effectively examine all the open

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communications and look at the basic broad reasons and specific reasons as to why the court should grant ADR.

Justice Jalil Asif KC (Judge): [02:59:18] If both sides consider that what Dr Harrison deals with in his open correspondence, then I'm perfectly happy to look at it. But I wasn't without having canvassed that in court. I wasn't happy just to read through it. But, but there is a more fundamental question, which is what is my jurisdiction to force people into intermediation?

Andrew Ayres KC : [02:59:40] Well, the good news is you do have jurisdiction to do so. I can't, like so many things in this particular case or this jurisdiction, I can't point to a case in which your Lordship, or which any other judge has made such an order. And it may well be one of the first orders made in the Cayman Islands for compulsory. And I'll tell you what the jurisdiction is, but obviously, your Lordship will be aware that in England and Wales.

Justice Jalil Asif KC (Judge): [03:00:06] Now, for positions moved on.

Andrew Ayres KC : [03:00:07] Positions moved on. And um, and the the argument in relation to jurisdiction will be based on the overriding objective, rule 4.2 D, the GCR Order 25, rule 3, Roman I.

Justice Jalil Asif KC (Judge): [03:00:31] Rule 3?

Andrew Ayres KC : [03:00:32] Yeah. Yeah, and the inherent jurisdiction of the court.

Justice Jalil Asif KC (Judge): [03:00:38] Okay.

Andrew Ayres KC : [03:00:39] So, I mean. Hopefully it will come as...As a pleasant surprise that the court has this jurisdiction. Certainly, if an order has never been made before to this effect, this court certainly should have this jurisdiction to compel people to engage in ADR, which obviously is something that, before 2023, in England and Wales, there was, um, some reticence and reluctance to. My Lord, the overriding objective and the uh, including for the purpose.

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Justice Jalil Asif KC (Judge): [03:01:12] Was it not achieved in England by a rule change? Can't remember.

Andrew Ayres KC : [03:01:16] Not as far as I'm aware, not a specific rule change to direct it. But obviously, uh, I mean, models, insofar as there are differences,

Justice Jalil Asif KC (Judge): [03:01:27] I think it's going back to, isn't?...

Andrew Ayres KC : [03:01:29] And also in the original case, and then, um,

Justice Jalil Asif KC (Judge): [03:01:32] Geoffrey Vos, in a subsequent case,

Andrew Ayres KC : [03:01:34] Churchill and Merthyr Tydfil.

Justice Jalil Asif KC (Judge): [03:01:35] That's the one. Churchill and Merthyr Tydfil said, actually, it is compatible with the right to access to justice to require a party to go through a mediation process.

Andrew Ayres KC : [03:01:47] Yeah.

Justice Jalil Asif KC (Judge): [03:01:47] Yes.

Andrew Ayres KC : [03:01:48] So our hope is, with respect to the mediation summons, obviously my learned friend is not going to agree with what I'm going to say now, and therefore, I'd like to ask you to give directions in relation to that and how it's to be dealt with efficiently with all the rest of it. But our hope, obviously, is that, notwithstanding the reservations as to jurisdiction as to as to reasons that Rigmora LPs actually agree to engage in this process because we can we can fight it out, and doubtless we will during December and then in January. But it's much better for the parties to try and actually reach an accommodation with each other.

Justice Jalil Asif KC (Judge): [03:02:26] So someone about a year ago was going to raise halls in Merthyr Tydfil, in relation to costs and then wasn't prepared, willing to argue

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it properly in front of me and tried to get it in through the back door. I wouldn't let them because it wasn't being properly argued, because, um, if that's the basis on which you're saying that there is jurisdiction power, I think it is an interesting question that needs to be properly prepared and argued. Yes.

Andrew Ayres KC : [03:02:58] Well, that comes back to I mean, myself personally. I haven't told my learned friend this, but I am available on the 27th of November and I know your Lordship's only said you had half a day then in respect to that, but if there's any chance we could have the full day on the 27th, Your Lordship may or may not be able to procure that, but if we could have two days, um, to deal with privileged summons, any contested amendments.

Justice Jalil Asif KC (Judge): [03:03:25] I've got a hearing already and something else on the morning of the 27th. Which is why I wasn't able to to say that, um, but I but I have I got my my list of outstanding judgments is growing all the time, I have theoretically, I could do the afternoons 26th, 27th, and then we'd be into the privileged summons on the 28th. It's it's really not ideal because it's chock-a-block. But if it's essential that.

Andrew Ayres KC : [03:03:58] I mean, my Lord, I heard what your Lordship said about wanting to have it properly argued in a sense, if the ADR summons has legs, then really it should be decided sooner rather than later. We, for example, would be possibly amenable to your Lordship deciding it on paper, but I know that's exactly what your Lordship said you didn't really want.

Justice Jalil Asif KC (Judge): [03:04:24] Difficult until you know what the arguments are, but it's it doesn't strike me as being because it would be relatively completely new law in case it would need to be properly argued and willing and able to make a decision on it.

Andrew Ayres KC : [03:04:51] So in terms of other days that you might have available, um, uh, I mean, the truth is, you know, well, I mean, perhaps it's too late in December.

Shelley White, Partner, Walkers: [03:05:05] It's November, sorry

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Andrew Ayres KC : [03:05:05] Lordship had other dates in November that you might be willing to hear an argument about on that. I mean, what I, what I would say is, um, I... In terms of time estimates, I'm not currently minded to agree that contested amendments, if it's a fully effective hearing is going to be half a day. But in terms of the ADR summons, that is something which, um, with efficient skeletons and efficient submissions that we probably could do in half a day. I can't do the 17th, but your Lordship said you had some time on the 18th.

Justice Jalil Asif KC (Judge): [03:05:53] Well, I've got. I've got until about 12 o'clock on the 18th, and that's really it. So that's not going to give you enough time on the 17th. The only the only thing I have is a directions hearing at 2 o'clock, so the 17th is otherwise available.

Andrew Ayres KC : [03:06:18] Yes, well, I can't do that today, but that may not matter, somebody else might do it, but, um. But my Lord anyway, so just in terms of this, I don't want the ADR summons to get lost in everything else. And I would ask your Lordship to give some sort of directions for that.

Justice Jalil Asif KC (Judge): [03:06:37] I think it's difficult for me to give directions now until I know what dates are feasible for each side. What I would what I would suggest is this both sides recognize, I think, that any, any amendment summonses on either side and the ADR summons need to be heard as soon as possible if the trial date is not going to be disrupted. What I would suggest is that both sides try to identify dates when their summonses could be heard, agree on a timetable leading up to those summonses, and if you can't agree on both sides' positions to me and I will deal with it on paper.

Andrew Ayres KC : [03:07:23] Very well, my Lord.

Justice Jalil Asif KC (Judge): [03:07:25] I'm sorry that I just don't have your availability, but I think we're probably two judges short of what we really need to cover the work that's coming in at the moment.

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Andrew Ayres KC : [03:07:37] Yes, totally understood. So I see that's 1:00. I wanted to, I may have some more things to talk about in relation to directions, but I obviously got to address the question of the party representation.

Justice Jalil Asif KC (Judge): [03:07:49] Yes. That's fine. Uh, Stephen.

Stephen: [03:07:54] What's that? Five past two

Unknown: [03:08:16] I [03:08:16] personally... (Court adjournment) [03:08:17]

Speaker3: [04:13:46] (random conversation between the parties)

Marshall: [04:14:20] All stand. God save the king.

Justice Jalil Asif KC (Judge): [04:14:33] Yes.

Speaker3: [04:14:34] Before I move on to question

Andrew Ayres KC : [04:14:36] I move on to the question of representation and directions, just to come back to you on dates. Certainly, from the partnership side, uh, we can confirm that, uh, the 17th of December for PR, if that's acceptable to Rigmora LPs and to your lordship, then that is a date we'd like to have reserved. And then, as far as dealing with all these other matters concerned, your lordship made clear you had some time on the 27th and some time on the 26th, and I don't know whether.

Justice Jalil Asif KC (Judge): [04:15:08] I've got, I've got also I've got time earlier. And as I said, it seems to me that all parties ought to be trying to work, if possible, to get the outstanding decisions decided as soon as possible.

Andrew Ayres KC : [04:15:23] So, subject to hearing what my learned friend may have to say about this so we already have, um, the 28th, if your Lordship could reserve the half days or the or or the near half days that you have on the 26th and 27th, that might give us close to two days worth of court time, which, um, if used efficiently and with no prolix submissions, we might be able to get through everything.

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Justice Jalil Asif KC (Judge): [04:16:37] That's in my calendar.

Andrew Ayres KC : [04:16:39] So, my Lord, I will now move on to making submissions in relation to this question that my learned friend dealt with at the back end of his submissions, which is what, if any, direction should your Lordship make today? And, my Lord, I'll come to it in a moment, but there are actually, leaving aside the two choices that you're being asked to prima facie by both parties. There are, in fact two, two different choices. There's a there's actually a choice of making a direction and not making a direction. And I'm going to explain where that comes from in a moment. But if I can take your Lordship back to the order that my learned friend, um, quite properly took you to at the beginning, which is the order made in the petition on the 1st of August, and that is in Tab 4, which gives rise to what we're debating today. And it also looks at the bottom of page 8, you'll see that there is the directions in relation to this case management conference. Uh, and it deals there with any directions pursuant to CWR Order 3, rule 12 (1)A to C. And, my Lord, I don't want the C to get missed out because, um, it hasn't had a great deal of emphasis in this area. And if your Lordship turns up, um, order 3, rule 12. And that is C says service of the petition upon persons other than the company as may be appropriate, having regard to directions given under paragraphs a, B of this rule. So with that introduction, um, there are four preliminary points that I want your Lordship to take into account in relation to, um, considering this question of the application of these rules to limited partnerships three of, three of those points relate to, um, limited partnerships themselves. But the fourth relates to what the purpose of these directions really are, so the first point is a point that's already been mentioned in the argument, which is important, which is that limited partnerships have no separate legal personality. And that's a key distinction, obviously, from corporate vehicles in relation to winding up petitions. And to some degree, the questions arising in relation to this application address the significance, if there is any, of that distinction and how this applies. So that's point number one. Point number two is that every limited partnership has to have a general partner. Um, like to some degree, a board of directors for a company. Um, but it has to have that general partner.

Justice Jalil Asif KC (Judge): [04:19:27] At least one.

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Andrew Ayres KC : [04:19:28] At least one. Yes, and my Lord, perhaps again, trying to sort of analogize with a corporate situation, um, as well as, um, to a greater or lesser extent, managing the business and affairs of the partnership itself. One of the key things about the general partner is that its role includes holding the assets for the partnership legally, on behalf of the limited partnership as a whole. And perhaps this intersects with the section 33 thing, is that if and no criticism of the Rigmora LP as to what they've done in this regard, but if you're going to sue both in writ proceedings and also in a, in a petition, a limited partnership, you have to do so via the GP, you sue the GP. And again, Rigmora LP have correctly described um in the title of both proceedings. Uh, uh, the GP then, in its capacity as general partner of ATP Life Sciences, Life Science Ventures LP. So this is all important context. The third point, my Lord, I'm going to ask your Lordship to take judicial notice of, which is that in the structure of Cayman Limited Partnerships, um, it's seldom, if ever, the case that the GP has assets of its own. Um, more often than not, it's simply just an SPV, which is simply operating specifically and created specifically to operate as a general partner.

Justice Jalil Asif KC (Judge): [04:21:06] And, is that right, because most partners get paid for, uh, providing that service. So they are a means of extracting, extracting value from the fund in favour of whoever is in control of the GP.

Justice Jalil Asif KC (Judge): [04:21:22] Well, I mean, undoubtedly there may well be revenue earned, but in terms of whether that revenue is held in a general partner, that's, that's another matter entirely. They're not, they're not asset-holding vehicles for their own purposes. That's really what I'm asking your Lordship to accept.

Justice Jalil Asif KC (Judge): [04:21:40] I'm not sure that I can think of cases where the GP, I think I think I can recall cases where the GP has had an interest in the fund as well, but I'm not sure about that but I'm not sure it can take judicial notice, it never has interest in the fund.

Andrew Ayres KC : [04:21:59] No, that's not my submission. It was seldom, if ever. But, I'm sure Your Lordship can take judicial notice of the fact that.

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Justice Jalil Asif KC (Judge): [04:22:12] I mean, certainly under the act, the intention is that the limited partners provide the capital and have no role in the management of the GP. Um, generally is the party that is responsible for the management acts as a trustee on behalf of the ELPs. So. Mr Ayres, if that helps you, I'm certainly happy to take judicial notice of that. That's the scheme of the ALPA.

Andrew Ayres KC : [04:22:35] Yes. Yes. Well, I wouldn't quibble with any of that. Um, so that's all I want to say about preliminary points in relation to limited partnerships. But in terms of, um, the, the provisions of CWR Order 3, rule 12 in their corporate context, um, what is their purpose? And my lord, in my submission, their purpose is to put in place, guide rails for the proper onward conduct of the petition, uh, also in the corporate context, to test whether the company has a genuine interest in the litigation or whether it's a bystander in a dispute between others.

Justice Jalil Asif KC (Judge): [04:23:22] Sorry, just again, whether the company has

Andrew Ayres KC : [04:23:25] A genuine interest in the litigation or whether it's a bystander in a dispute between others.

Justice Jalil Asif KC (Judge): [04:23:32] Thank you.

Andrew Ayres KC : [04:23:33] And also, to deal with who the proper parties to the petition should be. And so, obviously, at the centre of the debate for you is the question of costs. And the Rigmora LPs are very clear about this, that they're focusing on, um.

Justice Jalil Asif KC (Judge): [04:23:54] Cost consequences.

Andrew Ayres KC : [04:23:56] On order 24, rule 8, um, which of course just gives rise to whatever its terms to general rules. But the, the point, uh, my lord, to emphasize in relation to this is that when you're considering these sorts of directions, at least in the corporate context, you're not simply just considering the cost consequences. And what my learned friend calls the, the legal costs principle. You're considering all sorts of things effectively for the proper and efficient forward management of the petition. And if you accept that those points, then the question arises, which will come on in a moment as to how that

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applies in the limited partnership context. In light of the other preliminary points that I've raised to your Lordship. So, my Lord, I want to turn first of all to jurisdiction, and then I'm also going to deal, if your Lordship was pleased to know, um, your subparagraph G point. And then after that, on the assumption your Lordship accepts, uh, submissions to the effect that you do have jurisdiction, I'm going to address you on effectively the discretion.

Justice Jalil Asif KC (Judge): [04:25:11] Why shouldn't I accept it?

Andrew Ayres KC : [04:25:13] Well, what? Yes, yes. But what are the factors that you at least you need to take into account when you're looking at this particular situation? So turning to the question of jurisdiction, if we can look, um, at the Exempted Limited Partnerships Act, my learned friend very properly took you to and look at paragraph 36. And the first few phrases of Section 36, subsection 3, are important and are due to more weight than my learned friend might have put on them. Um, because they make clear, um, that the primary position and the prevailing, uh, sets of rules are to be found in the ELP Act, not in the Companies Act or the companies' winding up rules because it says, except to the extent that the provisions are not consistent with this act and in the event of any inconsistencies, this act shall prevail and subject to any express provisions of this act to the contrary. And then it goes on, uh, with various provisions that shall apply to the winding up of Exempted Limited Partnerships. But exempted limited partnerships. So you've seen our skeleton argument, and you've seen the emphasis that we place on subparagraph C with respect to, um, uh, the provision there that says that references to a director or officer of a company shall include references to the general partner of an exempted limited partnership. So as far as the analysis of, uh, replacing the words, your Lordship has seen what we've done in our skeleton, there's a very clear tripartite distinction between the company, um, between the limited partners and between, um, uh, the company limited partnership. The limited partners should be treated as if they were shareholders of the company. And then my learned friend, uh, went on to make submissions, to the effect, as if I understood it correctly, that the important part of subparagraph B was the manner in which, um, contributories are to be treated or limited partners are to be treated in the context of contributories, namely contributories um, contribute up to the limit of their contribution. And it's made clear in respect of that that it says, except that the application of the provisions will not cause a limited partner to be subject to any greater liability than that limited partner would otherwise bear under this

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act. But for the application of this paragraph. And one can completely understand that because the principle of limited liability of limited partners, subject to them losing that limited liability under the act, is an important principle. But the important words for the purposes of this argument are in subparagraph B, that the limited partners shall be treated as if they were shareholders of a company. My Lord, we say that's for all relevant purposes under the CWR and the other provisions. So there's a clear tripartite analysis. Limited partners are to be treated as if they were shareholders, the company is to be treated, limited partner is to be treated as the company, and the directors and officers are to be treated as though they were a GP. So, my Lord, just dealing with the question.

Justice Jalil Asif KC (Judge): [04:29:00] Mr Ayres, is it, is it exclusive? I know you said your skeleton it is, um, in your skeleton, you say, just give me a minute to get it right. Paragraph 13, you say: "company becomes a partnership, shareholders become limited partners, the director becomes a general partner", but it's actually the other way around, isn't it? Partnership is treated as if it is, it is a company under CWR, limited partners are treated as if they are shareholders, but it doesn't necessarily follow that it is only limited partners who are to be treated as shareholders. Isn't that the issue? And in 3C, um, where it says shall include references to the general partner of an exempted limited partnership. Is it right that it that it's exclusionary and that there is no circumstances in which a general partner can be treated as equally being a member of the company?

Andrew Ayres KC : [04:30:05] Well, the answer to that is that if there is this uncertainty, if I can put it like that, then that's not made clear in these provisions. And as a matter of the common sense of this language, it's clear that those definitions are to transpose over in all respects. So you simply can't read into that. The fact that it's not exclusionary, it's, it's intended effectively to deal with all of these things. Um, and in all instances in which they are, they are used. Otherwise, there would be endless uncertainty in argument about the circumstances in which these transpositions are not meant to work. So, my Lord, when, when you come back to the company winding up rules, order 3, rule 12, we say that certainly when you come to B, um, you're, you're looking at the language on the basis that you're asking the question as to whether the proceedings should be treated as a proceeding against the partnership, or as an inter-party proceeding between one or more limited partners as petitioners. The other limited partner or limited partners as respondents. So, as a matter of the language, and I'll come to why this makes sense in a

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moment. Um, you have only got two choices there, and I can see your lordship saying, well, um, it's always, uh, interesting when counsel come before you saying you don't have jurisdiction to do something. And there is obviously a desire on the part of the court, not necessarily today, generally to potentially fill the gaps of jurisdiction in circumstances where it feels it's necessary. But, my lord, you simply aren't in that territory because we say the language is clear, but I'm going to persuade your lordship, in addition to that, as to why all of this makes sense. So, there's simply no mention of the GP and no possible mention of GP, so you have, you have those two choices there, none of which involve an analysis of the position of the GP.

Justice Jalil Asif KC (Judge): [04:32:38] Sorry, where is there no mention?

Andrew Ayres KC : [04:32:40] Well, if you if you're, if you're transposing the language into rule 12, subrule 1, paragraph B, um, there's, there's, there's, there's no transposition of the language of general partner.

Justice Jalil Asif KC (Judge): [04:33:02] What circumstances would there ever be their petition where only the limited partners were the active parties, bearing in mind that none of them have any, and particularly in the context of adjustment, winding up, where none of the limited partners ever have any role in the management of the ELP.

Andrew Ayres KC : [04:33:25] But none of the limited partners ever had a role in the management. That would be all that in every case.

Justice Jalil Asif KC (Judge): [04:33:31] Exactly. So if the, if the limited partners have no role in management, what circumstances is there ever going to be a petition which involves a dispute between the limited partners only? How is that ever going to be a situation where there is a dispute of that kind?

Andrew Ayres KC : [04:33:55] My Lord, in terms of whether specific allegations are made against the limited partners, there won't be, but there might well be a dispute. And indeed, my learned friend raised this possibility in terms of whether the limited partners come in, um, to say, well, there hasn't been a breach of the limited partnership agreement or, um, or that sort of thing, or to, for example, to say that.

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Justice Jalil Asif KC (Judge): [04:34:15] But if they're going to come in, they're only going to come in because the claim has been started against someone else. So I still don't see how 12 (1)B is on your analysis is ever going to be effective, because you're never going to have a case only involving the limited partners having a fight between themselves.

Andrew Ayres KC : [04:34:33] And that may be the clue, my Lord, as to why, effectively, that B is completely irrelevant to the LP situation. And I'm going to explain why.

Justice Jalil Asif KC (Judge): [04:34:42] Okay.

Andrew Ayres KC : [04:34:44] My Lord, before I do that, um, in terms of, uh, this question of my learned friend obviously puts a lot of emphasis on the word members. For the purposes of, uh, looking at B and that effectively you can you can, members is a different word from the word that's used, uh, for example, in section 36 and that you can, uh, treat members in those circumstances as any type of partner, whether general or limited, of the of the um, limited partnership. Well, that, that is really hopelessly semantic in our submission because there's no difference in this context, uh, between shareholders, uh, and members and contributaries for the purposes of, of this analysis. So, my Lord, just into, just to deal with a couple of other points. The first one is that in the preamble to.

Justice Jalil Asif KC (Judge): [04:35:57] I'm so sorry, Mr Ayres, I'm conscious I'm cutting across you when you're trying to develop your submissions, but I'm just thinking through what you said a moment ago about in the ELP context 12 (1)B, actually just having no application at all. But if that's right, then doesn't that cut against 12 (1)A also having any real meaning in an ELP context? Because, as I think you were saying, um, both sides are saying 12 (1)A and B are interdependent and 12 (1)A, whether or not the company is properly able to participate in the proceeding, or should be treated merely as a subject matter of the proceeding. Well, that's not going to be meaningful. Meaningful if 12 (1)B doesn't operate or cannot operate.

Andrew Ayres KC : [04:36:48] And A isn't meaning, it doesn't really have any meaning at all anyway, because A is directed to a situation where the company has got a separate

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legal personality, and so one has to decide in that situation, where you have a, a winding up petition, whether the company is going to, uh, participate. To what extent? Whether it's going to be the full respondent or whether it's going to be respondent only as to discovery. Um, well, the difference, the difference here is that.

Justice Jalil Asif KC (Judge): [04:37:17] So effectively, sorry, so effectively, you're saying is what you're saying, that all three rule 12 just doesn't apply at all in the context. Okay.

Andrew Ayres KC : [04:37:28] And, my Lord, the reason I come back to this point about whether you make a direction at all, um, and if your lordship looks at the preamble to rule 12 one, it says, upon hearing the summons for directions, the court shall give such directions as it thinks appropriate. Now, my learned friend obviously drew your attention to the word shall, which is a mandatory word. I accept that.

Justice Jalil Asif KC (Judge): [04:37:50] That's appropriate.

Andrew Ayres KC : [04:37:52] ...not to make any, any directions at all. Um, and so, my Lord, that's why I say that in reality your, your, um, your options are to, uh, to, uh, make, make an, uh, direction or to not make any direction. So doing nothing is a choice that is available to you. Now, in absolute fairness, I need to take your lordship to the FSD guide, which doesn't support what I'm what I've just said.

Justice Jalil Asif KC (Judge): [04:38:23] Okay.

Andrew Ayres KC : [04:38:24] Can I take your Lordship to that? That's in tab four, tab four, looking at page number 58, you'll see that it's a page from the FSD guide headed Contributories' Petition. Your Lordship got that?

Justice Jalil Asif KC (Judge): [04:38:45] Yes.

Andrew Ayres KC : [04:38:45] And we're well known to you. Uh, now.

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Andrew Ayres KC : [04:38:49] I haven't looked at the FSD guide for quite a long time, actually.

Andrew Ayres KC : [04:38:52] Well...

Justice Jalil Asif KC (Judge): [04:38:53] It's in desperate need of rewriting and updating.

Andrew Ayres KC : [04:38:56] Well, in C 6.2, it says characterization of the proceeding and obviously, um, what, what one is dealing with here, it is not addressing itself at all to the ELP situation, addressing itself to the corporate one. But what it says, it says must always.

Justice Jalil Asif KC (Judge): [04:39:13] I'm not even sure this version of the, i'm not even sure the LP Act was in force at the time, 2015, when the FSD guide was written. I can't remember.

Andrew Ayres KC : [04:39:26] I don't know the answer to that question, but I can try and find out, but, my Lord, I'm drawing this to your attention because there are some more stringent words here, which it says in second sentence of C 6.2, it says the judge must always determine whether the proceeding should be treated as, and then it goes on. And then the final sentence is the way in which the proceeding is characterized determines the manner of its future conduct, which is a point that I made in support of what I was saying earlier on. But, my Lord, I wouldn't have any, I wouldn't have any quibble with this in the corporate context, and I wouldn't have any submissions to, uh, dissuade you from the words... must always, but this simply isn't just applicable in our situation. Well, if, if you are, um, concerned that you might be running against the FSD guide, then the reality is it's just a guide.

Justice Jalil Asif KC (Judge): [04:40:21] I was going to say it's a guide.

Andrew Ayres KC : [04:40:23] It's a guide. And you should you should be only directed by the correct decision. So, my Lord, the other point I wanted to make before I came on to hopefully trying to address some of what your Lordship has mentioned earlier on, which

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is, um, the point that my learned friend happily grabbed on to, which is the subparagraph b, g point in relation to the, uh, section 36 of the ELP Act.

Justice Jalil Asif KC (Judge): [04:40:57] Yes

Andrew Ayres KC : [04:40:57] Which is Lordship's point, and your Lordships look to that because you raised it with counsel, and it says, uh, on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership, as may be just and equitable. Well, there are two problems with why, um, with using that for the purposes of making the sort of directions that you're invited to make in relation to this particular hearing. And the first is that, um, this is, this question of characterization is already dealt with under the CWR Order 3, Rule 12. So, um, the specific ousts the general in my submission, and this is not intended as effectively as a way of getting around that or filling any lacuna. And the fact, the fact that, um, CWR order 3 rule 12 does not deal with the general partner, um, is simply part of the provisions that we have to deal with under those, under those rules. It's a gap that simply can't be plugged by this sort of provision. Well, that's the first point.

Justice Jalil Asif KC (Judge): [04:42:18] Does that depend on me concluding that the omission is intentional rather than an oversight?

Andrew Ayres KC : [04:42:28] Well, neither of those questions I would submit are irrelevant, whether intentional or oversight. The question is whether or not the language, whether construed plainly or stretched, is capable of giving your Lordship jurisdiction. It shouldn't be a question as to whether or not.

Justice Jalil Asif KC (Judge): [04:42:51] But if, if, if, if the language of the statute or the rules is unclear, and I'm not clear myself as to how I should construe it. I think I need to look at the legislative purpose, and if I decide that it was intentional, um, then I go then I accept your argument. If I consider that it's an oversight, but it can't be fixed by, um, interpretation of, uh, either 36 (3)A and B or CWR, Order 3, rule 12. Then, in those circumstances, would I not be entitled to say, well, um, I can get there by paragraph G.

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Andrew Ayres KC : [04:43:39] My submission would be none in those circumstances, because...

Justice Jalil Asif KC (Judge): [04:43:42] Right

Andrew Ayres KC : [04:43:43] In terms of this question of intentional or oversight, I submit that you're not going to be able to answer that question at all. And the reason you're not going to be able to answer it is because, um, for good or ill, the legislative scheme here is slightly clunky, if I can use a perhaps a rude word, but where effect you know you are to some degree left to analyze how how, um, Part Five on the CWR are to, apply to ELPs.

Justice Jalil Asif KC (Judge): [04:44:16] Not necessarily...?

Andrew Ayres KC : [04:44:18] Not necessarily happy happy bedfellows. And my lord, maybe this is possibly going to be the first case or not, but, um, there may well be situations in my submission. This is one of them where the corporate provisions in relation to party representation costs orders just simply don't apply to ELPs. Um, so that's that's the first point, which is specific as the general, and you can't run to the general, um, just to fill a hole, um, that is, uh, on things or an omission that is there in the statutory provisions. But there's a second point there, which is that the suggestion that this can be used for these sorts of directions at all is wrong because, um, this, uh, paragraph G is directed to a different activity. And, my Lord, that different activity is the making of orders and giving directions for the winding up and dissolution of exempt limited partnerships. It's not, it's intended for effectively, um, what one might describe as the relief that one might give at the merits hearing. It's not intended for what are effectively procedural orders that are made during the progress of, of the petition. Now, my Lord, you'll forgive me because I don't have any authority to support that submission, as you have just raised it today. Um, And if I find if I look for some, I may not be able to find some. But, my Lord, I make that submission off the back of the plain wording of the section, which is it's for the winding up and dissolution of an exempted limited partnership. It's it doesn't express itself to be any wider to include the conduct of the proceedings.

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Andrew Ayres KC : [04:46:14] So, my Lord, in terms of why, um, my submission works, um, I really make two points, which is that. If you are seeking to bring a petition against first point, if you're seeking to bring a petition against a limited partnership, you always have to sue the GP and, um, for that structural reason, the GP, the GP is, is, is effectively um, standing in the shoes of the partnership and it is the way of bringing the entire partnership before the court. And that's exactly what's happened in these proceedings, because the GP has been sued (in its capacity as general partner of ATP Life Science Ventures LP), so what has happened? And this is totally understandable and no criticism of, uh, of a Rigmora LP for doing this because they had to do this, is that what they have done is brought the whole partnership before the court by suing in that manner. And the difference, my Lord, between the limited partnership situation and the corporate situation is that in the corporate situation, the court is considering whether or not the company, a separate legal personality, has any independent interest in the dispute, and it sometimes might and it sometimes might not. In my submission, because of the way in which, um, one has to sue, uh, exempted limited partnerships, the whole partnership will always have an interest in the dispute, an independent interest in dispute, because it will always effectively be before the court because of the way in which it has to be sued, because of the way, in fact, that there's no separate legal personality. So. Well, that is.

Justice Jalil Asif KC (Judge): [04:48:31] That doesn't really work where the complaint is about the conduct of the GP itself rather than, rather than, um, the claim against the ELP. I think you do, I think it is necessary to separate out complaints against the GP, which may be brought by the LPs, and complaints against the LPs itself, which are likely to be brought by external parties.

Andrew Ayres KC : [04:48:56] My Lord, there's no there's no clear distinction in relation to those particular types of things when you're dealing with, generally speaking, the run of the mill, just actual winding up petitions in relation to limited partnerships, because yes, of course there might be complaints about the GP, but there also might be some complaints about what's happened with respect to other LPs. So, for example, one LP might complain that another LP has got an excessive distribution, but the core thing about it is that, um, it's effectively seeking to wind up the whole partnership. And that's, that's the point, because it's effectively a different question from, uh, because there's no way that the partnership can get away from having an interest in that particular dispute in a

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way that, in the corporate context, it can do. You can have a just and equitable winding up in a corporate context where effectively the company is a bystander. It is, it is an argument between, uh, between members. You simply just can't have that. My Lord, the second, the second point relates to the specific position of a GP. Now, obviously, and the Rigmora LPs make, make no, um, uh, you know, they don't hide any of this that we're looking to try and, uh, get, get to the provisions of Order 24, rule 8. Perhaps we can just have a look at that. So. So I'm sorry, I haven't I haven't given the headline of what the second point is yet, but just if you just bear with me for a moment. So in the corporate context, you've got Order 24, rule 8, which, which makes the point that in paragraph 1, the general rule is that costs incurred by a person who successfully prevents creditors' winding up petition will be paid out of the assets of the company on the indemnity basis. And then two, in the case of a contributory winding-up petition.

Justice Jalil Asif KC (Judge): [04:51:09] I'm so sorry, are you in

Andrew Ayres KC : [04:51:10] Order 24, rule 8, which is, which is in tab 2, page number 46.

Justice Jalil Asif KC (Judge): [04:51:16] Yeah.

Andrew Ayres KC : [04:51:19] And then we have these contributory winding up rules, and obviously, they're general rules, so in a sense, they're prima facie, they can be displaced at trial. And the, the first of all, A says if the court has directed that the company itself is properly able to participate in the proceeding. The general rule is that the costs of a successful petitioner be paid out of the company. And, my Lord, I'll just pause there, attempt not to distract us, but the slightly odd thing about that is that it doesn't track the wording of, um, subparagraph A in order 3, rule 12 one, which also talks about being treated as merely the subject matter of the proceeding. I don't have any specific submissions about that, but it is noteworthy that that that isn't dealt with in when we go back to rule 8 subrule two, subparagraph A, and then we've got um, B, which is if the court has directed the winding up petition be treated as inter partes proceeding between one or more members, and then there's the glitch, your lordship, by the way, I should say that I think it's common ground, I think there is a glitch exactly as your lordship has said, it just you can't make sense of it otherwise. Um, and then it says the general rule is that

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none of the costs should be paid out of the assets of the company, and the successful parties should pay the costs of the successful, uh, the unsuccessful parties should pay the costs of the successful party. Such costs are to be taxed on a standard basis. So, my Lord, this, this this further submission as to why this doesn't work for limited partnerships relates to the fact that, um, GP subject to having remuneration or having an interest in the fund or whatever, they generally speaking, don't have assets of their own. And, your Lordship heard my submissions about that before. And the difficulty is that if how how is a GP who is, um, made the respondent to a winding up petition, um, is going to defend that petition in a situation where it is assumed that, um, the proceedings against him are going to be inter partes, to use the phraseology that we're dealing with here. And he's going to at least be subject to the general rule that, um, no cost should come out of the partnership and that if the company, or sorry, if the limited partnership is wound up, he, the GP, is going to be paying the costs. My Lord, what I submit in relation to this is that this is quite close to a situation where, uh, if not a rogue's charter, then one's going to have quite a big breakdown in the way in which GPS operate, because you could simply have a situation where, um, someone has a has an adjustment for winding up petition against the partnership. The GP is the only party that is made a respondent, as in this particular case, and the GP, for the sake of my example, doesn't have any funds of its own. Um, it knows from a decision that Your Lordship is being invited to make today that, um, you know, if it defends the petition, there is a high likelihood, if not a certainty, that it was it is going to be paying, um, the costs out of its own pocket. The GP simply wouldn't have any basis for resisting the petition. It would roll over immediately. My Lord, that is that is a powerful reason as to why this set of provisions simply just doesn't work when it comes to trying to graft them onto the partnerships. My Lord, can I now just take you to some of the, um, the law in relation to this? I'm going to cover some of the same ground that my learned friend did. And, um, my learned friend referred to, uh, the Freerider case, and there's, there's nothing in Freerider that obviously I do or can disagree with. And I obviously don't disagree with what my learned friend calls the legal cost principle as far as, um, companies are concerned. But Freerider was was company case and it simply, uh, for all the reasons I've given um doesn't have any application to, um, limited partnerships. But the high point, although my learned friend was, was professionally diffident about it, um, is the Cybernaut case, which perhaps we can have a look at that again. Um, that was a matter, actually, of really two consent orders and then an issue that wasn't determined. Um, your lordships already had a look at that. That's in, uh, tab 8 of

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the bundle. And my learned friend took you to paragraph 31, which you've read. Um, but, but in a nutshell, you are getting really no assistance from this whatsoever, because as I say, there are really two there are two consent orders here. One is a consent order made prior to the trial by Justice Foster, which is the consent order with respect to the directions, um, uh, the partnership shall not participate in the proceedings on the petition shall be treated as inter partes proceeding between the petitioners as petitioners and the GP and Oriental as respondents, and was just important to know that we don't know the basis upon which this consent was given. But it is instructive to note that there does seem to have been another party oriented, um, for the purposes of understanding why, uh, that concession may well have been made. So that's the first consent order, and then the second consent order, in effect, or a concession made later in paragraph 31, is that in effect, the respondents accept that they'll, um, be entitled to, um, uh, they'll be obliged to pay the costs. And then there's a, there's a third point which is raised and then, um, not, not dealt with, which is the separate question of whether or not, uh, the GP is entitled to indemnity in respect of, uh, from the assets of the partnership. And, um, although the court says this is at line 17 on the next page, in this case, the effect of the consent orders, the partnership did not participate in the proceeding, the GP was acting in its own personal right, and the effects of rule 8 (2)B is that it must bear the risk and cost per person. And then, however, I'm persuaded by Mr Hacker not to make any final determination at this point on the basis that it's academic, um, because the GP has not, in fact, made any claim for an indemnity. Should the GP change its mind and make a claim in liquidation, this point can be more fully addressed and decided by means of the sanction application. And that's important because, um, it is, it is very important in distinguishing, in dealing with all of these arguments, to distinguish between any actual or prima facie right of costs between the parties, and the separate question of whether or not there's a right of indemnity. And my Lord, my submission is that the question of whether or not the GP is entitled to use the partnership assets is entirely determined by the Limited Partnership Act agreement of any particular limited partnership, and that that is the touchstone of whether or not it's proper and appropriate for the GP to expend funds.

Andrew Ayres KC : [04:59:51] And my learned friend took you to some of his complaints, and he talked about what he described as very large sums of money being used for various things, including for legal expenses. And my Lord, my client's position is that's all entirely proper and authorized by the limited partnership agreement. And Lord, this, this

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is an important point because in the corporate context, there doesn't normally tend to be anything in the article dealing with this particular provision or possibility. And what happens in the corporate context is that if you have what is, in effect, a dispute being undertaken between members. But for example, the members in control of the majority members are using the company's money for the purposes of fighting that dispute. That is improper. And that's, that's what my learned friend is focusing on in relation to this question of the legal cost principle. But that's, that's a principle effectively, um, of general application with respect to companies. But it simply doesn't apply in the limited partnership situation, because the only question is whether or not it's proper for the GP to use, um, partnership assets for any particular expenses pursuant to the limited partnership agreement. So those are my submissions in relation to, um, jurisdiction.

Justice Jalil Asif KC (Judge): [05:01:26] So, can I just let me just see if I've understood your position correctly? Um, because under section 33 (3) of the ELP Act, uh, the GP is the only party that should be sued. So any cost issues are always going to be determined between whoever is the petitioner and the GP within the proceedings. And as a result of that, there's no effectively there's no need to make the order that Mr Scott asks for, because any cost order is, is going to at least nominally be made against the GP and then the important question is whether the GP has a right of indemnity under the ELPA.

Andrew Ayres KC : [05:02:16] Yes. Okay.

Andrew Ayres KC : [05:02:18] And these questions of the general rule set out in the CWR.

Justice Jalil Asif KC (Judge): [05:02:25] It just doesn't arise in.

Andrew Ayres KC : [05:02:27] They deal with the corporate situation where, um, where there isn't a effectively necessarily contractual right of indemnity or anything for a particular member, there would never be a situation where a member, uh, well, it would be very unusual for a member to have effectively some sort of right of indemnity or to use the company's assets for the purposes of litigation to which it was parted. So...

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Justice Jalil Asif KC (Judge): [05:02:52] So sorry. Mr ayres, I know I keep interrupting you, but do you say then that it's a there's a similarity with the trustee position because a GP is treated as a trustee and in trust litigation, um, the trustee of the trust would be entitled to defend proceedings and seek an indemnity from the trust, um, from in relation to costs incurred in defending the trust?

Andrew Ayres KC : [05:03:22] Yes, to a large degree, but one has to be careful. I'm not going to unqualifiedly accept that it, that it is completely analogous, because trustees are in a slightly different position, because they have different rights of access to the court, for example, with respect to getting directions. And, you know, they can be encouraged to seek, for example, advance approval of various things. The other, the other thing as well, which is that this perhaps comes to a point my learned friend is making, is focusing on this question of the GP being a fiduciary. Now, obviously, I accept that, that the GP has certain fiduciary functions, but in terms of the GP's actual duties under section 19 of the ELP, their duties of good faith to the whole part. And so, um, I mean, in that sense, one has to be a little bit careful about.

Justice Jalil Asif KC (Judge): [05:04:08] No, I think there I think Lord Hamblen set the road in William and tready ports, set the road to each individual partner, limited partner. I don't see how they can be owed to the general body of partners. It's got to be owed to each individual and separately.

Andrew Ayres KC : [05:04:30] The proper construction of section 19 is that is, that the duties are owed to individually. So, my lord, um, you know exactly where I'm coming from, which is there's absolutely no need to make to make this provision, which follows through into a effectively, a sort of quasi-preemptive or general application cost order. And, and, also one has to be very careful indeed in, in, um, in, uh, Cybernaut. The judge was persuaded not to do it. The judge had to be very careful as to ensuring that you are not trampling on, on the GP's right of right of indemnity, Because, I mean, my lord, I, my learned friend very fairly took you to this provision, but it's it's accepted in all the debate that's been going on in respect of undertakings, which my learned friend addressed you on this morning. Rigmora LPs, they, they accept in their open correspondence that the GP should be entitled to use partnership assets for the purposes of this litigation. Does your lordship remember having a look at that?

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Justice Jalil Asif KC (Judge): [05:05:42] Yes, I do.

Andrew Ayres KC : [05:05:43] So the references, the letter of the 25th of October, page 1930, paragraph 3, and obviously that that's in a sense not relevant to the question of law.

Justice Jalil Asif KC (Judge): [05:05:56] So did you say 1930 page?

Andrew Ayres KC : [05:05:59] 1930, yes. So, my Lord, I just want to make a few points about, um, if I, if you're against me on the question of jurisdiction. Um, as to why you shouldn't make any order at all and to some degree, there are some points that I've already covered, but, um. The first point is, and perhaps has to look at this clearly, is that the only complaints and allegations in this claim are made against the GP and Doctor Harrison. None of the other LPs, none of them are parties to the litigation. And we come back to subparagraph C. It hasn't been suggested by the Rigmora LP that any other LPs should, um, uh, should be made parties to to the petition. And that may be Rigmora LPs, say, because they don't have any complaints against them. There are any complaints against the GP, but, my Lord, the proper construction of of the proceedings in those circumstances is that, um, we have an LP making a complaint against the partnership itself. And, my Lord, in terms of the allegations, uh, in relation to the three core matters in the petition, which are loss of trust and confidence, loss of substratum, need for an investigation. So in terms of the loss of trust and confidence, there are at least two elements to that, obviously, maybe more if amendments are granted. But you have a dispute about the question of whether capital calls were properly made. And you also have, um, the question of the commencement and pursuit of the Delaware proceedings. Now, those two issues there, obviously, there may be complaints against the GP, but they are partnership issues. Whether or not it is correct that the Rigmora LPs have failed to answer capital calls. That is a partnership issue. Um, and it's in the interests of interest of the partnership as a whole that that be determined. At the same point goes for the Delaware proceedings. The Delaware proceedings have been brought for the purposes of answering a number of questions, including whether or not, um, the capital calls have, have not been answered. And again, it's in the interests of the partnership that that question is answered. And then in terms of loss of substratum need for investigation, I

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mean, those are plainly in my submission partnership matters. Um, and they're relied upon for the purposes of the winding-up petition. So that's, that's all support for the suggestion that what you have before you is a dispute between a limited partner and the partnership as a whole. So that's the first point, my Lord. The second is on the discretionary point. The second point is is a repeat of my chilling-effect, uh, or rogue's-charter point, which is that one have to be very cautious about making this sort of order because effectively you're just pulling the legs out from under the GP completely in relation to this, in circumstances where the GP wants an opportunity to defend the trial, to show that it's a good GP and also to, to make, um, costs arguments to you at the end of the trial on a level playing field.

Andrew Ayres KC : [05:09:31] The third point is really just to repeat my submissions in relation to the suggestion that there really isn't a good analogy between the corporate context and, um, the limited partnership context. That's because, as I've submitted to you already, the core question here is whether or not the GP can spend the partnership's money on defending the petition, um, by reference to the limited partnership agreement. And that question is not before the court. It's not it's not suggested by Rigmora LPs to be before the court. The fourth point is that the Rigmora LPs come to you, and they say that they're bearing all the costs of these proceedings, uh, because they rely on their extremely large economic interests in the fund. And they say that effectively that makes, uh, it it sort of just that you should, um, ensure that, uh, at the very least, that they're not being, uh, paid with their own money in respect of the costs of litigation.

Andrew Ayres KC : [05:10:38] My Lord, there are two problems with that, or one problem specifically, which is that if my learned friend described the assets of the partnership as our money, now, I'm not getting away from anything in this case, but that's a wrong characterization of the assets of the partnership. The assets of the partnership belong to the partnership. They don't belong to the Rigmora LPs. I know that in sort of layman's terms that one might think that they they do, but they don't. Um, and the crucial thing that my learned friend is missing from his analysis is that, yes, he may be entitled to whatever it is, 94, 97% of the economic interest in the partnership. Uh, but he's not entitled to the entirety of that capital without taking into account the proper application of expenses incurred by the GP in fulfilling its functions and duties. And if the GP is entitled to expend that money, um, then that's simply nothing that the Rigmora LPs can say, uh, in relation

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to that being their money. It's not. It's part of the contractual and statutory arrangements that they've entered into in this fairly unusual limited partnership.

Justice Jalil Asif KC (Judge): [05:11:58] There's another point. This, um, although it doesn't necessarily go to the exercise of discretion, but it goes to the points of principle, which is whatever I decide needs to work, not just in a situation where the LP that's raising the complaint, owns 98% but also where LP owns 5 or 10% and it's got to be it's got to be workable across all the possible ranges of situations.

Andrew Ayres KC : [05:12:26] That that perhaps comes back to some degree, I don't blame Rigmora LPs for putting their position like this, but basically they say it's all our money. It's being managed by by a rogue individual, um, who we don't like and in whom we've lost trust and confidence. But, you know, they are effectively treating this, um, as though it's a real trust in which they are the sole beneficiary and that that is not the arrangement that they entered into, entered into this, uh, limited partnership pursuant to the limited partnership agreement. Um, can't, um, uh, ignore that when making submissions now about the position. So yes, your Lordship shouldn't just be steamrolled into thinking, well, this is effectively a trust. I'm just going to do, uh, whatever the Rigmora LPs say, and I'm also going to, um, recognise the fact that, um, the trustee in inverted comments hasn't sought, um, any court indemnity or anything like that. That's all irrelevant. My Lord, my final point, I actually only got five, is, um, the Rigmora LPs they made points on, my learned friend made points this morning about the loss of trust and confidence and the suggestion that, uh, the manager, sort of under a cloud, if that's where they want to, should simply step aside. And, my Lord, that's all to be decided. The question of who's right and who's wrong in this hard-fought battle is for your Lordship in January. And the reality is the fact that trust and confidence lost, that's not a subjective matter. Um, the question is the proceedings will consider whether the allegation of loss and trust and confidence is properly and fairly made out. My client, the GP, on behalf of the partnership, is not a recalcitrant manager, but is simply seeking to uphold the terms of the LPA and undertake its functions for the benefit of all LPs, not just Rigmora, even though Rigmora is a massive part of that. So in terms of the rights and wrongs of this, it would be completely wrong to make any direction which prima facie makes a, uh, decides that cost question now. So, with two possibilities that I invite you to, um, to make, uh, um, if you have jurisdiction. The first one is a direction of the petitioners, a proceeding brought

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against the partnership because that's in reality what it is. And the second possibility is to make no direction at all.

Shelley White, Partner, Walkers: [05:15:08] (Ms. White, in a low voice, confers with KC)... The ELP was enforced on the 2nd of July.

Andrew Ayres KC : [05:15:12] So Miss White tells me the ELP Act was in force on the 2nd of July, 2014, having passed on the 11th of April 2014.

Shelley White, Partner, Walkers: [05:15:24] previous to the FSD

Andrew Ayres KC : [05:15:26] So before before the FSD guide came into.

Shelley White, Partner, Walkers: [05:15:29] Our pleadings, that's the percentage. So it's around.

Andrew Ayres KC : [05:15:32] So just just in terms of the specific percentages in our pleadings, we accept that Rigmora has 97.9%.

Justice Jalil Asif KC (Judge): [05:15:40] Thank you.

Andrew Ayres KC : [05:15:42] And I think I think it's said on, on, on the other side that it's 98% so it's pretty close. My Lord, can I just have 10 seconds?

Justice Jalil Asif KC (Judge): [05:15:49] Of course.

Andrew Ayres KC : [05:15:54] Those are my submissions.

Justice Jalil Asif KC (Judge): [05:15:55] Thank you very much, Mr Ayres. Yes. Mr. Scott.

Andrew Scott KC: [05:15:59] Would it be convenient to your Lordship to take things in reverse order? Deal with the party's issue now?

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Justice Jalil Asif KC (Judge): [05:16:05] Take take take take it.

Andrew Scott KC: [05:16:08] That's what I would do. My Lord, can I begin on the parties' issue? Um, just to ensure everyone understands very clearly what our position is on legal spend. Can we go, please, to page 1930 in the bundle? It's the correspondence of...

Justice Jalil Asif KC (Judge): [05:16:25] 1 or 2.

Andrew Scott KC: [05:16:27] Bundle two, the letter from Campbell's that we looked at this morning, seeking undertakings. There's, of course, a fundamental distinction between the undertakings. One is seeking to hold the ring and the party's position in the dispute. And your Lordship sees the distinction very clearly in paragraph 3, final sentence. So, having carved out those payments from the undertakings. Campbell's writes for the avoidance of debt, however, this is without prejudice to the Rigmora LP's position that any such payments are unlawful and invalid, and the Rigmora LP's rights in regards to such payments are reserved. So it is quite right to say we have not sought undertakings in relation to those matters. He is quite wrong, insofar as he was intending to suggest that we accept that the use of partnership moneys for those purposes is proper. On the contrary, we say it is entirely improper, unlawful and uninvent. So I just wanted to correct any misapprehension on his, or more importantly, his client's fault on that issue. And, on the discretionary factors, my learned friend, um, put to your Lordship. He said that capital calls are a partnership issue. Whether or not he's correct about that, the petition is not simply or indeed not for the most part about the disputed capital calls. It is a petition which, as your Lordship will have seen from reviewing the amendments, puts in place a variety of allegations about the GPS wrongdoing. And the fact that there are no allegations about the other LPs, it's a point in my favour, because it reinforces that the substance of the dispute is a dispute between Rigmora LPs, on the one hand and the GP on the other. Well, the factor that was put to you at a number of stages in the argument about a rogue's charter. As I understand it, that was predicated on the assertion that GPs seldom have assets with which to defend themselves. Any Lordship observed with respect entirely rightly that that was not a matter of which judicial notice could be taken. It's not even a matter of which. Any evidence of the GP's position in the present case is before your Lordship. So it is not being suggested, at least not in any evidence, before you that this particular GP, having profited so handsomely from this partnership over the years, is not

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in a position to defend itself. So, with respect, your Lordship is in no position either to take judicial notice about the matter as a generality, or indeed to make any finding to that effect in the present case.

Justice Jalil Asif KC (Judge): [05:19:57] I notice when we were looking at the sideboard, the GP apparently had funded its own defence.

Andrew Scott KC: [05:20:05] I'm not in a position to give evidence from the bar. The variety of arrangements, except to say one sees a variety of arrangements.

Justice Jalil Asif KC (Judge): [05:20:15] Cybernaute, Justice Jones recorded that the GP didn't wasn't going to require indemnity from the fund.

Andrew Scott KC: [05:20:27] The next discretionary factor that your Lordship was to say, there is no good analogy with the position of companies. And, my Lord, I accept, of course, that there is no complete analogy with companies. But where the analogy breaks down, and again, this is a point in my favor, is a point your Lordship raised with me this morning, that partnerships have no separate legal personality. So yes, we all talk about the partnership, but what we mean are each and every one of the partners. And that brings me on to the next discretionary factor, which is the submission from my learned friend that this is not a real trust and this is not really our money. And with respect, if that is really the way his client is approaching this, and that is yet another reason why trust and confidence has justifiably broken down. Because the true position, of course, is that there is no partnership in the sense of a legal person for which the GP holds these assets as fiduciary. The GP holds the assets as a fiduciary for the partners. We are the partners as to approaching 98% of the economic interest in the partnership. We are the beneficiaries of trust. Of course, one has to take account of the LPA. I'll come to that in a moment. But in terms of where the beneficial interest in these assets lies, it is in us. And if that is a matter of dispute on the other side, that is, as I say, an objectively justifiable basis for trust and confidence to break down quite apart from all the other. On the question.

Justice Jalil Asif KC (Judge): [05:22:29] Of, I think, Mr Scott, to be fair to Mr Ayres, what he was saying is, um, that the the LPs have to take into account the costs incurred.

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These costs and expenses incurred by the GP in administering the fund on behalf of the LPs.

Andrew Scott KC: [05:22:46] Of course, and if that, if that is the limit at the point, I don't dispute it for the moment, and I will deal with how this partnership agreement deals with partnership expenses in a moment. Um, but it doesn't detract at all from the issue that really matters, which is that this is beneficially only. Held on the submission about why the GP won't set aside. It was sent to your Lordship that you will decide at the trial the rights and wrongs of this. But of course, Justice Kawaley was not dealing with the position at trial, as your Lordship saw from the passage I took it. Justice Kawaley was dealing with what should happen when the petition is brought. GP should stand aside so that the probity of its conduct can be established by independent scrutiny, and that is what has not happened here. Any Lordship has had no justification for it because there is none. My Lord, can I deal with the LPA? My learned friend said to you that this was the touchstone for expenditure. If you please take up Tab 61 in the second bundle. And, your Lordship, may recall from the August hearing that the way this LPA works is that there was an initial LPA and a number of variations, none of which has been turned into a single restated document, which is a feature of this case that we are all going to learn to love at trial. I have no doubt.

Justice Jalil Asif KC (Judge): [05:24:35] If I've got a vague memory of someone did attempt to put one together at the start of the August hearing.

Andrew Scott KC: [05:24:41] My side has has attempted that, but the document, as far as I'm aware, has not been agreed. It may be if agreement on that at least could be achieved. Which made some progress. My Lord, can I do with the expenses points under the LPA? And your Lordship needs to go to, um, I think it's amendment 9 to find the county relevant provision that starts on page 1661, and if your Lordship will turn forward to page 1671. It begins in 1670. Does your Lordship have the provision for the allocation of expenses?

Justice Jalil Asif KC (Judge): [05:25:31] Yes, I do.

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Andrew Scott KC: [05:25:33] And, it provides, ATLS shall provide the following expenses of the partnership.

Justice Jalil Asif KC (Judge): [05:25:42] Just before. Just before we get into that, I notice at the top of the page 10A, an ATLS has been paid 8.5 million per annum.

Andrew Scott KC: [05:25:53] Yes, I'm told that figure is is now around 18 million.

Justice Jalil Asif KC (Judge): [05:25:59] So, which puts into context submissions, it doesn't have any assets.

Andrew Scott KC: [05:26:05] My Lord, on the allocation of expenses you see you see the initial provision there about payments of the following expenses of the partnership. Invite your Lordship to underline those words, expenses of the partnership. And then your Lordship sees it continues over the page that says the partnership shall be responsible for all other reasonable expenses of the partnership. Which partnership expenses shall be funded by capital contributions made by the holders of preferred units in accordance with this agreement? If your Lordship moves through to Little Seven, one such partnership expense is professional fees, including legal expenses for the partnership. And the short point in relation to all of this is, this captures partnership. What it does not capture is a dispute, the substance of which is a dispute between partners. So what this clause poses is the same question of characterization that arises under rule 12. Because if your Lordship concludes, as we invite you to do, that the substance of this dispute is a dispute between the GP and the Rigmora LPs, and any expenses incurred in relation to that dispute are not expenses of the partnership. So with respect, we do say the LPA does not take the GP anywhere different on this issue and characterization under rule 12 does. Well, can I deal very briefly with Cybernaut and Freerider?

Justice Jalil Asif KC (Judge): [05:28:10] Yes.

Andrew Scott KC: [05:28:12] I hope I didn't overstate the extent to which your Lordship would be assisted by Cybernaut. I recognise, of course, that it's a content case without much discussion. Um, nonetheless, it is a case in which an order in terms of time seeking thinking, and I can't put any Freerider suggestions of assistance to you in this case. But

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unless your Lordship is persuaded to accept the submission that the legal costs principle has no application in relation to ELPs, and Free Rider is going to assist your Lordship in construing rules, these rules as procedural provisions by which to give effect to that legal consequence. And your Lordship has my submission from this morning that the legal cost principle applies just as much to ELPs as it does to companies, and indeed as it does to any fiduciary relationship.

Justice Jalil Asif KC (Judge): [05:29:28] This looks to me like a point where there's bound to be some very helpful mid to late 19th-century authority on partnerships that needs to be turned up. Uh.

Andrew Scott KC: [05:29:43] Your Lordship may well be right. Um, it seems to us the correct analysis, as a matter of principle, is one begins with the trustee relationship. And if your Lordship asks the question, take a case in which the beneficiaries sued the trustee for breach of fiduciary duty with the trustee without the court's sanction, be able to use the trust fund to defend those allegations. They needn't take a case in which two groups of beneficiaries were in dispute. Would the trustee be entitled to side with one of those groups and use the trust fund for that purpose? All the legal cost principle does, in the company context, is to replicate those obvious fiduciary conclusions. In the company context, it is exactly the same principle, in our effectual submission, in all fiduciary relationships. And the context is just an example of that. With the various points that were made on jurisdiction. And I can take these, I hope, fairly swiftly, because ultimately this turns on the question of what the words members of the partnership mean in the context of rule 12. And my learned friend is ultimately driven to interpret those words in such a way that neither rule 12 (1) A nor 12 (1) B have any application in the ELP context. And with respect, that is not a construction that the court should accept. There is no sufficient textual basis in the statute to think that's what Parliament intended to achieve here. Moreover, so where the effect of doing so would be to disapply the legal cost principles within this context. A series of points was put to you. At the outset, my friend's submissions on these preliminary points were to put them. The ELPs do not have, the ELPs don't have separate personality; every LP must have a GP. Those points are true, but there are other points in my favor or points that don't take the issue in the current, so unless I can assist your Lordship further on the parties, we say Lordship plainly does have

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jurisdiction, and it would be appropriate to exercise jurisdiction and to do so now, so in our favour. Now, can I then turn to the issues between us, such as they are on directions?

Justice Jalil Asif KC (Judge): [05:32:55] Can I just ask? Looking at my calendar, I still have, uh, Monday and Tuesday next week set aside for this case. Um, I can't remember because I've lost track. Is that still going ahead?

Andrew Scott KC: [05:33:08] No. My Lord, Monday and Tuesday had been allocated for the purpose of the PL, and then it went when we felt compelled to withdraw.

Justice Jalil Asif KC (Judge): [05:33:18] Okay. That's very helpful. Two things that arise from that. First of all, I need... administration has to take it out of the list on Monday. Um, but I'm just thinking, I'm not sure I'm going to be able to give a judgment this afternoon. It does give me the opportunity to give judgment on Monday. All right. Thank you. That's helpful.

Andrew Scott KC: [05:33:47] My Lord, directions...

Justice Jalil Asif KC (Judge): [05:33:48] Yes.

Andrew Scott KC: [05:33:52] I understand that the only point between us from the order for directions down to trial is the provision we invite your Lordship to make about what would happen in the case a witness doesn't attend to give evidence at the trial. And we respectfully submit that the appropriate direction is indeed the one that we have proposed at paragraph 12. My Lord, the starting point under the GCR, this is rule one of order 38, is there any fact required to be proved at trial by a witness of fact should be so proved by oral evidence at a public hearing, as the staff. There are, of course, exceptions to that under Order 38, but there are exceptions that operate through the process of giving hearsay notices in line with the act, since the Lordship has seen the directions make provision for that. So if either of the parties wants to put in a statement by way of hearsay notice, they, of course, can do so. What they cannot do is put in a witness statement and then not tender the witness for cross-examination at trial, and nonetheless still seek to rely upon the witness statement. All that would be open to them in that situation would be to seek the court's permission to extend the time for putting in a hearsay notice, to do it

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that way, so that that is the appropriate procedure here. My Lord, so far as concerns the company winding up, you have an entirely general power under rule 12 to make such directions as you think appropriate, and if your Lordship agrees with us that it is appropriate that witnesses who put in statements turn up to give their evidence already, your Lordship should respectfully submit, make a direction for what happens if they choose not to turn up. That's the only point on directions down to trial to send the question of Directions for the amendments and the mediation summons. My Lord, in terms of availability, our team would be available on all of the dates that Your Lordship has indicated. It seems to us that there is a question to be grappled with as to which ought to be dealt with first. The amendment summons or the mediation summons, and there is a time pressure in relation to the amendment summons that does not apply in relation to the mediation summons. And if your Lordship were able to accommodate the amendment summons on the earlier dates in November, we would be grateful to take that accommodation, because it's in everyone's interest to know where we stand on the pleadings in this case, so that we can get the process leading back up and running. So we would respectfully invite the court to list that summons against an undertaking for me to issue it early next week, either on the 14th or on the 17th, or on the 18th. And then a mediation summons that would come on in the dates your Lordship indicated before the privilege summons at the end of November. In terms of how much time we need for the amendment summons, it is difficult to say in circumstances where I still don't know which of the amendments are being proposed, but it does, with respect, seem to us that if we are in a situation in which the GP is suggesting that a day of argument will be required to decide whether leave to amend should be given in the context of a trial that's only due to last five days, that tends to indicate that there's plenty to be argued about here. We should just let the amendments come in and deal with the matter at trial. Well, as far as concerns the time estimate for the mediation summons is, it was issued with an estimate of one hour. Your Lordship was told the jurisdictional basis for it by my learned friend. Um, three bases were identified. One of them is the GCR order 25, rule 3. Of course, that has no application at all in relation to the petition and so far as concerns the writ proceeding. Order 25, rule 3 is concerned with the court's power, either when hearing summonses for directions or when giving directions, the court's own motion. Neither of those things is what the mediation summons is. And indeed, as I said earlier, this is a case in which the court has already given directions in relation to mediation in the form of your Lordships' provisions in the consent orders.

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Andrew Scott KC: [05:39:38] Your Lordship was also told that the overriding objective will provide a jurisdictional basis for ordering us to mediate. We respectfully disagree. The overriding objective doesn't confer on the court such a power. Um, there is a reference to the Churchill case in England, but in the Churchill case, the source of the power was the pre-action protocol. The pre-action protocol in England includes provisions about what it may do in circumstances where parties have not considered mediation, and so on, in line with the court's expectations. There is no equivalent protocol in this jurisdiction, or indeed any basis in law from which to contend that there is such power. And what that leaves my learned friend with is the inherent jurisdiction. It's not going to take us long to argue about whether the inherent jurisdiction enables the court to order parties to mediate, who do not wish to do so. My Lord, jurisdiction aside, the real argument before your Lordship is that going to be discretion and whether, in the context of this case, as long into it as we are, where one side is saying they see no realistic prospect of a successful mediation given the GP stance in the discussion so far, does the court realistically feel able to gain say that without seeing the second communications, which the court won't see because the GP won't be privileged? Well, it seems to us that it can be debated well within the context of half a day, if your Lordship considers it would be prudent to make more time available. It would be sensible and possible to do that in the days running up to the correct estimates. And in case it assists in your Lordships' decision as to which of the two summons ought to come on first. For our part, we will not be taking a point on the delay in relation to the mediation summons in terms of the delay between now and the 26th, 27th, 28th. So I may well be saying it was too late now, what I will not be saying is that the passage of time between now and hearing is a material consideration. Whereas I understood from my friend when he was addressing you on the amendment that they would indeed be submitting the passage of time as a material consideration. If that is right, it's another factor in favour of dealing with amendments first. Can I finally say this on undertakings? Your Lordship heard what I had to say on undertakings. My learned friend didn't respond to it. There is no update beyond what we see in correspondence. We will continue to try and achieve something on that front, and we will update the court on it in due course. My Lord, unless I can assist you further, I've finished my submissions.

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Justice Jalil Asif KC (Judge): [05:43:05] Thank you very much, Mr Scott. Um, just give me two minutes to look something up. Right. I'll deal with them, I'll deal with the question of directions now, so at least.

Andrew Ayres KC : [05:47:08] Before you do. I know I don't have a right to rejoinder, but there's one additional point I wanted to make just to make sure you weren't unwittingly misled and I know you wouldn't be, um, wittingly misled but my learned friend took you to the expenses provision of the partnership agreement, and it's an important provision and I know it's not before you today for decision, but he didn't actually take you to the relevant part of the provision, which entitles the GP to spend the partnership assets on legal expenses, and that was Roman 17 that on page 167.

Justice Jalil Asif KC (Judge): [05:47:43] I should also say that I noticed, having made the point about the, uh, the fee being 8.5 million. I noticed in the opening words that it said a whole lot of expenses are paid out of that fee.

Andrew Ayres KC : [05:47:58] Well, I mean, if you read those two provisions together.

Justice Jalil Asif KC (Judge): [05:48:01] Just give me the page again.

Andrew Ayres KC : [05:48:02] Well, it's, it's sorry I gave you the wrong page number. It's, um, it's 1671, 1670 was the first page my learned friend took you to. And the fee, the fee there. That's that's that's not a fee without payment of expenses. And then in terms of expenses, um, anyway, I won't I won't trespass because I don't have a right. I just wanted to point out 17, which says all expenses, including travel and travel-related expenses relating to any actual or threatened litigation or proceeding involving the partnership.

Andrew Scott KC: [05:48:36] Your Lordship appreciates that we say all these items have to be read subject to the opening words. Partnership should be responsible for all other reasonable expenses of the partnership.

Justice Jalil Asif KC (Judge): [05:48:57] Yeah.

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Justice Jalil Asif KC (Judge): [05:48:59] Okay. Thank you both very much. Um, so I'm just going to deal with, uh, directions at this stage to just put my thoughts together on the point about the status of the parties. Um, so I will... Looking at the draft order for directions in the writ action. Um, so I will make the directions of the sort... As regards 12, um, I will include the, the wording that's proposed by Mr Scott, but on the basis that it is understood that, um, that does not preclude, uh, either party if the witness is genuinely unable to attend for making an application to reduce their evidence as hearsay. If the, uh, circumstances justifying that, uh, are demonstrated and, um, the time taken for this application may have to be truncated, depending on when it becomes apparent the witness is not able to attend. Uh, but it seems to me it is worth including paragraph 12 just to bring home to all witnesses concerned and to the parties that they are expected to be here if they want, uh, any weight to be given to their evidence at all. Um, so similarly, in the draft consent order, in the petition, uh, I will delete 1 to 4, and subject to the what I said about the, I slightly preferred format of paragraph five, I'll extend the time for disclosure discovery. Um, and it seems to be, uh, forwarded to the other uh. Oh, Mr Scott, are you available on the 17th for the PTR?

Andrew Scott KC: [05:51:05] Oh, I'm so sorry. Yes, my Lordship.

Justice Jalil Asif KC (Judge): [05:51:07] Yes. All right, so, um, you can update both draft orders, say, PTR on the 17th of December at 10 a.m.. Um, as regards timetabling for the mediation summons and the amendment summons, uh, it seems to me I think Mr Scott's right. The most urgent matter to deal with is the question of amendment. Um, and so if the parties can work towards a hearing of that summons on either the 14th, 17th or 18th of November, uh, then they should do so. And if there's any, as I said earlier, if there's any difficulty with agreeing on a suitable timetable that leads up to a hearing on one of those dates, then contact me and I will resolve it from my, from my part. If it helps the parties, I probably don't. Well, I don't arrive back in the country until the evening of the 13th. Um, I will be picking up emails. Um, but I don't need the bundles really until the day before, whatever is the date of the hearing, um, so.

Andrew Ayres KC : [05:52:19] I'm sorry to interrupt you. You said 14th, 17th and 18th. I had personally been working on the basis that it was the 26th, 27th. 28th. Um, but have I misunderstood?

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Justice Jalil Asif KC (Judge): [05:52:32] Well, I think Mr Ayres what, what we were saying was, I'm available on the 14th, 17th and 18th. Um, and also on the 26th, 28th. Uh, and Mr Scott was saying is that the amendment summons ought to be dealt with in the earlier batch of dates, and the mediation summons ought to be dealt with in the second batch of dates. I appreciate Mr Ayres, you may have some difficulty on the 17th.

Andrew Ayres KC : [05:52:57] Yes, and really on the 14th as well. I mean, I might be able to do the 18th. Yeah. I mean, obviously, there's a lot to do in relation to these three summonses in advance. I mean, it may, if I can urge you, it may just be better just to plump for doing it all together on those three days with the compartmentalised times, because we need to get all the evidence in and have a reply and do everything.

Justice Jalil Asif KC (Judge): [05:53:25] Well, we could do that, Mr Ayres, but it's rather going to undermine your complaints about delay and timing if we do that. Yes.

Andrew Scott KC: [05:53:32] If Mr Ayres will undertake today that he is not going to take a point on the passage of time between when we provided the undertaking to draft and the hearing. I'm very happy to have them heard on the schedule. That's convenient to him. But if he's not going to give that undertaking, his Lordshipship has my submission. And it's reflected in your Lordship's ruling that the amendment summons should come first.

Andrew Ayres KC : [05:54:00] I'm not going to give that undertaking, obviously, because I don't have instructions to do so, but, my Lordship, we have to take take what we what we can, particularly in relation to, to this issue. But, um.

Justice Jalil Asif KC (Judge): [05:54:11] My view is that the parties are the ones who are driving an early trial of this matter on both sides, for reasons that I don't criticize, both sides wanted this matter dealt with quickly, and I'm afraid they need to get their fingers out and make sure that happens.

Andrew Ayres KC : [05:54:31] Well, I've heard what you have to say.

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Justice Jalil Asif KC (Judge): [05:54:34] All right. Um, I will deal with the question of CWR, Order 3, rule 8 and 24, whichever it is, I've forgotten already.

Andrew Ayres KC : [05:54:50] 24 (8).

Justice Jalil Asif KC (Judge): [05:54:52] Thank you. Thank you very much. Uh, on Monday morning. Thank you for setting up some work over the weekend.

Andrew Ayres KC : [05:55:03] What time... on Monday?

Justice Jalil Asif KC (Judge): [05:55:05] Um, yes. That's it, 10:00 o'clock. If there's any any reason that I'm not ready, I'll send a message to you.

Andrew Scott KC: [05:55:10] Also on our side, it wouldn't be me on Monday. I think it may, it may be someone else from Campbell. I'm very sorry.

Justice Jalil Asif KC (Judge): [05:55:18] Yeah. That's fine. Mr Scott, you're excused.

Marshall: [05:55:21] [Hearing adjourned]

EXHIBIT R

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD NO. 146 of 2025 (JAJ)

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD (in its capacity as general partner of Rigmora Biotech Investor One LP)
(2) UNICORN BIOTECH VENTURES TWO LTD (in its capacity as general partner of Rigmora Biotech Investor Two LP)

Plaintiffs

-and-

ATP III GP, LTD (in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

AND:

FSD NO. 151 of 2025 (JAJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES LP

PLAINTIFFS' / PETITIONERS' SKELETON ARGUMENT

FOR THE PTR ON 17 DECEMBER 2025

References to the Plaintiffs' hearing bundle and authorities' bundle are to [HB/Tab/page] and [AB/Tab/page]

Suggested Pre-reading (2 hours)

- the Delaware judgment **[HB/12]**;
- the Chapter 11 Petitions **[HB/13-15]**; and
- the Motions seeking dismissal of the Chapter 11 Petitions **[HB/16]**

This SKELETON ARGUMENT was filed by Campbells, Attorneys for the Petitioners/Plaintiffs, whose address for service is Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010 (Ref: LMF/PDK/HF/19135-44991)
#3429983v1

A INTRODUCTION

1 This is the skeleton argument on behalf of the Plaintiffs and the Petitioners (the "**Rigmora LPs**") for the Pre-Trial Review in these proceedings. The trial in these proceedings is listed for 5 days, commencing on 12 January 2026.

2 As the Court will recall, the Rigmora LPs are limited partners in ATP Life Science Ventures LP (the "**Partnership**"), an exempted limited partnership established pursuant to the Exempted Limited Partnership Act (the "**ELP Act**"). The general partner is ATP III GP Ltd (the "**GP**"), the sole director of which is Dr Seth Harrison (**"Dr Harrison**"). The dispute arises from the implosion of the relationship between the Rigmora LPs and Dr Harrison, culminating in the GP issuing (on 30 May 2025) eleven capital calls against the Rigmora LPs (totalling more than US$100m) (the "**Disputed Capital Calls**") and commencing proceedings against the Rigmora LPs in the Delaware Court of Chancery (the "**Delaware Proceedings**") seeking wide-ranging relief including declarations that the Rigmora LPs had defaulted on the Disputed Capital Calls, had waived their contractual approval rights over Partnership investments, and were obliged to contribute hundreds of millions of dollars of additional capital to the Partnership in excess of their contingent subscriptions.

3 Two very significant developments have recently occurred in Delaware.

4 **First**, on 5 December 2025, Chancellor McCormick handed down a "Post-Trial Memorandum Opinion" (the "**Delaware Judgment**") **[HB/12/236]**. The Chancellor refused almost all the relief sought by the GP and rejected large parts of its case, including in relation to the extent of the Rigmora LPs' contingent subscriptions to the Partnership.

5 The Delaware Judgment is a disastrous outcome for the GP and Dr Harrison. When he caused the GP to commence the Delaware Proceedings in May, it sought a judgment establishing that the Rigmora LPs owed US$550m of outstanding contingent subscriptions to the Partnership and had lost their rights to approve further budgets, such that the GP had unrestricted control over how that capital could be used. Instead, the Delaware Court has determined that the Partnership has just US$125m of capital commitments remaining and that the Rigmora LPs have an unfettered discretion over budget approvals. Further, since the Delaware Court has required the Rigmora LPs to contribute US$96 million in capital to the Partnership (which the

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Rigmora LPs intend first to pay, pursuant to the terms of the Delaware Court order, and then to appeal, as they are entitled to as of right) the residual undrawn contingent subscriptions to the Partnership are at most US$29 million.

6 While the Partnership has billions of dollars in investments, for the benefit of the LPs, the fundamental relationship – that is, the Partnership's substratum – has now indisputably been lost. In its current governance structure, it cannot carry on its business in accordance with the reasonable expectations of its partners (or at all): "*[T]hat which the [Partnership] was formed to do can no longer be done":* Re Bristol Joint Stock Bank (1890) 44 Ch D 703 at p 712. The GP has failed to effectively manage the Partnership's capital and its investments.

7 **Second**, rather than accepting the consequences of the Delaware Judgment and proceeding promptly to trial in this Court as he had represented to this Court and the Delaware Court that he would, on 9 December 2025 Dr Harrison opened up a new front in his long-standing wrecking strategy aimed to prevent the Cayman Court from examining the GP's conduct. He caused: (i) the GP **[HB/15/346]**, (ii) the Partnership **[HB/14/333]**, and (iii) the Partnership's wholly-owned services company, Apple Tree Life Sciences Inc ("**ATLS**") **[HB/13/319]**, to commence bankruptcy proceedings in Delaware, under Chapter 11 of the US Bankruptcy Code (the "**Chapter 11 Bankruptcy Proceedings**"). A few days later, he caused four of the Partnership's portfolio companies (Apertor, Initial, Marlinspike and Red Queen) to do the same **[HB/19-22]**. The Chapter 11 Bankruptcy Proceedings were unheralded. Dr Harrison failed to disclose his intention to commence in the correspondence that had passed between the parties following the Delaware Judgment, or in the evidence he served for the January trial just the day before. Indeed, the position adopted by the GP was that it was fully committed to going to trial in January 2026. Two days before it filed the Chapter 11 Bankruptcy Proceedings, Walkers reassured the Court that they intended to "*progress our client's appeal [of the Privilege Summonses] promptly and so not as to imperil the January trial fixture*".[1] Even on the day of 9 December 2025, Walkers wrote to Campbells rejecting that their proposed appeal of the Privilege Summonses was "*in any way unmeritorious or a tactical attempt to delay the trial*".[2] The GP has explained its decision to file the Chapter 11 Bankruptcy Proceedings by noting that the Rigmora LPs did not engage in negotiations with the GP

[1] Walkers email to the Court dated 8 December 2025 at 11:28am **[HB/6/111]**
[2] Letter from Walkers to Campbells dated 9 December 2025**[HB/7/134]**

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following the Delaware Judgment, indicating that they are attempting to leverage those proceedings to extract concessions after failing to achieve their goals in the Delaware Proceedings **[HB/25/747]**.

8 The Court will recall the GP's prior efforts to forestall this Court exercising its winding up jurisdiction in respect of this Cayman Partnership: the failed stay applications; the failed mediation summonses; the failed privilege summonses; the GP's maneuverings to prevent this Court from considering the Rigmora LPs' provisional liquidation summons; and its failure properly to engage with a timetable to trial in advance of the October CMC.

9 That the Chapter 11 Bankruptcy Proceedings are a continuation of that course of conduct is laid bare in an email sent to the Court by Walkers on 10 December 2025 **[HB/9/142]**. This asserted that the effect of the Chapter 11 Bankruptcy Proceedings was to impose an "*automatic stay*" of these proceedings in Cayman such that the PTR and January trial must be vacated. That is wrong as a matter of Cayman law for the reasons explained below. The Rigmora LPs have fully complied with the automatic stay and will continue to do so going forward, but Walkers has misstated the impact of the automatic stay. Critically, the U.S. Bankruptcy Court has lifted the stay to permit the PTR to proceed in full; accordingly, the Rigmora LPs submit this skeleton in connection with the PTR to address proposed next steps in both courts, as to which they will seek further relief from the automatic stay as discussed below.

10 The commencement of the Chapter 11 Bankruptcy Proceedings will have an additional critical impact on these proceedings. Their commencement in relation to the GP has the agreed contractual consequence under paragraph 10(b) of the LPA that the Partnership shall be wound up, leading to the commencement of voluntary winding up under ss.36(1)(a) and 36(10)(d) of the ELP Act. This has important consequences for the January trial. The question is no longer whether the Partnership should be wound up, such that the GP no longer manages these valuable assets: that ship has sailed with the Delaware Judgment and the commencement of the Chapter 11 Bankruptcy Proceedings. The question now is how the winding up of the Partnership relationship and new management of Partnership assets should be effected: voluntarily or compulsorily; and by whom?

11 On 12 December 2025, the Rigmora LPs filed motions with the Delaware Bankruptcy Court to

have the Chapter 11 Bankruptcy Proceedings dismissed and / or to lift the stay under §362 of Chapter 11 to permit these Cayman Proceedings to continue (the "**Motion to Dismiss**") **[HB/16/359]**. Dismissal was sought on the basis that 9 December filings were in bad faith: a litigation tactic to circumvent the Delaware Judgment and blow up the Cayman trial rather than an attempt to utilize Chapter 11 to address any financial distress faced by the Partnership; because there is no financial distress – the Partnership's assets (which run to billions of dollars) and its available cash being vastly greater than the paltry debts stated in the filings – debts of a few hundred thousand dollars. The idea that this manifestly solvent Partnership is a candidate for Chapter 11 protection is risible. The true position is that it needs to be wound up in accordance with the parties' agreement so that its investments are managed appropriately and its economic stakeholders can benefit from and recover what is theirs – yet that is what Dr Harrison so wants to avoid, desperate as he is to cling on.

12 A scheduling hearing took place 15 December 2025, at which the Delaware Bankruptcy Court granted the Rigmora LPs permission to appear at this PTR, and "*grant*[ed] *relief from stay for the pretrial conference itself to go forward*" and agreed that "*the parties and judge can discuss*" what is "*left before* [the Cayman Court] *before the January 12th trial date*" **[HB/25/766]**, but declined to give directions for an expedited hearing of the Motion to Dismiss. The Delaware Bankruptcy Court also stated that if the Rigmora LPs wished to pursue an application to lift the Chapter 11 stay beyond appearing at and participating in this PTR, they would need to do so in a separate motion. The Rigmora LPs will shortly be filing such a motion (the "**Motion to Vary**"). They intend to ask the Delaware Bankruptcy Court to vary the Chapter 11 stay to permit this Court to determine (in advance of the Motion to Dismiss) the following issues (the "**Paragraph 10(b) Issues**"):

12.1 whether, as a consequence of the Chapter 11 Bankruptcy Proceedings, the Partnership has entered voluntary liquidation pursuant to paragraph 10(b) of the LPA;

12.2 whether, as a consequence of the Chapter 11 Bankruptcy Proceedings and the Delaware Judgment, the Court should make an order for compulsory winding up of the Partnership on the basis that the Partnership's substratum has gone; or

12.3 in the alternative, whether the Court should make an order appointing independent liquidators to conduct the voluntary winding up in lieu of the GP.

13 Consistent with the Bankruptcy Court's relief from stay for purposes of the PTR and its guidance that the parties could participate in this PTR and discuss what is left for this Court to address, the Rigmora LPs hereby seek to update this Court on their view as to that question, and separately intend to return to the Delaware Bankruptcy Court to file the Motion to Vary on or before 19 December 2025. Pursuant to Rule 4001-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, the Rigmora LPs must provide notice of a motion for relief from the stay (i.e. the Motion to Vary) at least 14 days prior to the hearing date. It is hoped that the hearing date can be set and the Motion to Vary can be determined in early January 2026, such that this Court may determine the critical gating question whether authority to act for the Partnership continues to rest with the GP or must, as a matter of Cayman law, vest instead in a liquidator who can act for the benefit of the LPs and preserve their valuable investment, as a proper fiduciary.

14 The Rigmora LPs therefore request that the Court direct a two-day listing, preferably during the week of 19 January 2026 (which the Rigmora LPs understand has been set aside for judgment writing in these proceedings), for a hearing of the Paragraph 10(b) Issues, and to hold that date pending the outcome of the Motion to Vary.

B UPDATE ON THE DELAWARE PROCEEDINGS

15 The trial of the Delaware Proceedings took place on 16 and 17 October 2025 and was followed by three hours of closing arguments on 21 November 2025.

16 By the end of the Delaware trial, the relief sought by the General Partner had changed significantly. As the Court will recall, the central complaint made by the General Partner in the Delaware complaint filed on 30 May 2025 (the "**Delaware Complaint**") **[HB/11/149]** had been that an email sent on behalf of the Rigmora LPs on 15 May 2025 (the "**15 May Email**") amounted to a repudiatory or anticipatory breach of the Rigmora LPs' obligations under the LPA. In reliance on that foundational (albeit baseless) accusation, the General Partner had requested eleven wide-ranging heads of relief from the Delaware Court.[3] They included:

16.1 A finding that the Rigmora LPs had "*breached the LPA by refusing to consider and has waived its rights to approve budgets" and an order for specific performance requiring*

[3] See the "Request for Relief" at p.84 of the Delaware Complaint. **[HB/11/232-234]**

the Rigmora LPs "to pay the $43mm in reasonable budget requests from January 2025, and budget proposal drawing on up to $31.3 mm in remaining capital commitments".

16.2 A finding that the Rigmora LPs had breached their "*common law duties to exercise [their] discretion in approving budgets in a rational and good faith manner, and have waived [their] rights to approve budgets*".

16.3 A finding that the Rigmora LPs had "*breached the LPA by preemptively* [i.e. in the 15 May Email] *refusing to respond to capital calls"* and an order for specific performance requiring the Rigmora LPs to "*fund capital calls on the seven Early-Stage Companies identified in the May 15, 2025 email, at an amount to be determined at trial, up to $214.2mm in remaining approved budget"*.

16.4 A finding that the Rigmora LPs conduct qualified them as a Defaulting Partner, and an order "*permitting ATP to impose a Default Charge against all of the Family Office LP's interests, or in the alternative, an order permitting ATP to impose a Default Charge against the Family Office LP's interests in the pools implicated by its breaches".*

16.5 An order enjoining the Rigmora LPs "*from interfering with ATP in the exercise of its discretion over the Fund once the Family Office LP is deemed to be a Defaulting Partner".*

16.6 Declarations that the General Partner's filing of the Delaware Complaint *"is not (i) an act taken in bad faith; (ii) an instance of willful fraud, willful misconduct or gross negligence; nor (iii) an intentional and material breach of the LPA".*

16.7 An order awarding costs against the Rigmora LPs.

17 As the Court knows, almost all (i.e. approximately 98%) of the capital contributed to the Partnership to date had been provided by the Rigmora LPs. Yet the relief claimed by the GP sought to disenfranchise the Rigmora LPs from the Partnership by extracting hundreds of millions of US$ more from them while removing their rights to approve or reject budgets (thereby removing a restriction on the GP's entitlement to call capital) and imposing a "*Default Charge*", through which the GP claimed to be entitled to reallocate 50% of their economic interests in the Partnership to Dr Harrison and his family trust.

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18 By the conclusion of the trial in the Delaware Proceedings, the GP had abandoned much of that extreme and unjustified relief. The relief ultimately sought was limited to:

18.1 Declarations that the Rigmora LPs had breached the LPA or their common law duties by refusing to consider budgets in good faith, and had waived their rights to approve budgets in future (the "**Budget Approval Issue**").

18.2 An order for specific performance requiring the Rigmora LPs to pay the Disputed Capital Calls (the "**Disputed Capital Call Issue**").

18.3 Declarations that the GP's filing of the Delaware Complaint was not taken in bad faith, and was consistent with its fiduciary duties and the terms of the LPA (the "**Bad Faith Filing Issue**").

18.4 A declaration that the default provisions in the LPA govern defaults and have not been amended (the "**Default Provision Issue**").

18.5 An order awarding costs against the Rigmora LPs (the "**Costs Issue**").

19 The Delaware Judgment was circulated to the parties on 5 December 2025. As recorded at p.1 of the Delaware Judgment, the decision "*orders specific performance of all but one of the capital calls and otherwise sides with the limited partners"* **[HB/12/237]**. More specifically:

19.1 In relation to the **Budget Approval Issue**, the Chancellor rejected the GP's claim that the Rigmora LPs had breached alleged duties of good faith when reviewing and approving budgets. The Chancellor held (at p.75) **[HB/12/311]**: "*At the time of contracting, Rigmora contributed nearly all the Fund's capital. It thus makes sense that Rigmora secured the absolute discretion to reject budgets and negotiated for the ability to preserve its capital by blocking budgets"*. Accordingly, all the GP's allegations to the effect that the Rigmora LPs are improperly "*starving*" the Partnership and using "*hostage-tactics*" by failing to approve budgets in supposed breach of the LPA were (and remain) baseless and groundless.[4] The Rigmora LPs have always had an

[4] See, for example, [4], [7], [13], [77], [95] of the Delaware Complaint **[HB/11/152, 154, 187, 194]**. The General Partner also sought to justify its refusal to distribute the Braeburn assets on the basis that "*the Family Office was refusing to approve new budgets"* (at [95] of the Delaware Complaint) **[HB/11/194]**. That justification fails in

unqualified right to approve or reject budgets. There is, and never has been, anything untoward or improper about them exercising those rights in their own interests - not least where they are the source of the billions of dollars of capital already contributed to the Partnership.

19.2 In relation to the Disputed Capital Calls Issue:

(a) The Chancellor rejected the GP's contention that the Rigmora LPs' Contingent Subscription to the Partnership exceeded US$2.85bn. Tellingly, even after trial, the GP was unable or unwilling to identify the precise amount of the Rigmora LPs' Contingent Subscription. The Chancellor agreed with the Rigmora LPs that their contingent subscriptions totalled US$2.425bn, over US$425 million less than the GP asserted: "*ATP has proven that Rigmora committed no more than US$2.425 billion"* (p.55) **[HB/12/291]**.

(b) The Chancellor also held that the Rigmora LPs had contributed only approximately US$2.3bn to the Partnership to date (and not US$2.69bn, as claimed by the Rigmora LPs (p.56)) **[HB/12/292]**. In doing so, the Chancellor declined to give credit for approximately US$390 million of "*deemed contributions*" under Amendment 20 of the LPA.

(c) The Chancellor therefore concluded (at p.56) that the Rigmora LPs had remaining contingent subscriptions to the Partnership of US$125m. That is **US$425m less** than the US$550m of contingent subscriptions which the GP had sought to establish in the Delaware Proceedings **[HB/12/292]**.

(d) The Chancellor held that the Disputed Capital Call for US$4,000,000 in respect of the portfolio company "*Replicate*" had been improperly made. The Chancellor agreed with the Rigmora LPs that there was no approved budget in respect of Replicate "*and ATP may not enforce Capital Calls for Replicate"*

circumstances where the Rigmora LPs have an absolute entitlement under the LPA to decide whether to approve budgets.

(p.65)[5] **[HB/12/301]**.

(e) The Chancellor held that the other Disputed Capital Calls (totalling US$96,960,925.88) had been properly made in accordance with the LPA. In doing so, the Chancellor held that the capital calls had been made for the purpose of funding the portfolio companies and – on that narrow basis – were made in good faith compliance with the requirements of the LPA (p.58 – 61) **[HB/12/294-297]**.

19.3 In relation to the **Bad Faith Filing** issue, the Chancellor refused to grant a declaration that its filing of the Delaware Proceedings was in good faith, in accordance with its fiduciary duties and the terms of the LPA. The Chancellor recognised that "*the underlying dispute around whether ATP's filing of this action constitutes a breach of its fiduciary duties is central to Rigmora's Winding Up Petition in the Cayman Litigation. As a common-sense matter, this court has little reason to resolve the issue, which was not a core dispute in this litigation"* (p.79) **[HB/12/315]**.

19.4 In relation to the **Default Provision Issue**, the Chancellor refused to grant the declaration sought by the GP because it served no useful purpose: "*ATP's request is so narrow as to be undisputed, as Rigmora does not deny that the Global Default Provisions have never been amended*" (p.80) **[HB/12/316]**. In short, while the meaning and effect of the default provisions are disputed between the parties, the GP was no longer seeking any declaration to resolve that dispute and still less pursuing the declaration it sought upon filing that it was entitled to impose a Default Charge on the Rigmora LPs. Instead, the GP was seeking a pointless declaration that the language of the default provision in paragraph 5(c) of the LPA had not been amended (which had never been disputed).

19.5 Finally, in relation to the **Costs Issue**, the Chancellor held that the GP had waived any claim for costs against the Rigmora LPs by failing properly to brief it (at p.81) **[HB/12/317]**.

[5] A consequence of that finding is that a payment of US$1.5m made by the General Partner to Replicate from Partnership assets on 21 August 2025 was improperly made, in breach of the LPA (as the Rigmora LPs have always maintained).

20 The Rigmora LPs are entitled to appeal the Delaware Judgment as a matter of right and intend to appeal the Chancellor's decision in relation to the Disputed Capital Calls Issue, including the Chancellor's conclusion that they were made in good faith. Respectfully, the Chancellor's judgment on this point cannot be reconciled with the equitable proper purpose rule under Cayman law, which constrained the GP as fiduciary when exercising its powers. That the GP was doing so for purposes which include (as its internal documents show) putting pressure on the Rigmora LPs and furthering its litigation strategy amply contravenes that rule.

21 In the meantime, the Rigmora LPs intend to comply with the Delaware Judgment. The Chancellor has ordered the Rigmora LPs to pay US$96,960,925.88 into a segregated account held until further order of the US Bankruptcy Court within 10 business days of 11 December 2025, which the Rigmora LPs will do once the GP provides the account number of where the monies are to be transferred.

22 The disparity between what the GP and Dr Harrison sought in Delaware and what it has achieved by the Delaware Judgment is stark:

22.1 The GP had claimed that: (a) the Partnership had US$550m of capital commitments remaining; (b) had US$214,170,000 of unfunded approved budgets; and (c) the Rigmora LPs had lost their rights to approve further budgets.

22.2 Instead, following the Delaware Judgment, the GP has at most US$29 million in capital commitment left to call and in circumstances where the Rigmora LPs are free to reject further budgets.

23 The Partnership's substratum has now indisputably gone. As explained by Jones J in Re Belmont Asset Based Lending [2010 (1) CILR 83] at [13] **[AB/4/17]**:

> *"The expressions "loss of substratum" or "failure of substratum" are derived from English case law dating back to a decision of the Court of Appeal in In re Suburban Hotel Co. (6) (L.R. 2 Ch. App. at 750). Whilst it may be helpful for the court to categorize circumstances in which it will be considered just and equitable for a company to be compulsorily wound up, I question whether it is sensible to adopt terminology invented in the context of England's 19th century economy. A company was said to have "lost its substratum" if the purpose for which it was formed can no longer be carried out (In re Bristol Joint Stock Bank (2) (44 Ch. D. at 712, per Kekewich, J.)); if the company has practically ceased to carry on business because it has become impractical to do so (In re Diamond Fuel Co. (3) (13 Ch. D. at 408, per James, L.J.)); or if the company was formed to pursue a specific business*

> *opportunity which is no longer available to it (In re Haven Gold Mining Co. (4)). To translate these statements into a modern context, it can be said that it is just and equitable to make a winding-up order in respect of an open-ended corporate mutual fund if the circumstances are such that it has become impractical, if not actually impossible, to carry on its investment business in accordance with the reasonable expectations of its participating shareholders, based upon representations contained in its offering document. If such a company, organized as an open-ended mutual fund, has ceased to be viable for whatever reason, the court will draw the inference that it is just and equitable for a winding-up order to be made."*

24 As the Grand Court put it in Re Freerider [2010 (1) CILR 486], the Court's just and equitable winding up jurisdiction is engaged "*if the circumstances are such that it is impractical, if not actually impossible, for the company to carry on its business in accordance with the reasonable expectation of its participating shareholders"*: Freerider at [71] **[AB/5/55]**. That is what has now happened in the context of this Partnership, given the Delaware Judgment.

25 The fact that the Partnership is no longer able to carry on its business within the framework of the LPA has been conceded by the GP by the commencement of the Chapter 11 Bankruptcy Proceedings. While the GP has yet fully to explain the relief sought in those proceedings, and has not submitted any draft reorganization plan, its Chapter 11 filings state that the combined indebtedness of the GP, the Partnership and ATLS is just **US$204,066**, as compared with partnership assets of between **US$1bn and US$10bn**. Whatever "reorganization" the General Partner is contemplating in the Chapter 11 Bankruptcy Proceedings it must involve some attempt to vary the terms on which Rigmora LPs have agreed to participate in the Partnership without their consent.

26 Further, in a declaration filed in the Chapter 11 Bankruptcy Proceedings on 15 December 2025, Dr Harrison has stated that one of the aims of the Chapter 11 Proceedings is to effect a "*restructuring of the Partnership's capital structure"* and to "*bring in new investors to replace the defaulting limited partners"*[6]. It appears, therefore, that Dr Harrison intends to use the Chapter 11 Proceedings to dilute or remove the Rigmora LPs' interests in the Partnership on the premise that they are "*Defaulting Partners*". However:

26.1 the Rigmora LPs are not "*Defaulting Partners*" under the LPA, and intend to comply with the Delaware Judgment;

[6] At paragraph [17] **[HB/24/621]**.

26.2 the GP is enjoined, by this Court's Order of 1 August 2025, from taking any steps to "*designate, deem or treat"* the Rigmora LPs as a "Defaulting Partner" until further order of this Court. Despite that, the GP and Dr Harrison clearly *are* treating the Rigmora LPs as "*defaulting limited partners"* for the purposes of the Chapter 11 Bankruptcy Proceedings in breach of the 1 August 2025 Order; and

26.3 in the event of a winding up of the Partnership on the Petition, any alteration in the status of the Partnership's members will be automatically void absent a validation order from this Court (see s.99 of the Companies Act). The GP is therefore unable properly and effectively to pursue a "*restructuring of the Partnership's capital structure"* or seek to "*replace"* the Rigmora LPs as supposed "*defaulting limited partners"* while the Petition remains pending.

27 The Rigmora LPs maintain that Dr Harrison and the GP are abusing the Chapter 11 process, by which they seek to renege on the Cayman law governed LPA, collaterally attack the Delaware Judgment, and this Court's winding up jurisdiction too. The US Bankruptcy Court will rule on that in due course when disposing of the Motion to Dismiss.

28 The key point for present purposes is that the commencement of the Chapter 11 Bankruptcy Proceedings concedes that the substratum of the Partnership is now gone. The obvious and conceded loss of the Partnership's substratum is a sufficient basis for the Court to wind up the Partnership on just and equitable grounds – and to do so on a summary basis.

C THE CHAPTER 11 BANKRUPTCY PROCEEDINGS

29 Irrespective of whether they are abusive, the commencement of the Chapter 11 Bankruptcy Proceedings has further important implications for the Partnership: it has triggered the commencement of voluntary winding up, as explained below.

Voluntary Winding Up of the Partnership

30 The ELP Act provides that the partners of an ELP can agree that the occurrence of certain events will trigger the commencement of a voluntary winding up:

30.1 S.36(1)(a) provides that an ELP "***shall*** *be voluntarily wound up in accordance with the*

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provisions of the Partnership agreement - (a) at the time or upon the occurrence of any event specified in the partnership agreement" (emphasis added) **[AB/3/8]**.

30.2 S.36(10)(d) provides that the winding up of an exempted limited partnership "***shall*** *be deemed to commence upon the earlier to occur of any of the following- … (d) the occurrence of an event provided by the partnership agreement upon which the exempted limited partnership is to be wound up*" (emphasis added) **[AB/3/10]**.

31 Pursuant to paragraph 10(b) of the LPA, it has been agreed that the Partnership "***shall*** *be wound up and dissolved (i) upon any event in respect of the General Partner specified in section 15(5) of the ELP Law*" (emphasis added) **[HB/5/56-57]**. The "*ELP Law*" is defined in the LPA by reference to the 2012 Revision "*as amended from time to time*" **[HB/5/16]** and the "*events"* identified in s.15(5) of the ELP Act **[AB/2/5]** are now found at s.36(7) of the ELP Act. Those events include, under s.36(7)(b) *"the commencement of liquidation, bankruptcy or dissolution proceedings… In relation to the sole or last remaining qualifying general partner*" **[AB/3/9]**.

32 The commencement of the Chapter 11 Bankruptcy Proceedings in respect of the GP is thus an "*event*" specified in s.15(5) of the ELP law (2012 Revision) and s.36(7) of the ELP Act (2025 Revision). The contractually agreed and statutorily mandated consequence under paragraph 10(b) of the LPA together with ss.36(1)(a) and 36(10)(d) of the ELP Act is that a voluntary winding up of the Partnership is deemed to have commenced on 9 December 2025, upon the filing of the Chapter 11 Bankruptcy Proceedings. Paragraph 11(a) of the LPA **[HB/5/57]** contains further provisions concerning the winding up of the partnership in respect of the provisions under paragraph 10(b) including for the GP to act as the liquidating agent. That is subject to any contrary order of the Court: see further in that regard below.

33 Thus, the question now is how the Partnership should be wound up and by whom. Absent Court intervention, the GP would be responsible for the voluntary winding up of the Partnership. That is unacceptable to the Rigmora LPs for reasons that will be obvious to the Court. As holders of the overwhelming majority interest in the Partnership, their views on who should conduct the winding-up carry decisive weight: see §34 below.

34 The Rigmora LPs' preferred approach would be for a compulsory winding up order to be made. There are two reasons for this. First, to preserve the effect of s.99 of the Companies Act

[AB/1], which automatically avoids any dispositions of the Partnership's property made after the commencement of the winding up (i.e. the date of presentation of the Petition). As the Court will recall, the Rigmora LPs have raised concerns for months over dispositions of Partnership property made by the GP during the pendency of these proceedings (including its enormous expenditure on legal fees, and various payments totalling US$39,306,044 made between 4 August 2025 and 4 September 2025). Second, it may be easier for court-appointed liquidators in a compulsory liquidation to obtain recognition under Chapter 15 of the US Bankruptcy Code, than it would be in a voluntary liquidation.

35 The alternative approach would be for the Court to remove the GP as liquidating agent, and replace it with independent officeholders. The jurisdiction for the Court to make such an order is well-established. In One Thousand & One Voices Africa Fund LP [2025] CICA (Civ) 9, the CICA confirmed that the Court has jurisdiction to replace a general partner as a liquidator in a voluntary winding up, irrespective of whether any contractual "*removal event*" has occurred **[AB/8/152]**: "*The ELPA provides a clear route by which a limited partner may "set at naught" the agreed contractual process for liquidation of an exempted limited partnership"* (at [31]). Further, the Court will ordinarily make such an order at the request of the majority limited partner. In One Thousand & One Voices Africa Fund LP (unreported, FSD 22 of 2024 (IKJ), 9 May 2024), Kawaley J held (at [25]) **[AB/7/127]**:

"Where the overwhelming majority of the limited partners of an exempted partnership seek the appointment of a voluntary liquidator because they have lost confidence in the incumbent contractually agreed liquidator, this Court should likewise ordinarily give "due respect to the commercial sense of those involved"".

It is for the Cayman Court to decide how to manage its proceedings

36 The Chapter 11 Bankruptcy Proceedings have not triggered an "*automatic stay*" of these Cayman Proceedings under Cayman law in the manner that Walkers has suggested. The Rigmora LPs seek to fully comply with Chapter 11 and will address the impact of the "*automatic stay*" and how it is to be implemented as a matter of Cayman law during the PTR on December 17.

37 As an initial matter, it is important to note that at a status conference before the U.S. Court on December 15, that Court expressly ruled that the PTR on December 17 may proceed in full.

The Rigmora LPs had requested "*immediate relief from the automatic stay to allow the parties to proceed with that conference on the merits.*" At the December 15 status conference, the Court held "*I will grant relief from stay for the pretrial conference to go forward in the Caymans on Wednesday*" **[HB/27/766]**.

38 With respect to the impact of the Chapter 11 Bankruptcy Proceedings on the proceedings before this Court, Chapter 11 is not part of Cayman law. Nor does Cayman law provide (whether under statute or at common law) for any automatic recognition of the effect of foreign bankruptcy proceedings or for an automatic stay of Cayman proceedings where such foreign proceedings are commenced and pending. These are matters for decision by *this* Court.

39 The Court of course has its own power under Cayman law to stay its proceedings. That power will be exercised in the usual way where the interests of justice so require and in accordance with the Court's duty to further the Overriding Objective. The Court will also exercise its power (where it properly can) in accordance with the common law principle of modified universalism, by lending assistance to foreign insolvency proceedings that it is prepared to recognise: see Singularis Holdings v PricewaterhouseCoopers [2015] A.C. 1675 (PC) at [19], [54] **[AB/10/192,203]** ; In the Matter of China Agrotech Holdings [2017] (2) CILR 526 at [26]) **[AB/6/99-101]**.

40 There are, of course, limitations to that common law principle including that the granting of relief must be consistent with the substantive law and public policy of the assisting court: Singularis Holdings, at [19] **[AB/10/192]**, [25] China Agrotech, at [26(b)] **[AB/6/99]**. Cayman substantive law includes the Court's long-established statutory jurisdiction – founded on the important public policy of the Court supervising legal persons that are created and exist under Cayman law alone – to wind-up local entities, including ELPs such as the Partnership, which is registered under the ELP Act, and constituted and governed by that Act and the Cayman-law governed LPA.

The Chapter 11 moratorium

41 The Rigmora LPs are naturally concerned to comply with the Chapter 11 stay. The stay and the conflict of law over its applicability is a particularly critical issue here, where there is a

prior winding up proceeding in the Cayman Court, but the Partnership has assets located in the US.

42 The Rigmora LPs are also concerned that the Chapter 11 cases that have been filed as to the Partnership and the GP are utterly improper and were filed in bad faith, to avoid this Winding Up proceeding, and for all the reasons set forth in the Rigmora LPs' Motion to Dismiss filed on 12 December 2025 **[HB/16/362]**. The Rigmora LPs had hoped that the Motion to Dismiss could be resolved in time to allow the trial of the Cayman Proceedings to proceed as ordered. However, at the scheduling hearing on 15 December 2025 the Delaware Bankruptcy Court declined to set down a procedural timetable which would allow that to happen. The Delaware Bankruptcy Court also held that the alternative relief sought in the Motion to Dismiss (seeking to lift the stay under §362 of Chapter 11 to allow these proceedings to continue) could not be advanced separately from the rest of that Motion. The Delaware Bankruptcy Court indicated that a separate filing would be required if the Rigmora LPs wished to vary the Chapter 11 stay before the Motion to Dismiss is determined.

43 As noted above in paragraph 13, the Rigmora LPs therefore intend to file such a motion for relief from the stay as it relates to the Cayman Winding Up Petition (i.e. the Motion to Vary) on or before 19 December 2025. As explained above, the Rigmora LPs expect the Motion to Vary to be determined in early January 2026.

D THE CONDUCT OF THE CAYMAN PROCEEDINGS

44 The Rigmora LPs ask the Court to use some (relatively small part) of the time reserved for the January determine the Paragraph 10(b) Issues.

45 They are narrow and self-contained questions of Cayman law. They turn on the construction of a single provision of the LPA, and the consequences of the Delaware Judgment and Chapter 11 Bankruptcy Proceedings under the LPA and ELP Act. These Cayman law issues are capable of being determined in one or two days, without the need for the Court to determine any contested factual issues. The Cayman Court’s views on these questions of its own law are likely to be of critical importance, not just in this jurisdiction but in the Chapter 11 proceedings too.

46 The Court is invited to maintain a two-day listing, preferably during the week of 19 January 2026, for a hearing of the Paragraph 10(b) Issues; and direct all the other issues in the Petition

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Proceedings, as well as the Writ Proceedings as a whole, be adjourned, with liberty to apply.

Andrew Scott KC

Campbells LLP

16 December 2025

This SKELETON ARGUMENT was filed by Campbells, Attorneys for the Petitioners/Plaintiffs, whose address for service is Floor 4, Willow House, Cricket Square, Grand Cayman, KY1-9010 (Ref: LMF/PDK/HF/19135-44991) #3429983v1

EXHIBIT S

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 146 of 2025 (JAJ)

B E T W E E N :

(1) Unicorn Biotech Ventures One Ltd
(in its capacity as General Partner of Rigmora Biotech Investor One LP)
(2) Unicorn Biotech Ventures Two Ltd
(in its capacity as General Partner of Rigmora Biotech Investor Two LP)

Plaintiffs

- and -

ATP III GP, Ltd
(in its capacity as General Partner of ATP Life Science Ventures, L.P.)

Defendant

CAUSE NO. FSD 151 of 2025 (JAJ)

In the Matter of the Exempted Limited Partnership Act (2025 Revision), the Companies Act (2025 Revision) and the Partnership Act (2025 Revision)
And In the Matter of ATP Life Science Ventures, L.P.

MR A SCOTT KC (instructed by Campbells LLP) appeared on behalf of the Plaintiffs.

MS S PREVEZER KC (instructed by Walkers (Cayman) LLP) appeared on behalf of the Defendant.

TRANSCRIPT OF HEARING ON 1 AUGUST 2025

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Friday, 1 August 2025

(10.00 a.m.)

JUSTICE ASIF: Yes. Good morning, Mr Scott, Ms Prevezer.

MR SCOTT: Good morning, My Lord.

MS PREVEZER: Subject to Your Lordship, it's agreed that I will go first this morning in relation to the matters that you've got before you.

JUSTICE ASIF: All right. Just before we get started----

MS PREVEZER: Yes.

JUSTICE ASIF: -- I do want to say I'm pretty unhappy with the way this has now come before me on a number of different bases. First of all, I'm really unhappy about the length of pre-reading time which I was asked to devote to this matter. There was no disclosure that you were going to be asking me to spend two days pre-reading when this matter was proposed for listing today. If I'd known that, I would not have listed it for hearing today. I would have listed it for hearing next week because my diary this week was full of other matters.

I'm pretty disappointed because at the time that both sets of attorneys addressed the court and requested listing, they must have known, because skeleton arguments must have been in the course of being prepared, of the kind of time that they were going to ask the court to devote to pre-read. Now, as I indicated on 22 July, in fact, I only had half a day to pre-read. Luckily, for the parties, I was able to claw back half a day because another case went short, but that is really unfair on other users of the court who are waiting for me to give judgments in matters going back now to November that I can't deal with because I'm having to drop everything and spend time on this case.

It's also pretty inadequate because I have to say it took me a whole day just to read the skeleton arguments and a selection of the documents referred to. So even the two days that was estimated is really inadequate. I'm also really unhappy with the content of skeleton arguments. First of all, as both of you know, skeleton arguments should not be a speaking note. Both of these read as if that's what they are. They're not skeletons. Mr Scott, your skeleton is 57 pages. Ms Prevezer, yours is 70 pages. That is not a skeleton.

Secondly, skeleton arguments should identify concisely – and both of you know this from the Commercial Court Guide in England – the nature of the case, background facts only

insofar as they are relevant, propositions of law relied on, with references only to the necessary authorities and the submissions to be made. Now, in England, there's a 25 page limits for an application that's listed for more than half a day, and that is the sort of target length for a skeleton argument we should be aiming for here, not 70 pages.

Thirdly, I have to say, Ms Prevezer, I did not find the GP's skeleton argument remotely helpful in understanding what it is that the GP is asking me to decide. There's no route to decision or a decision tree or anything like that that makes it clear to me what it is that I have to analyse and decide in reaching a conclusion on the points that you must give me to consider. Also on that, I'm also not helped by the fact that neither of the parties have really, despite the court asking on two or three occasions, separated out the two actions, the writ action and the petition, because the issues on the two different actions are not exactly the same. There's some overlap, but there are areas that are different. At this stage, I still don't really have a handle on quite how those differences impact the decisions that I have to make.

Finally, I am concerned how we're going to get through all of the matters which are listed for hearing today. We have a day. There is a lot to get through and neither of you seem to have factored in any time for me to think about what it is that I'm going to decide, and to express the decision even if I can't give detailed judgment, which is highly unlikely given the complexity of what's being put before me. Now, I appreciate there's some time pressure because of what's going on in Delaware, but I do want to say I am particularly unhappy with the way this case is now entered in front of me on the first day of vacation.

MS PREVEZER: My Lord, (inaudible) and we are where we are, and I can only apologise for our part for any and all of the things and matters of which you complain. The purpose for the length for the skeleton argument was to give Your Lordship the full narrative so Your Lordship would not need to spend time in the undergrowth of the documents because Your Lordship is not dealing with the merits of the underlying dispute today.

Your Lordship is dealing with case management procedural matters, which boil down to not very much, with respect. They boil down to two proposed amendments to the order that Your Lordship made on 20 June. They boil down to whether there should be a stay of both the writ and the petition here until after Delaware has been determined at first instance, and revert then back to Your Lordship for review as to the steps to be taken. We say there should be no directions given until then, and it's seven and a half weeks' or eight weeks'

time, and that's what you're being asked to do. Then, if you are not with us on that, there's a dispute about the directions that need to be given up to trial. So that's what this boils down to.

I'm sorry if Your Lordship didn't find my skeleton helpful; it was intended to be helpful. It set out our position. I recognise that Your Lordship has had put before him a huge amount of underlying evidence, which actually go to the merits which Your Lordship, as I said, deemed----

JUSTICE ASIF: Which is totally irrelevant----

MS PREVEZER: -- totally irrelevant, and I wasn't going to take Your Lordship to you----

JUSTICE ASIF: -- and, Ms Prevezer, which did not, in my view, really need to be referenced in skeletons because it is irrelevant.

MS PREVEZER: Well, My Lord, what Your Lordship will obviously have appreciated, there is a lot of upset and anger between the parties in the way that the----

JUSTICE ASIF: There always is in these things.

MS PREVEZER: -- merit has been-- always is, but Your Lordship will appreciate my clients have not had an opportunity to have their narrative before Your Lordship. Your Lordship had my learned friend----

JUSTICE ASIF: And, Ms Prevezer, your function is to say to your client, "I appreciate that you're unhappy that the court has not heard your narrative, but this is not the occasion."

MS PREVEZER: My Lord, without, you know, disclosing the conversations I've had with my client, of course I have made that clear, but the merit that you-- there are a number of factual points that I need to take Your Lordship to and I will do that very speedily this morning. I will try not to repeat the matters in our skeleton, but as I say to Your Lordship, the procedural issues before Your Lordship are really quite short. There's, as I said, two amendments that we propose, and I can give you the reasons why we propose them, to the order Your Lordship made on the 20th, and then there's this question of stay or not stay of the two Cayman proceedings until Delaware is determined.

On that, the hearing is going ahead, despite my learned friend's clients' efforts to forestall it, in Delaware on the 17-18 September. It's been expedited specifically by the chancellor in Delaware. It's anticipated a judgment be given, because it's been expedited because it's urgent, in two or three weeks thereafter. So by the beginning of October, there'll be a decision in Delaware, and what we have been proposing is that this matter then comes back

so this court can review where we are, what's left. If we're right and Delaware is upheld, we say the writ summons will just go away. The injunctions fall away. There may be bits of the petition that are still outstanding, and that will need to be reviewed but, on any view, there's going to be wholesale revisions of pleadings, maybe different disclosure, etc., following on from Delaware.

Delaware is going to be a game changer. If we lose in Delaware, then the capital calls, the subject matter of the writ, will fall away because they'll be found to have been wrongly issued, I say-- or not justified because my learned friend is right; his clients have subscribed the whole of their capital commitment. There's no more capital to be called, end of, so that will fall away, much of the petition will fall away because it's based on the calling of those capital calls, and then there'll be an issue as to what happens then going forward on the petition. So Delaware, we say, is a game changer, hence the application for the stays.

The stay's delay, in bringing that before Your Lordship, has been much about availability and timing. We were told, I think, by the court's office that Your Lordship had a day to pre-read. As Your Lordship will see in my skeleton, we thought a day was sufficient, hence the length of the skeleton to allow Your Lordship to have all you needed to know in the skeleton. But again, I apologise if it wasn't what Your Lordship wanted or appreciated, and it took Your Lordship some time to read the skeletons. But that's where we are today, and I would hope we'd be able to do this in the time available, but I can only apologise from our part. None of this was with any malevolence or malice.

JUSTICE ASIF: No, I'm sure it wasn't. I'm absolutely sure it wasn't. Anyway, well, Ms Prevezer, I've thrown my toys out of the pram. Let's get on with it.

MS PREVEZER: My Lord, may I start then?

JUSTICE ASIF: Yes.

MS PREVEZER: Your Lordship knows there are five things before you this morning: the return date of the injunction, our summons is for stays of both the writ and the petition, and then there's the directions, and my learned friend's been very gracious to allow me to go first. That is really because your order on the 20th provides that it was to carry on unless there was a----

JUSTICE ASIF: So can I just be clear? So the order that we're going to deal with these is the return date on the injunction first?

MS PREVEZER: Absolutely, absolutely.

MR SCOTT: Then the two stays, then the directions.

MS PREVEZER: Yes, yes. Well, My Lord, and what I propose and I said to Mr Scott is that I was going to do the background narrative, and if Your Lordship will forgive me, I do need to make some headline points and my clients will expect that to be heard. It's important that Your Lordship has it because it is relevant to the way the injunction is framed and how it was obtained, and I'm going to do this by reference to Mr Scott's skeleton. So if Your Lordship has that to hand, I think that's probably the easiest way to do it.

JUSTICE ASIF: I do.

MS PREVEZER: If Your Lordship turns to paragraph 5, there's an introductory section where he deals with the injunctions on paragraphs 4 to 11, and he describes the essence of the dispute in the second sentence as being whether the GP can lawfully call capital under the LPA beyond the amounts that the family office agreed to subscribe. With respect, that is not the dispute. That assumes too much. The dispute is about the amount that the family office has contractually agreed to subscribe under the LPA, and whether the family office was entitled to refuse to pay the capital calls, the subject matter of the Delaware complaint and the writ summons issued this year.

The family office contends, and quite rightly say that they have paid all that is contractually obliged to be paid. We say no, that's in Dr Harrison's evidence and our skeleton at paragraph 25. We say there's about 600 million of capital to be contributed yet by the family office, but that is not for Your Lordship today. It will be determined at the hearing in Delaware; preparation for that hearing is well-advanced. They're doing discovery, depositions, witness evidence, etc. As Your Lordship knows, my learned friend sought to prevent that hearing happening, and you've seen the transcript of the application by my learned friends to stay the matter in Delaware. I don't know if Your Lordship had a chance to look at the transcript?

JUSTICE ASIF: I did actually read that transcript.

MS PREVEZER: Thank you. Well, Your Lordship will recall, critically for today's purpose in relation to the stay, my learned friend's clients submitted there that the very same issues, or substantially the same issues, would be dealt with there as here and they submitted in support of their stay that running two cases in parallel was precisely the type of wasteful duplication and race to judgment that was deprecated on the authorities on which they relied.

Your Lordship will see at paragraph 5 also that they talk about appropriation of the family office's interest for the benefit of my clients, and I do need to deal with that because that is, with respect, a very misleading characterisation of what happens when the global default mechanism is instrumented. Now, paragraph 5C of the LPA, which is the global default mechanism, is at A/0426. I don't need Your Lordship to turn it up at the moment. Your Lordship was shown it on 20 June. The default charge there is just one of the remedies available to the GP in the event of an LP default. Its operation is set out, for Your Lordship's note, at 0426-0428 in the bundle. It's explained by Dr Harrison at paragraph 54 in his third witness statement, and that Your Lordship will find at A bundle, 0238.

But to use the word "appropriation" is misleading. There is no appropriation if it's intended to apply that the assets are unlawfully taken away and there is nothing opportunistic about it, notwithstanding what is said in my learned friend's skeleton or by Mr Bogdanov's evidence. In the event of a default and an LP being deemed a defaulting partner, there's no designation by my client, as was told to Your Lordship last time. The GP may cause the LP's number of preferred units and investment common units to be reduced by up to 50 per cent of its corresponding number of units and then they are allocated to non-defaulting holders of the preferred units in proportion to their respective number of units.

Now, Dr Harrison's evidence, I don't know whether Your Lordship had time to read his third witness statement?

JUSTICE ASIF: No.

MS PREVEZER: Right. Well, what he explains there is that this contractual global default mechanism, as it's referred to, has been contained in the LPA since its inception, and it has remained unchanged through 22 versions of the LPA negotiated by the parties and their lawyers, its importance has always been very clear and it hasn't been challenged until this dispute. So, whilst Mr Bogdanov now says he doesn't accept the construction we say applies, Your Lordship will remember the very significant weight that was placed on it as being draconian before Your Lordship on 20 June.

But the intent and purpose of that mechanism is simply to allow the partnership to remove an LP that is not complying with its obligations under the LPA after giving them a default notice and time to pay and to enable the use of funds and to obtain new capital, and it exposes the LP to a default charge and not simply a default charge, the whole of its interests

and not simply to the project that the LP wishes to abandon. Here, it appears that the family office doesn't want to support new companies, the new portfolio companies, or early stage portfolio companies, I think that's what you referred to. But what it enables the GP to do is to use the values in the partnership to generate liquidity to support the partnership going forward, whilst it takes steps to remove the defaulting LP, and that is what the parties contracted for at the outset, nothing draconian. That is what they contracted for.

Now, it is absolutely undeniable that the family office has contributed a very large percentage of the capital to the partnership. The correct percentage is 97 per cent, not 99 per cent. However, Your Lordship will have appreciated contribution of capital is not ownership. The fund is governed by the LPA, and in its submissions on 20 June and today the family office has singularly ignored the interests of the other LPs, that's Dr Harrison, Les Pommes and 14 other LPs and their carried interest which runs to tens of billions.

The family office has had the LP register of interest for a long time. The status of these 14 other LPs has never been challenged until this dispute, and I can tell Your Lordship on instructions that the signed counterparts for these LPs have now been disclosed in Delaware. So we hope that will put an end to this arid and unfounded dispute about these other 14 LPs. There are 17 LPs in all, including the plaintiffs and Dr Harrison and Les Pommes. Dr Harrison has contributed 54.7 million-odd in capital, which is not an insubstantial amount for any individual, and these 14 employees have contributed their time and expertise, and as we state in our skeleton, what Your Lordship was not told on 20 June was that the family office has received back 2.1 billion of the 2.3 billion capital it has already contributed as a result of the very successful running of this partnership by the GP and the other LPs.

It's right that the injunction has been in place for more than a month, and that really has been as a result of scheduling and availability issues than anything else. As I said, we are and have been prepared to accept some limited restraints on the exercise of powers and duties under the LPA pending the termination in Delaware. But we do not accept, for reasons I'm going to come on to very quickly, that the present injunction is properly holding the ring, a term which is very often used.

Just reminding Your Lordship very quickly of the chronology that brings us here. The Delaware complaint was 30 May. It covers the very same issues as the writ summons, and

that's been expressly admitted by the family office in the Delaware court. Quinn Emanuel, the GP's lawyers, sought to serve Latham -- not serve, provide the complaint documents to Latham after the complaint was issued. They refused to accept them. They said they weren't the litigation counsel. But it is absolutely clear, and it's never been contested, that when my learned friend's clients filed their writ summons, they were aware of the contents of the complaint, and whilst we do not seek a stay today on forum non grounds under the clause [13/18] that if it's not a breach, certainly it's against the spirit of that clause, we seek a stay today on case management grounds.

It is not, we say, a principally Cayman dispute. Your Lordship may or may not have appreciated but the LPA, whilst it's governed by Cayman law, it invokes Delaware law with regard to the standard of conduct required from the GP, which is in issue in the proceedings.

JUSTICE ASIF: Well, I saw that in your skeleton. Can you show me how that arises in the LPA?

MS PREVEZER: Yes, I can. Yes, the Delaware law definition is a gross negligence and it's at bundle A2/21/0403, let me find that. 0403. That's the exhibit of the LPA, Your Lordship has that and in the first clause at paragraph 2G.

JUSTICE ASIF: 0403?

MS PREVEZER: So 0403 is where it starts. It's tab 21 in my bundle. It's the first tab in volume 2.

JUSTICE ASIF: Yes.

MS PREVEZER: And the definition of gross negligence. The standard of care, Your Lordship will see, on page – if you're using the numbering at the top – at 0410.

JUSTICE ASIF: Right.

MS PREVEZER: And then gross negligence is used in various places. It's used in the removal of the GP at 0416.

JUSTICE ASIF: Let me just look at the top (inaudible) first so that (inaudible).

MS PREVEZER: Your Lordship sees on page 8, 0411 refers to the laws of the state of Delaware, top of 0411.

JUSTICE ASIF: That's where I was just looking.

MS PREVEZER: Yes. That's the reference to the laws. It appears in the GP removal event, which is at 0416 at (ii) if you go down towards the end, gross negligence appears there. It appears again in relation to the standard of care in the course of a winding up on 0449.

JUSTICE ASIF: Excuse me one moment.

MS PREVEZER: Apologies, yes?

JUSTICE ASIF: Where is gross negligence defined?
MS PREVEZER: (Inaudible).
MR SCOTT: I think it's paragraph 2(g).
UNKNOWN SPEAKER: 2(g).
MS PREVEZER: 2(g). Yes, that's it.
JUSTICE ASIF: Oh, I see.
MS PREVEZER: Yes.
JUSTICE ASIF: Sorry, it follows on from the bit I was just----
MS PREVEZER: Sorry, I was (inaudible).
JUSTICE ASIF: That's okay.
MS PREVEZER: And that----
JUSTICE ASIF: So that bleeds into 416?
MS PREVEZER: That bleeds into 4-- it gets 416, it also bleeds into 449 which relates to the standard of care in the process of winding up, and it also bleeds into the-- a carve out from the indemnification at 0459.
JUSTICE ASIF: Sorry, 459? 459?
MS PREVEZER: 0459, it's a carve out where there's been gross negligence on the indemnification, but it's the standard of care point that invokes Delaware law, which is important for present purposes. But as Your Lordship will recall, the portfolio companies of the partnership are Delaware companies. Critically, as Your Lordship was told on the last occasion, and shown I think, the parties expressly agreed the dispute sum of the LPA could be determined either in this court or in Delaware, and Your Lordship sees that-- I'm sorry, you've just put your bundle away, but it's in 0479-- is the forum submission to jurisdiction clause that's been referred to in the skeleton at tab 18G, apologies.
JUSTICE ASIF: That's all right. Sorry, give me that page reference again?
MS PREVEZER: It starts at 0477, "Applicable law remedies for breach of injunction."
JUSTICE ASIF: Yes.
MS PREVEZER: And at the bottom, if you go over the page to (vi).
JUSTICE ASIF: Yes.
MS PREVEZER: Your Lordship will see-- Your Lordship I think was shown it last time, allowing it to be here at the top of 0479. So the parties expressly agreed it could go to Delaware. As we've made clear in our skeleton, there is-- sorry, do tell me if I'm going too fast.
JUSTICE ASIF: No, it's fine.

MS PREVEZER: As we make clear in our skeleton, there is simply nothing in the point that the capital calls, the subject matter of the writ summons, are not expressly mentioned in the complaint for its relief. We've given you a section in our skeleton where the overlap is made clear, but the Delaware complaint – it's in Your Lordship's bundle – is an action for specific performance and equitable relief to address what the GP contends to be the family office's breach of its obligations to make contributions to the partnership under the LPA, by first of all refusing to fund the capital calls, the subject matter of the writ summons. Secondly, by arbitrarily and irrationally refusing to approve new budgets for the more mature portfolio companies.

As I said, we've set out in our skeleton, and I do apologise for its length, at paragraph 41 to 49, the overlap between the relief sought in the Delaware complaint and the written summons and the petition. So the partnership's right to call capital and the family office's peremptory claim that it's not required because it's already subscribed enough are the threshold issues in Delaware. The question of the purpose of the capital calls is parasitic on those issues, and the Delaware court will determine in September, or early October latest, the right of the GP to make the capital calls and whether my learned friend's clients breached their obligations under the LPA by refusing to pay them. If answered in my client's favour, there will be no sensible argument that the capital calls were issued for an improper purpose or in breach of fiduciary duty. So the 18 and 19 September hearing will determine the capital calls, the subject matter of the writ summons.

Now, just going back very quickly to the chronology that are relevant to the injunction. The family office issued its writ on Monday, 2 June, Your Lordship will know, in full knowledge of the complaint, and then it issued a petition on 6 June. It then issued an injunction summons on 12 June, which was the day before the scheduled expedition application in Delaware. One assumes that was because they wanted to tell the Delaware court they had done that. Obviously, the Delaware complaint was expedited, nonetheless. It was opposed by my learned friend's clients. The court rejected that.

The injunction summons was then amended on the 18th to correct certain errors that my solicitors pointed out to Campbells. What the family office then did was they issued a motion to stay the Delaware complaint on 17 June. On the same day, we offered an undertaking not to take any steps to enforce the default notices in relation to the very capital

calls before this court, pending the earlier determination of the Delaware complaint or the writ summons, but that wasn't accepted by my learned friend's clients, and we have since offered a similar undertaking to cover any future capital calls in the event that Your Lordship is prepared to exceed with our proposed amendment to the injunction.

So then what happens is that the injunction came before Your Lordship on 20 June, contending it was urgent when it wasn't, and it clearly wasn't for the reasons explained at paragraph 32 of our skeleton and, indeed, Your Lordship rightly made the point on 20 June that nothing could happen in relation to the default notices until 17 July, 30 days after they had been issued. The answer given to Your Lordship on urgency, namely that they were operating under a very strict timeline, with respect, simply wasn't right. From 20 June to 17 July, we could have had an *inter partes* hearing on the injunction, and Your Lordship can see the transcript for Your Lordship's hearing is at A/0393.

What Your Lordship also was not told on 20 June was that the family office could have cross-motioned in the complaint in Delaware for an injunction in the terms of the injunction sought from this court or for declaratory relief in relation to the capital calls, and that injunction application or cross-motion could have, arguably, been heard on 13 June in Delaware at the expedition hearing, but it wasn't.

Your Lordship was also not reminded of-- although Your Lordship is well familiar of the matter, is that under section 99 of the Companies Act, now the petition has been issued, there is this issue of validation of actions taken by the GP going forward. So my learned friends had protection already in place by reason of them simply filing the petition on 6 June and, as Your Lordship knows, their stay application in Delaware was refused on 27 June.

Just picking up very quickly, then, some of the found facts in my learned friend's skeleton relevant to the injunction and they're covered in his skeleton between B and C, so that's-- It doesn't have page numbers on. It's paragraph 18 onward. As I said to Your Lordship, I'm very conscious that a very large amount of evidence was put before you and for what are clearly procedural issues, but I just need to pick up a very few number of points on my learned friend's skeleton. Paragraph 19, I know it sounds silly, but this is a critical point. Dr Rybolovlev is, in fact, Russian and this is relevant because his Russian identity has made

it impossible for the GP to raise outside capital, and it has left the partnership behoven to the----

JUSTICE ASIF: Well, Ms Prevezer, where's the evidence of that?

MS PREVEZER: I think it's in Dr Harrison's evidence, in his third witness statement.

JUSTICE ASIF: Can I see that, please?

MS PREVEZER: Can I carry on and I'll get that for you, because I don't want to waste time? But what is important is the global default mechanism is there precisely because the partnership is behoven to capital contributed by the family office, and third parties dealing with the partnership need to know, when dealing with a partnership, that funding will not be imperilled by the family office deciding unilaterally that there are certain portfolio companies they don't want to fund.

JUSTICE ASIF: Well, wait a minute. How are third parties going to have to sight of the conflict?

MS PREVEZER: Well, they will be told. I mean, all the portfolio companies-- and when I'm talking about portfolio companies, who are third party entities dealing with the fund.

JUSTICE ASIF: Sorry, I thought you meant external third parties dealing with portfolio companies.

MS PREVEZER: No, just the portfolio companies are external.

JUSTICE ASIF: Right.

MS PREVEZER: My Lord, going on in my learned friend's skeleton. You've read the chancellor's judgment in Delaware. At paragraph 25 of my learned friend's skeleton, I hope I've dealt with that point and that will now disappear now the signed counterparts have been provided in Delaware. Just to be clear, there is no breach of section 22. There hasn't been, and until this month no such breach has ever been asserted. The fact that the 14 LPs who are employees have not contributed capital, with respect, is nothing to the point.

In relation to paragraph 26 of my learned friend's skeleton, if Your Lordship's got that up, it's simply incorrect that the family office has invested 2.6 billion, being 99 per cent of the fund. They've invested 2.3 billion and have received back already 2.1 billion. They've invested this money in a fund and specifically in the people who are turning the capital into companies and money, which is a very valuable investment.

With regard to the position on approval of budgets, budgets approval is bilateral. The family office has the right to approve budgets and then the GP is entitled to make capital calls in relation to those budgets and all the capital calls in issue before Your Lordship, and indeed

any future capital calls we'll be making before Delaware is completed, will be in relation to approved budgets or for certain expenses where no approval is necessary. So the simple point is that if the partnership had been intended, as it's termed by my learned friend, as an "investment vehicle for the family office," it wouldn't have been structured as an ELP.

Paragraph 27 onwards, my learned friend's put in evidence about the alleged breakdown in the relationship, and they say it's been happening for the last 24 months or so. There's simply no evidence of that. This alleged breakdown – and we don't accept that characterisation, obviously – stems from my learned friend's clients' actions in May this year when it decided unilaterally not to pay the capital calls or approve budget.

It's telling that no petition has been filed by the family office at any point in those 24 months, not until 6 June this year, which was wholly reactive to the Delaware complaint. If this relationship had been breaking down at any point after the Braeburn settlement or before that, they could have filed a petition. They didn't do so. The pool Braeburn dispute which is referred to, and I'm not going to bother Your Lordship with the underlying merits of that, was a claim in relation to a particular pool, the Braeburn pool. The family office wanted money paid out. It was settled by agreement. There is a settlement which led to Amendment 22 of the LPA. End of. The court shouldn't look behind it, there's no coercion, there's no signalling that that was a breakdown of the alleged relationship. Indeed, quite the contrary; Amendment 22 is reflective of the fact that the parties wanted to keep working together and have worked together since December of last year.

Paragraphs 28 to 30 of my learned friend's skeleton mischaracterise how the present dispute, with respect, has come about. You've read Dr Harrison's third affidavit, or you've got Dr Harrison's third affidavit, which sets out our position. But what has happened since May is my learned friend's clients have refused to consider new budgets, which they are obliged to do contractually under the LPA; they've sought to insert new budget processes that are onerous, unprecedented in the 13 year relationship; they have, contrary to the words of the LPA, sought to input milestones that are in information memorandums to say they're contractually binding; they sought to challenge expenses and in May, when the GP was, in good faith, still operating under the assumption that relationship was working well, they proposed a reallocation of capital and sent the email of 15 May, which I don't think Your Lordship was shown at the hearing on 20 June. But if in fact, as I said, the relationship was

irretrievably broken down for 12, 24 months, there was no evidence of it at all and that whole narrative, we say, is a false narrative and it's one that does not support a petition to wind up the partnership, but that's for another day.

Just to be clear, one little point that my clients have asked that in relation to paragraph 33, the GP did in fact multiple times attempt to attempt to communicate with Dr Rybolovlev after the May 15th email. There are numerous without prejudice emails, which I'm not obviously going to take Your Lordship to.

So Your Lordship has-- there are three sets of proceedings ongoing, and as regards the Delaware proceedings in paragraph 35 to 42 of my learned friend's skeleton, there is nothing tactical or extraordinary by the issue of the complaint. The family office simply doesn't like it. Your Lordship cannot today and should not form a view on its merits. The family office's refusal to fund is causing very significant destruction to the partnership. How the GP sees it, in a nutshell, and it's set out in Dr Harrison's witness statement, is that the family office now wants to decide what to invest in or not, to destroy the partnership as it presently functions and to benefit unilaterally from the selected value that the GP has created because it's trying to write off early development portfolios and it's trying to seek to remove call obligations on which they otherwise have defaulted. So they're really trying to seek to renegotiate all aspects of the economics control and of the partnership and it is not their investment vehicle. It's not theirs to do that.

So the capital call proceedings which are before Your Lordship, like I said, they're three sets of proceedings. They, as we say, deal with exactly the same subject matter as Delaware. We've filed a defence in short order in terms of the timeline that was set. We have since, on Monday, filed a more expansive amended defence. So that's----

JUSTICE ASIF: Is that in the bundles?

MS PREVEZER: I would hope so. I think it is. I'd certainly put-- it is tab 3 and I've slipped it in behind the one that was already there, and it should have been added to Your Lordship's bundle.

JUSTICE ASIF: Oh yes, I've got it. Thank you.

MS PREVEZER: (After a pause) My Lord, Your Lordship asked for the evidence in relation to the Russian effect.

JUSTICE ASIF: Yes.

MS PREVEZER: And what it is, it's evidence that was filed in relation to the Braeburn dispute but my learned friends have exhibited and rely on it. It's volume 2, tab 21. I don't need Your Lordship to look at it now.

JUSTICE ASIF: No, but I want to.

MS PREVEZER: So I'll give Your Lordship the reference. Volume 2, tab 21. So it's A/0666, and it's paragraphs 43 to 44. It's 683, apologies.

MR SCOTT: (Inaudible).

MS PREVEZER: Okay, it starts at 40 and runs on.

MR SCOTT: Starts at 43.

MS PREVEZER: Oh, it starts at 43, I'm sorry. (Pause for reading) Thank you. Apologies I didn't have that to hand. So, My Lord, I was just dealing with the three sets of proceedings very quickly, which are all part of the background. I've said Your Lordship should have the amended defence.

JUSTICE ASIF: Yes, I've found that.

MS PREVEZER: We obviously don't accept my learned friend's submission that our position as regard the contingent subscriptions has been inconsistent, and we haven't obviously had an opportunity, because we haven't got a right, to respond to Mr Bogdanov's fourth affirmation which was recently served. But the position is, we say, there is headroom to the total committed capital of about 600 million, and if we are right, and given that the GP is not close to exceeding that headroom by the 30 May capital calls, a subject matter here and in Delaware, then any alleged inconsistencies do not impact the fundamental question as to the validity of those capital calls, so the court doesn't need to get involved in some sort of forensic accounting exercise now.

There is some veiled suggestion in my learned friend's skeleton that the Delaware court is not equipped to deal with the present dispute because it's Cayman law on Cayman matters. The court should absolutely have nothing of this. The Delaware court-- the parties agreed the Delaware court could hear a dispute, the Delaware court will be assisted by expert evidence as so required on Cayman law. It's perfectly capable of construing with due fidelity the provisions of the LPA, and it's a somewhat scandalous suggestion, with respect, being made here.

I'm going to deal with the substantive bits on the injunction in a minute, so just finishing off the proceedings in line with Mr Scott's skeleton. Paragraphs 58 to 60 refer to the petition,

and I've given Your Lordship our comments in relation to this alleged breakdown, and as we say in our skeleton, there are no conflicts dependant on the GP's decision making. The fact that the GP is a director of some of the portfolio companies, it's there to look after the partnership's interest and that's standard. At Delaware, the GP has acted in accordance with the LPA. As I said, my learned friend's clients simply do not like the fact we are litigating in Delaware.

Now, finally, turning to the substance of the injunction. Our primary position is that the injunction as presently ordered, as we set out in our skeleton, goes well beyond holding the ring, so termed, and the proposed amendments – and there are two which we are saying are required – they are required to correct that position. Contrary to paragraphs 8 to 10 of my learned friend's introduction, those amendments do not undermine, let alone severely undermine, the purpose and utility of the injunction. They are required to properly hold the ring between the parties, and there is no question about the court being unable to do full justice at trial in the event that these two small amendments are made. I'm going to deal with those amendments, and I will deal with them in the reverse order they appear in the order because my learned friend takes the second amendment first, and I will do that to keep consistent with his skeleton.

So deleting future capital calls, that's what I want to deal with. Your Lordship has our skeleton on this point. In short, what we say is deleting the capital calls injunction going forward – so between now and Delaware, we should be allowed to issue capital calls and default notices if my learned friend's clients decide not to pay against them – is essential from our perspective, and I'll explain why, and causes no prejudice whatsoever to my learned friend. But what it does allow is the GP to retain its existing contractual right and ability to continue acting under the LPA as agreed in the ordinary course, making capital calls as and when required in the best interest of the partnership; and as I said earlier, all the future capital calls that may be made are against already agreed budgets, so there can be no issue with regards the budget approval.

JUSTICE ASIF: I'm not sure Mr Scott accepts that. That's one of the difficulties, isn't it?

MS PREVEZER: Well, I think he accepts-- I think they're not accepting future approvals. I think he doesn't say that the future calls will be against approved budgets because the capital calls in May didn't exhaust the approved budgets. I don't know that there's anything between us on that. Maybe my learned friend can tell me.

MR SCOTT: So, the capital calls that have been made we certainly do dispute on the grounds that they do not accord with the budget. That's one of the pleaded bases----

JUSTICE ASIF: That's one of your bases for----

MR SCOTT: -- for relief here. Of course, those were capital calls made on the basis that they would cover the funding position up to, I think, November this year, so it is somewhat surprising to hear suggested that yet further capital calls are needed between now and the Delaware proceedings in eight weeks' time. I'll address Your Lordship when I get on my feet, but it's fundamentally wrong to say we don't dispute the point of budgeting. It's a critical part of the pleaded issue.

MS PREVEZER: It's not critical to my argument, but we had understood that there had been approval of budgets. The capital calls in May only used up a percentage of those approved budgets, and the future capital calls that may be made-- and the reason why they may be made, may need to be made, is because of the very serious consequences and damage that has been caused and the additional costs that have arisen----

JUSTICE ASIF: Your client essentially wants to start the clock running so that it's not two or three weeks behind, essentially, in its ability to enforce.

MS PREVEZER: Well, Your Lordship is absolutely right. There is no conceivable prejudice to my learned friend. They are pieces of paper, ultimately. There will be capital calls; they won't pay them; they've made it very clear they won't pay them. The default notices will be pieces of paper which we have said we will not take any steps to action. But Your Lordship is absolutely right. If the Delaware complaint is determined in our favour, we will want to rely on capital calls properly made to obtain money very quickly, because time is really of the essence. It's absolutely critical that money is obtained into the partnership, and there is real prejudice if, as a result of this injunction and not being able to issue any further capital calls that are necessary – and we do say it may be necessary to make future capital calls precisely because of the damage that's being done by my learned friend's action – we should not have to start afresh, as Your Lordship rightly says, and start time running again for us to issue a capital call, wait for another 30 days thereafter before we can do anything.

That is that in a nutshell, and we say holding the ring does not and cannot entail stripping the GP of its contractual rights and powers on behalf of the partnership to continue running the partnership described by the LPA, and those rights and powers existed prior to the issue of the writ and the injunction. My learned friend is trying to----

JUSTICE ASIF: Ms Prevezer, can I just cut across you for a moment?

MS PREVEZER: Yes, of course.

JUSTICE ASIF: When the injunction application was before me in June, one of the reasons that I was not content with the undertakings that were being offered on behalf of your client was it seemed to me they didn't deal with the effect of the default notices, in particular the result that the family office of note would lose any voting rights. Now, when you said to me a moment ago that your clients have offered that the issue of any default notices, etc., would not-- they would not treat those as having effect, does that extend to the question of voting rights as well?

MS PREVEZER: Yes, yes.

JUSTICE ASIF: Right, okay.

MS PREVEZER: Yes. I mean, the concern we have is the one Your Lordship absolutely correctly----

JUSTICE ASIF: It's certainly a timing issue.

MS PREVEZER: Absolutely. But it's a real issue. It's a real issue because time is of the essence here in circumstances where we are being denuded of cash in order to run these partnerships, where----

JUSTICE ASIF: There is an overlapping issue, which is everyone is saying that portfolio companies or the investments-- The fund basically is pretty illiquid. There's no ready market for selling interests in portfolio companies, etc. You showed me evidence about the Russian effect on the ability to raise funds outside the family office. So where is this money going to come from, or are you simply saying you want to run the clock against the family office as quickly as possible?

MS PREVEZER: Well, absolutely. I mean, you know, if we're right, if Delaware is upheld in eight weeks' time and the family office is deemed a defaulting partner and the global mechanism works as it's required to do under the LPA, they will then lose their voting rights. We will be able to-- The GP is quite entitled under that mechanism----

JUSTICE ASIF: How is that actually going to generate any cash----

MS PREVEZER: Well, because then we then get new LPs involved. Because the Russian element will have been effectively removed, we can raise cash----

JUSTICE ASIF: It won't, because you'll only be able to remove part of it.

MS PREVEZER: But it will remove a significant part of it, and we will be able to raise cash and liquidity against the finance.

JUSTICE ASIF: But the investors are saying, "Oh, we don't like this because it's got a Russian connection with the possibility of sanctions." Their view is not going to change because the Russian element has gone from 96 per cent down to 50 per cent.

MS PREVEZER: But what it will do is enable the GP and the other LPs to make decisions as to what assets it can sell to raise liquidity. But it is about running the clock, and it is all hinged on what is going to happen in Delaware; and as I said, if we lose in Delaware, the capital calls action here isn't necessary; the whole mainstay of the petition will still be; the petitioner will have to come and review what's going on there. But if we win in Delaware and the capital calls are determined to have been properly made and there is a liability to pay. That really is a game changer in terms of what's left over here.

JUSTICE ASIF: Well, assuming there's no appeal and no stay pending.

MS PREVEZER: Well, I can tell you in terms of the timeline on that, the position is the hearing is 18 and 19 September. It's been expedited. It's reasonable to assume a decision will be expedited, and it's been expedited because of the urgency. I don't think there's any disagreement that-- or maybe my learned friend will say there is. We've been advised by American lawyers that the decision would be expected by the end of September, beginning of October at the latest from the first instance. If there's an opinion given by Bayard from my learned friend's clients in relation to the speed of an appeal, if-- Two things, and this goes to the second amendment I'm proposing with the Delaware-- the injunction should go into Delaware, is they would be entitled to apply in the Delaware court for an injunction for a stay pending appeal. Our advice is that on an expedited basis, that appeal could be dealt with by the end of this year.

Mr Bayard says that appeals longer than four months are not uncommon but doesn't comment to say that an appeal determination within four months by the Supreme Court couldn't happen. It will be expedited because it has been expedited for good reason by the chancellor. So that is the position, but what we're asking from Your Lordship today is not a stay up until the end of an appeal but that we come back to Your Lordship on a case management conference after Delaware has been decided so that the court can review it for both the writ action and the petition as to what is left in light of the decision in Delaware; and as I said, if we're right in Delaware, the capital calls writ summons should disappear.

Now, as regards the injunction, and this is a separate matter, Your Lordship will appreciate the injunction order is a separate freestanding order. It was granted in aid of the writ

summons, not the petition, to tide the event over for the determination of the capital calls issue. If that's determined in Delaware, the injunction should fall away. If my learned friend wants relief, they can go to Delaware or they can come back here, but it should not be on us to run back to this court to say, "Can you now lift that injunction?" which was giving them very specific protection in relation to the particular capital calls, which, if we're right in Delaware, will have been decided in our favour.

Now, Your Lordship is right that they're not-- Going back to the future calls, there's nothing unjust or prejudicial. They're not going to pay; they've made it very clear they're not going to pay. There's no consequence of us being allowed to do what we were contractually entitled to do under the LPA, and if they want to contest the capital calls as they're issued between now and Delaware----

JUSTICE ASIF: Ms Prevezer, can I summarise it this way?

MS PREVEZER: Yes, of course.

JUSTICE ASIF: You say if you're right and the Delaware judge agrees with you, then you should have been entitled to make these capital calls, and the ones that you have made in the interim should be effective so that you don't lose the time that you would be in touch with them. If Delaware goes against you then these are all invalid, and so they have no effect.

MS PREVEZER: That's right. That's absolutely right. In relation to future capital calls, my learned friend is right that when we raise the 30 May capital calls, it was our anticipation that that would give us sufficient liquidity for the next six months. But what has been going on, and Dr Harrison's evidence goes to this, as a result of their failure to pay has been very significant difficulties and problems and damage to the partnership, which has raised considerable cash flow problems, and that has exacerbated the need for further capital over and above the capital calls that have already been made. Now, they can contest those. They have every right to contest those going forward if they choose to, and they can contest them as we're making them. As we've said, we're not going to take any steps to enforce them by taking away their voting rights or anything of that nature, pending Delaware.

That's the proper holding the ring, as we say. That is the proper status quo that Your Lordship's order should address. In particular, dealing with my learned friend's submissions on this, if Your Lordship is amenable to our proposed amendment-- It's not a big amendment, and as I said, no prejudice to my learned friends, it will not cause any inconvenience or result in further applications to this court for interim relief for the simple

reason that no action is going to be taken on any of those default notices until Delaware is determined. The suggestion in my learned friend's skeleton that the issue of any further capital calls on the family office is going to put pressure on them to contribute beyond which they consider to be their contractual obligation, with respect is entirely risible.

One only has to have regard to the family office's conduct of the present proceedings, here and in Delaware, to understand that in the current situation, the GP is David and the family office is Goliath. It's that way round. As regards altering the present status quo, I've just addressed Your Lordship. The present status quo is allowing the GP to exercise their rights. Without the proposed amendments we say the status quo is irreversibly altered in terms of the timeline in which it was identified. Then I say that my learned friend's point in his skeleton, that somehow one is fixed with a-- defines the status quo at a time before the writ was issued and therefore there had been no default notices, and therefore we can't issue default notices, is wrong. The status quo before the writ or the injunction on it is that we have these contractual rights, which we now want to exercise.

So that is that and, as I've said, in the event the Delaware complaint is upheld, the conclusion of that will be my learned friend's clients will be found to have acted in repudiatory breach-- not repudiatory; I think that's the wrong word-- in breach of their funding obligations pursuant to the LPA by failing to agree research and development plans and budgets and failing to pay those 30 May capital calls. I say the consequence of that ruling is this injunction should be set aside; a default is under the LPA, has occurred and can be actioned; we will need to go out and get funds, and there's extreme urgency; and Your Lordship was told on the last occasion on the 20th about discussions about interim funding. They have gone nowhere and, with respect, all of those interim funding discussions were heavily conditioned and subject to the family office's veto as to how those monies were to be spent.

So they were completely unacceptable, and Your Lordship should just know that there are no funding negotiations going on. Our evidence in Dr Harrison's evidence before Your Lordship is that the portfolio companies face imminent collapse. Some of them have already been forced to wind down their efforts. The same is true of the management companies that manage the partnerships and the portfolio, and so it's having a very significant financial impact, and so we should be able to rely on capital coming in timeously

and in accordance with the LPA. So, as Your Lordship rightly pointed out, if we are required to wait until the final termination of the Delaware complaint before issuing future capital calls, time will be running against us.

At the moment, as the present injunction is framed, it says that we're not allowed to issue any future capital calls unless agreed in writing by the family office. That's tantamount to a blanket injunction, with respect, because it's quite clear they won't agree to anything. Just very quickly picking up the points my learned friend makes at paragraph 63 of his skeleton, if Your Lordship's got that. On the first point, we accept there's a dispute on the amount, but if we're right, then the family office hasn't contributed to the extent required, then we're right in identifying that capital call injunction and further calls will cause further financial difficulties. Time is----

JUSTICE ASIF: I'm sorry, Ms Prevezer. Can you just say that again?

MS PREVEZER: Apologies. If we're right and the family office has not contributed at the extent required under the LPA, then we are right in identifying that this injunction and further calls will be the cause and will have been the cause of further financial difficulties. If the complaint is upheld in Delaware, we need to be able to move swiftly to enforce the default mechanism, as time is of the essence. That's on his first point. On his second point, we're not prejudging the resolution of the dispute. As I said, if the complaint is not upheld in Delaware and the family office has in fact satisfied its total commitments, those further capital calls, as Your Lordship says, will fall away. But as I said, the present injunction is not holding them.

On the third point, the undertaking deals with that. On the fourth to the sixth points, as I've said, the interim funding discussions have come to naught, but we don't accept that's because of Dr Harrison's actions. The court can look at all the correspondence if Your Lordship wishes to. It really goes nowhere. The family office is, with respect, being disingenuous here, and the court shouldn't presume, despite what Your Lordship was told on the 20th, that any funding is going to be agreed. In terms of the conflict director, which is referenced at paragraph 63(e) of my learned friend's skeleton, what in fact is set out there in 63(e) is only a partial narrative of the proposal. What that doesn't reference, which was part of their proposal on the 3 July letter, which is in Your Lordship's bundle-- But again, time; I don't think you need to look at it. It's in B/16, tab 16, at 1530 to 1549.

What was proposed, ultimately, was that any use of funds would ultimately be subject to my learned friend's clients' veto. What they've missed out is that the funding would then be agreed with these clients. What this offer of a conflict director was really about, we say, in its true context is about the family office seeking to obtain prematurely the relief it seeks in its petition and utilise a conflict director as a tool in the litigation, and we responded substantively on that. My solicitors', Walkers, letter on that Your Lordship will find at B/1547. That's where the letter is, and it's from 1548 to 1549. Your Lordship is not really concerned today with the conflict director, but it's there if you need to look at it.

Finally, on the seventh point, this liberty to apply point, the liberty to apply in the order puts the onus on the wrong party, with respect. It shouldn't be incumbent on the GP to have to apply back to the court in circumstances where the proper status quo should allow for the issuance of these future capital calls, if they're so required, particularly where we are not seeking to enforce on them, and that offer to not take any steps to enforce means that there is no conceivable prejudice. The reasons given, with respect, at paragraph 64 of my learned's skeleton, they are not good reasons, and they are not good reasons, given there at (a) and (b), for these reasons: the injunction is freestanding, it was granted against the alleged threat against the use of the default mechanism with regard to the capital calls, so in support of the writ summons.

As I've said, and I'm sorry if *ad nauseam* I'm going to drive you crazy, but if we win in Delaware, the capital calls will be found to be valid and the injunction should fall away, and there's no warrant for its continuation beyond that. If they want to seek a further injunction, they can do it in Delaware, they can come back here, but Your Lordship's injunction should not continue.

JUSTICE ASIF: It will really depend on what the judge in Delaware finds.

MS PREVEZER: Absolutely and, My Lord, we have offered in correspondence an alternative, which is if Your Lordship is worried about lifting the injunction or having it fall away on the determination in Delaware-- I mean, either way, if the Delaware complaint goes against me, they don't need an injunction because the capital calls will be invalid. If the Delaware complaint is with me, they don't need the injunction because they shouldn't be entitled to it. But we have offered a proposal that we come back immediately after the first instance to have a CMC, and if Your Lordship is nervous about the injunction disappearing immediately, and that's the second proposal that we're going to go on to in a minute, we can

review it at that second CMC, and we were proposing putting a date already in the court listing, working out as best we can when that decision is likely to be handed down.

But just to note, the injunction wasn't brought, as far as I can see from what was said to Your Lordship, in support of the petition. The petition didn't feature in what Your Lordship discerned on 20 June. The transcript's in the bundle. I'm looking at 64(b) in my learned friend's skeleton, the other alleged effects of them being defaulting partners, their loss of their voting rights. As I said, we won't take steps in relation to that, pending the decision in Delaware; but as I've said, the consequences of Delaware will be determined one way or another. So that deals with our first proposed amendment to the injunction order.

The second proposed amendment is to paragraph 1 of the injunction order, and we say similarly that proposed amendment was neither unjust, inconvenient, unfairly prejudicial or indeed prejudicial, or liable to impair the court's ability to do justice between the parties at trial. Because the key point on this amendment is, as I've said, that the Delaware determination is highly likely to be a gamechanger in relation to the landscape of the disputes here, and Your Lordship knows, as I said, what happens in either scenario. I mean, even as regards the petition, with respect, the primary facts allegations in that petition on which it is based will fall away if we're right on the capital calls, and I've said we proposed a CMC after the determination of the Delaware complaint.

But we do say that the order should be amended now. It is a freestanding and separate order which Your Lordship made on 20 June to hold the ring, pending determination of the issues which were in dispute before Your Lordship, the capital calls, and so it should rightly end with the determination in Delaware one way or another; and as I said, if they want to seek a further injunction or stay in Delaware, they could do that. That's the obvious place. The Bayard opinion, I have found in my reference. It's at B/1559. I don't know if Your Lordship very quickly wants to have a look at that. It's at 1559, and if Your Lordship has a look at that, it's addressed to Campbells. It's 15 July, 1559.

Your Lordship will see that what he talks about in terms of our page 1560 (inaudible) citing a decision of the Court of Chancery:

> "One appealing from an adverse decision is entitled to a stay of proceedings if the appeal is taken in good faith and presents some question of possible merit."

Oh, I'm sorry, Your Lordship's not with me. Sorry.

JUSTICE ASIF: I'm still getting there. Right, there at last.

MS PREVEZER: So, it's page 1559. At the top of 1560, there's a reference to an authority that says if you're appealing from an adverse decision, a stay is ordinarily granted if it's in good faith. Going over, in terms of timing it's at 1562. Paragraph 3 on 1562 says you can expedite the schedule. The Supreme Court can do so, and we would certainly, if asked for an expedition, if we are winning and my learned friend seeks to appeal because the hearing itself was expedited for the reasons I've made clear; and what he says is at the bottom:

> "While they can also be shorter, expedited appeals of longer than four months are not uncommon."

It then lists a whole raft of cases, but what he doesn't deal with is the point that you can have an expedited appeal determined in a period shorter than four months. It doesn't express a view, just says it's not uncommon, which Your Lordship may not find particularly helpful, but that is the evidence. What we're being told on instructions by the US lawyers is that it is possible for an expedited appeal to be determined by the Supreme Court and the American courts (inaudible) very quickly, by the end of 2025.

Just going back to my learned friend's skeleton, paragraph 68, and just quickly running through the points there made. Point 1-- I dealt with this point. Point 1, we say is a thoroughly bad point. The capital calls will be determined in Delaware. Point 2, the fact that enforcement is not restricted is nothing to the point. If the Delaware complaint is upheld and the capital calls are required to be paid, the injunction should go. Point 3, it's not really understood. The injunction in short was to prevent us relying on the capital calls, and the injunction at 1(b) prevents us from taking any steps to issue a default notice. Point 4, the injunction was sought in support of the writ summons, not the petition, and that's clear from Mr Bogdanov's first witness statement at A/0130, paragraph 60.

We accept that the injunction was not stated to be sought in aid of Delaware, although, as I've said, they could have sought a similar injunction there, but they didn't do so. But the

effect of the injunction that has been made is the same as if the court was exercising ancillary jurisdiction, because Delaware is going to be heard on 18 or 19 September, and the injunction has prevented anything happening pending that event. Your Lordship has our alternative proposal for a CMC, and at paragraph 69, I think what the family office is saying is if we win in Delaware, the injunction should be continued because of the date of the injunction application. We hadn't issued default notices. I've dealt with that point.

So that takes me on to fortification. Your Lordship has our skeleton. It's page 8 of the skeleton. I'm sorry about the numbering. I didn't realise it went on and on. It's paragraph 18(xi) onwards. I don't think there's anything between us on the law. It's at paragraphs 59 to 62 of our skeleton. My learned friend will tell me if he says otherwise.

JUSTICE ASIF: Sorry, which page in your skeleton?

MS PREVEZER: It's page 18 onwards. It would probably be easiest to find it on the page numbers.

JUSTICE ASIF: Oh yes, I've got it now.

MS PREVEZER: Yes. We obviously reject the contention in their skeleton at paragraph 73 that we haven't demonstrated a good arguable case for fortification. I think their primary case, as I understand it, appears to be that the injunction doesn't cause loss to the partnership because all it is doing is stopping a default charge and an attempt by us to monetise the redistributed assets in the event it's enforced. But Dr Harrison's third witness statement makes very clear that there has been and are very severe financial consequences as a result of their failure to pay in May. So I've said his evidence is the ten portfolio companies have already become or are heading towards insolvency, and Your Lordship will appreciate companies can be insolvent on a cashflow basis but still have valuable assets. What the critical point is – and my clients, who are probably listening, will tell me I'm not explaining this properly – that these early-stage companies get to a pivotal point through clinical trials when then they become really viable in terms of financing and raising money, and stopping them at this stage is very damaging indeed.

JUSTICE ASIF: As I understood it, I think the family office's point is more directed at the difference between current day valuation of these early stage companies and the valuation Dr Harrison puts on them, in that he seems be trying to value them on the assumption they have reached that inflection point already, and he seems to be valuing them on the basis of the potential value that they could have in the future rather than the current value they have now, and their current values now are very substantially lower than potential future values.

MS PREVEZER: My Lord, Your Lordship is right in that regard on the argument that is made, and we accept that the evidence that we have put forward-- And that's why we're not seeking fortification of hundreds and hundreds of millions. We are seeking fortification only of 25 per cent of the value of those portfolio companies as valued in December of last year, the valuations of which are in the bundle. So we recognise that it is the stopping of the development of these companies at this stage which is prejudicially affecting their ability then to become very valuable commodities, very valuable assets.

JUSTICE ASIF: And what about the family office's argument that, well, you're already sitting on 96 per cent. We have the ability to enforce against the 96 per cent interest the family office has in the fund, so why do you need separate fortification?

MS PREVEZER: Well, two things on that. The very serious consequences of my learned friend's clients' actions is obviously affecting their own interests in the fund itself, and we say they should not be able to use assets in the partnership, which they committed to the partnership, for the purposes of fortification. In relation----

JUSTICE ASIF: Why not?

MS PREVEZER: Because of the uncertainty and the damage that they're causing the partnership at this very time.

JUSTICE ASIF: I don't see the link between uncertainty about the extent of damage and the ability to enforce-- to obtain compensation for damage that's been suffered from the value of the family office's interest in the fund. I'm not sure where the link is.

MS PREVEZER: Well, My Lord, the assets in the funds are caught up in the partnership and governed by the LPA----

JUSTICE ASIF: There's no suggestion that, because of the family office's actions, the fund is suddenly going to have no value at all.

MS PREVEZER: No. No. Your Lordship----

JUSTICE ASIF: It's still going to have a substantial residual, even if it's impaired, and in those circumstances I'm not sure that I'm following why, in that situation with impaired value, the value of the family office's interest in the fund is going to be so low that your client would not be able to get adequate compensation for the diminution in the overall value of the fund.

MS PREVEZER: And, Your Lordship, we recognise that point.

JUSTICE ASIF: Right. So why do you need separate protection?

MS PREVEZER: Well, My Lord, we do say that it's not appropriate for the family office to rely on assets within and which are committed within the partnership, because having to realise against those assets in the partnership in order to get compensation for the damage that has

occurred will not simply affect the family office, but it affects all the other LPs who have interest in those assets. To sort of be forced to realise those assets in order to realise proper compensation caused by the family office will potentially damage the interests of the other LPs. There are 15 other LPs than just these two plaintiffs, and by accelerating or having to monetise assets in the partnership in order to get that compensation can potentially damage the interests of the others in assets in the partnership.

JUSTICE ASIF: But why is money's worth, rather than money, not good enough compensation for the GP? If there is consequential damage to value of the overall fund, why is compensation to the GP, or to the partnership overall, I guess, who is the entity entitled to the compensation, why does that compensation have to be in money rather than money's worth? I suppose what's driving that question is why is it inadequate simply to say, "Well, on the basis that the value of the fund has been reduced by 250 million, the other limited partners should acquire essentially 250 million worth of the family office's interest in the fund so that in the future they are entitled to realise in due course at their convenience"?

MS PREVEZER: And I think the complication is, you know----

JUSTICE ASIF: I've not expressed it very clearly, but----

MS PREVEZER: No, no, My Lord, you did express it very clearly, and I absolutely understand. I'm not quite sure that I know the answer to Your Lordship's question, but I think one answer may be that the sorting out of that and the valuing of the various assets to take values rather than the money is problematic. But I think that's the best I can do, and we do say that looking at the family office's assets and the position of the family office, these two plaintiffs, they are BVI companies. Their financial position is unclear, certainly in terms of enforcement against them.

JUSTICE ASIF: Well, they own 96 per cent of the interest in the fund, so that enforcement is pretty straightforward.

MS PREVEZER: Well, if only. But we also say-- I think we say in terms of current assets as opposed to non-current assets, the sum that they have got of current assets, i.e. available within 12 months, is very small relative to the whole. I think Dr Harrison deals with that. But I hear Your Lordship. If Your Lordship feels that the access to the money or money's worth of their contribution in the fund is sufficient fortification, I'm not sure I'm going to be able to move Your Lordship.

JUSTICE ASIF: Fine.

MS PREVEZER: Going on, then-- Well actually, I think that's it on our position in relation to the two amendments. Can I just check behind me that I haven't missed any points?

JUSTICE ASIF: Yes.
MS PREVEZER: Thank you.
JUSTICE ASIF: Just to be clear, we're dealing with this first and then coming on to----
MS PREVEZER: We thought it was sensible. I'm very happy to deal with the stay, but it seemed more sensible just to get the injunctions done.
JUSTICE ASIF: No, that's fine. That's fine. I just wanted to make sure (inaudible). Yes.
MR SCOTT: My Lord. As you Lordship will have seen, we say with respect you were entirely right to impose the injunction in the terms in which you did at the 20 June hearing.
MS PREVEZER: My Lord (inaudible). I've just been handed up-- I just want to make clear, so that my learned friend knows the target he's got to hit, in relation to the voting rights, Your Lordship asked me-- Your Lordship said the concern about the voting rights being taken away. The end result is the same, but I should make clear, and I absolutely should have made this clear: once deemed to be a defaulting partner – not delegated, deemed – the loss of the voting rights is automatic with the deeming. What we're saying is we are not going to take any steps in relation to that deeming if the default notice is (inaudible). We're not going to take any steps to act contrary to them having lost those voting rights. So the net effect is the same. We are not going to do anything to damage their position until Delaware is determined.
JUSTICE ASIF: But on your position they've automatically lost their voting rights, and so if there are any decisions on which they would be entitled to vote, they can't do that.
MS PREVEZER: Yes, and in the event that Delaware is upheld, that will be found to have been correct.
JUSTICE ASIF: What sort of decisions would they now be entitled to vote on?
MS PREVEZER: Well, budgets. I mean, you can have a look on the-- I can go to the LPA if Your Lordship wants to have a look at it.
MR SCOTT: In case it assists, I was planning to take Your Lordship through this. It's helpful to have the indication that that's the target.
JUSTICE ASIF: All right. Mr Scott, just before you carry on, Ms Prevezer----
MS PREVEZER: My Lord, I'm sorry, I'm just getting instructions as to whether I have (inaudible). Apologies. May I interject if I get instructions?
JUSTICE ASIF: Yes. Well, I was actually going to ask you a question. Even if the clients' strict contractual rights are as you've described and the effect of the LPA is that the loss of voting rights is automatic, your clients would still have the option of voluntarily recognising any exercise of a voting right that would arise and might be necessary before the Delaware court

makes its determination. Is that something that your clients would be willing to volunteer, essentially?

MS PREVEZER: Well, My Lord----

JUSTICE ASIF: I appreciate you'll need to take instructions on that.

MS PREVEZER: -- let me take instructions. They're on the Zoom and they're hearing this, so I'll get instructions (inaudible).

JUSTICE ASIF: Right, thank you. Yes, Mr Scott.

MR SCOTT: My Lord, I don't ask Your Lordship to turn it up, but Your Lordship's reasoning for making the injunction is on the transcript. Your Lordship has that at A1/20/399. Your Lordship was satisfied on that occasion that there were serious issues to be tried, Your Lordship was satisfied that damages were not an adequate remedy for us, and Your Lordship was satisfied that the balance of convenience favoured an injunction in the terms in which Your Lordship made it. Now, I am mindful, acutely mindful, of the very substantial volume of material before Your Lordship and I'm sorry that our skeleton failed to meet the court's expectations, but it is important that Your Lordship is clear at the outset what is not in dispute. The parties agree that the underlying dispute raises serious issues to be tried. Where and how they are resolved in their case management, there are disagreements about that – we'll come on to that – but there is no dispute that there is a serious dispute that needs to be trialled, and my learned friend rightly and realistically accepted that, as Your Lordship will have seen from paragraphs 3 and 18(a)(ii) of their skeleton.

So, while Dr Harrison raised in his evidence various points about an alleged lack of justification for seeking the injunction *ex parte*, alleged lack of urgency, alleged failures of full and frank disclosure, alleged lack of substance or merit to our case – and some of that, though with not much enthusiasm, was pressed in my learned friend's presentation of the narrative – the critical point for Your Lordship's purposes is that none of it is being put forward as a basis for discharging or varying the injunction. So, I'm not going to take up Your Lordship's time answering the various mischaracterisations and points for which there is simply no evidence that you see in the general partner's skeleton and in my learned friend's submissions insofar as it goes to the underlying merits.

JUSTICE ASIF: Well, Mr Scott, Mr Faulkner probably briefed you that I gave him quite a hard time about whether it was appropriate to apply the *ex parte*-- I think it was *ex parte* (inaudible)----

MR SCOTT: Indeed.

JUSTICE ASIF: -- at the time because I was concerned about whether it properly ought to have been a full *inter partes* hearing.

MR SCOTT: Indeed. I've seen the transcript, I've seen the exchanges – Mr Faulkner evidently persuaded Your Lordship it was appropriate to proceed in that way----

JUSTICE ASIF: Yes.

MR SCOTT: -- and it seems to me, with respect, that Your Lordship was entirely right to proceed in that way, given the limited nature of the undertakings that were being offered then by the general partner, which are the same undertakings which are being offered now. The critical deficiency – and I'll come on to this – is the refusal of any undertaking not to treat us as a defaulting partner pending resolution of the disputes as to whether the general partner has any contractual entitlement so to treat us, but whether so to treat us would be consistent with its fiduciary duties, and that is critical because it is the treating us as a defaulting partner, which results from the expiry of the 30-day cure period under the default notice, that leads to a raft of serious and irreversible consequences under the contract, one of which is the stripping of our voting and approval rights when it comes to the use of capital for the purpose of this partnership. That's in paragraph 5(c) of the LPA, and I'll be coming on to that.

Now, I had understood the first time round in my learned friend's submissions to Your Lordship this morning that things may have moved on, but it appeared from the submissions second time round that they have not. My Lord, what I am going to do is to deal with the opposition to the injunction on the basis of the undertaking that Dr Harrison has said he is prepared to offer Your Lordship. Can I just remind Your Lordship what that is? It's at A1 at tab 15 at page 261, and that undertaking that my learned friend relied on in the skeleton at footnote 24, if we can perhaps start off there. My learned friend helpfully has indicated that she now has instructions.

MS PREVEZER: My Lord, I may be able to cut this short because I have instructions along the lines Your Lordship requested. My clients agree not to strip them of the voting rights for the (inaudible).

MR SCOTT: (After a pause) My Lord, I will deal with that. That, of course, improves things so far as concerns the undertaking. What it does not do is to achieve full justice and convenience in the way that Your Lordship's order does, not least because, as I understand the proposal, it would still leave the general partner in the position to issue default notices to allow the time to run down so that it is in a position to push the button immediately upon

those irreversible contractual consequences, without us having had the opportunity to provide the capital if it turns out we are contractually obliged to do so, and that really is the point on pressure that we made in the evidence and the skeleton. If Your Lordship takes the capital calls, if there is any prospect of us being defaulted on the basis of those capital calls so that we lose our voting rights and the default charge becomes applicable, we will have no option but to pay them and what we are seeking to avoid is a situation in which we have to pay them now under protest, because of that pressure, to a general partner who has not offered an undertaking to repay the capital, could not realistically offer an undertaking to repay it and has no assets independently that would fortify that undertaking in any event. Really, that is the essential reason why we sought an injunction to hold the ring from Your Lordship and it's the reason why Lordship was prepared to grant the injunction.

Now, subject to Your Lordship, what I was proposing to do was develop my oral submissions in five parts, and I'm going to take a slightly different approach from my learned friend because what I want to do in the first part is to show Your Lordship some of the key contractual provisions and also the pleadings, because a good deal was said to Your Lordship about what the Delaware complaint is, and what the writ petition is, and we don't accept that characterisation at all. So, to give Your Lordship a single example at the outset, what Your Lordship was not told in the submissions in relation to the Delaware complaint is that the relief sought is predicated on an allegation of repudiatory breach founded upon the 15 May email. That is the ball game in Delaware. It is a case about whether or not, by sending the 15 May email, we have repudiated our obligations under the LPA.

JUSTICE ASIF: Your case is, "clearly not because the 15 May email says we will comply with whatever obligations you have under the LPA."

MR SCOTT: Indeed, My Lord, and it's the sort of point that, if we were in Your Lordship's court, perhaps it might be capable of summary determination, but we're not. We're in Delaware; we'll deal with it there. But the point I'm making for the present purposes is not to seek to persuade Your Lordship we are right on it. It's just so Your Lordship understands what the key dispute is there. It's a dispute about alleged repudiation, and Your Lordship sees that fact, that there's no mention in the pleaded case in Delaware of the capital calls that were served on the same day or, I think, around the same day or a few days later which are the subject of the writ petition in Your Lordship's court. Your Lordship was also not told about the suite of remedies that are being sought from the Delaware court by which the general partner seeks to combine both an order for alleged specific performance by way of payment

of $585 million per category and, at one and the same time, seeks an order permitting the general partner to apply a default charge by which to reduce our interest. What Your Lordship was also not told in the submissions on there being complete overlap between Delaware and the writ proceedings was that one of the bases upon which we seek relief in Your Lordship's court is the contention that the making of these capital calls and the service of the default notice a few days after they were informed of the injunction application, we say that's all in breach of fiduciary duty. That's a matter that is going to be adjudicated in Your Lordship's court and is not going to be adjudicated on in Delaware, or at least if it is there's no trace of it in the pleaded case.

My Lord, that's the first topic I'm going to address, the contract and the pleading. I will then address why the injunction that Your Lordship made remains just and convenient, and then I'll address the proposed variations from the general partner. I was going to address Your Lordship on the question of fortification and I'm very happy to do so if there are some additional points that we can assist Your Lordship on, but Your Lordship has the fundamental answer to the application, which is that in circumstances where we have partnership interests in this jurisdiction worth some $3.8 billion, there is simply no good, arguable case for fortification. Even if all the other points that we make against the application for fortification were to be assumed against me, there is still the unanswerable point that with assets in the jurisdiction on that scale there is simply no basis to require further fortification. Indeed, the fact that the general partner has seen fit to seek it, a general partner who has the considerable benefit of King's Counsel attorneys in Cayman-- who will no doubt have informed the general partner of the importance of the $3.8 billion worth of assets in the jurisdiction. The fact that the general partner has nonetheless pressed an application requiring us to bring almost $100 million more cash into jurisdiction, we do say that tells Your Lordship all Your Lordship needs to know about the extent to which he is treating seriously his fiduciary obligations.

Now, My Lord, if we can start on the terms of the LPA, we addressed Your Lordship on the material provisions at the 20 June hearing. For Your Lordship's note, that is on the transcript from that occasion at A1, tab 20, 369 to 375. My learned friend helpfully indicated in her skeleton – that's at paragraph 29 – that the general partner does not take issue with our summary of the provisions on that occasion. My Lord, three features of the contractual provisions on calling capital frame the landscape on the checks and balances that

were agreed to govern this critically important method. The first is that the limited partners are only obliged to contribute up to the amount of their contingent subscriptions, so there is no unlimited funding obligation. It is instead contractually capped at the amount of the agreed contingent subscriptions. That's clause 5(a) and we'll come to that in a moment. The second check and balance is that within that contractually capped amount, the general partner's right to call capital is subject to further specific, contractually agreed purposes as regards use of capital and, also, to our various approval rights as majority holders of the preferred units. That's clause 5(a)(ii) and we'll come to that as well. The third is that there is a specific contractual regime for dealing with a partner that defaults on an obligation to meet a properly made capital call, and that is a regime which is itself subject to various contractual safeguards, as well as those which result from the fiduciary nature of the general partner's role, and that is clause 5(c). If I could just make good on those submissions, if Your Lordship will turn up the LPA – it's A2, tab 21, page 404, and we're here, My Lord, in the first amended and restated version, but for the purpose of the submissions I'm going to make, none of the subsequent amendments make any difference. If Your Lordship will please turn to 421, we have clause 5 dealing with ethical partnership. Can I ask Your Lordship----

JUSTICE ASIF: Just give me one moment. 421, did you say?

MR SCOTT: Yes, 0421.

JUSTICE ASIF: Yes, got it.

MR SCOTT: If I can ask Your Lordship, please, to read the provision against (i) in 5(a). This is the first check and balance to which I referred a moment ago.

JUSTICE ASIF: (Pause for reading) Yes.

MR SCOTT: Now, as Your Lordship knows, we say that the contractual language there, the "contingent subscription", we say that is properly referable only to the amounts that each partner agreed to subscribe by its subscription agreements with the general partner, and in our case we agreed by those means to contribute contingent subscription up to $2.425 billion. For Your Lordship's note, our pleaded case on that aspect is our statement of claim in the capital call proceedings at paragraphs 32 to 34, 40----

JUSTICE ASIF: Sorry, Mr Scott, just give me a moment. I'm just----

MR SCOTT: I'm so sorry, (inaudible).

JUSTICE ASIF: That's all right. I was just thinking through what you said and I just want to clear it now. So, your agreed subscription is 2.5 billion, you said?

MR SCOTT: 2.425.

JUSTICE ASIF: 2.425.

MR SCOTT: Then that's set out in the pleaded case at 32 to 34 ad 42 to 51. I don't ask Your Lordship to turn it up, but that's A1, tab 2 from page 20. What Your Lordship will also see from the pleaded case is that at paragraph 52 we plead that, as at 30 May this year, when the first of the capital calls was made, we had contributed more than that amount, US$2.69 billion. The upshot of those pleaded allegations, if they are correct, is that we have no obligation and the general partner has no entitlement to call further capital. Now, can I just show Your Lordship the general partner's recently amended defence on this point, served on Monday this week? We have that at A1, tab 3, if Your Lordship can just turn that up alongside and keep the LPA open. So, if Your Lordship will go, please, to A1, tab 3----

JUSTICE ASIF: Yes.

MR SCOTT: -- and if we turn ahead to page 74, can I ask Your Lordship to read against letters (a) and (b)?

JUSTICE ASIF: This is-- At 74, I've got (h), (i) and (j). Oh, do you mean 14(a) and (b)?

MR SCOTT: Yes, I mean 14(a), over the page, to 14(b).

JUSTICE ASIF: Right, yes.

MR SCOTT: It's all in red text because this only came in by way of amendment on Monday.

JUSTICE ASIF: (Pause for reading) Okay, I've read that. So, somewhere there's a calculation error or an accounting error in terms of what your commitments are and what it is that you've made.

MR SCOTT: My Lord, not quite.

JUSTICE ASIF: There's certainly some dispute, some difference between the two of you, both in terms (inaudible)----

MR SCOTT: There is.

JUSTICE ASIF: -- you're obliged and (inaudible).

MR SCOTT: So, there are two disputes. There is a dispute about what we are contractually committed to provide, and I'll say a little more about that in a moment. There is also a dispute about what we have, in fact, provided, and that dispute arises because of how the general partner has decided in the context of this litigation to treat deemed contributions of assets. So, I don't understand there to be any dispute about the cash contributions, but I do understand there to be disputes about how deemed contributions are to be dealt with, but that is a dispute that will need to be resolved in Your Lordship's court in due course. It's not something that matters much for present purposes.

On the general partner's case as to what we are contractually obliged to do, Your Lordship sees that the thrust of this case is that we are contractually bound, the general partner says, to contribute an amount approaching $500 million more than was provided for under the subscription agreements, and Your Lordship sees from the amended defence that the pleaded foundation for that approaching $500 million additional commitment is not clause 5(a)(i) of the LPA and the contingent subscription to which it refers. Rather, the pleaded foundation is a series of later amendments. Now, My Lord, five brief observations here. The first is that none of these later amendments, 17, 18 or 20, none include language that purports expressly to amend the provision that Your Lordship has seen under clause 5(a)(i), so the general partner's case must be that the amendments alter the contingent subscription under that clause by necessary implication. My Lord, the second observation we make is that the general partner's case on necessary implication, will fall to be assessed, as with all matters under this contract, as a matter of the law of these islands. It will be assessed, as usual, having careful regard to the contractual language and the contractual context. As Your Lordship will appreciate, we're dealing here with a Cayman ELP to which billions of dollars are to be contributed. Is it realistic to suppose that these sophisticated and professionally represented parties intended to deal with both fundamental matters by way of necessary implication? My Lord, the third observation we make here is that in the case of the first of these later amendments that are relied upon-- that's Amendment 17. In the case of Amendment 17, it was in fact accompanied by an amended subscription agreement, and that amended subscription agreement increased expressly the amount of the contingent subscription by $1 billion. For Your Lordship's note, you have the amended subscription agreements that went with Amendment 17 at A1/21/1201 and 1203, and we say what the court will see from those----

JUSTICE ASIF: Can I hear those page references again?

MR SCOTT: Yes, it's 1201 and 1203. We say they show very clearly that when the parties wanted to increase the contingent subscription, they did so by exactly the means you'd expect. What is more – and this is the fourth observation – the parties did that in relation to Amendment 17 with the benefit of advice from Cayman Island lawyers that that was the right way to go about it, by amending the subscription agreement and not simply by amendment to the LPA. That was the legal advice that Maples gave to the partnership and upon the basis of which the amended subscription agreements were entered into. Your Lordship has that advice at A2, tab 21, 1271 to 1272. So, against that background, we do say it would be surprising if, having recognised, on advice, the need to amend the

subscription agreements, in the context of Amendment 20, the parties intended that as a matter of necessary implication to alter the contingent subscription.

Now, My Lord, fifth, on Amendment 20, Your Lordship has that at A2, tab 21, 636. Given the time, I'm not going to ask Your Lordship to turn it up at this stage, but we do say, upon reading the language of Amendment 20, it is impossible to see how, as a matter of necessary implication, that is said to alter the provision on contingent subscription. Indeed, it makes no reference to contingent subscription whatsoever. Now, My Lord, standing back, obviously you cannot decide today whether we or the general partner are correct on this issue, but what you can see is that the first fundamental issue in the case is this issue of Cayman Islands contract law as applied to a Cayman ELP that will require very careful consideration of the documents and their wording as set in its commercial contract, and if we're right upon it, then the general partner's attempts to call capital have no contractual basis or validity, independently of the various further objections to which we will come. That's the first basis we advance in the capital call proceedings for relief. If I can just give Your Lordship the references, it's the statement of claim, paragraph 138 and paragraph 1 of the prayer at pages 49 and 65 to 66 of the bundle.

My Lord, the second check and balance I mentioned is approval rights and other restrictions in relation to budgeting. That's the provision under clause 5(a)(ii) of the LPA. What Your Lordship will see from there is that the general partner is confined not just in the amount of contingent subscriptions, but also the purposes for which capital could be called and the need for it to be agreed to by us as holders of the preferred units. Now, My Lord, to see this provision, we need to go to Amendment 3 because Amendment 3 introduced what is, as I understand it, the current version of this provision. That's at page 516 in the bundle Your Lordship has open.

JUSTICE ASIF: Yes.

MR SCOTT: If I can just ask Your Lordship to read 5(a)(ii) as introduced by paragraph 3 of the amendment and, in doing so, can I ask Your Lordship to note the various points at which the general partner's ability to call capital is constrained by the need for approval?

JUSTICE ASIF: (Pause for reading) What is the board for the purposes of this?

MR SCOTT: I don't know the answer to that question, My Lord. As I understand it, there is not one. (After a pause) Mr Faulkner has helpfully drawn to my attention that there is a contractual definition of "the board" on the preceding page.

JUSTICE ASIF: Okay.

MR SCOTT: It's at 2(n).

JUSTICE ASIF: Thank you. (Pause for reading) It sounds as if this board has never been constituted.

MR SCOTT: My understanding is that it may have been historically, but it was subsequently dispersed. I'm not sure anything turns on that for today's purposes.

JUSTICE ASIF: Okay, that's fine. Thank you.

MR SCOTT: (After a pause) I'm even more helpfully assisted, I think, this time by Mr Farmer, for Your Lordship's note, that the board removal took place under Amendment 14, paragraph 10, and I see echoes to my left, so there seems to be a point upon which at least we are agreed. Now, My Lord, you may recall that, having referred Your Lordship to this provision on the prior occasion, Mr Faulkner said to Your Lordship:

> "The GP is the sole fiduciary and agent of the partnership. The Rigmora LPs [of course, us] have contributed 99 per cent of the capital. There are checks and balances in play, which means that the consent or approval of the Rigmora LPs are required before budgets can be approved and capital calls can be made."

That's at A1/20/374, and that's in one of the passages that my learned friend helpfully indicated her agreement to. A further aspect of our case in the capital call proceedings is that this check and balance has not been observed either and we seek declarations that the disputed capital calls were not made in accordance with approved budgets in at least the case of five projects, and we've detailed the reasons why over multiple pages in the pleading, and we reserve our position, in other words, pending disclosure. If I can just give Your Lordship the pleading reference, it's the statement of claim, 139 to 175, and the relief sought is at paragraph 2 of the prayer – that's pages 49 to 58 and 66 to 67 – and they are not matters addressed in the pleaded case in Delaware, as I'll show Your Lordship in due course. The case we put in Delaware is that there was no need to seek and obtain approval on the basis that, having repudiated, so it is alleged, our rights have been waived or otherwise have gone. I'm going to come, My Lord, to the default provisions under clause 5(c) in a moment, but, as Your Lordship knows, one of the consequences of a party's being deemed a defaulting partner is the loss of voting and approval rights, including as regards capital calls. That is a consequence of clause 18(f) of the LPA, and perhaps I can just remind Your Lordship what that says. It's at page 477 in the bundle Your Lordship has open.

JUSTICE ASIF: Mm-hmm.

MR SCOTT: So, the relevant sentence is the second one. Perhaps Your Lordship would just be good enough to read that.

JUSTICE ASIF: (Pause for reading) Okay.

MR SCOTT: An essential part of the protection that we sought and have obtained by Your Lordship's injunction is the protection against being treated by the general partner as a defaulting partner, one of the consequences of which would be the loss of voting rights, in circumstances where there is a fundamental dispute as to whether we are in default or not. Whereas Your Lordship's injunction protects us against that happening, so it prevents all the potentially irreversible consequences that may follow if it did happen, the general partner's more limited undertaking does not provide the same protection. The undertaking that Dr Harrison had offered and that was being put forward until about 40 minutes ago would have left it open to the general partner to treat us as defaulting partners and thereby strip us of our voting rights.

JUSTICE ASIF: Actually, having looked at (f), it's not just the voting rights. It's also the approval rights which are important.

MR SCOTT: It is, and Your Lordship is quite right to pick me up on the lazy wording. It is indeed both. My Lord, can I turn next to the provisions on default? This is clause 5(c) and we can pick that up at page 426 – perhaps Your Lordship would go there.

JUSTICE ASIF: Yes.

MR SCOTT: My Lord, five points I'd invite you to note on these provisions. The first is that the default provisions under clause 5(c) are concerned only – and I emphasise that word "only" – with cases in which a capital call in respect of contingent subscription has been properly made under clause 5 and it has not been paid, and Your Lordship sees that very clearly in the opening words of the third paragraph which introduce the default provisions. Perhaps I could just ask Your Lordship to read that third paragraph. It's the one that begins, "A limited partner that has failed to make a payment in satisfaction of its contingent subscription," if Your Lordship would just read that to the end of the paragraph. (Pause for reading) So, the contractual regime that Your Lordship sees here is not for breaches of contract generally. It is not the sort of event of default or material breach provision that one sometimes sees. It is a specific contractual regime to deal only with cases of non-payment in respect of properly made capital calls. Now, we say there has been no non-payment in respect of a properly made capital call because the capital calls were not proper. That's the subject of the capital calls proceedings. That is not the subject of the Delaware proceedings

because the Delaware proceedings is not a proceeding brought on the basis of particular capital calls having been made and not honoured; it's a case brought on alleged repudiation, which is said to bring with it the various consequences to which we will come.

Now, My Lord, the second point to note here is that even if a limited partner has failed to meet a capital call that was properly made, that does not mean that the default provisions automatically apply. Rather, the general partner has to invoke them by serving a default notice. There is then a 30-day cure period, effectively, following which the relevant partner may be designated a defaulting partner. The final sentence in the paragraph that Your Lordship has just read underscores the point that this is all within the discretion of the general partner, and we suggest that the discretion whether or not or when to deliver a default notice must, as a matter of proper interpretation, carry with it a discretion to withdraw a default notice once issued. That interpretation, we say, is reinforced when Your Lordship recalls that this is a discretion conferred for the benefit of the general partner in his capacity as agent for the partnership, i.e. as fiduciary for it, and there is no sensible reason, we respectfully suggest, to construe these provisions such that a default notice is some sort of fire-and-forget missile over which the general partner has no control once it is issued. My Lord, just to illustrate the point with a simple example, take a case in which a default notice is issued and the relevant partner says, "I'm going to pay this. I just can't do it within the 30 days. I'm going to do it on the 31st day." All other things being equal, what the fiduciary office of the general partner would require it to do is to revoke the notice and issue a new one and allow payment to take place within the provisions that are set out.

My Lord, the third point we make here – and this is, again, a point that Mr Faulkner emphasised to Your Lordship – is the fiduciary nature of these contractual discretions, and there can't be any serious dispute that these are fiduciary powers and there can't be any serious dispute that that carries with it the foundational duties of loyalty and their usual instance to exercise the powers in good faith and solely for the purpose for which they were granted. Now, My Lord, that is another basis upon which we challenge the disputed capital calls and the default notice that it was purportedly issued on the basis of. My Lord, if I can just briefly show Your Lordship the pleaded case on that? Can we turn up A1, tab 2, please, at page 63? Can I ask Your Lordship, please, to read paragraphs 189 to 191?

JUSTICE ASIF: (Pause for reading) Yes.

MR SCOTT: My Lord, if we establish that case at trial on the breach of fiduciary duty, that will provide another basis for the declarations that we seek in Your Lordship's court. This is another part of the dispute that sits squarely before Your Lordship's court and is not before the Delaware courts at all, or at least if it is, that is difficult to discern from the pleaded case. That's ultimately all Your Lordship has to go on, the scope of what is in issue in Delaware. Your Lordship has no expert evidence about that you just have the complaints to go on. My Lord fourthly on the default provisions is that if the general partner has properly called capital and if the general partner has properly served a default notice and it is not cured within the 30 days, then and only then is the respondent, limited partner, deemed a defaulting partner, and that has a number of consequences which follow under the contract. Now, I've addressed Your Lordship already on one of these; that's the loss of voting rights and approval rights under clause 18(f). What I want to turn to now are the remedies that are available to the general partner as a means by which to deal with the defaulting partner, and these are set out in the fourth paragraph of clause 5(c). Your Lordship sees that it opens with these words:

> "If a limited partner becomes a defaulting partner, the general partner may, in its sole discretion, pursue one or more of the following alternatives."

So, again, it's a discretion and, as such, it's held in a fiduciary capacity and is subject to the usual restrictions. My Lord, there are also contractual restrictions on the discretion to keep in mind here. The first of these is that the first of the four alternatives introduced, the imposition of a default charge. That cannot be exercised in combination with the acceptance of the capital by way of late payment. Your Lordship sees that at the foot of the page:

> "If the defaulting partner's preferred units and common investment units are sold in their entirety, pursuant to clause 2, [then this,] or if the general partner exercises its sole discretion to accept a late contribution, pursuant to 3 above, the general partner shall not [shall not] impose a default charge pursuant to 1 above."

As we will see in a moment, that is exactly what the general partner is seeking to do through the suite of relief prayed for in Delaware. It is seeking both an order for specific performance, as it is described, pursuant to which we would be required to pay $585 million in capital, and at the same time, an order permitting the general partner to impose a default

charge. This contract simply does not allow that. My Lord, the fifth point and the final point on these default provisions concerns the scope of the default charge. If Your Lordship will just turn over, please, to page 25, can I ask Your Lordship to read the second paragraph on the page? It says, "The partners agree that damage is suffered [etc.]…"

JUSTICE ASIF: Sorry, page 25 in this document?

MR SCOTT: It's 25 of the document or 428 of the bundle.

JUSTICE ASIF: That's 23, I think, in the document.

MR SCOTT: It's 23 in the document----

JUSTICE ASIF: 23 in LPA, 25 in the exhibit.

MR SCOTT: Yes, (inaudible).

JUSTICE ASIF: Yes, I've got it. Sorry, second paragraph saying, "Partners agree that damages"----

MR SCOTT: Yes, "that damages"-- and I'd ask Your Lordship to note as you read through, what is the subject matter of the default charge? The answer is the units identified. The preferred units and the common units.

JUSTICE ASIF: (After a pause) Yes.

MR SCOTT: So, obviously here there is no mention anywhere of this being a global default charge. On the contrary, it's a default charge defined expressly by reference to particular classes of unit. Now, in this fund, as you Lordship will have seen, there are various pools. In the case of just one pool – that's ATP IV – are assets held and distributed by reference to units. So it is that pool and that pool alone which is the proper subject matter of a default charge. In the case of the other pools, they are the subject of different provisions under the LPA which do not refer at all to a default charge. You can see that from the plain language of the contract. So My Lord, with those points in mind on the checks and balances, can we turn up, please, the Delaware complaint? Your Lordship has that at A4/28/250.

JUSTICE ASIF: Yes. Is that just one of the (inaudible)? (Inaudible). (After a pause) The reason I'm sort of trying to see is effectively looking at this question about timing, where (inaudible) effectively it's 35 days, and after 35 days then potentially the (inaudible) comes down.

MR SCOTT: One of the protections that Your Lordship's order confers upon us is that we will get that 35-day period once the dispute about contractual entitlement to invoke the provisions has been resolved, and what the general partner is seeking to achieve is to deprive us of that protection and thereby bring about a situation in which the general partner can pressure us by saying, "If we are right in the dispute, we the general partner, then the clock will have

expired. You will have lost your voting rights, and we will be entitled to oppose a default charge." That's, with respect, entirely correctly what Your Lordship's injunction prevents.

JUSTICE ASIF: Okay, so A4/28/250?

MR SCOTT: Yes, My Lord. This is the Delaware complaint. If I can ask Your Lordship, please, to turn to 2508. There isn't time, I'm afraid, to take Your Lordship through all of this, but I hope I can give you the gist of it from the----

JUSTICE ASIF: Can I just check – I did see this one (inaudible) bundle, the Delaware complaint has got a confidentiality marking on it in quite stringent terms. Now, no one has said to me anything about that confidentiality marking having been superseded.

MR SCOTT: Indeed----

JUSTICE ASIF: It's in the footer on every page of the complaint.

MR SCOTT: Indeed. My Lord, as I understand it, the Delaware complaint has been put in exhibit by both parties for the hearing today. I don't understand there to be any objection to my left to (inaudible)----

JUSTICE ASIF: Maybe you will both have to face the wrath of the Delaware judge for having breached the confidentiality order.

MR SCOTT: Well, I----

JUSTICE ASIF: Unless it's within Rule 5.1, or this----

MR SCOTT: I hope the position in Delaware will not be that by showing a fellow judge the allegations being made in Delaware, I'm breaching the confidentiality order, but maybe I need to not go on holiday today.

JUSTICE ASIF: (Inaudible). Well, except having been exhibited here and relied on, they are now in the public domain. I mean, that is something that maybe someone just needs to give some thought to.

MR SCOTT: That's noted, My Lord, and hopefully someone that is not me will do that exercise.

MS PREVEZER: There is a redacted version. I mean, I know they're in the core bundle, so Your Lordship has them, so it's probably too late and the horse has bolted, but there is a redacted version in the bundle which-- I don't know whether my learned friend can make his points off, if----

JUSTICE ASIF: Well, no. I mean, unless the entire document's redacted, I don't think the confidentiality is going to be complied with.

MR SCOTT: The entire document is not redacted.

JUSTICE ASIF: Anyway, sorry for-- No, I'm not sorry for throwing a spanner in the works, because I think it is important, but it's nothing we need to spend more time on today.

MR SCOTT: My Lord, if I can----
JUSTICE ASIF: Yes.
MR SCOTT: -- move past the spanner for present purposes, and perhaps we can think about what we might need to do to deal with it.
MS PREVEZER: I've been told that we only refer in ours to the redacted one which is in the public domain, and not the non-redacted one.
MR SCOTT: There may be more gold stars for Ms Prevezer and her client than for us.
MS PREVEZER: I'll be able to go to Delaware.
MR SCOTT: My Lord, the relief.
JUSTICE ASIF: Yes?
MR SCOTT: In looking through this, I would invite Your Lordship to keep in mind the three contractual checks and balances to which I drew Your Lordship's attention. Now, it's obviously going to be a matter for the judge in Delaware to decide whether it is appropriate to grant this relief, and to the extent that that is in her court of question of Cayman law, she's going to be briefly assisted, as I understand it, by Cayman law experts, and she will make findings accordingly as to law which is to her foreign.
JUSTICE ASIF: They will be findings of fact, won't they?
MR SCOTT: Indeed, findings of fact. Now, My Lord, I say briefly assisted because, as Your Lordship knows, it's a two-day trial in Delaware. There are going to be fact witnesses, there are going to be other experts, there will need to be submissions on issues which are not straightforward, and Cayman law is going to be slotted in within all of that.
JUSTICE ASIF: On the other hand, Mr Scott, as you know, the American practice is to do very much more on papers and much less orally.
MR SCOTT: Indeed.
JUSTICE ASIF: But I appreciate it's still a lot to cover.
MR SCOTT: My Lord, the only point I want to make for present purposes is, if Your Lordship just looks through the relief that is being sought here, it is in various ways fundamentally at variance with the express terms of the LPA. Now, that is relevant to the wider disputes, and in particular the loss of trust and confidence that we say we justifiably have in this general partner, but it's a further illustration of the importance of holding the ring on the contractual checks and balances, as Your Lordship's order does, to prevent our being treated as defaulting partners pending resolution of this aspect of the dispute. So, My Lord, if we start first with the prayers at B and D. These amount to specific performance as it is described to

pay sums totalling $588.5 million. Perhaps I can ask Your Lordship to read the prayers at B and D.

JUSTICE ASIF: Yes, I've read those.

MR SCOTT: Orders in those terms would not specifically perform the LPA, at least not in the sense that that remedy is understood in this jurisdiction, because there is no obligation, as matters stand, to pay those amounts. Those amounts would have to be properly called under clause 5, and they have not been. What the general partner is seeking to do is to replace the regime of having to call capital and replace it with a new court-imposed obligation to pay it all in one go and to contribute more than half a billion dollars, and to do so without any approval rights on our part as to how it is to be spent. Now, Your Lordship sees in the prayers at A and E it is said that we have waived those approval rights. Can I ask Your Lordship just to read A and E, please?

JUSTICE ASIF: Yes, I've read those.

MR SCOTT: My Lord, we cannot discern from the Delaware complaint any pleaded case as to the basis for the alleged waiver as a matter of the LPA's governing Cayman Islands law, still less for a waiver in writing, as the LPA itself requires under clause 17. I don't want to go back, but that's at page 473, and in the usual way for contracts of this kind, it has a no informal waiver provision. Yet the Delaware court is being told that we have waived these most important of rights without any pleaded cases to hand. Well, no, that's an overstatement, just to say, "without any pleaded case". As I understand it, the pleaded case is that this is all the result of the repudiation. Result of the repudiation.

JUSTICE ASIF: Yes.

MR SCOTT: If Your Lordship will look, then, at F on page 250.9, can I ask Your Lordship to read that, please? It's at the bottom of the page.

JUSTICE ASIF: (After a pause) Yes?

MR SCOTT: (Inaudible) judgment that we are in breach of funding and budget approval obligations sufficient to qualify as a defaulting partner. Now, Your Lordship has seen the provision under clause 5(c), whereby a limited partner can become a defaulting partner. It's a regime which only applies in the case of unmet capital calls. The alleged breach of budget approval obligations, that does not engage the default regime at all, and the alleged breach of funding obligations, that could only fall within the default regime if specific capital calls had been made and not complied with, if a default notice had been served, and if it had not been complied with within the 30-day cure period. My Lord, the general partner did not seek to do any of that before bringing the Delaware complaint, and that is because the Delaware

complaint is instead brought on a very different basis: the contention that we have repudiated the contract by virtue of what we said in the 15 May email. Now, the Delaware court, as I have said, will obviously need to form a view as to whether that email was indeed repudiatory as a matter of Delaware law. My Lord, even if----

JUSTICE ASIF: Hang on. Why as a matter of Delaware law?

MR SCOTT: Sorry, as a matter of Cayman law. You're quite right, My Lord. I'm so sorry. As a matter of Cayman law. She will need to resolve as a matter of Cayman law whether or not it is repudiatory. My Lord, even if the court in Delaware concludes that it is repudiatory, it is impossible to see how that could lead to the conclusion that the default regime under clause 5(c) applies. Indeed, it is also impossible to see how the general partner could simultaneously rely on an alleged repudiation of the LPA while seeking its specific performance and while relying on its default provisions. The general partner is thereby affirming the contract, not accepting any alleged repudiation.

It is likewise very difficult to see, at least as a matter of Cayman law, how the court could accept the general partner's pleaded case that it would be, and I quote, "futile to serve default notices", and that there is no need to do so before treating us as defaulting partners. Just to accept that would be to fundamentally rewrite the default provisions that Your Lordship has seen. If I can just show Your Lordship the pleaded case on futility; it's really quite important when it comes to the injunctions Your Lordship is being asked to vary. Can we turn back, please, to page 2502? With the greatest respect, this paragraph appears to have been written either by someone who has not read the contract, or by someone----

JUSTICE ASIF: Sorry, which paragraph?

MR SCOTT: It was paragraph 171.

JUSTICE ASIF: 171, yes. Thank you.

MR SCOTT: It's got reference to----

JUSTICE ASIF: I was just distracted by paragraph 177, which doesn't strike me as being an accurate reflection of the case.

MR SCOTT: It has struck us much the same, My Lord. On 171, the allegation is that the harm arising from our 15 May email, which you see at 169, is said to be a material, clear breach of the LPA, a payment default, and an event of default under the LPA. None of those is a contractual concept that this contract recognises. It then says it would be futile to wait for the notice period under paragraph 5(c) to lapse before the family office LP is declared as a defaulting partner. We would ask Your Lordship to put that pleaded case in Delaware,

which is foundational to the relief sought, against the attempt to persuade Your Lordship to discharge that part of the order which prevents them from serving default notices. How can that at one and the same time be futile, as the Delaware court is being told, and essential, as my learned friend submitted to you this morning? Either one or other of the judges concerned is not being told the full story.

My Lord, if we can go back, please, to the prayer, 2510, the general partner seeks here another order declaring that we have waived or forfeited voting rights, but this time on the basis that we are the defaulting partner for the purpose of 18(m). That's a case that was pursued despite no default notice having been served. Likewise, Your Lordship sees at the prayer at (i) on the same page, an order is sought enjoining the family office from interfering with the ATP in the exercise of its discretion over the fund once the family office LP is deemed to be a defaulting partner. What that apparently seems to do is to go beyond even clause 18(f) and treat us as some sort of outlaw, unable to interfere at all with how the general partner, our fiduciary agent, is operating a fund the vast majority of which is ours.

My Lord, if I can just deal at this point with the issue about the additional limited partners: I'm heartened to hear that the documents we have been seeking now for some time are to be found in the disclosure in Delaware. That is good news (inaudible), but even if we were to take account of these limited partner interests that they carry, it reduces our economic interest in the fund I think to the lower end of 90 per cent, rather than the higher end. It makes no material difference to who are the real----

JUSTICE ASIF: I think Ms Prevezer was saying 96 per cent, rather than 99 per cent.

MS PREVEZER: 97 per cent, I said, yes.

JUSTICE ASIF: 2 per cent?

MR SCOTT: Indeed. The reality, as all concerned know or ought to know, is that this is very substantially our fund, and yet the general partner is seeking in Delaware an order that will exclude us from any ability to interfere with its management. My Lord, the final example of variance between the LPA and the relief sought – and in some ways, we say, the most egregious of all – is the relief that is sought in relation to the default charge in combination with the orders for specific performance. Your Lordship sees that at page 25110, top of the page, and the primary case is an order permitting imposition of the default charge against all of the family office's interests. We respectfully say it would be in clear breach of the express terms of clause 5(c) to attempt to combine these remedies. Indeed, to do so, to have

even attempted it, is fundamentally contrary to the general partner's fiduciary duties. This is an attempt to both obtain capital from us and at the same time dilute our interests.

My Lord, that is among the reasons why, independently of the outcome in Delaware, trust and confidence in the general partner has justifiably broken down. That's why it's quite wrong to submit, as my learned friend does at a number of points in her skeleton and again this morning, that if the Delaware court grants the relief that her client is seeking, the writ will fall away here and the backbone of the petition to wind up will be removed, as it was put in her skeleton.

JUSTICE ASIF: I mean, the problem is it all rather assumes that the outcome in Delaware is binary, which it may well not be.

MR SCOTT: That's a point I'm going to come on to in the context of the case management stays. There is a simplistic assumption, with respect, that underlies the general partner's position to Your Lordship, which is that we can know with certainty when the Delaware judgment is going to come, we know with certainty when an appeal will come, and we can assume it will be binary one way or the other. Your Lordship is asked to case manage the proceedings before you on the basis of those assumptions, but they are, with respect, all false. We don't know any of those things: we don't know how long it's going to take the Delaware judge to write her judgment; we don't know how long an appeal will take; and we don't know what the judgment is going to say.

JUSTICE ASIF: My job would be so much easier if we could know in advance.

MR SCOTT: My Lord, can I turn, then, to the two respects in which Your Lordship is being asked to change the injunction?

JUSTICE ASIF: All right. Mr Scott, we've got 20 minutes until the short adjournment.

MR SCOTT: I think I will be done by then.

JUSTICE ASIF: That's fine. Just a quick note that-- Let me just say this: although I was complaining bitterly about the time estimate, that is not to say that if people need time to make their submissions properly, we shouldn't take it. If we have to, in fact I have availability on Monday and Tuesday next week, and so if we need to go over, then we need to go over.

MR SCOTT: Well, we will attempt----

JUSTICE ASIF: I see Ms Prevezer shaking her head, indicating she can't, but it seems to me that because of the time constraints related to Delaware, I need to make a decision upon the various issues that are in front of me as soon as possible. Ms Prevezer, it may just be that

you'll need to send a substitute or make some alternative arrangements if we don't finish today. Yes?

MR SCOTT: My Lord, can I start with what the parties have referred to as the default injunction? That's the provision under paragraph 1 of Your Lordship's order. I think we have each done what the other did in seeking to follow the order from the other's skeleton, but I think it's the right way to proceed, not least in the light of the apparent movement on their undertaking in the course of the morning.

JUSTICE ASIF: I notice your second heading, "The injunction remains just and convenient", and then "Proposed variations" as Heading 3. Have we skipped over 2, or is that already covered by what you were just saying?

MR SCOTT: The large point there, My Lord, is nothing has changed since you were persuaded the first time round. Mr Faulkner explained to you concerns we had about losing the checks and balances under the LPA. I've shown Your Lordship what the checks and balances are. Your Lordship, I hope, has our submission as to why this injunction is necessary, just, and convenient: to hold the ring so they are preserved. My Lord, if I can just make one brief coda to those points before turning to the variations. It's to invite Your Lordship to keep in mind the disparity on both sides in terms of reversibility. So, on our side, we are offering, a cross undertaking in damages which is fortified by assets in the jurisdiction worth $3.8 billion. In the context of the fortification application from the general partner, you've been told that potential losses of hundreds of millions could occur. Even if they do, they will amply be covered by the assets that we have in the jurisdiction and our cross undertaking.

By contrast, there is no offer on the other side of an undertaking to return capital to us if we pay it under protest and it turns out that we have no contractual obligation to do so. The general partner is an entity which has no assets, as we understand it, that would be able to fortify such an undertaking, even if it were given. So when Your Lordship comes to the balance of convenience, we would ask Your Lordship to keep firmly in mind the disparity in protection that exists by reason of those features. Because whereas it will be possible, if it proves necessary, through the cross undertaking in damages to address the alleged consequences Dr Harrison has identified, if they do emerge, it will never be possible to have the general partner return capital to us, because the whole thrust of the case has been this----

JUSTICE ASIF: Well, not without winding up the entire fund.

MR SCOTT: The whole case that is being put to Your Lordship by the general partner is, there are urgent funding needs, we need the capital so it can be spent on Dr Harrison's companies. Of

course, there's no undertaking from those companies either to return the capital, because presumably they want it for their own activities. My Lord, can I deal then with the third topic, variation on the default injunction? Perhaps can we start here at A1/15/261?

JUSTICE ASIF: A1?

MR SCOTT: Tab 15. We're in Dr Harrison's third affidavit, which sets out the undertaking.

JUSTICE ASIF: Give me that page again.

MR SCOTT: 261.

JUSTICE ASIF: 261, thank you. 261.

MR SCOTT: Can I ask Your Lordship just to read what his Lordship was being asked to accept in lieu of paragraph 1 of the injunction? (After a pause) That lesser undertaking was inadequate to meet the justice of the case in two respects. The first is the scope of what it covers so far as concerns invoking the default provisions, because all it covered was the imposition of the default charge. Everything else it left open to the general partner: issuing default notices; treating us as defaulting partners; on that basis, stripping away our voting and approval rights. There was some indication this morning, as I began, that the general partner now is willing to offer more, is willing to offer not to strip away our voting and approval rights. I'm in the more invidious position that I don't have the text.

JUSTICE ASIF: I was going to say, to be fair to Ms Prevezer, she said her instructions were that the GP agrees not to strip the voting rights. I think at that stage I hadn't raised the question of approval rights.

MS PREVEZER: I can clarify that, (inaudible). If you're looking for the wording, it's at A/04/77. It's the voting as set out there in the LPA (inaudible). I hope that helps my learned friend.

MR SCOTT: What would really help is, in words that we can all look at, an amended form of undertaking. That's not a criticism of my friend; she can only do her best with the instructions she has.

JUSTICE ASIF: I appreciate it's (inaudible) suggestions around (inaudible) intended to be helpful but are not necessarily.

MR SCOTT: Wording aside, and without at all meaning to seem ungracious, dealing with the voting and approval rights is only one thing. There is still the fundamental problem – unaddressed – of the opportunity to cure the default notice once served. Your Lordship's order protects us against being put in the invidious position in which a default notice is served, the clock starts running, and we have to choose either obey, as I have said, with the money going once it's paid over, or to put all of our eggs in the basket of being right on the question of whether there is an entitlement to call capital. Your Lordship's order, with

respect, quite properly protects us against that risk, against the risk of effectively being held hostage by the general partner. There is no offer from my learned friend to address that protection because the general partner doesn't wish to provide it. Your Lordship will draw his own conclusions as to why.

My Lord, if I can just briefly address at this point the suggestion that the general partner needs to be able to set the clock running because it needs to be able to move quickly. We respectfully suggest that Your Lordship should ask the question, move quickly and do what? What is it that the general partner wishes to be able to do that would enable capital sooner to come into this partnership? Despite all the reams of evidence that Your Lordship has, you have no suggestion from Dr Harrison that there are sources of capital, specific sources of capital, that would be available to him right now or in the coming months if the injunction were discharged. There's simply no evidence to that effect. There's no suggestion that if you were only able to default charge us, funding would be able to be obtained.

In the absence of that evidence, Your Lordship does need to ask with real care, what is the point that is sought to be achieved by the general partner running down the clock? The only answer we have been able to ascertain is that it will enable the general partner, if the general partner wins in Delaware, to apply the default charge and thereby reduce our interest, the practical consequence of which is to increase Dr Harrison's interest and that of his associates, the other LPs. My Lord, that's the first respect in which we say the proposed undertaking falls short.

The second is its temporal scope. Your Lordship's order is expressed to apply "until further order". That has the distinct advantage of leaving this court's hands untied in the event that developments later arise that make it just and convenient to revisit the order, and that includes developments by way of decisions in Delaware insofar as they have impact here. Your Lordship has made an order in a time-honoured form that will allow the court properly to examine such developments if and as and when they occur.

What the general partner invites Your Lordship to do is instead accept an undertaking that automatically terminates upon a judgment being given at first instance either here or in Delaware, irrespective of what that judgment says, irrespective of whether appeals are pursued against it, irrespective of what the timing is on those appeals, irrespective of what

the factual position is on the ground as to what the fund's financial condition is at that stage, and what justice and convenience would serve. We do say that would be, with respect, an entirely foolish and unjust order for Your Lordship to make. By far the better course is to leave the order in place until further order, so that if and when developments do occur, they can be considered in concrete terms – for example, with the benefit of an actual judgment from Delaware – rather than in the abstract and hypothetical way that the general partner seeks to.

My Lord, can I deal next and briefly with capital calls? We've explained in some detail in writing the various reasons why it would not be just and convenient to discharge the capital calls injunction. Your Lordship will have read our written submissions, so I'm not going to repeat them orally, but we do here invite Your Lordship to stand back and ask, what would be the point of serving capital calls between now and the resolution of the dispute? It seems to us, with respect, the only purpose of serving them could be to pressure us into paying prior to resolution of the dispute, because it cannot be suggested that serving capital calls will achieve any benefit in resolving the funding difficulties of the partnership.

As Your Lordship will have seen from the skeleton, there have been attempts between the parties to agree an interim funding arrangement. That has not resulted in agreement. Your Lordship may have seen the correspondence, may have formed his own view as to whether one side is more to blame than the other. In some ways, that doesn't really matter for present purposes. It is an avenue that is always open to the parties, to seek to consensually resolve an interim funding. What will not assist that process is to enable the general partner effectively to put pressure upon us with capital call notices backed up by default notices, time under which will run down, so that we end up in a situation which is irreversible in the event that the court concludes at trial that we are right. My Lord, it was said in my learned friend's skeleton----

JUSTICE ASIF: Well, except, Mr Scott, if you are right, then all of these calls will fall away, won't they?

MR SCOTT: Yes, but that will not assist with the loss of voting rights, and that's the problem. Now, the problem would go away if there was some mechanism by which the general partner could undertake to repay capital paid under protest. Of course, that would cut across the whole basis upon which their position stands. My Lord, fortification: five points here, and I'm going to take them fairly briefly because the short answer to it all is our assets in the

jurisdiction. My learned friend is entirely right that we agree on the principles, and I anticipate those principles will be familiar to Your Lordship.

We do say, though, that it is essential to ask the question of whether the alleged losses would result from the injunction or from something else. If Your Lordship looks at the evidence and the submissions made in the skeleton, it is not the injunction that is said to cause the alleged losses, it is the dispute between the parties about the extent of our funding obligations, a dispute which of course predates the injunction. That is a complete answer to the application for fortification.

My Lord, the second point is that, insofar as the injunction has any material effect on the general partner's ability to obtain funds for the portfolio companies, it could only be on the basis that it prevents the imposition of a default charge and thereby monetisation of our defaulted stake, but that could only be coherent if Your Lordship had some evidence that there were funding sources out there which, if the general partner could default us, that would enable him to access. Your Lordship has no such evidence.

My Lord, third, these fundamental causation problems aside, the evidence on the likely extent of the loss is inadequate. My Lord, we gave various illustrations why at paragraph 74(d) of our skeleton. Just to give another example, whereas we were told by Dr Harrison in his evidence that the companies are worth US$374 million, we were told by my learned friend in her skeleton that the companies are either insolvent or imminently will be, and we find those two things difficult to reconcile. Again, this is not a criticism, and it may simply reflect the uncertainties that Dr Harrison and his team see on this. Your Lordship also sees that uncertainty in the proposal for fortification not in respect of a specific loss, but a percentage of the supposed value of these companies. That is, with respect, a far cry from what the authorities require in terms of a good arguable case. My Lord----

JUSTICE ASIF: Sorry, Mr Scott, just repeat that. I don't----

MR SCOTT: The good arguable case test that you see in *Energy Venture Partners Limited v Malabu Oil and Gas Limited* [2014] EWCA Civ 1295 from the Court of Appeal requires the court intelligently to estimate the extent of loss. The court has to be in a position to make an intelligent estimate of it so that it can calibrate what fortification is needed. Your Lordship simply has not been provided with the evidence that would enable such an intelligent estimate. That's the submission. My Lord, 4, even if there were otherwise a good arguable

case, it founders in the context of this fund once it is recalled that we're talking here about alleged loss to a fund which is very substantially ours, somewhere in the 90 per cents. It is impossible to see how it could be just and convenient to require us to provide fortification in respect of alleged losses to a partnership which, if they ever occurred, would be losses that ultimately fall, for the most part, on us.

Your Lordship will have seen, although reliance is placed on the interests of the other LPs (inaudible), there is no attempt to confine the fortification application to the alleged value of those interests. No attempt, not least, because any such attempt would not come close to justifying fortification in sums approaching $100 million. My Lord, finally, and in some ways the shortcut through all of this, our very valuable assets in the jurisdiction. My Lord, if I can just show you the evidence on this, you had it in unsworn form, I think, on the 20 June hearing. It has since been sworn. It's Mr Bogdanov's second affirmation, A1/11/54, please.

JUSTICE ASIF: Did you say page 54?

MR SCOTT: I did, but it was a bad reference – it's 154. Grateful to My Lord. Your Lordship there has the evidence about the value of the Rigmora LP's stake: just over $3.8 billion. They are assets in the Cayman Islands. There would be no difficulty enforcing against them if the need arose, not least in circumstances where the general partner is of course trustee of the assets for the partnership. My learned friend says in her skeleton that this point is no answer, because if the injunction causes a loss to the partnership, that loss cannot be made up by other partnership assets. That's the point she makes at paragraph 18.20. With respect, that misses the point. The point is, if an award of damages is made against us, is there any material risk that it could not be satisfied out of assets in the jurisdiction? And there is no such risk once it is recognised that our assets – not partnership assets, our assets, our interest in the partnership – is worth $3.8 billion. Unless I can assist Your Lordship further, those are our submissions. I think we now move on to the case management.

JUSTICE ASIF: Well, it's one o'clock now. Can I just ask, what do you want? Do you want me to at least give you a decision on the injunction and then go on to deal with the stay and directions? Or do you want to continue with your submissions and then for me to, if I can, give you a decision on as many issues as we're able to at the end of the day?

MS PREVEZER: I think the latter makes sense.

JUSTICE ASIF: All right. Five past two, then. Thank you.

(Adjourned for a short time)

MS PREVEZER: My Lord, first of all, we're very grateful for the extra time. Can I----

JUSTICE ASIF: (Inaudible) you've done me out of handing down (inaudible).

MS PREVEZER: Oh no, the point of that was I was going to respond very briefly on the injunction----

JUSTICE ASIF: Right. Okay.

MS PREVEZER: -- before Your Lordship delivers it-- a judgment on that, but we have managed to reach accommodation on the balance of what was before Your Lordship.

JUSTICE ASIF: Okay. Fine.

MS PREVEZER: So, do you want me to reply on the injunction?

JUSTICE ASIF: Yes, I think you should.

MS PREVEZER: Albeit you've reached a judgment.

JUSTICE ASIF: You certainly should, because I might make some changes.

MS PREVEZER: Hope rest eternal. The short points I want to make on the injunction are these. As Your Lordship knows, the parties agreed to have the dispute determined in Delaware, and they agree that the issues arising out of the LPA could be determined by the Delaware court. Whilst my learned friend, Mr Scott, did a very eloquent job of identifying arguments that might be raised in Delaware based on Cayman law and the LPA, which, of course, we don't accept, and so I'm not going to respond to that, the Delaware complaint (inaudible) court will decide that complaint, and the relief sought, and I just want to turn Your Lordship to the Delaware complaint if I can, please, just to see what it is that is being sought by way of relief there and what it will cover. I think if you can start on the introductory paragraph and I'm going to just very quickly skip through some paragraphs that I----

JUSTICE ASIF: Sorry, just give me a page reference and the bundle.

MS PREVEZER: Well, first of all, it's A2425 is the one I'm working off and that's the unexecuted version. It's behind tab 28 in volume 4 of bundle-- it's the content of the exhibit----

JUSTICE ASIF: 2428.

MS PREVEZER: Yes. 2425 is where it starts. Apologies. (After a pause) (Inaudible).

JUSTICE ASIF: Yes.

MS PREVEZER: Your Lordship will see the introduction at paragraph 1. Your Lordship will quickly cast your eye over that, please.

JUSTICE ASIF: Mm-hmm.

MS PREVEZER: And over the page it goes. Your Lordship will then turn on to paragraphs 9 and 10, which is the effect, the consequences, of the injunction-- of the actions that are being caused on the portfolio companies as stated in that complaint.

JUSTICE ASIF: Yes.

MS PREVEZER: Paragraph 15 on page 12. Outline----

JUSTICE ASIF: Sorry. If there's anything particular you want me to take from the table, I can find----

MS PREVEZER: No, I will come at-- yes, it's just the relief at the end, but just wanted to show the way it's formulated.

JUSTICE ASIF: Right.

MS PREVEZER: At 15, "Seeks declarative judgment," "The LPA gives the right to play the full charge." Then paragraph 124, which Your Lordship will find on page 59 or----

JUSTICE ASIF: Sorry, Ms Prevezer, just going back to 15.

MS PREVEZER: Yes.

JUSTICE ASIF: It seems to me the operative part is actually not the bit that says, "The LPA gives ATP the right to impose a default charge," but actually what it is that is being asked for, which is in the middle of the paragraph: "ATP, therefore, seeks declarative judgment of the family officers"----

MS PREVEZER: Yes.

JUSTICE ASIF: -- "a payment default."

MS PREVEZER: Making them defaulting partners, and then labelling them "pose a default charge," but I'll show you the relief at the end.

JUSTICE ASIF: Right. Okay.

MS PREVEZER: But it is clearly set out. I just wanted to show the build up to it. Paragraph 124, Your Lordship will see the point I was making about approved amount on budget and what have remained uncalled, paragraph 124, which is page 2482. (After a pause) Then going on to 152, paragraph 152:

> "The setting out of the clear and unequivocal repudiation obligations. Improper and bad faith resistance to considering new budgets etc. They request the order of specific performance and to fund capital calls as identified in the offer."

Then moving forward, My Lord, to the relief sought. The causes of-- well, let me show you the causes of action.

JUSTICE ASIF: That's the specific performance to engage in the budget approval process under the terms of the LPA. That's going to be an almost impossible award to police, is it not?

MS PREVEZER: Well, maybe. This is for the Delaware court, My Lord. It's not for Your Lordship.

JUSTICE ASIF: No, I appreciate that. I'm just wondering how the Delaware judge is going to close this.

MS PREVEZER: Then you've got the causes of action which begin at 2497. Breach of contract, that's the first one. Second one is at 2500, (inaudible) breach of contract. Then at the third cause of action, the 2503, and this is the point that my learned friend says that's not quite Cayman law, that's for the Delaware court to decide.

MR SCOTT: I think just so the transcript has it, it was Your Lordship who said that.

MS PREVEZER: Okay, I'm sorry.

JUSTICE ASIF: Yes. I was about to say, and clearly I'm not making agreement, it just-- it caught my attention to be a slightly novel concept.

MS PREVEZER: Well, it may well be that this is the way the Americans phrase the position. There will be expert law on Cayman law given to the Delaware court.

JUSTICE ASIF: Now, I'm conscious, certainly under New York law, which I'm fairly familiar with, there is a concept of the de facto good faith. It hasn't really made it across the water.

MS PREVEZER: Fourth cause of action is at 2506, the global default charge, and the fifth cause of action is declaratory relief, proper actions of the general partner, which is very important, and you see all of those reflected in the request for relief from 2508, and Your Lordship will see a panoply of requests, declarations, orders sought. Specifically, over the page at 2510, a declaration that, by the filing of this action of the complaint itself is not act in bad faith, wilful fraud, intentional material breach of the LPA, and that is important in terms of with regards to the conduct and the filing of this action, because one of the complaints in the petition is that the very filing of the action was precisely that improper. My learned friend will say that doesn't cover breach of fiduciary duty but we say it's wide enough to deal with all of that and the Delaware Court will decide that.

Now, again, it's not for Your Lordship to go into the merits, but as regards to status quo, the position still stands as I submit it to you. If we're right in Delaware, that there has been a waiver, by dint of the breach, of their voting rights, and they have to pay capital calls, which will include the capital calls in the writ summons here, then there will be prejudice suffered

by us as a result of this injunction continuing if we are not able to issue further capital calls to get the clock running, in relation to those, in the meantime, we say.

Now, and we say there is no conceivable-- and if we issue further capital calls, there's nothing to stop them contesting them. There's nothing to stop them paying them, but I think it is, with respect, disingenuous for my learned friend to say they may feel under pressure to pay anything. They don't feel under pressure at all. They have made no payments. They're not offering to pay. The office interim funding has been very small amounts, all contingent and all conditional, but if the clock doesn't keep running, we are prejudiced, and given that we are prepared to undertake not to take any action in relation to any default charge in relation to the default notices that might be issued, including not enforcing any of the-- dealing with the voting rights under 18F of the LPA-- If Your Lordship wants to open that up, Your Lordship will find it at A0477 is where the voting right provision is.

So, we are not taking those away or doing it-- take those voting rights away, pending determination of Delaware, or the consent rights. I mean, the full-- everything that is-- we're not going to impose anything else. I think, that's the best way of-- in terms of wording, we're happy to just adopt that wording there and lift it.

JUSTICE ASIF: The difficulty, Ms Prevezer, is this, isn't it? The relevant clock is 35 days. So, suppose you issue your capital call tomorrow, even on the basis of all of the undertakings, 35 days is going to run out before you get your judgment in Delaware, and so judgment Delaware comes down, optimistically, on 19 September, 35 days already run out. So, on 20 September, your client is then able, immediately, to say, you, family office, are in default because 30 days have run out and we are immediately entitled to treat you as a defaulting partner even though, over that 35 days, or over the period up until 20 September, there has been an unresolved question about whether your clients are entitled to make capital calls or not.

MS PREVEZER: But if the question is resolved in our favour by the Delaware court which concludes that they have waived voting rights, then we are entitled to do precisely that, if we're right in Delaware, and therefore we don't, and shouldn't have to, wait another period within which to exercise those rights.

JUSTICE ASIF: How do you then respond to the position put by Mr Scott on behalf of the family office? Really, that puts them in an impossible position because they either have to pay with no possibility of getting the money back if (inaudible), or effectively they lose their----

MS PREVEZER: Well, they can apply for a stay in Delaware of the enforcement and then they can pay at that point, if they feel imperilled in relation to their voting rights.

JUSTICE ASIF: If they could do that, then why do you need the clock running now anyway?

MS PREVEZER: Because the onus shouldn't be on us. That puts the obligation rightfully on them to deal with this. If we are right, and we win in Delaware, they will have been found to have lost those voting rights, and we ought to be entitled to act accordingly. If they seek a stay of that decision, and they decide to pay money into a court account or whatever, whichever way they seek to do it, that will be up to them, but this is a state which holds the ring pending Delaware. We're right in Delaware, it goes, and the consequences are what the Delaware court calls the consequences, and the relief is very clear on that.

Now, I'm not prejudging which way the Delaware court is going to go on any of this, but that is the consequence, and we are being prejudiced by not being able to issue in the ordinary course, as we need to do, in between now and Delaware, further capital calls. Standing here, I don't have instructions as to what those capital calls will amount to, when they're going to be issued, but at the moment the order reads as a blanket injunction, preventing us from exercising rights that we've got under the LPA because it's without the consent, in writing, of the LP, the family office. They're never going to consent. That's a very broad order indeed, and it's not holding the ring.

(After a pause) So, we say amending paragraph 2 should be, at the order of stance, should be allowed. There's no prejudice to them at all and they've made it abundantly clear in their skeleton, and elsewhere, that they are not intending to pay, and they haven't paid the capital calls in May so we haven't had the money that's been necessary to fund these companies, and time really will be of the essence. If we get to Delaware and we win, we will need to move very fast in order to do anything in relation to getting money, and in particular, one of the capital calls, I don't know if Your Lordship has appreciated this on the papers, relates to the ATLS fee for, which is the money for management fees.

JUSTICE ASIF: I saw that.

MS PREVEZER: There is absolutely no defence to that, and they haven't paid it, but that's a separate point. So, we are being prejudiced at every day that goes on at the moment. So, that's all I wanted to say in relation to the two paragraphs. If Your Lordship is against me in relation to the injunction ceasing on the Delaware judgment being given, notwithstanding they can seek a further injunction in Delaware or stay in Delaware, which will give them the

protection they need, then if Your Lordship is going to be-- at the very least it should come back to-- the injunction should only extend to the CMC, which I'm happy to tell Your Lordships we've got an agreement on subject to availability of the court. So, that's what I was going to say in the injunction, and I can then tell you what's happening on the others.

JUSTICE ASIF: Okay.

MS PREVEZER: In relation to the other matters, there are the two stay summons and the two directions summons, and it's been agreed, subject to what I'm going to tell you and subject to Your Lordship, that those four summons should be withdrawn and costs reserved in relation to them, and the basis on that, the agreements being reached by the parties, is that we will file a defence to the petition by 20 August, and we can draw up an order for Your Lordship that the discovery in Delaware stands as the discovery in Cayman, I think that gets moving on 13 August, that any additional discovery requests, all requests have to be made by 3 September and delivered by 24 September, that there should be a CMC after the Delaware judgment is delivered.

JUSTICE ASIF: So, sorry, just give me the date for delivery of----

MS PREVEZER: 24th to be delivered, by 3 September for the request to be made.

JUSTICE ASIF: Yes. Thank you.

MS PREVEZER: And that satisfies both parties. There's very limited amount of work that's going to be done in Cayman. That's really been the concern. There should be a CMC after Delaware, which should be settled in the third week of October, subject to your availability, My Lord, because we weren't anticipating this would come back to Your Lordship.

JUSTICE ASIF: It will, because it's FSD, say it's assigned to me so----

MS PREVEZER: And I can promise Your Lordship, certainly on my part, better skeletons and sufficient reading time in preparation for Your Lordship.

JUSTICE ASIF: Third week in September is----

MS PREVEZER: Third week of October.

JUSTICE ASIF: Sorry, third week in October is actually not ideal. I've got a four-day trial that week, but the Friday of the week before, the 17th, would work.

MS PREVEZER: Yes. I mean, if the judgment in Delaware, for some reason, and we think it unlikely, hasn't been delivered, we may have to revisit that, but I think we want to date in the diary. When this court----

JUSTICE ASIF: Can I just say, if it's the 17th, I've got things in my calendar 13th, 14th, 15th, so would really only have the 16th for reading.

MS PREVEZER: Well, obviously it would be very important Your Lordship has had time to review the Delaware judgment, and I have no idea what the landscape is going to look like then, but we do think it will change the landscape one way or another, and on that, then, CMC, we will deal with all else. What's----

JUSTICE ASIF: Can I just say-- sorry, MS PREVEZER.

MS PREVEZER: No, no, no. Please go ahead, My Lord.

JUSTICE ASIF: I know it's not ideal because everyone wants to resolve this quickly as possible, but if the combination of the 16th and 17th doesn't work, then currently the whole of the week of the 24th to 27th is clear.

MS PREVEZER: If Your Lordship-- I don't know, I mean we don't have a problem with coming back at that later-- if that gives greater certainty to Your Lordship in terms of time for reading, I don't know whether----

MR SCOTT: I can't do the 17th, I'm afraid. I can do the dates Your Lordship indicated, the subsequent ones of the 24th----

MS PREVEZER: Maybe we should do that anyway.

JUSTICE ASIF: Right.

MS PREVEZER: And that will give Your Lordship time to read. There'll be greater certainty that Delaware judgment will be delivered by then.

JUSTICE ASIF: All right. I'm keen to do what I can to facilitate getting as much of a timely conclusion as possible----

MS PREVEZER: It's the 24th.

JUSTICE ASIF: --so long as everyone is content for the week of the 27th, then that's fine.

MS PREVEZER: So, the 22nd, did you say?

JUSTICE ASIF: 27th.

MR SCOTT: 27th.

MS PREVEZER: All right.

JUSTICE ASIF: Of October.

MS PREVEZER: I have no idea of my diary, but I will-- and at that CMC, we will deal with the correct party to the petition. You know, Your Lordship, there was an issue before Your Lordship today, and we are reserving that over to deal with at the CMC, which makes sense because it depends on what's still standing or not. We would like, and have agreed, that a trial date be put in the court's diary, your diary.

JUSTICE ASIF: I'm very keen on doing that as quickly as possible so everyone knows the target we're aiming for.

MS PREVEZER: And the target we're aiming to, we say, is mid-January. I think my learned friend's still pushing for the end of December. What we have anticipated is three reading days and five days to do the writ and the petition together, realistically. Now, if we win in Delaware, and if the capital call is (inaudible)----

JUSTICE ASIF: (Inaudible).

MS PREVEZER: --you won't need five days, and you won't need three days of reading, and who knows what will be left in the petition, but that is, and we say, realistically, because if we're talking about a CMC on 27 October, if we're going ahead, there are witness statements, any expert evidence in terms of GPs duties or whatever that needs to be done, realistically, skeletons, we are looking at January because of the vacation as well.

JUSTICE ASIF: Well, just on that, I wouldn't suggest 27th itself as the CMC, or I won't have any reading time. So, it'd be ideal to put it slightly later in the week.

MS PREVEZER: Yes.

JUSTICE ASIF: The Tuesday or Wednesday, or even Thursday, depending on how much material there is.

MS PREVEZER: Can I just get my phone out and look at my diary to see if I can help Your Lordship?

JUSTICE ASIF: Of course. I'm very happy for the two of you to discuss it amongst yourselves afterwards.

MS PREVEZER: Yes.

MR SCOTT: I wonder what might help in particular, if we could have Your Lordship's dates that are available in October around those two weeks and then perhaps my learned friend and I can agree.

JUSTICE ASIF: Right. You can have the 2nd----

MS PREVEZER: Of what?

JUSTICE ASIF: Of October, the 16th or 17th, or the whole of the week of the 27th, so that's 27th to the 31st.

MS PREVEZER: I mean, I think the worry we have, and as we said about the third week in October we agreed between ourselves, the 2nd may be perilously close to a Delaware judgment coming out, and I don't think we should discount that. The 16th and 17th you were concerned about not having----

JUSTICE ASIF: The Delaware judge (inaudible).

MS PREVEZER: I think Your Lordship was concerned about the 16th and 17th, I mean 27 October seems to be----

JUSTICE ASIF: Mr Scott's unable to do the 17th, I believe.
MS PREVEZER: He can't do the 17th, so 27 October.
JUSTICE ASIF: And as I said, you've got the whole of that week, so depending on how long you think I'll need----
MS PREVEZER: And that looks all right in my diary too. (After a pause) So, and then fixing a trial date working from then. We say we're in the middle of January, subject to Your Lordship's diary again. My learned friend I know was keen to get that ----
JUSTICE ASIF: Just on that for a moment. Presumably there'll be some witness statements. Are we going to need experts on Delaware law?
MS PREVEZER: Well, we might do. I mean, I think the question is, what's left outstanding? And once we've got the Delaware judgment, if everything is out there, then I think we might do. If it isn't----
JUSTICE ASIF: If it isn't, the points on Delaware are likely to be very, very discrete, if there are any at all.
MS PREVEZER: Well, yes, but I think Your Lordship was going to need assistance, aren't you? You may not, but I think we should have an option, but we will need witness statements, possible expert evidence, but I can't identify that on the face of anything now.
JUSTICE ASIF: No. That's fine.
MS PREVEZER: And then we----
JUSTICE ASIF: Mid-January will probably be sensible.
MS PREVEZER: Yes, and Your Lordship's diary in mid-January----
JUSTICE ASIF: That is clear, so you've got the whole of January.
MS PREVEZER: Right.
JUSTICE ASIF: Luckily. Luckily, I think.
MR SCOTT: I don't know if it would-- I mean, just dealing very briefly with the expert's issues. We can obviously return to that at the CMC, but the position in fact, as things stand, is there is no pleaded issue of Delaware law.
JUSTICE ASIF: The only reason I mentioned it is whether gross negligence is going to be an issue.
MR SCOTT: No, it's not at the moment. It's not-- I mean, obviously, my friend can amend and----
MS PREVEZER: Yes.
MR SCOTT: -- we can consider then, but as things stand. My Lord, in January, as I understand it, if we aimed for mid-January, that would leave open the possibility for Your Lordship to do pre-reading in the first week of term and then we would have the trial in the second week of term, which I think----

MS PREVEZER: Sorry, is that 12 January second week?
JUSTICE ASIF: That would work.
MR SCOTT: Yes.
JUSTICE ASIF: (Inaudible).
MR SCOTT: So, there will be pre-reading in the week of the 5th, and then the trial itself in the week of the 12th.
JUSTICE ASIF: I can do that.
MS PREVEZER: Yes. My Lord----
JUSTICE ASIF: Can you make sure that's recorded in the order, because we need to let the registry know so that the time is booked out.
MR SCOTT: Yes.
MS PREVEZER: Yes. Of course. So, I think that is all that we need to bother Your Lordship with today, subject to Your Lordship's order in relation to the Injunction 2 amendments and the cost consequence on that.
JUSTICE ASIF: Right. Just give me two minutes because I will just think through a couple of points that you've made in reply.
MR SCOTT: My Lord, just before you rise to do that just one slight correction on the agreement my learning friend relayed to you. We did not agree to withdraw the directions summons.
MS PREVEZER: Oh, I thought----
MR SCOTT: Obviously, Your Lordship is making directions. The agreement was that the stay summons would be----
MS PREVEZER: I'm sorry. I thought that the-- because we were replacing it with an agreed order in terms of direction----
JUSTICE ASIF: I think Mr Scott's right for me to (inaudible) summons.
MR SCOTT: I'm not sure we can withdraw a directions summons.
MS PREVEZER: That's fine. It's just that there is no disagreement between us.
JUSTICE ASIF: That's fine. That's fine, I still need a summons to make an order.

(Ruling given - See separate transcript)

JUSTICE ASIF: So, Ms Prevezer, sorry, I'm against you on all three.
MS PREVEZER: I've never had a judge apologise. There is a question of costs, and I think you should hear from Mr Scott first then I'll respond.
JUSTICE ASIF: Thank you.

MR SCOTT: My Lord, there is the question of costs today. We would seek an order that the general partner pay the costs of the return date and to be assessed on the standard basis, if not agreed.

JUSTICE ASIF: Actually, that does remind me that there was an issue, I think it's in this case, about, and I think it's in the context of the petition, whether the general partner, is that all going to be dealt with?

MS PREVEZER: There's going to be at the CMC. (Inaudible).

JUSTICE ASIF: I was just going to ask-- I see what you mean. It's status rather than identity, but that's fine. Thank you.

MR SCOTT: So, that point is to be resolved at the CMC. My Lord, I'd also seek liberty to apply at the CMC for an interim payment if that hasn't been agreed. I don't have any cost information before the court today, so I can't seek one today, but we would seek that liberty and one hopes----

JUSTICE ASIF: So long as you call it a payment on account rather than an interim payment.

MR SCOTT: I will fix-- I'll wash my mouth out, My Lord. (Inaudible). That's what we seek (inaudible).

JUSTICE ASIF: Well, the only thing I would say is this, if you're going to make an application for a payment on account, then obviously you'll need to put together figures and give the defendant a proper opportunity to respond. I wouldn't want to be turning up at the CMC with people being bounced into having to deal with quantum (inaudible) at such short notice.

MR SCOTT: No, indeed, and it would be very much in our interest to have that tailored sufficiently in advance, and that's what we will seek to do.

MS PREVEZER: My Lord, we would resist any cost order against the GP on behalf of the partnership, which is the party before Your Lordship today. This injunction was there to hold the ring, and it was in support of the capital calls, the writ summons. In the event of Delaware, in our favour, it may or may not be, but in the event it is and we're back before the CMC and the summons goes away, this injunction ought never to be granted and, therefore, there will be cost consequences flowing from that. We are here on the return date because there were issues arising when the face of the injunction was granted. Your Lordship has found against me, but again, if I'm right and this ought never to be granted because we win in Delaware, if, then the costs will flow from that event. So, we say the cost should be reserved over to the CMC and we can debate this then.

MR SCOTT: My Lord, very briefly. The usual principle, of course, is costs follow the event, and the event has been the best part of the day's work of argument, as to whether the injunction

made back in June should be continued on the same terms as Your Lordship made, or very substantially reduced, and we are the successful party on it. With respect, my learned friend's submission confuses the question of the costs of the injunction, which, of course, will be matters to be dealt with at the end, and the costs of the return date, which was a discrete event required by the respondents to the injunction in an attempt to reduce its scope, which has failed, the just order is we should have our costs of that misadventure.

JUSTICE ASIF: I'm going to reserve the cost to the CMC, but mainly because I am unclear about who is the proper party that should be paying. It seems to me that the question of costs-- sorry, what I mean is whether they should be borne by the GP alone, whether there should be partnership expenses, which is the issue in the petition that is going to be determined. It seems to be, I think I want to get to the bottom of that before I make any order.

MR SCOTT: Very well, My Lord.

JUSTICE ASIF: I think, maybe, at the CMC you'll tell me I'm wrong, that it's very straightforward (inaudible)----

MR SCOTT: I think, from our perspective, we had rather assumed that if Your Lordship made a cost order against the general partner, the general partner would not dream of using partnership assets to discharge it because they would be substantially our assets, it would be difficult----

MS PREVEZER: There's an issue of the validation in (inaudible). My Lord, this is all circular because they've issued a petition and there's a section 99 issue about validation. So, reserving them to the CMC makes perfect sense.

JUSTICE ASIF: I think that's better. We should have a bit more clarity.

MR SCOTT: I didn't resist Your Lordship's decision at all. Your Lordship's decision (inaudible).

JUSTICE ASIF: Okay. If you can just make sure that, between you, you draft an order reflecting on that for the CMC, that would be very helpful.

MS PREVEZER: And we won't be seeing you on Monday. Thank you, My Lord.

JUSTICE ASIF: All right. Thank you both very much.

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EXHIBIT T

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	**REDACTED PUBLIC VERSION EFILED: June 26, 2025**
Defendants.	)	

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY PROCEEDINGS

1. Rigmora's Motion to Stay exemplifies why ATP needs specific performance in this Court: Rigmora refuses to abide by the terms of the LPA to which it agreed. Rigmora agreed in the LPA that Delaware is a proper venue for disputes and ***waived*** any venue or *forum non conveniens* defense. But when ATP sought to hold Rigmora to its LPA obligations, Rigmora responded with obstruction. It raced into a Cayman court to file a retaliatory writ petition and to wind-up the Fund and remove ATP. Rigmora now argues that its second- and third-filed claims are the proper vehicles for this dispute. Its Motion seeks this Court's blessing for violating its promise not to assert Delaware as "an inconvenient forum" or improper venue. The Court should hold Rigmora to its commitments and deny the Motion.

2. Even had Rigmora not waived the venue and forum challenges on which its Motion is premised, this action was the first-filed and the *forum non conveniens* factors favor Delaware. Delaware is the proper forum because the Cayman court is not capable of rendering prompt or complete justice. Litigating in the Cayman Islands will result in non-expedited proceedings bankrupting the portfolio companies. That is exactly the escape from specific performance that Rigmora covets, and why the parties here chose the Delaware courts. The Motion should be denied.

BACKGROUND

3. The parties' dispute arises from Rigmora's breach of its obligations under the LPA, which threatens to destroy a portfolio of biotech companies and derail the critical medical research they perform. Compl. ¶¶8-11. ATP brought this action on May 30 to compel Rigmora to meet its capital and budgeting commitments under the LPA. Given the dire position of the portfolio companies, ATP moved to expedite, which the Court granted. Dkt. 31.

4. In Paragraph 18(g)(vi) of the LPA, the parties consented to actions in Delaware or the Cayman Islands and agreed not to assert *forum non conveniens* or venue challenges in either jurisdiction:

[redacted]

[redacted]

(emphasis added).

5. Prior to filing the Complaint, Rigmora refused to engage in the budget approval process and denied ATP's proposal to reallocate already approved budgets to support clinical-stage companies. Compl. ¶¶112-25.

6. On May 15, Rigmora repudiated its LPA obligations by refusing to fund *any* additional capital calls, including up to [redacted] ***for budgets it had already approved***. *Id.* ¶10. Rigmora now argues its obligations to meet capital calls are "discretion[ary]." *Id.* ¶12.

7. Rigmora's actions will drive [redacted] portfolio companies to run out of cash [redacted], and [redacted] more [redacted]. *Id.* ¶9.

8. For that reason and others, ATP sought specific performance in this Court on May 30.

9. After ATP sued, Rigmora ran to the Cayman courts to file retaliatory proceedings. On June 2, Rigmora filed a writ seeking a declaration that it need not pay issued capital calls (the "Cayman Writ"). Mot. Ex. 1 at 4-5. On June 6, Rigmora filed a winding-up petition (the "Winding-Up Petition") to replace ATP as General Partner and close the Fund. Mot. ¶¶5-6, Mot. Ex. 2 at 28. On June 12, Rigmora filed an *ex parte* writ to preliminarily enjoin ATP from issuing additional capital

calls during the Winding-Up proceedings (collectively, "the Cayman Actions"). Ex. A. Rigmora hopes these proceedings will allow it to escape its funding obligations under the LPA, either by terminating the Fund or slowing litigation until the portfolio companies ultimately perish.

10. However, none of Rigmora's Cayman Actions seek the relief ATP seeks here. None makes any provision for expedited relief on behalf of the Fund. None proposes steps to preserve the [redacted] Delaware portfolio companies, their active clinical trials or their hundreds of jobs. Compl. ¶¶9-10. That relief is sought solely here in Delaware.

ARGUMENT

I. RIGMORA WAIVED ANY IMPROPER FORUM DEFENSE.

11. ATP's specific performance claims are properly brought in this Court, which can move expeditiously and provide complete relief. Rigmora's desire to litigate elsewhere does not supersede ATP's chosen forum, to which Rigmora consented. "Delaware courts consistently uphold a plaintiff's choice of forum except in rare cases." *Berger v. Intelident Sols.*, 906 A.2d 134, 135 (Del. 2006).

12. Rigmora waived any arguments that a Delaware forum is inconvenient or that venue here is improper. LPA § 18(g)(vi).

13. Delaware law is clear that parties "are free to displace" the *forum non conveniens* doctrine "by a valid contractual agreement." *AlixPartners, LLP v. Mori*,

2019 WL 6327325, at *12 (Del. Ch. Nov. 26, 2019) (plain language of a forum selection clause precluded *forum non conveniens* argument).

14. Where a defendant "clearly agreed not to challenge the [plaintiff's] selected forum," and "now offers no sensible reason to disturb these sophisticated counterparties' unambiguous intent … the Court must respect the parties' explicit agreement – [defendant] cannot claim *forum non conveniens*." *CRE Niagara Hldgs. v. Resorts Grp.*, 2021 WL 1292792, *8 (Del. Super. Apr. 7, 2021); *Utilipath v. Hayes*, 2015 WL 1744163, at *4 (Del. Ch. Apr. 25, 2015) (same). Rigmora's Motion barely mentions its waiver, conceding it has no response that its plain terms bar the very arguments made in its Motion. The Court should deny Rigmora's Motion on this basis alone.

II. DELAWARE IS THE PROPER FORUM.

A. This Action Was First-Filed.

15. Even if Rigmora did not waive any forum or venue objections, Delaware is still the proper forum because this suit was first-filed.

16. "[A]s a general rule, litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction." *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970).

17. Rigmora argues that this action and the Cayman Actions were filed contemporaneously. Mot. ¶9. But the Cayman Actions were reactive, and this Court defers to the first-filed suit over reactive second-filed suits, even if filed close in time. *Dura Pharms. v. Scandipharm*, 713 A.2d 925, 929 (Del. Ch. 1998) (awarding first-filed deference where an action filed one day later was "in reaction to, rather than independently of"); *In re CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *5 (Del. Super. Aug. 12, 2022) (similar). Rigmora hurriedly filed the Cayman Actions the week after this action in an attempt to circumvent ATP's chosen forum. They are reactionary attempts to obstruct Delaware litigation, and not "contemporaneous" in any sense.

18. Rigmora also argues that ATP's claims are not entitled to first-filed deference because it satisfied earlier capital calls and ATP's claims are thus "anticipatory." Mot. ¶10. Rigmora ignores its May 15 repudiation of the LPA and refusal to approve budgets, each of which is a breach, and that it planned to refuse the capital call due June 13. Moreover, Rigmora's argument makes no sense: if ATP's claims were "anticipatory" because they preceded Rigmora's failure to fund the June 13 capital call, then Rigmora's June 2 and June 6 filings are equally anticipatory.

19. This is not the type of "anticipatory" action to which the Court declines first-filed deference – where a defendant sues in advance of a damages action by the

natural plaintiff. *See Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Crosstex Energy Servs.*, 2013 WL 6598736, at *4-5 (Del. Ch. Dec. 13, 2013). ATP is the natural plaintiff injured by Rigmora's breaches and is seeking injunctive and monetary relief. ATP did not race to the courthouse to defeat an action for damages by Rigmora. Rigmora's Writ of Summons ***does not even seek damages***. Mot. Ex. 1 at 4-5. ATP is the party injured and that will continue to be harmed by Rigmora's breaches. It is entitled to first-filed deference.

B. The *Cryo-Maid* Factors Favor Delaware.

20. Because this action was first-filed, Rigmora has to invoke *forum non conveniens* to justify deference to later-filed actions. *Focus Fin. P'rs v. Holsopple*, 250 A.3d 939, 953 (Del. Ch. 2020). But Rigmora's Motion does not even use the words "*forum non conveniens,*" or cite *Cryo-Maid*. Movants who "do not argue that the *Cryo-Maid* factors apply, ... cannot meet their burden of proof." *CVR Refin., LP v. XL Specialty Ins. Co.*, 2021 WL 3523925, at *9 (Del. Super. Aug. 11, 2021).

21. Rigmora ducks the first-filed standard because it needs to show it "would face ***overwhelming hardship or inconvenience*** from litigation in Delaware," and the factors must weigh "heavily and decisively" in favor of

dismissal. *Principal Growth Strategies v. AGH Parent*, 288 A.3d 1138, 1156-57 (Del. Ch. 2023) (emphasis added).[1]

22. Rigmora cannot show *any* hardship from litigating in Delaware, much less "overwhelming hardship." Rigmora should be estopped from even making such arguments because it waived those defenses. LPA § 18(g)(vi). The selection of Delaware in a forum selection clause "bar[s] inconvenience objections in Delaware." *GXP Cap. v. Argonaut Mfg. Servs.*, 253 A.3d 93, 100 (Del. 2021) (citation omitted).

23. In determining whether a defendant can show "overwhelming hardship or inconvenience," the Court considers the *Cryo-Maid* factors:

> (1) the existence of other litigation involving substantially similar parties or subject matter; (2) whether the controversy depends upon a question of Delaware law which the courts of this State more properly should decide than those of another jurisdiction; (3) the relative ease of access to proof; (4) the availability of compulsory process for witnesses; (5) any other matters that would affect the conduct of the litigation and the expeditious and economic administration of justice.

Focus Fin., 250 A.3d at 952.[2]

[1] The "overwhelming hardship" standard applies to both motions to dismiss and motions to stay where the latter "would likely have the same ultimate effect as a dismissal." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Turner Constr. Co.*, 2014 WL 703808, at *2 (Del. Super. Feb. 17, 2014). That is the case here.

[2] Even if the filings were contemporaneous, the *Cryo-Maid* factors overwhelmingly favor Delaware as the forum for the same reasons.

1. The Cayman Actions Are Not a Substitute for a Delaware Specific Performance Claim.

24. Parties routinely elect Delaware as a forum in their agreements because of its well-known tradition of handling expedited claims and enforcing claims for specific performance. Rigmora now asks this Court to stay its hand in favor of reactionary Cayman proceedings that it designed to thwart specific performance, not enable it. None of the Cayman Actions offer what ATP seeks in this Court: expedited proceedings compelling Rigmora to comply with its contractual obligations to fund more than [redacted] Delaware companies that depend on the Fund.

25. To evade that truth, Rigmora congratulates itself for using the weekend after this suit was filed to copy the "same parties" and make what it argues are "sufficiently similar" claims in the Cayman Actions. Mot. ¶¶16-17. But none of the Cayman Actions are set-up to award ATP the relief it seeks here: compelling Rigmora's compliance with its contractual obligation to fund. The Cayman Writ, for example, seeks only *declaratory* relief that "there is no requirement for" Rigmora to make capital contributions. Mot. Ex. 1 at 5. Even if the Cayman court rejects Rigmora's claims, Rigmora would not be compelled to make the requisite capital contributions or approve budgets. That is relief sought only here.

26. The same is true of Rigmora's retaliatory Winding-Up Petition. Mot. Ex. 2. Rigmora may have premised its Winding-Up Petition on flawed theories

similar to those it espouses here, but its Petition says nothing about compelling Rigmora to meet its funding obligations, approve budgets or do anything to keep the Fund alive during the [redacted] it may take to litigate that claim.

27. Rigmora did the opposite. Without disclosure to this Court, on the eve of the expedition hearing, Rigmora filed an *ex parte* preliminary injunction application in the Cayman Writ to enjoin ATP from issuing capital calls without its approval for the pendency of that suit. Ex. A. If granted, this injunction – which does not require a bond and may stay in place for the duration of the Cayman Writ proceedings, which could be between [redacted] at first instance alone – would bankrupt the portfolio companies before the resolution of any substantive claims.

28. Delaware courts consistently deny stays "where rapid resolution of a corporate governance dispute is needed and a non-Delaware court is not in a position to provide expedited adjudication and prompt justice." *Choice Hotels Int'l. v. Columbus-Hunt Park DR. BNK Invs.*, 2009 WL 3335332, at *5 (Del. Ch. Oct. 15, 2009). So too here. The continued survival of the Fund is in jeopardy; a non-Delaware court is not in a position to provide expedited relief.

2. This Action Involves Both Delaware And Cayman Law.

29. Rigmora myopically argues that because the LPA invokes Cayman law, the Court should disregard the parties' election to use the Delaware courts in the

LPA. Mot. ¶7. But the fact that Cayman law applies to some questions is not sufficient to deprive ATP of its chosen forum. "Delaware courts often decide legal issues – even unsettled ones – under the law of other jurisdictions" and "[t]he application of foreign law is not sufficient reason to warrant dismissal under the doctrine of *forum non conveniens*" unless it "create[s] overwhelming hardship." *Berger*, 906 A.2d at 137. "The expense and inconvenience of translating pertinent legal precedent, of retaining foreign lawyers, and of producing foreign law experts to testify at trial, has not been shown to be of material weight in an overwhelming hardship analysis … [and] falls far short of satisfying the standard for a *forum non conveniens* dismissal." *Candlewood Timber Grp. v. Pan Am. Energy*, 859 A.2d 989, 1002-03 (Del. 2004).

30. In any event, Rigmora's Motion overstates its case. While the LPA is mostly governed by Cayman law, key aspects of the LPA and this dispute are governed by Delaware law. Compl. ¶22 n.2; LPA § 18(g)(i). The LPA applies Delaware law to the standard of care required of the General Partner. LPA § 2(g), 11(d). The General Partner is exculpated unless its conduct constitutes "[redacted]" *Id.* (emphasis added). Thus, Count V, which seeks a declaratory judgment that ATP did not violate that standard of care, invokes Delaware law.

31. Rigmora's Winding-Up Petition may also present Delaware law issues. The standard for removing ATP as the General Partner is a matter of Delaware law. Mot., Ex. 2. The LPA allows for removal of the General Partner only for Gross Negligence (as defined by Delaware law) or violations of the Management Agreement, LPA § 4(c), which is also governed by Delaware law. LPA Schedule A. There is no reason this Court should stay its proceedings in favor of a Cayman court that may ultimately be considering Delaware law. *Rosen v. Wind River Sys.*, 2009 WL 1856460, at *6 (Del. Ch. June 26, 2009) ("The [applicable law] factor strongly favors Delaware. Although this action may not involve, on its face, cutting-edge or terribly novel issues of Delaware corporate law, it does implicate important aspects of Delaware law."). Instead, this Court could helpfully address Delaware law disputes and provide appropriate and significant guidance for the Cayman court when deciding whether to wind up the Fund.

32. Nor should this Court stay this action based on Rigmora's misguided attempt to wind up the Fund rather than comply with its funding obligations. Mot. ¶¶19-20. Litigating this action is the only way to preserve the Fund prior to the Winding-Up Petition being determined. In the unlikely event that the Winding-Up Petition is granted, this action can preserve Fund assets. Mot., Ex. 1.

3. The Ease of Access to Proof and Witnesses Favors Delaware.

33. In support of a stay, Rigmora argues that "[t]he parties, witnesses, and relevant evidence are located outside of Delaware." Mot. ¶21. But the parties, witnesses, and relevant evidence are located outside of the Cayman Islands, too. This factor does not favor a stay. *Rapoport v. Litig. Tr. of MDIP Inc.*, 2005 WL 3277911, at *5 (Del. Ch. Nov. 23, 2005) ("[M]odern methods of information transfer render concerns about transmission of documents virtually irrelevant."). If anything, Delaware is a far more convenient forum for litigation than the Cayman Islands. It is closer to ATP's offices in New York or Massachusetts. And it is closer to the numerous portfolio companies that depend on the Fund.

34. The availability of compulsory process for witnesses also favors Delaware. The parties are all subject to jurisdiction here and the portfolio companies are organized here. The Cayman Islands cannot "provide a ***substantial improvement*** as to the number of witnesses who would be subject to compulsory process." *Id.* at *6 (emphasis added).

4. Expeditious and Economic Considerations Favor Delaware.

Only Delaware can provide the expeditious administration of justice necessary here. This case has already been expedited for a September trial. In contrast, the Cayman courts do not have a similar process for expedition. The

Cayman Actions are still in their infancy. Neither the Cayman Writ nor the Winding-Up Petition currently have timetables to trial.

35. Delaware is the only forum to which the parties consented that is capable of providing relief ***prompt*** enough to salvage the Delaware portfolio companies and prevent ATP from suffering irreparable harm.[3]

CONCLUSION

36. Rigmora will not suffer "overwhelming hardship or inconvenience from litigation in Delaware." *Principal Growth*, 288 A.3d at 1156. ATP respectfully requests that the Court deny the Motion.

/s/ Michael A. Barlow

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Dated: June 18, 2025

Words: 2,991 / 3,000

[3] Earlier litigation in the Cayman Islands is irrelevant. That dispute addressed Rigmora's demand for assets from Braeburn, not the LPA amendments at issue here or refusal to fund capital calls. Compl. ¶¶ 106-11.

EXHIBIT V

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, November 21, 2025
1:29 p.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

POST-TRIAL ORAL ARGUMENT

APPEARANCES:

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- - -

THE COURT: Welcome back, everyone.

ATTORNEY ROHRBACHER: Good afternoon, Your Honor. Blake Rohrbacher, Richards, Layton & Finger, for the defendants. We discussed dispensing with full introductions, since the Court is by now familiar with both sides. But I will introduce Shannon Selden from Debevoise, who will be making our presentation.

THE COURT: Thank you.

ATTORNEY BARLOW: Your Honor, Michael Barlow, Quinn Emanuel, here on behalf of plaintiff, ATP III GP. Mr. Andrew Berdon will be handling our argument today.

THE COURT: Thank you. Let's begin.

ATTORNEY BERDON: Good afternoon, Your Honor. May it please the Court.

Your Honor, we're here to discuss a relatively straightforward contract dispute that has morphed into something that reads as something that it's probably not.

Your Honor, this is a case where we've asked for specific performance of a contractual obligation to contribute capital in response to capital calls that are within the capital commitments

that the parties have agreed to. And there's a great deal of discussion about uncertainties about capital commitments. But what's very clear is that of the capital that was called, it was all cabined amongst ATP Pool -- I call it V-1 and V-2, and ATP Pool V-3.

And the agreement is very clear that after the adoption of Amendment 13, all accounting for capital commitments is to be done on a pool-by-pool basis. And we refer you to JX 15 on the first page. "Separate Pools." And we know there was a change in the names of pools and the number of pools over time, before we had Pools A and B and C, and they were ultimately changed over. Pools B and C became Pools V-1 and V-2. Pool A was turned into what's called Pool IV. And those are the antecedent investments that are not at issue here.

It's not contested that there was a capital commitment of about 1.425 billion in what became Pool IV, the early commitments, and that was done in 2012.

There's also no disagreement that there was an enhanced capital commitment of $1 billion at the time of the adoption of Amendment 17. And there was a subscription agreement executed in

connection with the initial in 2012. There was an amended subscription agreement at the time of Pool 17 -- I'm sorry, of Amendment 17. But from the adoption of Amendment 13 on, all of the capital contributions were to be tracked on a pool-by-pool basis.

And if you look at our Slide No. 5, there's an email from Patrik Blöchlinger to his colleagues at Rigmora -- it's JX 1639 -- where he says, "We have always to look at the investments at a pool by pool basis and cannot just see what we invested in total per investment."

So as we look at the capital calls that are at issue in this case, you will see that they are weighted towards Pools V-1 and V-2. There are two capital calls for Pool V-3, Ascidian and Marengo.

But we will see that as far as accounting for capital commitments, capital contributions, and budgets, within Pool V-1 and V-2, there is no doubt that there was a billion dollars committed, that there's remaining uncontributed capital commitments of about $565 million, which -- forgive me, Your Honor.

Marco, can we go to Slide 18, please.

So we have commitments in Pools V-1 and V-2 remaining, but as yet uncalled, the 456.8 million. Pool V-3, committed but remaining uncalled, about 91.

And when we look at the budgets that already have been approved, we have $178 million in budgeted but as yet uncalled capital in Pools V-1 and V-2, and we have $36 million in unbudgeted -- in budgeted but uncalled capital in Pool V-3.

So we have a total of committed but as yet unfunded of $545 million, total between Pool V-1, V-2, and V-3.

Even if you were to find that there is an ambiguity as to the commitments of V-3 -- and we'll talk about that in a minute -- we still have a billion-dollar commitment in Pools V-1 and V-2, contributions of 543 million, and remaining committed capital of 456.8 million against which there is 178 million in approved budgets. There is no meaningful dispute about that. And that would cover the capital calls that were issued as to the Pool V-1 and V-2 companies. And we'll go into that in more detail in a minute.

So, Your Honor, let's take a look at

the questions that are relevant to Pool V-3 and the addition of capital commitments in Amendment 20.

Can we take a look at Slide No. 8, please.

So, Your Honor, under Cayman law, there's a distinction drawn between parol evidence and evidence that's sufficient to show the -- information that was readily available and understandable to the parties at the time of contracting. And so it's perfectly appropriate for us to take a look at the outline at JX 195 that was exchanged between Rigmora and ATP in the lead-up to negotiations that culminated in the Amendment 20.

And a couple things here that remain true, even if some of the numbers have changed.

The first thing is that each pool is having a numerical value associated with it solely for the purpose of funding the companies that are in that pool. That's extremely important.

We look here at (b), and it speaks to the availability of unfunded capital of 220 million for Pool ATP V-1 for "its existing portfolio companies" and future.

Same thing for Pool V-2, is "its

existing portfolio companies" in Pool V-2.

And then they have a discussion of what is to be expected for Pool V-3 and Pool Braeburn.

The clear understanding is that there's a billion dollars that has been committed to Pools V-1 and V-2, and Pool V-3 is being created for the first time. And there are components to it, but it's very clear that there is going to be a specified amount of capital that's going to be attributed to Pool V-3 for the companies that are in Pool V-3.

That money's got to come from somewhere. And we know from the amendments that created Pools V-1 and V-2, Amendment 17, that that billion-dollar commitment for Pools V-1 and V-2 cannot be spent on any other pool without a written agreement between the parties modifying the language of Pool 17, just as it wouldn't have been possible to create a new Pool V-3 and move capital from Pool IV into creating a new Pool V-3 without a writing. And that's what Amendment 20 was. Amendment 20 provided a writing that allowed for the contribution of companies and value of about 189 million in deemed contributions from Pool IV into Pool III. And that has fair market value studies associated with it. And so the

companies that were moved from Pool IV into Pool III were valued, and that value was subtracted from the $500 million total capital commitment that Rigmora made in connection with the creations.

And as you see here, "Capital Commitments and Contributions," in JX 1061, it says that "ATP V-3 shall have capital commitments of $500,000,000, including without limitation [] 189.5 [] of capital deemed to have been contributed as provided below ...." And you subtract 189.5 from 500 million, you have 310.5.

Then there was a shift of previously approved budgets of about $71 million. And then there's another pool of cash that was estimated here to be approximately 235 million. And the reason it was estimated is because there were certain expenses, particularly outstanding expenses and adjustments, essentially, that made the exact amount of that capital commitment subject to some adjustment.

But what we have is the parties subsequently reaching agreement as to the amount of committed but as yet unfunded capital commitments and outstanding capital commitments by pool.

So let's go to Slide 9. So, Your

Honor, this is contributed capital. I'll note that on the copy that was distributed to the Court and to our friends from Debevoise, the line that says Annex to Amendment 20 shows 1.41 billion in contributed capital that's on your screen, that reads differently on the copy that was distributed to you.

The copy that was distributed to you says 1.462 billion in outstanding commitments. That -- I apologize. That was misapplied, that heading. It should read, Annex to Amendment 20 shows $1.41 billion in contributed capital.

And if we look to see what that is comprised of, it's 1.35 billion in Pool ATP IV, plus about 28 million in capital contributions for Pool ATP V-1 and about 30.6, 30.7 billion that had already been contributed in ATP Pool V-2.

So if we start from the $2.5 billion of committed capital from Amendment 17, the related amended subscription agreement, and the original Pool IV, we have $2.5 billion, give or -- $2.45 billion, minus $1.41 billion in capital that had already been contributed as of the date of Amendment 20. And that leaves about $1.1 billion in remaining committed capital.

So we have 1.41 billion that had already been contributed out of the $2.5 billion commitment, leaving 1.09 billion.

So on a forward-looking basis, what did the parties agree to, at the time of Amendment 20, were the amounts of remaining capital commitments?

And Exhibit A to Amendment 20 is very clear. And it says the total for Pool IV was going to be $20 million. And that was going to be for expenses associated with Pool IV. And then there was an associated write-down of some other value that had been in Pool IV. But it was understood and agreed between the parties that there would be $20 million that remained committed to Pool IV but as yet unfunded.

For Pools V-1 and V-2, it was agreed between the parties at the time of Amendment 20 there was $941.5 million in capital that had been unfunded but committed prior to the capital calls that were made in connection with Amendment 20.

And then for Pool V-3, it was expressly understood and agreed between the parties that the total Pool V-3 commitment that was unfunded as of the time of Amendment 20 was $310.5 million.

So arguments about total contributions versus, you know, total committed capital gross, without regard to the attribution to specific pools, are just not relevant. We have to always be governed on a pool-by-pool basis. And that's confirmed out of Rigmora's own general counsel's mouth, and it's confirmed by the schedules that were attached to Amendment 20, which increased Rigmora's capital commitment to Pool V-3, overall $500 million commitment; contributed capital from Pool IV, 189; transfer of existing budgets, about 70. And then what they agreed to here was they had $310.4 million available to be called from Pool V-3.

So whether or not there's a 2.7 or a 2.3 gross commitment or gross contribution, it just doesn't matter. Whether ATP describes itself as being a $2.5 billion fund when it's filling out some paperwork or talking about itself in public really doesn't matter. What matters is what have the parties agreed on a pool-by-pool basis that the commitments have been, and what does the documentation show was remaining in committed but as yet unfunded capital as of May 30. What were the approved budgets as of May 30.

And all of those facts line up to say that there was a valid commitment on the part of Rigmora to contribute capital pursuant to approved budgets up to an additional $1.462 billion on top of the already contributed capital -- can we get that back -- of 1.41 billion.

So if we look at Slide 9, already contributed 1.41. We look at Slide 10, committed but as yet unfunded, 1.46. So -- and that's before capital called in connection with Amendment 20. If you look at the information to the right, it then has the capital calls that were made in connection with Amendment 20 that takes the remaining budget down to 1.447 billion over and above any prior commitments.

And, Your Honor, if you listen to Rigmora's defense on this, they say that the 280 -- I'm sorry, the 235 million discussed in the capital commitments portion of Exhibit 1061 with respect to Pool V-3 is aspirational. But in terms of capital commitments, Your Honor, a reasonable person looking at the Pool V-3 capital commitment language here that calls for 235 million in investments anticipated to be made in new portfolio companies, and you look at the exhibit that specifies exactly how much capital each

of the LPs was going to be responsible for, you have Ezbon and Blue Horizon and Dr. Harrison and Les Pommes. That says there's $310.455 million over and above anything else that's committed as of Amendment 20.

And there is no reason to believe that there are any limitations on that 310 due to indefiniteness, any lack of clarity. This is perfectly clear that there's -- there's going to be companies that are shifted into Pool V-3.

And as we know, those companies included Galvanize and the companies that went into making up Galvanize. It included Intergalactic. It included Marengo, which at one time was called Elstar. It included Ascidian. Where were those companies going to get money to operate if not from a capital commitment?

And for what purpose would these capital commitments be called out if not to create new committed capital requirements? There's no plausible explanation other than to say that Amendment 20 increased Rigmora's capital commitments by at least $310 million, which included the $70 million in budgeted amounts that that obligation traveled with

Pool V-3.

Your Honor, there's an issue about double-counting in the capital contributions. Dr. Strebulaev, in his report, concedes at page 24 of JX 1576 that if you take away the double-counting, then Rigmora's contributions as of the execution of Amendment 20 equaled no more than $2.3 billion.

That leaves headroom under the $2.5 billion committed through the first -- the original LPA, plus Amendment 17, that still leaves headroom under the 2.5 billion. But again, there's no question that Amendment 20 created a new capital commitment that Rigmora's responsible for.

So, Your Honor, the basic contractual obligation here arises under paragraph 5 of the LPA as amended, of course. And there is very clear, as amended in Amendment 3, paragraph 5(a)(ii), allows ATP to call capital to pay partnership expenses, to pay nondiscretionary items, and ordinary course of business items, and then to fund projects that are described in subpart (E), which is to "invest in Projects approved by the holders of a majority of the Preferred Units ... in accordance with a budget therefor approved by such holders ...."

And so we have projects, we have partnership expenses, we have ATLS fees. And as long as there's an existing capital commitment, as long as there's an approved budget for the projects, we have a right to call capital. And that's a -- it's a basic contractual framework. And we think there's clear and convincing evidence that we have approved budgets sufficient to support the capital calls that were served on May 30 and that there is capital commitments remaining sufficient to cover those approved budgeted amounts.

We are not alleging, Your Honor, that the approval of a budget increases a capital commitment per se. What we are saying is that the capital commitments exist and the approved budgets count against them.

So, again, we saw this slide a little earlier. Remaining capital commitment to Pools V-1 and V-2 is 456, almost $457 million. The approved budgets within that amount is 178.1. And then for Pool V-3, we have approved budgets that have not yet been called of 36 million out of a total remaining commitment of 91.5 million. None of those are implicated by any uncertainty or ambiguity about Pool

Braeburn. None of those are implicated by any question of gross accounting independent of pool.

And here, Your Honor, is the breakdown on Slide 19 by company of the approved budget and the amount remaining for each of those budgets. And these are all the companies for which the May 30 capital calls were made. Again, remaining budget of 214.

And here's Rigmora's internal accounting of its remaining commitments, its remaining budgeted commitments. And Mr. Iskhakov reports to Yuri Bogdanov -- and this is on January 20 of 2025 -- that the residual budget is 214 million and that they had residual capital commitments over $572 million.

Irrespective of any quibbling that Rigmora has about ATP's internal recordkeeping, this is definitive, contemporaneous proof of what it is that Rigmora expected it was liable for, what it had committed to in terms of approved budgets. And that number was $214 million.

And, Your Honor, here on Slide 21, we have a composition of the amounts of called capital against the approved budgets. And the evidence is that each of the May 30 capital calls was within approved budgets. Took some of them down to zero,

Your Honor, but none of them overcalled capital for more than an approved budget, and each of them was appropriately sized.

And again, the other side is going to make a lot of the fact that there were discussions of ATP calling smaller amounts in the weeks and months running up to May 30. And there's evidence that there were small, single-digit million-dollar numbers that amounted to about $20 million that was sort of to perpetuate the drip funding idea.

There was an intermediate set of numbers that would have been good for about three months. I think that totals something in the neighborhood of about $60 million.

And then there was a number that was appropriate to fund the companies for about six months. And that's the amount that Dr. Harrison, within his discretion as ATP's general partner, chose to call. And that six-month number is perfectly in line with what Dr. Rybolovlev testified was -- about his expectation of how much capital one of these portfolio companies should reasonably have on hand. And that testimony is from Dr. Rybolovlev's testimony at 392, lines 8 through 11. And that was the trial

testimony.

There's no evidence of a breach of fiduciary duty by Dr. Harrison in sizing those capital calls. There's no question but that he is the GP, had the right to call capital.

Rigmora makes much of the fact that there was an email fired off by one of ATP's outside transactional lawyers going between meetings who said that, you know, the purpose of capital calls is to pressure Rigmora. We submit, Your Honor, that, number one, that wasn't written by ATP; it was written by one of its lawyers. But it wasn't a representation being made outside. It was a discussion between a lawyer and the client. And there's no indication that that was in the mind of Dr. Harrison at the time that the outside lawyer wrote that.

But even if it was, if the idea here was to come to a consensual understanding between Rigmora and ATP about the path forward that they were going to take together, if the idea was to come to an understanding as to how much capital could be called for the preclinical companies, what the new budgets were going to be for the clinical-stage companies, the idea of using capital calls as a way to spark those

conversations doesn't indicate a breach of fiduciary duty.

Again, it's not a statement by Dr. Harrison; it's a statement by an outside lawyer. Dr. Harrison did not write back agreeing. And so we don't believe that the outside lawyer's comment should have any impact whatsoever on consideration of the general partner's motivation.

So, Your Honor, I'd like to just spend a few minutes talking about some of the defenses that Rigmora has erected here. You know, one of them -- and we spent a long time talking about them at trial -- were this milestone argument. And, Your Honor, I think it's very clear that there's no provision in the LPA that says that Rigmora's only required to respond to capital calls if those capital calls are in line with milestones contained in investment memos. That -- they are looking to impute that language into the LPA, but it just doesn't exist.

And, Your Honor, there's ample evidence that when the parties wanted to adopt a milestone, they knew exactly how to do it. Because they did that in connection with the budget extension for Replicate.

So the milestone, the idea that there was a gating function at Rigmora that they could elect out of their funding obligations by referring back to an investment memo and objecting to a capital call, is 100 percent litigation-inspired, after-the-fact rationalization. That was never part of the course of dealings between the parties. It's not consistent with the express language of the agreement. And when you look at the four corners of the agreement, it's very clear that the agreement envisioned a world in which budgets contain milestones.

There are provisions in the agreement, some of them canceled by subsequent amendment, but there are provisions in the agreement that say that where there are milestones in a budget and you want to call capital faster than was approved in the budget, you've got to come up with a rationale for doing so. But what that says is that you have to have included the milestone in the budget. It doesn't say that those would be imputed into a budget that had been approved with no reference to milestones.

There's no evidence of the parties agreeing to that. Dr. Harrison was asked whether he and Dr. Rybolovlev had ever talked about adopting

milestones as tranching requirements in approved budgets. He said, "Never." Until Replicate -- and I think Dr. Harrison had one other budget in mind. That isn't made clear in the record. But it certainly was not a widespread situation. It was one or two budgets in the history, the 12-year history of the relationship.

Spiros Liras, who is responsible for actually running several of these companies and is responsible for calling capital to fund these companies on an ongoing basis, was asked whether there was ever any discussion of there being a tranching requirement or a milestone requirement between ATP and Rigmora. And he had never heard that.

And, of course, we have the testimony from Dr. Rao, who did not testify at trial but who spoke to the flexibility of companies when dealing with milestones and the need to be able to pivot and the fact that timelines set at the initiation of a project are very variable. But again, if the parties had elected to adopt milestones in their budgets, they were free to do so.

Another big problem for Rigmora is the fact that they didn't have anybody who was technically

proficient enough to even monitor the technical progress of these cases.

Bogdanov testified that they didn't employ anybody who had the necessary background. Mr. Yakovlev, who is the chief financial officer, was asked if he had even reviewed investment memoranda in connection with his work -- and his work included the release of funds pursuant to capital calls -- and he said he had never done so.

Your Honor, the reason why somebody breaches a contract is, it's often of marginal importance. But here, where there's a good-faith requirement, where we're asking for equitable relief, and where we're being told that we've asked for equitable relief despite our having unclean hands, I want to look at some of the evidence of what was going on behind the scenes at Rigmora when we were talking about new budgets and meeting capital calls.

A very telling admission when we were talking to Mr. Bogdanov at his deposition. He wrote the email on Christmas Eve, "Let's start.

"Merry Christmas!"

And this was in response to ATP's request for approval of four new budgets, four

companies that were in clinical trials. And I asked Mr. Bogdanov, I said, well, "when you said 'Let's start,' did you mean let's start approving budgets?"

And his answer was a candid no. "No, I didn't."

Mr. Bogdanov, as we will see, was much more interested in erecting barriers to the approval of new budgets than he was in approving them, even though these are companies that had been founded specifically pursuant to agreement between Dr. Rybolovlev and Mr. Harrison, Dr. Harrison, that at the time of the approval of the original budgets for the Pool V-1 and V-2 companies, there was a meeting of the minds, yes, we are going to fund these companies. Yes, they are going to have initial capital commitments, initial budget approvals of 40 or $50 million. And yes, you are to go forward and do your research and come up with drug candidates and put those candidates into the clinic. You're going to be hiring people. You're going to be entering into research agreements with universities. You're going to be entering into agreements with clinical investigators. All of that is part and parcel of the instructions that were given.

And here, when it's time to extend those budgets to carry on the very work that is necessary in order to follow through with all of those commitments, instead of having somebody who is focused on moving projects forward, we have somebody who's focused on erecting barriers, with no regard whatsoever to the actual functioning operation of those companies or even ATP.

We see that after receiving an initial draft of a diligence request -- and this is in JX 1287 -- Mr. Bogdanov did not comment on the technical contents of the diligence request.

He didn't say, well, I'm more interested in how this incremental money -- which in the case of Replicate was an $11 million extension on a company that had started out with a $40 million budget and had had a $13 million extension of that budget in connection with a pivot from oncology to metabolic disease. He didn't ask questions of Mr. Iskhakov that were substantive. His instruction was to ask open-ended questions rather than turning statements into questions. He gave no consideration whatsoever to the questions.

And the requests were bizarrely broad,

including, if you see the middle bullet here, there was a -- you know, a question about the oncology portfolio and asking for an update as to why the oncology portfolio was essentially still viable or explain to us why you shifted away.

And again, this is a decision to pivot that had been vetted, approved, and funded in connection with the $13 million budget extension. And the incremental $11 million should have been, "Tell us about the metabolic program. Tell us about what is going on that could be helpful or" -- in this case, I'm sorry, it's infectious disease. And then asking, you know, a question about broad platform technology, "How has the company's technology evolved over the past four years compared to its main peers?"

Mr. Bogdanov didn't have the ability, and no one at Rigmora had the ability, to process that information, even if it had been provided.

And remember, this was a request for a budget extension for a company that was facing a cash-out date in a matter of weeks. There was an agreement to provide a million or 2 in bridge financing. But the $11 million that was originally being requested was urgently needed. And when I asked

Mr. Bogdanov did he know one way or another whether the questions he was asking were even appropriate to be answered in the amount of time that was relevant to funding Replicate, he said he didn't know.

Your Honor, that brings us to the question of, well, Rigmora had committed $2.3 billion to this portfolio and had committed a billion dollars of future contributions. Why on earth would they be looking to destroy value? And the answer becomes very, very clear. The answer becomes clear, and it's driven by two factors.

Number one was it was Mr. Bogdanov's prime strategic directive to reduce Rigmora's obligations to ATP because, as someone who was associated with accounting and risk management at Rigmora, he was alarmed by what he called a liquidity crisis at Rigmora. And he identified the way forward -- the way forward, the only way in this situation to start moving forward towards a cash buffer is to drastically reduce payments to ATP.

So here's the new CEO of Rigmora, who's made this observation in late 2022. He takes over as CEO in October of 2024. Their cash situation hadn't changed. If you see in the trial testimony

that we have of Dr. -- of Mr. Bogdanov about the financial reporting back to the trustee, there is no difference, material difference, in the amount of cash on hand. In fact, the amount of cash on hand had gone down.

And so there's no argument that these observations had become stale between 2022 and 2024.

There's also no argument that Mr. Bogdanov's views had changed between 2022 and 2024. And as Your Honor asked Mr. Bogdanov at trial, what were your instructions? Did you get instructions on what to do? He said no. He said he hadn't received instructions.

Well, be that as it may, I was talking at a deposition to Dr. Rybolovlev, and I said, in your experience, have you found Mr. Bogdanov to be truthful? And Dr. Rybolovlev gave me an answer that -- the word "remarkable," it just doesn't do it service. And even if you were to say that there is a translation issue, what he said is that "Bogdanov's background is auditing and his perspective hasn't changed ..." since he became CEO.

THE COURT: In context, I always thought that -- I think he meant occupational hazard.

ATTORNEY BERDON: And which is why I'm not arguing the choice of word.

But what he is saying is that Bogdanov was ill-suited for the position of CEO of anything. And that's actually in the Q & A that follows in the Rybolovlev deposition transcript.

And that there was a disconnect, because there was a world of difference between the proclivity -- the necessary business knowledge and attitude of an entrepreneur or someone who is looking to grow businesses, versus an accountant; and that Mr. Bogdanov had essentially been elevated because he was there when Anna Kolonchina left.

But, Your Honor, what we also have, and what we saw at trial, is that Dr. Rybolovlev, his views towards investing in early-stage biotech changed. And when he made the initial new billion-dollar commitment in Amendment 17, when he made the additional $300 million commitment in Amendment 20, by his own admission at his deposition, he made those decisions in an environment where companies could achieve exits at the preclinical phase. There was a boom in biotech at the time that he made those commitments. And that by 2022, 2023,

the biotech markets had changed radically. They essentially had gone into a downturn. That downturn may actually be ameliorated today partially. There's more deal volume. But they are consistently at a level where products are in the clinic.

And so he found himself committed to the development of both preclinical and clinical companies when the market had moved against him, and he no longer believed in the investment thesis.

So the desire on his part to essentially trade out of these positions, he asked Dr. Harrison to try and syndicate and to try and sell the companies. Dr. Harrison testified that he was -- ran into big problems and was unable to do so, in part because of KYC issues that actually killed deals.

And it's -- it's not for lack of trying that ATP tried to bring in syndication partners. And the deals were attractive from a technical and business point of view, but they just couldn't get through the compliance side.

And so without the ability to bring in new investors, without the ability to get some liquidity out of those positions, it appears that ATP decided -- forgive me. It appears that Rigmora

decided to take unilateral action to address what it considered to be an imbalance of risk in its portfolio.

So, Your Honor, one thing that we should talk about in terms of the availability of specific performance is the question of money damages. And why should specific performance be granted here instead of money damages. And specific performance is appropriate here, Your Honor, because if one were to say -- a standard expectation damages award here would be, well, what's the difference in the portfolio, in the fund, between a properly funded company and an improperly -- and an unfunded company. And one would be asking to value early, early-stage investments.

And obviously, there are ways to do it. But the parties themselves understood that specific performance would be appropriate here because of the difficulty in estimating the value of early-stage companies and the somewhat conjectural nature of early-stage valuations.

And so there is an explicit agreement here that "The Partners agree that [] damages suffered ... as [a] result of any failure by a Limited Partner to [make a timely] capital contribution ... cannot be

estimated with reasonable accuracy."

And so it provided for imposition of a default charge, among other things. But that agreement also speaks to the difficulty and inappropriateness of the use of money damages as a remedy. And so it provided for mechanisms by which the general partner could get relief inside the fund. But it also speaks to whether, outside of the fund, damages would be appropriate here instead of specific performance. And we think that this agreement is an admission by Rigmora that damages here would be extremely difficult to calculate. And the lack of readily quantifiable damages makes equitable relief appropriate, instead of damages.

It's certainly a similar standard for the availability of injunctive relief generally, which is, you know, you have to establish the unavailability or inappropriateness of money damages to properly compensate the person/plaintiff moving for entry of a preliminary permanent injunction. Much the same standard. And we believe that there's a binding admission here that it's appropriate.

Your Honor, we then get to a balance of equities. The key here, Your Honor, is that we

have ten Delaware companies whose existence is now right on the margin. And we have Mr. Yanchik testifying that we are still at the point where relief could help. These companies are not beyond saving.

They have fired all of the people who were performing research on their programs, save just the ones who possessed the know-how and the trade secrets and the -- the fundamental scientific understanding that would be necessary to carry those programs forward.

And so from a balance of the equities point of view, we have unfunded companies that can be saved through the infusion of funds pursuant to the capital calls, versus a defaulting partner on the other side, whose -- who has assets that can be accessed in order to pay their debts.

At his deposition, Mr. Bogdanov testified that the named defendants in these cases had at least $40 million on their balance sheets.

Dr. Rybolovlev said that their debt ratio was kept very, very low; that they really didn't have much, if any, debt on their balance sheet. And there are hundreds of millions, if not billions of dollars in assets on their balance sheet, as reflected

in their financial reporting back to the trustee, that can be accessed.

And so, Your Honor, the tipping of the balance here between, you know, nine companies, seven -- seven of the preclinical companies that we are under orders to liquidate, those seven companies standing alone that can be rescued, versus a well-capitalized Rigmora, that balance tips in favor of the -- of the party requesting relief.

Your Honor, Rigmora also argues on specific performance that the specific performance that we're asking for is now inflated because we have obtained money from inside the fund to fund some of these companies in the interim. The sum total of those are about $18.6 million that have been invested in alignment with approved budgets, and some for essentially restructuring costs to avoid -- avoid problems with creditors that then couldn't be fixed.

We would not seek double collection here. We say that the solution to that problem is set off, but not an order of the Court deeming that all of the capital calls be deemed to have been satisfied because we had access to $18.6 million out of the $100 million called.

Rigmora also says that we are asking for the Court to provide specific performance as to as-yet unspecified future capital calls. We do not. We are only seeking specific performance today of the May 30 capital calls, plus the relief we're requesting on the request for new budgets for Aulos, a city in Marengo, and Replicate.

So, Your Honor, again, $104 million just in Pools V-1, V-2, and V-3 on the May 30 capital calls.

We have -- we have done our job. We have done exactly what we have promised to do. Rigmora has already received more than $2.4 billion in distributions from ATP. That is very important. This is not a situation where Rigmora has been pouring money into a hole.

If we take a look at the top quote there, that's actually Dr. Rybolovlev's trial testimony where he talks about why he went sour, essentially, on the market.

So, Your Honor, let's talk now for a minute about the budget requests and the *Braganza* doctrine.

Essentially, the question here is

whether you can imply a contractual term into the LPA. It's not whether there's a fiduciary obligation on the part of the LPs. The question is whether, as a matter of contract law, you can find that Rigmora's discretion in approving budget is, in the words of one of the experts, "fettered." Or whether they have unfettered discretion to act in bad faith.

And here is the *Tesco Stores* case, where it -- it speaks to the ability of a court to impute a term where it's necessary "to give business efficacy to the contract."

And to consider budgets in good faith is necessary to give efficacy to this agreement, because we can only call capital pursuant to approved budgets. The agreement contemplates that we will be investing Rigmora money. The agreement contemplates that we will be getting budgets approved from time to time. The contract necessarily, in order to function on a going-forward basis, has to require Rigmora to approach those discussions honestly and in good faith.

So what we have, Your Honor, is -- this is the run-up to the May 15 email. The May 15 email is obviously the precipitating event where we say that the imposition of a condition on the

discussion of new budgets -- and that condition being the agreement to liquidate or wind down seven preclinical companies -- was a breach of this implied duty to negotiate in good faith. And so the May 15 email is the precipitating bad faith, dishonest act.

But, Your Honor, what we see here is the chronology that took us on a five-month journey of diligence request after diligence request, meetings between Rigmora and management that led nowhere, and ultimately led to the May 15 email imposing that condition.

And can we go to the May 15 email? And it's obviously been featured in all of our briefing.

But, Your Honor, we have the assertion of pretextual reasons to abandon the preclinical companies, saying that future investments would "waste the ATP fund's assets." We have unrebutted testimony from Spiros Liras that these companies have scientific value.

Can we go to the next.

And again, here is -- here is the precipitating event where we are told that there will be no new budget conversations for the four clinical

companies unless we agree to wind down the preclinical companies. That is a violation of an implied duty to act in good faith. It's a violation of an implied duty to treat us honestly and rationally.

The other side, quite remarkably, says that they have the right to act in bad faith. And that is not hyperbole.

Let's go to Slide 45, please, Marco. It's actually a heading in their brief. 45, please, Marco. There we go. It's a heading in their brief. Now, that may be something that sounds okay in Cayman, where they're saying that it's perfectly okay for them to treat the GP of the fund rough.

It's not okay to say that here in Delaware. It's not okay to say that when you have seven preclinical companies and four clinical-stage companies who are dependent on Rigmora for its funding by design, okay. That dependence was by design because they wanted to be sole shareholders of these companies unless and until they decided to syndicate. And they are now saying that they were under no obligation to act in good faith.

When you talk about balance of equities, Your Honor, that is -- again, I think it's a

definitive admission.

So, Your Honor, we have asked the Court to craft an equitable remedy here, where the Christmas budget request, the December 24 budget request be deemed to have been approved. Replicate had an approved budget extension, so we're asking for Aulos, Ascidian, and Marengo, those budgets to be deemed approved. And the amounts of those are all set out in correspondence on the 24th of December at JX 1079.

And in the alternative, we have a request that at least Rigmora be required to adjudge those budget requests on their merits. Without regard to what happens to the preclinical companies, those budget requests should be adjudicated, essentially, based on the individual merits of those programs.

And it's extremely difficult, I know, to envision a world in which there's a remedy for their having violated an order like that, which is why, Your Honor, the more pragmatic remedy here would be to find that they actually have an obligation to fund those budgets.

And, Your Honor, there's another issue that has sort of plagued this case, and that is the

cases that Rigmora filed in Cayman after we brought this action.

And, you know, the progression here is, again, I think important when judging balance of equities. As Your Honor recalls, Your Honor found that Rigmora objected, essentially, to proceeding in this court despite its clear waiver of its right to object to appear in Delaware Chancery Court, because the LPA had a waiver of jurisdictional objections for both Delaware and Cayman. But they came here arguing that the case belonged in Cayman, in opposition to our motion to expedite.

While they were opposing our motion to expedite here, they were moving for the equivalent of an expedited proceeding in Cayman. And again, we have the issue with the requested adjournment of the trial date, where they came to you and asked for an adjournment of the trial date because of the prejudice associated with the late production of documents, while at the same time, the very next day, they filed their request for the appointment of provisional liquidators in Cayman that cited extensively from the very documents that they said they didn't have enough time to review.

And most recently what they have said to you is "we are not trying to put the Cayman case ahead of the Delaware case."

Well, I don't know if they're dancing on semantics, but what they are now saying in Cayman is that "it would be contrary to public policy [for the Cayman [] Court] to recognize any judgment" that you were to grant. And the reason for that, they're saying, is because they got this *ex parte* injunction down in Cayman saying that we couldn't do anything to have them deemed to be a defaulting partner or to take away their voting rights under Section 18 of the agreement or to call more capital. And they say the relief that we requested in our pretrial order came -- crossed the line and was actually in contempt of that order.

And so now they are saying that the remedy for that should be the entire nullification of the results of this case, despite the time, effort, and expense that the parties have incurred and the great deal of attention that the Court has given to this matter on an expedited basis.

I just don't know -- I won't characterize it, but it is what it is. This is how

they are litigating this case. And we do not believe that it is favorable in terms of the equities.

Your Honor, briefly, our briefs discuss the question of the construction of the provision of the agreement that allow the general partner to impose a default charge. The other side has taken the position that despite all language to the contrary, that should be read to be on a pool-by-pool basis. And so a breach in one pool could only be remedied by a default charge imposed as to the assets of that pool.

Of course, that's one thing that the amendments never said was going to happen, was an amendment of the default charge or the default provisions to be on a pool-by-pool basis. None of the amendments say that, and our position, Your Honor, is in the absence of an explicit, express modification, that continues to be in effect as drafted.

Your Honor, there are exculpatory provisions in the LPA that specifically allow the general partner to bring this action in connection with an LP's breach of this agreement.

The other side tries to argue that this dispute is not ripe. Well, in their Cayman

winding-up proceeding, they are saying that this action was brought both in bad faith and in a way that caused them to lose their trust and confidence in the general partner.

But what they're trying to do is sidestep an explicit, agreed-upon provision of the LPA that gives the GP the right to bring this action in response to a funding breach. And it says here specifically, "To the full[] extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such ...."

Your Honor, here's from Spiros Liras, talking about exactly why this case was brought. He said the effect has "been devastating." He had to go, over the course of 31 hours, oversee 75 layoffs. And those were just for the companies that he was supervising.

And, Your Honor, here under Exhibit-- Exhibit -- under Section 18(g), "Standard of Care,"

here, too, it says that the general partner, unless they are acting in bad faith or conducting willful fraud, there's no reason to have them be deemed, you know, in breach of this agreement, and that there's no basis to impose liability on the GP for any of Rigmora's perceived losses here.

So, Your Honor, we believe that these matters are ripe. There's an active dispute. They are saying in Cayman that we are in violation of our fiduciary duties simply by bringing this case. We don't believe that the *Schick* case is applicable, because there is an actual dispute here and it's not an advisory opinion in any respect.

Your Honor, then there's just a question of attorneys' fees. Rigmora contends that we have not properly pleaded a right to attorneys' fees. This would be a form of essentially use of Cayman and English common law, where the loser pays.

And the -- the claim that if it's not perfected as of today because of the uncertainty of the ultimate amount of attorneys' fees that will be incurred, we certainly haven't waived. There's no voluntary waiver of any rights here to attorneys' fees that are otherwise allowed.

And I'll reserve the rest of my time for rebuttal, Your Honor, unless you have any questions.

THE COURT: I don't have any questions. Thank you.

So I propose we take our break now.

Mr. Barlow, go ahead.

ATTORNEY BARLOW: No, Your Honor. I didn't have anything.

THE COURT: Okay. So I propose we take a ten-minute break now and go into the other argument.

(Recess taken, 2:47 to 3:00 p.m.)

THE COURT: Thank you. Please be seated.

Are there any extra copies of the presentations? Could you please pass them to a few folks in the back.

ATTORNEY SELDEN: For sure.

THE COURT: I sprung a court appearance on my clerks on casual Friday so ...

ATTORNEY SELDEN: Happy to pass them around, Your Honor.

THE COURT: All right.

ATTORNEY SELDEN: Good afternoon, Your Honor, Shannon Selden of Debevoise & Plimpton for the Rigmora defendants.

Your Honor, this is a case for breach of a Cayman limited partnership agreement. And the questions before Your Honor all turn on the terms of that LPA and on plaintiff's allegation that the Rigmora defendants breached it or, in the case of exculpation, that its own potential breach should be preemptively excused.

As you've heard over the course of trial, this fund was started in 2012 when Dr. Dmitry Rybolovlev agreed to invest $100 million in a fund to be managed by Dr. Seth Harrison that was intended to invest in biotech companies.

Dr. Rybolovlev is a sophisticated investor. And you've heard how he grew up in the Soviet Union in Perm, worked his way through medical school, spent a year working after graduation as a doctor for 130 Rubles a month supporting his wife and child. And then, with the onset of Perestroika, made his fortune by first acquiring interests in a broad portfolio of 20 Soviet companies, coming to concentrate them in seven, and then in two, coming to

control and run Uralkali, which he transformed from a Soviet company to a success on the London Stock Exchange in 2010. It's a remarkable story, and it made Dr. Rybolovlev a wealthy man.

And that's when he returned to healthcare, this time as an investor, with a goal of investing across a broad portfolio of early-stage biotech companies. Biotech is a high-risk investment, as you've heard from fact witnesses and experts alike. And most companies don't make it.

Dr. Rybolovlev thought that the best approach was to make small early investments across a broad portfolio, identify the best performers, and focus on developing those into more fully mature enterprises. He shared that vision with Dr. Harrison, and they agreed to start the investment fund under the name Apple Tree Partners. And that's the fund at issue in this case.

As you've heard, the overwhelming majority, 98 percent, of the capital net fund comes from Rigmora, the limited partners that are owned by Dr. Rybolovlev's family trust. An entity controlled by Seth Harrison, ATP GP, is the general partner of the fund and is charged with managing it for the

benefit of its investors, the Rigmora LPs.

As you've also heard, and as comes up again and again in this case, the fund is governed by a limited partnership agreement, or LPA. And that LPA is, in turn, governed by Cayman law, including the Cayman Exempted Limited Partnership Act, or ELP. And the hallmark of a Cayman Islands exempted limited partnership is limited liability for the limited partners.

Under Cayman law and the LPA, the general partner of an ELP is a fiduciary with an obligation to act in the interests of the investors, who are the LPs. And the LPs, on the other hand, subscribe to provide specified amounts of capital. They're not fiduciaries, and they don't owe obligations to the fund. That is not nefarious, and it's not bad faith. That is the way ELPs are structured in the Cayman Islands. It's effectively a trust managed by the GP for the benefit of the LPs who are its investors. And those investors have no obligation to provide capital in response to calls in excess of their commitments.

The GP calls capital from the LPs, but it only has limited rights to call that capital. And

those rights are spelled out in the LPA. And you did not see Mr. Berdon mention once this afternoon paragraph 5(a) of the LPA, which is the contractual provision that is the source of his client's claims in this court, the claim that it called capital validly that the LPs had an obligation to respond to. To be a valid capital call, creating a corresponding obligation on the part of the LPs to fund, the capital call must satisfy the contractual criteria spelled out in the LPA.

Your Honor, the Rigmora LPs' arguments here are not pretextual, they're textual. They're rooted in the text of the LPA, which is what governs these parties' relationship.

Most fundamentally, the GP cannot call capital in excess of the LPs' subscriptions. But there are other requirements too. This LPA has a provision that's particularly relevant, and somewhat unusual, and that's the provision that gives the LPs the rights to approve budgets for the companies in which the fund invests.

It's not a provision you might see in a multi-LP fund, where there are many limited partners and where the GP might be expected to have that

oversight and discretion. But here, where 98 percent of the capital is committed by two LPs, both owned by a family trust, those LPs, per the contract, have approval and oversight rights that other LPs might not.

That doesn't change the limited nature of their liability to the fund, but it does give them a right to approve budgets. That's a right to approve, but not an obligation to approve. It's their money that's coming in, and they have some say over how it is going to be invested.

The terms of the LPA that govern these two things, capital calls and budget approval, are at the very core of the contract claims before this Court. And what I'd like to do today is to take those claims in turn and just show Your Honor why plaintiff's claims fail across the board, as we've argued in our pretrial and post-trial brief, for the reasons addressed there in detail.

I'd like to pause briefly on the legal standard, because the threshold here is high. And it's the bar against which everything that follows must be measured.

And I'll turn to the GP's claim that

the LPs are obligated to invest further capital in the fund pursuant to the GP's May 30 capital calls, and that they breached that obligation.

After that, I'll address the GP's claim that despite months of detailed negotiations and back and forth over companies and budgets, the LPs somehow breached a contractual obligation to discuss budgets and should be ordered to specifically perform that obligation, or that the Court should just disregard that process and order the budgets approved over their objection.

I'll briefly address the GP's other requests for relief here.

You've heard many times the GP insist that the portfolio companies need money -- and I will touch briefly on that -- and the GP's claim that they're being starved and will fail if not funded. But the dispositive question for this Court isn't whether additional funding might be desired by the companies, but whether the LPs have a contractual obligation to provide it to the fund. Because the answer to that question is no, the claims fail. And they fail for straightforward legal reasons.

They're not entitled to specific

performance of the May 30th, or any other, capital call, because the GP cannot, as a matter of contract, call capital in excess of the LPs' contingent subscription. And the GP cannot prove with clear and convincing evidence and the clarity of obligation that Cayman law requires that the LPs' contingent subscription exceeds their $2.69 billion in contributions to date.

They're not entitled to specific performance of any obligation to approve budgets, because no such obligation exists in the LPA. Approval is a right that they hold, not an obligation that they owe.

And the GP is not entitled to specific performance of any obligation to discuss budgets in good faith because that's not a claim or cause of action that Cayman law recognizes in this context as to exempted limited partners. And if it exists, it was satisfied. And if it wasn't, it's not susceptible of specific performance. And there's no way around that, legally or factually.

As Your Honor is aware, the breach of contract claims here are governed under Cayman law. And that requires the existence of a valid contract

and certainty of terms. That Cayman law contract must be read, when it's a limited partnership agreement of an exempted limited partner, must be read against the ELP Act, which has some terms that make it a little bit different from a typical contract. So you look not just at the four corners of the agreement, but also at that background ELP statute that governs those terms.

Certainty of terms here is important, and I would suggest to Your Honor that nothing you've seen from Mr. Berdon today provides certainty of terms as to a contingent subscription on the part of the LPs higher than the $2.425 billion that I will show you in a moment.

Under Cayman law, negotiating history and subsequent conduct aren't relevant. You look at the document, at the LPA, at its terms. And to the extent you look at anything outside of that contract, it's only that background knowledge which would have been reasonably available to the parties in the situation in which they were at the time of the contract, not the negotiating history and not the subsequent conduct, and certainly not emails sent among parties or internally four or five or ten years

later.

As you've heard from Mr. Berdon, the GP here is looking for specific performance. And specific performance requires clear and convincing evidence. And on that standard, the GP's capital call claims fail.

I'd like to pause for a moment, Your Honor, on these, the May 30 capital calls that are at the very core of this dispute. And here, the plaintiff's story just doesn't add up. And this is one of the many places in the GP's case in which the story just doesn't add up.

These calls were sent just minutes before the GP filed suit. The GP called approximately $88 million in capital for an unprecedented ten companies at once. It had never before called that much for that many companies at a single time. It also called capital for partnership expenses and fees, which brought the total capital call to over $100 million.

The GP tells you that these companies were starved, that it is somehow the Rigmora LP's fault that they were lacking in money. But what you can see here is a couple of things — that is, these

companies are all of a similar vintage. They had initial investments between May 2020 and December 2022, starting at the beginning of the COVID pandemic and continuing through the peak of the biotech investing market. So these aren't new companies. These companies had been around for awhile. They'd been around for a few years. They were started all at once, and there are quite a number of them.

This is the portfolio of companies that I talked about a minute ago and where the fund took or was meant to take a portfolio approach to high-risk investments, entering into Series A financing arrangements to invest incrementally over time in a number of companies that had promising research projects with commercial potential and see how they developed.

And those Series A financing agreements and the investment memoranda by which they were entered provided for kind of milestones or increments across time that would give some measure of how the companies performed and some indication of whether they were entitled to or should receive the next tranche of funding.

These were not lump-sum investments, and they were never intended to be lump-sum investments. They were aspirational budgets submitted by companies or by the fund to be tranched and financed over time.

When the fund took a portfolio approach, it recognized that there would be some winners and some losers among the portfolio. Dr. Harrison agreed with that in his deposition when I asked him that, saying that there are likely to be winners and losers. And Dr. Rybolovlev testified to that here at trial; that is, it's not expected in a high-risk biotech market, or with ten biotech portfolio companies, that all of them will succeed.

The parties knew that the odds are that most early-stage biotech companies won't make it and understood, importantly, that the expectation is that those that don't make it get wound down.

So if you invest in ten companies in the space of two years, the expectation is not that you have ten successful companies three or four or five years later. Some might succeed, but many won't. And that's the expectation going in.

Here, the GP made investments at the

peak, but it didn't manage the portfolio. Even though its GC, Mr. Finkelman, who didn't come to trial, and Dr. Rybolovlev, both urged Dr. Harrison to do that and to manage these companies to their milestones and wind down or to stop funding those that weren't performing as hoped.

But the GP didn't do that. Instead, it just kept calling more money for investment, continuing to treat these more as open-ended commitments to be funded as needed and in perpetuity, rather than an investment in a portfolio of companies tied to performance, made with the knowledge and in the expectation that only a few will succeed and make it all the way through.

So when the GP purported to call capital for these ten companies on May 30, it did so after many years and hundreds of millions of dollars of investments by the fund. You can see here the total amount, $433 million, invested in these ten companies as of May 30 when these capital calls were made.

These companies had had both time and money to try to achieve their goals. But they were not all performing.

So not all of these calls of amounts requested on May 30 were valid. All of them were above the LPs' contingent subscriptions. And for that reason alone, they're not valid on the part of the GP, and there is no corresponding obligation on the part of the LPs to pay them. They're not in accordance with budgets, and they weren't made consistent with the GP's fiduciary duty to the LPs.

This, Your Honor, is a flow chart of how one might think about the LPA's requirements for calling capital, which are straightforward.

I had mentioned that the GP bears the burden of showing that each and every one of its capital calls is valid under the LPA, creating an obligation to fund on the part of the LPs.

And in order to do that, the capital calls must meet the criteria set out in the contract. This is a claim for breach of contract. This is what the contract says. They must be within the contingent subscription. They must be in accordance with an approved budget. And they must be consistent with the GP's fiduciary duties.

The GP cannot meet that threshold for any of the calls that it has presented to the Court

today, and it certainly cannot do it with the clear and convincing evidence that specific performance requires. And I'm going to start and focus what I think is a central and in some ways the simplest question in this case, and a dispositive one, which is, whether the capital calls are within the LPs' contingent subscription to the fund. Because if the capital calls are not within the contingent subscription, the analysis ends there. That is dispositive of that claim and of the case, because there's no need to go through the rest of the analysis.

We've argued that extensively in our briefs, but I think it's important to spend some time here, because I really want to root our response to this in the text of the LPA, which is what governs this claim for breach of contract.

You've heard an awful lot today about pools, about Amendment 20, about negotiating history. We've seen tracking spreadsheets. But these are contract claims. And they arise under the terms of the LPA. And it's the LPA that defines what the GP can call and what the LPs are required to contribute.

And we start with 5(a)(i) of the LPA,

which requires calls by the general partner to be "not in excess of, the total amount [of] ..." any limited partner's contingent subscriptions.

And you will see, Your Honor, that what LPA paragraph 5(a)(i) actually says is that "the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription," in the List of Partners ...."

One thing you haven't seen from the GP today, or at any other point in this case, is a list of partners that the GP is required to maintain under the LPA and under the Cayman ELP Act. And that list of partners is required to be maintained by the GP, and it is required to provide next to each partner's name its contingent subscription to the fund. That is where you look to see how much that LP has committed to the fund.

In the absence of such a list, however, Your Honor, I am going to focus on the contingent subscriptions.

Here, while it's true that a partner may not make less than the full amount of any required

capital contribution, it is also true that the GP cannot request an amount in excess of the total amount of the LPs' contingent subscription. That is all that the GP can call, is the contingent subscriptions.

So I think the question is, what is a contingent subscription, and do these calls exceed it?

Paragraph 1(e) of the LPA provides that the GP will deliver to each incoming LP a subscription agreement that establishes the amount of the LP's contingent subscription. And paragraph 3(c) of the LPA, which is here on the screen, provides that at any time an LP "is to make an additional subscription," they shall "execute a Subscription Agreement (or the equivalent thereof) ...."

And again, Your Honor, I'm focused on paragraph 3(c) here, because this is the only way that the LPA provides for the parties to memorialize or amend or increase the subscription by an LP to the fund. It's not possible under the contract to increase an LP's subscription without executing an additional subscription agreement or the equivalent thereof. That's what the text says. It's clear, it is unambiguous, and that's what it requires.

The GP focuses on a general ability to

amend, that an amendment be in writing, agreed to by the parties. But 3(c) is a specific provision that governs exactly this circumstance when you want to increase the subscription. And increasing the subscription is important, because that's all the GP can call. So if you want to increase the amount of callable capital, you have to execute an additional subscription agreement or its equivalent.

And that one parenthetical, Your Honor, is carrying almost the whole weight of the GP's case. The GP insists that various amendments and budgets and exhibits are somehow the equivalent of a new subscription agreement and serve to increase the amount of callable capital or of the LP's contingent subscription, the 2.425 billion in total subscription and amendment subscription agreements.

And they rely entirely on pools and on the negotiating history and on spreadsheets to show you that. But that's wrong. The subscription agreements are detailed documents that are different in kind from those amendments. And they provide absolutely clarity as to the amount of the LP's contingent subscription.

They provide the kind of clarity as to

the sum certain, the amount, of the contingent subscription on the part of each limited partner in the fund that you could write next to their name on the list of partners that the GP is required to maintain under the LPA and under Cayman law. They each set out a specific dollar amount tied to that defined term. And there's a separate subscription agreement and a specified amount for each LP.

Dr. Harrison understood that this was important. I mean, I asked him about it at his deposition. This is what he said. He recognized it's important to have clarity, and that he understood that the term "contingent subscription" defines the size of the overall fund or of the investable capital at any given time.

There's no doubt about the importance of the contingent subscriptions in the LPA. And they're clear. They don't look anything like Amendment 20 or Amendment 13 or 17 or 18 or a spreadsheet or an annex. They look like a subscription agreement of a limited partner to a fund, subscribing to contribute a specified amount of capital, amenable to being recorded and drawn down.

It's 35 pages long. This is the one

for Blue Horizon, which is a predecessor to one of the two LPs that are the parties to this case. It clearly identifies what that entity is -- Blue Horizon -- and the amount of capital that that limited partner has committed to the fund as its contingent subscription.

There's no doubt that the amount of Blue Horizon's subscription is $698,250,000. It's spelled out right here.

Ezbon, the other entity and the predecessor entity of the other defendant here, had its own agreement with its own specified amount.

So the subscription agreements have the kind of clarity that paragraph 5 of the LPA requires and that you could put in a list of partners had you maintained them. And the GC of the GP, Mr. Finkelman, has admitted that in maintaining the list of partners, he never put down a capital commitment amount, so there is no such list that I can show you with these numbers.

But if you were to create a list, you could. And this is what it might look like. Here is the date of the subscription agreements, the entities, and the amount that they owe and the total amount of contingent subscriptions to the fund.

It's clear who committed capital. It's clear how much they committed — it's $1.425 billion, split precisely between the two LPs.

Sometimes the LPs' original subscription is referred to as $1.5 billion to take into account the $75 million loan to Dr. Harrison. But this is their own commitment to the fund. And that clarity here is what the LPA requires. And it's essential, not just for the contractual obligation to exist, but because of the consequences that flow from it in a Cayman ELP and in this particular LPA, in particular. That is, the LPA requires capital calls to be paid within ten days. It imposes serious consequences if those payments are missed. You've heard from the GP often about the default provisions and the consequences that flow to LPs if they do not make their capital payments within the ten days of the call.

When an LP commits to satisfy a capital call that quickly in the face of those consequences, it needs to know with certainty and clarity what that commitment is.

Even today, you haven't seen at any point so far this afternoon a clear statement by

Mr. Berdon as to what the sum total of the subscriptions of the two LPs are, or broken down as to which LP would owe how much at the end of the day. But that clarity is essential, and it's a premise of the LPA, and it's a premise of the consequences that follow from missing a capital call.

Amendment 17 and 18, which you've heard about because they deal with pools, don't constitute an additional subscription consistent with paragraph 3(c) of the LPA. When the parties entered these agreements, they didn't just rely on Amendment 17 and 18 to be the equivalent, but they amended the subscription agreements too.

So here, again, is an amended subscription agreement -- this one for Blue Horizon -- stating clearly here is the amount of the contingent subscription and that it is "hereby increased by $490,000,000 (the 'Increase')."

Similarly, Ezbon entered its own separate amended subscription agreement that clearly stated here's the amount of its contingent subscription and that it's "hereby increased by $510,000,000 (the 'Increase')."

There is no doubt that these

amendments to the subscription agreements state with clarity exactly who has committed how much and by how much their continued subscription has increased.

Again, you can add them to the list and see where you stand.

The parties agree, and the GP doesn't dispute, that the LPs never entered into any further amendments to the subscription agreements. There are no further amendments after this.

And at the time that the GP and the LPs entered into these amended subscription agreements, that's when the GP updated the markets with a press release announcing that the fund had a billion dollars in new capital commitments. And you can see that at JX 128.

It didn't update the list of partners because it didn't have one. But it did otherwise update its messaging to reflect its understanding that as of this point, there's 2.425 billion in commitments by these entities, the LPs, making it a $2.5 billion fund overall, counting Dr. Harrison's loan and credit commitment.

So it's a sum certain that the GP can draw on over time. As calls are made and capital is

contributed to satisfy them, the amount available to call is reduced. Nothing the GP has shown you today is the equivalent of these subscription agreements.

It's shown you Amendment 13. That's where Mr. Berdon started out. And he says that that is a place where suddenly the commitment shifted to pools. But you don't see anything in Amendment 13 that even mentions commitments or subscriptions or contingent subscriptions. It refers to contributions, distributions, and income, not commitments. And it doesn't have anything like the language that you saw in the subscription agreements or their amendments, identifying by LP a specified amount of increase in their subscription. You don't see that in Amendment 20, or 17, or 18, or anywhere other than the subscription agreements and the amendments to the subscription agreements.

Here, you can see the next dispositive fact in this case. That is, one fact is that there are four subscription agreements, the two original ones from 2012 and the two amendments from 2020, establishing the LPs' collective subscription at $2.425 billion.

And here, you can see how much the LPs

contributed to the fund over time. You can see that increase from July 2012, when the fund was started. And as it approaches the $1.425 billion limit of their original contingent subscription late in the summer of 2020, you can see that the cap rises when the parties amended the contingent subscriptions to take it up by a billion dollars to $2.425 billion.

And then the GP continues to call capital, and the LPs continue to contribute it, steadily over time, notwithstanding Mr. Bogdanov's memo about liquidity, notwithstanding the Ukraine war.

And through years, the GP -- the LPs continued to contribute capital in response to calls, until, at the end of 2023, they crossed the green line. That is, the contributions exceed the total amount of the LPs' contingent subscriptions.

And because this has happened, any further capital call is the call in excess of the LPs' contingent subscriptions. And it cannot give rise to a valid obligation to contribute more capital. The LPs can and did contribute capital in excess of their commitment. Again, they've invested 98 percent of the capital of this fund. This is fundamentally their investment.

And you have heard from them that they're committed to understanding it and to making additional investments as appropriate. But they cannot be compelled to do so under paragraph 5(a)(i) of the LPA, which only permits the GP to call capital up to the amount of the contingent subscriptions and no more. The GP cannot force contributions above that threshold, and that is what it is trying to do in this court. That's why those capital calls are invalid, is because the LPs have exceeded their contingent subscriptions.

This is no surprise to anyone. You have heard again and again, Your Honor, that the LPs are somehow starving the companies of capital. But they have contributed not just $2.69 billion to the fund, but 433 million to the companies for which capital was called on May 30. And they have been clear throughout about the limit of their commitment to the fund and have asked Dr. Harrison and the GP to manage to that commitment like a responsible GP.

You heard that from Dr. Rybolovlev. And Dr. Harrison admitted that he understood that as far back as in May of 2023, that the investment was capped at $2.5 billion.

And you'll recall that I asked him at trial and he testified, and he testified in his deposition, that he didn't do anything to manage to that cap.

And so we are not here today with companies in need of funding because they were starved by the LPs. We don't -- we are here today because there was a known cap, it was drawn down, and the GP didn't manage to it and now is in a fix trying to force the LPs to contribute more.

Your Honor, we've heard an awful lot today and generally about how other amendments besides the subscription agreements could have somehow increased the LPs' commitment to the fund, in particular, Amendment 20. And I want to spend a little bit of time talking about why Amendment 20 didn't increase the contingent subscriptions.

I think the overarching questions here, is Amendment 20 clear? Does it have the clarity that Cayman law requires? Does it have the clear and convincing evidence of a sum certain that the LPs are required to contribute, that specific performance requires, in a world in which the burden is on the plaintiff to show that. Is it clearly the equivalent

of a subscription agreement? And I would suggest that it is not.

We haven't put all of Amendment 20 on this slide, but here is one of the paragraphs with respect to ATP V-3 that the GP focuses on, which begins with the statement that "ATP V-3 shall have capital commitments of $500,000,000 ...." But, of course, the GP isn't telling you that this is a capital commitment of $500 million. It's telling you that you have to subtract from that $500 million certain amounts, and add other amounts, and look at the 70 million of budgets and otherwise do quite a bit of math in the breaking down of this paragraph and other paragraphs in Amendment 20 in order to come up with what the supposed additional commitment is here.

But I would suggest to Your Honor that this is not the equivalent of a subscription agreement. You saw in the subscription agreements a minute ago a specific amount for each of the separate LPs and a clear statement that it's increasing their contingent subscription. You don't have here a sum certain. There's no specific amount. There's no statement that this is an increase in contingent subscriptions. And it's not tied LP by LP.

Even the GP's Cayman law expert agrees. Mr. Bloch testified that Amendment 20 doesn't appear to have that clear statement that would be required to find that it increases the amount that the LPs have to contribute.

Amendment 20 didn't increase the subscriptions. But what it did do is kind of restructure the pools. And I think plaintiffs place an enormous amount of emphasis, as you've seen today, on this pool concept, claiming that the LPs' contingent subscriptions or commitments must be viewed on a pool-by-pool basis and must be greater than their subscription agreements to the extent that the pool accounting exceeds that amount. It's a very convoluted way to think about capital commitments.

As to Pool IV, it requires assuming that the LPs' contingent subscription of $1.425 billion was somehow reduced to 1.33 billion because the parties agreed to a reduction of 150 million that hadn't been paid, and then factoring in the 20 million in fees — a set of assumptions and math.

As to Pool V-1 and V-2, it purports to leave the $1 billion commitment untouched.

And as to Pool V-3, it argues that 309.3 million is the commitment by taking the 500 million referred to in that paragraph, subtracting 189.5 million that had been deemed to be contributed, counting as new commitments over 70 million that had already been budgeted, and then factoring in approximately 235 million in investments anticipated to be made in new portfolio companies, and then multiplying that by various percentages.

That is in no way the equivalent of a subscription agreement. It lacks the clarity that the subscription agreements have and Cayman contract law requires, and it doesn't make any sense.

If you take the 70.8 million of capital budgeted for follow-on investments in that paragraph, just as an example, keep in mind that at the time that Amendment 20 was entered, the LPs had just committed another billion dollars in capital to the fund. And of their total commitments, over a billion dollars remained to be drawn.

It makes no sense that the parties would have used Amendment 20 in this circuitous and indirect way to increase the LPs' capital commitments to correspond to existing previously approved budgets

that were well within the fund's current subscriptions, much less to do it without saying so, without saying that it's an increase in the subscriptions, or without breaking it down by LPs and who has to pay.

It doesn't make sense to think that, with over a billion dollars available to invest, the parties needed to increase capital commitments by another approximately $235 million for new, unspecified portfolio companies, or, again, that they did it in a circuitous way and without saying so expressly and without actually amending the subscription agreements.

The same is true with the Pool Braeburn analysis. None of this is the equivalent of a subscription agreement.

Even in their post-trial brief, the GP can't pinpoint what the increase in the subscription is, and instead gives you a long paragraph breaking down various amounts, none of which sums up to a new, clear commitment to increase subscriptions or breaks it down by LPs.

Amendment 20 is an increase in capital commitments. It doesn't say that it is. It doesn't

specify an amount. And it doesn't need to because so much remained available at the time. And Rigmora never thought it did.

What it does do is continue to tinker with the fund's internal mechanisms for tracking investments, largely in order to deal with management and team economics, in particular with carry. Amendment 20 talks about plans for commitments and budgets and contributions that the fund already has, and it continues to move them around for the sake of internal accounting and management carry.

You see that's how Dr. Harrison described it, as essentially accounting devices, accounting for companies and investments that the fund already had.

And you can see here, in a chart from Dr. Strebulaev's report, how the pools evolved over time. And in some ways, Your Honor, I think this is a much more interesting and telling report than the various Excel spreadsheets. Because what this shows you is how, over time, and with the pools and with the amendments, essentially, the GP and the fund were moving companies from one place to another, corresponding to how they were thinking about

management team carry and distributions to group the economics for internal accounting purposes.

But none of this internal accounting and rearrangement does anything externally to the arm's length relationship between the LPs and the fund as to how much they would commit.

I mentioned, Your Honor, that there was no need to increase this contingent subscription at the time of Amendment 20. And the parties knew that at the time. As of the time Amendment 20 was entered, they had just increased the contingent subscriptions by the collective billion dollars that we saw in September 2020.

What appears to have happened is that the GP backed into its understanding of Amendment 20 as they ran out of money as it came up against that threshold where it had drawn down the committed capital and was looking for ways to find arguments to say that the LPs owed more.

That's how the GP's CFO described it in his deposition. Again, he didn't come to testify at trial, but in his deposition he said this understanding of Amendment 20 "developed over time." And it's clear that the understanding of Amendment 20

as somehow increasing capital commitments or subscriptions wasn't a contemporaneous understanding based on that amendment itself or its text, but something that developed over time. And the time that had passed between Amendment 20 and now is the same time in which the GP fully had drawn down its commitments, was unable to secure financing from third parties, and needed to find a way to somehow get more money.

I think you've also seen that the GP anchors its argument not in the text of Amendment 20 or not in the text of paragraph 5, but instead on the negotiating history and subsequent conduct, which is contrary to Cayman law. Cayman law tells you don't draw inferences about what the contract means from the negotiations that led up to it. And there's an entire agreement provision in the LPA which also suggests that you should look at the LPA and its text but not at the negotiating history and term sheets that were exchanged in advance.

I'd also note, Your Honor, that one of the things Mr. Berdon pointed to as indicative of the meaning of Amendment 20 was on Slide 10, and Exhibit A, repeatedly referring to it as an exhibit to

Amendment 20, when it wasn't. It was an attachment to an email and an attachment to a capital call, but not part of the LPA. And so that, again, is not part of the contract whose terms the Court must construe in order to ascertain whether there is an existing obligation on the part of the LPs to contribute more money.

I think it's telling, Your Honor, that the GP has struggled so extensively to clarify its position on the total amount of commitments to the fund. It hasn't done that consistently in this case, in the Cayman case, and it hasn't done that consistently as it has faced other third parties.

I've mentioned, and I won't belabor it, but I will mention it one last time, that the GP didn't keep a list of partners, and their contingent subscriptions, where it had in one clear place a stated, known amount of investable capital subscribed to the fund.

And instead, it has presented different numbers at different times to different third parties that are really all over the map. And they're all over the map if you map them, which we've done here. This is just dots reflecting the same

things that I showed you in the previous chart. But the GP has a shifting theory of contingent subscriptions. It does not identify consistently a sum certain as the LPs' subscriptions to the fund, but, rather, kind of ranges all over the place, where these are big numbers, but they're big numbers with real differences. There are hundreds of millions of dollars in difference as to what the GP thinks the contingent subscriptions or investable capital of the fund are.

And I think, again, in a world in which the LPA requires the GP to know that number and write it down, and the ELP Act requires the GP to know that number and write it down, and where that's a number and amount of subscription that the LPs have to have on hand to be called on ten days' notice, the GP shouldn't get credit for numbers that move.

And this is again indicative that it is backing into an Amendment 20 or pool theory in order to somehow create more headroom to justify in hindsight capital calls that were invalid at the time they were made. In fact, ten days before trial, the GP still wasn't sure what Amendment 20 did or what precisely the LPs' commitments were.

And you see again, there's more than $100 million difference in what Dr. Harrison told me ten days before trial and the position that they're advocating to the Court today, that it's something like $2.85 billion. That's a number that the GP is supposed to know and keep track of and can call on ten days' notice, but ten days before coming to this Court Dr. Harrison still didn't know what it was.

And I pause on that, Your Honor, also, again, because, under Cayman law, a contractual obligation requires clarity of terms. And specific performance requires clear and convincing evidence. And the burden is on the GP to show you that, to show with clarity of terms what the LPs' subscription is, and to show you clearly and convincingly if they want to obtain specific performance.

And if the GP can't specify a number and cannot specify a contractual source for that, and cannot specify the particular contractual source that this contract requires, which is the equivalent of a subscription agreement in paragraph 3(c), they are not entitled to the relief that they seek on these capital calls. The capital calls are not valid.

And the capital calls aren't valid

because there's no contingent subscription remaining. And this is fairly straightforward, Your Honor. Unlike the GP's CFO, the LPs' CFO did show up at trial and he did testify. And he showed you that as of today, taking the contributions in total, the amount of capital contributed to the fund is $2.69 billion. There's no dispute that's greater than $2.425 billion.

The only question around that $2.69 billion is whether the LPs' $390 million in "deemed contributions" count as capital contributions.

But, Your Honor, they should. "Deemed" means deemed. It's -- I wanted to cite Black's Law Dictionary, but I'm told this is the authoritative British dictionary on English law. But they are the same. And "deem" means deem. And when we deem something, we should treat it as what it is.

For its own purposes, the GP treated deemed contributions as contributions. Dr. Harrison's $54 million of contributions includes cash, it includes some distributions from the fund and contributed back, credit against his management fee, and some portion of the value of his carry.

That -- what I asked Dr. Harrison here is exactly what the LPs did. That is, they had

distributions from the fund that they contributed back. And instead of round-tripping it and taking the cash all the way out and putting it all the way back in, the distributions were deemed contributed.

And you heard Mr. Berdon tell you that the GP has $2.4 billion in distributions to the LPs from the fund. That 2.4 billion includes the 390 million that we contributed back in. So it counts as a distribution for purposes of calculating the distributions coming out, but it was just recontributed back in. And that's why it counts towards the $2.69 billion in contributions. There's no question and no real dispute here that distributions of value returned on the capital above the investment, which could have come out in cash and are counted for the purposes of distribution, when they are reinvested, are just the same as new cash money coming in. It is in fact new cash money. It's just a reinvestment.

So, Your Honor, I know this has been a fast-moving and complex case and there are many pieces. But, really, for the capital calls, it should end here. This claim fails because they are not within the contingent subscription. The contingent

subscription is $2.425 billion. The LPs have exceeded that. There's no basis under paragraph 5 for the GP to request in excess of the total amount of the contingent subscriptions. That's what they've done. And because they've done it, the calls are improper.

Of course, capital calls also have to be in accordance with an approved budget. And that, again, is in paragraph 5(a)(ii) of the LPA.

When the GP submitted budgets for approval, it didn't just submit one line and a number. It submitted an investment memorandum, a CFIUS memo, the actual budget approval authorizing the budget, and a capital call for the corresponding investment.

This is what one of the emails looks like. Both Dr. Harrison and Dr. Rybolovlev understood that the investment memorandum describing what the investment was for and budgeting the amount for that investment out over time in tranches tied to milestones was part of the budget package that the LPs were presented with and that they were asked to approve.

The investment memoranda provided a detailed overview of the project for which the budget was submitted. They included all kinds of details

about it, including the investment thesis, risks, the R&D plan, an overview of the company.

And they included the milestone-based tranche funding. And this is an example, again, for Evercrisp. I think these tranches are important, Your Honor, because you've heard so much about budgets from the GP. But you've also heard from both parties and all the experts that early-stage biotech investing is risky. And it's risky because lots of companies don't make it out of the first tranche. They don't make it past the first milestone or the second or third.

There are points, and you can see here, "self-delivery properties demonstrated in vitro," "self-delivery properties demonstrated in vivo." There are things that the therapy needs to accomplish in order for it to be effective and in order for it to unlock the next tranche of funding.

It doesn't make sense to get $20 million for an IND if you haven't completed all the steps that lead you to the point where you would have an IND to submit.

So tranche-based funding, as you've heard from Dr. Rimm and Dr. Strebulaev, is important in biotech investing. It was also important to these

particular parties and the investing that they did, and it maps out what these companies are trying to achieve over time.

And you see that, again, in the investment memorandum for Marlinspike and Apertor. These are examples.

And then when a budget was approved, there's a one-page approval form here which simplifies it down. And that really -- this is what the GP is relying on when they're telling you that they're approved budgets. They're looking at that total number and disregarding the tranche-based financing and the milestones to which those tranches are tied.

But I will put it to Your Honor that that doesn't make sense in the context of these kinds of investments, where it isn't -- where there are gates, they're basically hurdles. I mean, we call them milestones -- you can call them something else -- but it is a threshold that you need to pass through and accomplish in order to move on to the next step. If a drug isn't effective at the first step, you don't test it at the next step. If it's not effective in mice, don't test it in humans.

So each of these tranche-based

financings is designed to allow the budget to progress over time. And again, remember what I said at the beginning and what you heard from Dr. Rybolovlev and from multiple witnesses in this case, which is early-stage biotech investing is high risk. Lots of companies are not going to clear all of these hurdles. These hurdles are hard, some of them, and they won't clear all of them.

And so there's no expectation at the end of the day that the full budget will be drawn for every one of the ten portfolio companies. That's not consistent with the investment thesis or the market expectations in this area.

And again, the fund invested heavily in these companies, in these early-stage companies over time. From the point of initial investment until May 30, when the calls were made, you can see tens of millions of dollars here for each of them. It's not that they were starved and unable to achieve their goals for lack of funds. They had funding.

But again, the expectation is sometimes, you know, for many biotech investments, the thesis won't play out. And, in fact, it didn't. Despite all of those investments over time, for the

early-stage companies, they all missed milestones. And you heard that from Dr. Rimm in testimony here. And this, again, is a chart. It's a little bit of a complicated chart, but it shows you effectively with the dots what the milestones were. And with the red, that they were missed. And they're missed across the board for all of the companies, and many of them were completed late.

But if you just look, for example, at Aethon, Aethon's budget was meant to progress a cancer treatment all the way from initial drug discovery through candidate nomination, preclinical studies, and an investigatory new drug filing with the FDA, which, if approved, would have permitted Aethon to start clinical testing. It made some progress, but it wasn't able to complete the development candidate nomination, or DCN, milestone by the third quarter of 2024. And as Dr. Rimm testified, the DCN is a critical go/no-go decision point in drug development.

So if you haven't isolated a molecule as the development candidate that the company is going to focus on, there's a big hole in the company's plans. It can't progress to preclinical testing, like for dosing or toxicity. And without the preclinical

testing, it could never file an IND application.

It doesn't make sense to fund a budget for an IND application that you cannot make because you have not identified a candidate molecule that meets the criteria and can be tested. And that's what the back end of budgets are intended to cover.

Nonetheless, Aethon's May 30 capital call for $5 million drew from its final tranche, which was only supposed to be unlocked upon the filing of the IND application with the FDA.

Again, that's a clear milestone. It's one that it missed. And it's one, also, that investors can assess. You don't need to be a biochemist to know whether an IND application can be filed with the FDA. That's something the GP or the company can report. And that's why calls for companies that miss milestones aren't within the budget.

It wasn't just Aethon. The fund had invested heavily in each of these companies at the core of this dispute for over a long period of time. And despite that, all of them missed these milestones.

Initial had sought to develop a cancer treatment. It was supposed to nominate a DCN in Q2

2024, but it never did, and the GP nonetheless called $20 million for it.

Apertor was focused on age-related diseases and had multiple programs. It identified a DCN, but it failed to progress the drug to the very first regulatory approval step.

Evercrisp was focused on genome editing. It was supposed to have filed its IND application by Q2 2024, but it still hasn't done so.

Red Queen said it would achieve a DCN for its RSV program by April 2022, but it's failed to nominate a drug candidate.

Deep Apple sought to incorporate AI into drug discovery. It was supposed to file the first of its two IND applications in Q1 2024. It still hasn't done so. But the GP called $28 million of capital for it. These are all in the Rimm report at JX 1579.

But, Your Honor, this is why the capital calls are not within the approved budgets and why they're not made in good faith. The LPs aren't starving successful companies of money that they need in order to achieve their goals. These companies have been funded. They were funded on a tranche-based

system. They were supposed to meet milestones to unlock the next tranche, and they haven't done so.

The GP tells you, and Dr. Harrison has told you, that the milestones are obsolete and irrelevant and that the companies often pivot away. But many other witnesses, including witnesses at ATP, told you that milestones matter.

You saw that from Mr. Finkelman, the GP's general counsel, in the deposition testimony that Your Honor watched outside of the courtroom when it was sealed, which I will not put up on the screen, but where Mr. Finkelman himself recognized the importance of milestones as a gating mechanism for fund financing for those companies.

The GP's own chief scientific officer, Dr. Ehlers, acknowledged that milestones were important.

Mr. Bogdanov agreed that milestones are important.

It's not surprising that the fact witnesses agree -- the experts agree as well -- that industry-leading biotech and venture capital experts explained at trial that milestones are industry-standard mechanisms for investors to manage

their risk. And that's important in biotech investing, which is risky.

Dr. Harrison disagrees for purposes of this litigation. This is what he said at trial, that they're obsoleted or that they're irrelevant. But when Dr. Harrison goes out to market, including in the week before trial, in this deck, produced after his last and third deposition day, what he's telling investors now is that "Milestone-based tranches of capital infused over time ..." are how ATP manages its investment. This is what he's saying contemporaneously and outside of this courtroom.

So for those reasons, Your Honor, the capital calls for those early-stage companies are not within approved budgets because the approved budgets contemplated those tranches of financing being tied to milestones that they haven't met.

And for Replicate, there is a separate reason that the capital call fails, because of this $300 million financing contingency.

So even if Your Honor were to find somehow that there is some headroom, notwithstanding the clear subscription agreements, the capital call claim would still fail because these are not in

accordance with approved budgets.

They fail a third hurdle as well, Your Honor -- and I will pause just briefly on that -- which is under LPA 5(a)(ii), capital calls also must be consistent with the GP's fiduciary duty. The GP is a fiduciary of the LPs. The ELP is essentially a trust, as a matter of Cayman law, and it's synonymous with the limited partners, and the GP owes them a duty. It must call capital for proper purposes. If it doesn't, the capital calls are invalid under Cayman law and under the LPA.

Here is the ELP Act explaining the obligations of the GP to "act at all times in good faith and ..., in the interests of the exempted limited partnership ...."

And, Your Honor, I would just pause for a moment on Section 19 of the ELP Act, which I think is an important level set in this case, because the GP speaks frequently about the state of the companies and what's owed to the companies and how they need more money. And that may be how Dr. Harrison thinks about it or should think about it when he has his director hat on as a director of a portfolio company. But when the GP is acting as the

general partner of an exempted limited partnership, its duty is to the LPs. It is a fiduciary of the LPs, and it is to act in their interests, and not in the interests of the portfolio companies, when it is putting its GP hat on.

And it's undisputed that capital calls have to be consistent with the GP's fiduciary duties. That's what the GP's own Cayman law expert says.

One reason -- I had paused so long on this chart, Your Honor, I will skip past it again, except to say even if you were to find that the milestones are not part of the approved budgets, I would say that it is not consistent with the GP's fiduciary duty and not a proper purpose to call budgets to fund companies for milestones that they have not met for new phases of life that they cannot progress to because they haven't accomplished what they needed to get there. So even if you buy the GP's theory on budgets, you still should find these capital calls invalid because it's not a proper purpose.

I would also suggest, Your Honor, that it's not a proper purpose because it quadrupled in the course of two weeks for no good business reason, and largely as an effort to put pressure on the GPs.

And for the clinical-stage companies, I think that problem is really stark. That is, the GP called these capital, even though Ascidian's management didn't project needing additional capital. The GP hadn't anticipated calling it for Marengo, and the Replicate board didn't know anything about it.

Dr. Ehlers is the CEO of Ascidian, and he thought Ascidian was fine for a year.

The GP called $30 million for Marengo on May 30, even though on February 3, on April 29, on May 14, and on May 15 -- two weeks before its own forecast projected calling zero for Marengo -- all of a sudden on May 30 it called $30 million for Marengo. That's not a proper purpose, and it's not consistent with the GP's fiduciary duty to the LPs.

The Replicate chair, again, Dr. Ehlers, testified that he wasn't aware of the $13 million capital call made for Replicate on May 30.

So, Your Honor, under the LPA, capital calls have to be within the contingent subscription. They must accord with the approved budget. And they have to be consistent with the GP's fiduciary duties and for a proper purpose. These capital calls are none of those things.

They fail across the board. So we would ask Your Honor to reject the GP's request for specific performance of the capital calls for those reasons. They have no subscriptions left to call against. They're not in accordance with budgets. They're not consistent with fiduciary duties.

And to the extent they're requesting relief as to future capital calls, that's unworkable, because any future capital call must also meet these criteria, and it's impossible to predict now whether a future call will meet these criteria. But I can predict one thing was certain, which is that it can't meet the subscription agreement because it would already be in excess of it.

I'll turn, Your Honor, to the GP's claim that the LPs need to discuss and approve budgets.

And on that, again, it's rooted in the LPA in paragraph 5(a)(ii), which says that budgets are to be approved by the LPs.

And Amendment 22 requires discussion of certain particular budgets conditioned on the approval of royalty financing. And the LPs did discuss, consider, and approve budgets in good faith.

You've heard a little bit from the GP and from us in our briefs about the proposal that the GP sent for five companies specified in Amendment 22 on Christmas Eve of last year: Aulos, Replicate, Nereid, Nine Square, and Ascidian.

And you heard from Mr. Bogdanov at trial, who walked through each of these five companies. And you've heard, really, that there are reasons that the budgets for these companies didn't progress. That is, for Nereid, the GP proposed a merger but dropped the idea and didn't pursue any further discussions.

For Nine Square, the parties agreed to postpone the Nine Square budget approval until later.

For Replicate, the LPs discussed and approved a budget. You've heard extensively from Dr. Harrison and his counsel that Mr. Bogdanov asked questions about Replicate. Of course he did. Replicate had consumed tens of millions of dollars over several years and switched directions. They were asking for tens of millions more.

He asked questions and then discussed them and then approved an $18 million budget increase, $7 million more than the initial request.

I do not think that Your Honor can find that the LPs failed to discuss budgets in good faith with the GP or to approve budgets when, in fact, they did so by asking questions, learning more about the companies, and agreeing to approve not just the requested budget, but a greater budget than had originally been requested. That is, the gathering of information and better understanding of the company led to a greater investment in the end.

Dr. Harrison takes these questions offensively as "a kind of blockade" or an "obstructionist tactic," but it is not at all unreasonable. It is not bad faith to have questions about how the GP is making investments and how companies are progressing when, again, $433 million had been invested in the ten companies called on May 30.

Tens of millions of dollars had been invested in the companies discussed pursuant to Amendment 20. It's reasonable to have questions about how that money is being used, particularly, as I just described, when those companies are not always effectively achieving their milestones.

The LPs discussed Aulos and Ascidian.

They did so in good faith. They did so over the course of December 2024, March, May.

And against the background of all of this, the GP tells you that Mr. Bogdanov's email from May 15 is somehow indicative that the LPs weren't discussing budgets. But, Your Honor, it was the cumulation -- or not even the cumulation. It continued after that. It fit into a long chronology of budget discussions and back-and-forth between the GP and the LP over these budgets and these companies.

And I would just note, Your Honor, that it's part of good-faith discussions about reallocation, where Dr. Ehlers, in August of 2024, proposed to Dr. Harrison a reallocation of budgets and assets within the companies. Dr. Harrison proposed it to the LPs, texted about it internally. And those discussions continued.

And you see some of that back-and-forth here.

Again, this is the GP's recommendation in April, that they collapse certain of the early-stage companies and reallocate their capital. And the spreadsheet that Dr. Harrison sent on April 29 includes these reallocated scenarios.

He sent a term sheet on May 11. In that term sheet, he asked for control over portfolio company budgets, which would be a departure from the LPA.

And after that, it's true, Mr. Bogdanov sent a May 15 email and expressed that the LPs don't see a path to commercial success for the early-stage companies, but understood the GP held a similar view and wanted to continue to discuss that reallocation proposal with it.

Again, Your Honor, I would put it to you that this is not a breach, it's not a repudiation, and it's not a bad-faith discussion of budgets.

And again, hard to say that it's bad faith or a breach of a duty to discuss budgets or reallocation when the GP itself is taking essentially the same proposal out to the market now in October 2025.

I'd also suggest, Your Honor, that the May 15 email doesn't reflect a purported liquidity crisis. It was years after the 2022 email from Mr. Bogdanov that the GP is relying on. And not just years, but hundreds of millions of dollars later.

Also hard to believe that the May 15

email reflects a liquidity crisis when Mr. Berdon himself is telling you that they believe that the LPs have assets available.

So, Your Honor, I think the GP's request for relief on the budget claims should fail. They've more than -- the LPs have more than satisfied any obligation to discuss and consider budgets. The GP hasn't put on any evidence that a rational good-faith investor would, in fact, approve these budgets. And the GP's request that the LPs should be deemed to have waived approval rights basically rewrites the LPA for no good reason.

Your Honor, as to the default charge, I understood the request for that relief to be withdrawn. That is the one thing that has come up in the Cayman proceeding. Essentially, the Cayman proceeding has a status quo order. That's the injunction that Mr. Berdon referred to that prevents the GP from imposing a global default or a default against the LPs.

Your Honor, if the GP continues to pursue the default claim in violation of the Cayman order, the LPs will raise that in the Cayman court. That is the provision of the amended pleadings that

Mr. Berdon quoted to you. But that amended pleading was done on consent. The GP's counsel is aware of it. It had an opportunity to object to the LPs' pleading and didn't. And so that's going to go forward in the Cayman court.

I don't think there's any reason to draw adverse inferences against the LPs here because they obtained essentially an injunction against the default from the Cayman court, which thought it appropriate to grant it and will address it in January.

The GP is here as a plaintiff, as a representative of the fund, but seeking to exculpate itself. We think it should be denied for that reason and for the reasons stated in our briefs.

And, Your Honor, I will wrap up by saying a few things. One is, I think at the end of the day, as you've heard me say, this is a simple case. It's a contract claim, governed by contract. The contract provides that the GP can only call the contingent subscriptions of the LP, and it's clear what those are.

And the capital calls fail for all the other reasons in the LPA as well. There's ample

evidence that the LPs discussed the budgets and did so in good faith; that they in fact approved them. And for the ones that weren't approved, that there were good reasons.

And I would end by noting that the GP here carries the burden of showing clarity of the terms of the contract, clear and convincing evidence of its right to specific performance. And you haven't seen them show you anything that looks like the equivalent of a subscription agreement. You haven't seen them show you any deal that fell through for financing these companies because of rushing concerns or know-your-client concerns. You haven't seen them show you any evidence of calls being consistent with budgets.

There's lots of missing evidence from the GP here, and very clear contractual provisions that show what the GP -- what the LPs committed to fund; and, again, evidence showing that they funded it and contributed it in full.

So for those reasons, Your Honor, and those stated in our briefs, we would ask you to reject the GP's claims.

THE COURT: Thank you.

ATTORNEY BERDON: Andrew Berdon for ATP.

Thank you.

A couple things that Ms. Selden said that I think I'd like to comment on.

First, she made the assertion that Exhibit A is not actually part of Amendment 20, that it's a piece of correspondence between the parties that's extracontractual.

And I would just direct the Court to paragraph 13 of Amendment 20. And it says, "Schedules. The Schedules supporting certain of the calculations contained in this Amendment and set forth in Annex A hereto are hereby incorporated by reference into this Agreement as if set forth herein at length."

So the idea that this was -- Exhibit A was post-contractual interaction between the parties that can't be taken into consideration in contract construction is plain wrong. It was incorporated by reference.

So let's take a quick look at Exhibit A again. And so, Marco, can we please go to Exhibit-- I'm sorry, page 10 of our deck.

And what we've heard from Rigmora is

that Amendment 20 is some kind of a mess, where you can't look for the amount of capital committed by individual partners.

But if you look here, on page 10, please, of our deck, you have the name of each limited partner and the amount of their subscription; and in particular for Pool V-3, because there really is no question about the amount of capital that's been committed in Pools V-1 and V-2.

And again, Ms. Selden said that the amendment is lacking any of the specificity that one would look for, including, you know, breakdowns of exactly who was required to contribute what.

Marco, can we go to page ending in 6789. Amendment 20. I'm sorry, 6789 Bates number.

Okay. So let's take a look at paragraph 22(b). And that's on the fifth page of the exhibit. Paragraph 22 is "Pool ATP V-3." There we go.

And so let's take a look at (b), which is the next page. And let's zoom in, please, so we can take a look at the section that says exactly who is responsible for contributing what to Pool V-3. There are the names of each of the limited partners,

the specific amount of their capital commitment. It's directly contrary to what you've just been hearing.

The only thing that's missing there, effectively, is the address. This serves all the purposes of a capital commitment. It was negotiated to be one.

Your Honor, we've also heard about the portfolio concept; that the idea between the parties was that there would be judgment exercised about whether or not to continue to fund companies that weren't doing well. Well, under the LPA, the management authority is vested in the general partner. Once a budget is approved, the LPA does not impute any further milestone-based controls on the LPs. Once the budget is approved, it's up to the GP to run the business of the fund.

And you heard from Dr. Liras that these companies were making progress. And so the idea that there was a -- a gate and that there were specific determinations made by Rigmora that there were problems in the portfolio, well, none of that analysis was available or had been done by anyone with any skill before May 15.

Everything that you heard from Rigmora

about the status of the companies -- whether some were doing well or not, the specifics of what they had achieved -- is after-the-fact, litigation-inspired rationalization. You see no contemporaneous business communications within Rigmora breaking down the detail and whether these companies were actually worth further investment.

You had Mr. Iskhakov go through and check off to see if, using just the investment memos and just the quarterly reports, whether there had been some missed milestones. And he reported back to Mr. Bogdanov that in some cases there were and in some cases there weren't. And Mr. Bogdanov on the stand had to admit that he really didn't know which ones had missed and which ones had made it by May 15.

So Dr. Rimm's conclusions, quite frankly, are irrelevant to the question of whether, on May 15, their instruction to shut down the seven companies was backed up by a fair and rational assessment.

And, again, subsequent events show that Deep Apple, far from being worthless, now has a Big Pharma collaboration agreement. Other companies in the portfolio continue to move forward and make

real scientific progress.

And so the idea that this was a cleansing of the portfolio driven by the LPs pursuant to a contractual right and the natural order of things is all invented for the purpose of this litigation.

Your Honor, again, Rigmora elides just completely the plain math of commitments to V-1, V-2, commitment to V-3, how does the headroom stack up. They say there's $2.6 million in contributed capital. If you take away the double-count, it's 2.3. And if you take away the double-count, there is still headroom between that 2.3 and the 2.45 that they agree they committed to, in any event.

There's about 110 to $120 million in headroom; enough to cover each and every capital call, even if you subscribe to the idea that there's only $2.45 billion in overall commitment, once you take away the double-counting that we point out in our brief.

Just very briefly, Your Honor, on the idea that the word or the equivalent thereof cannot include a document as detailed as Amendment 20. Their expert witness admitted that you can have an alternative to a full subscription agreement.

Let's get the slides up. Beautiful.

Here we have Mr. Phillips' question, and I'm asking -- roll back, please. I'm asking the question -- forgive me.

"Question: So strictly speaking, Paragraph 3(c), as written here, provides that a subscription agreement is not necessary to create an additional subscription of capital?

"Answer: Not necessary, I agree."

And so it really comes down to the question of whether there's any gap between the specificity contained in Amendment 20 and the list. The only thing that's missing is addresses. And so we would submit that Amendment 20 is binding for $310 million of additional capital commitment on top of the $2.45 billion, and that the cumulative amount of contributed capital to date was $2.3 billion, because the backing out of the double-count.

So, Your Honor, what we really have here, Your Honor, is a lot of *post hoc* rationalization, a breakdown that we believe is driven by the limited partners' strategic decision to get out of the market for early-stage biotech investing and that the capital calls that were served were within

the capital commitment, within budget, served in good faith, for a proper purpose, and that specific performance is entirely justified and the balance of equities falls clearly in our favor.

And that will be the end of my presentation, Your Honor.

THE COURT: Thank you.

One question. I asked this at the end of trial, but what is the timing? By when do you need a decision?

ATTORNEY BERDON: Your Honor, witness statements, in essence -- you know, in essence, the affirmative case has to be put in in Cayman by December the 5th. We would appreciate our not having an unknown outcome here at the time our witness statements go in. Because we want to be able to inform the Court in Cayman as to what's going on. And so in order for us to do that within the time allotted would be December 5.

THE COURT: You can't supplement your witness statements in Cayman?

ATTORNEY BERDON: Your Honor, I am not sure about the ability. It would require, I'm sure, leave of court. I do not know if leave of court is as

freely granted in the lead-up to trial. Trial here starts, I believe, January the 12th.

THE COURT: Because getting you a decision by December 5 gives me, really, seven business days to write the decision. That's not a lot.

I have a couple people; you have armies. And I know you know how hard it was to marshal this record.

So I'll do my best, but I can't make any promises.

ATTORNEY BERDON: Your Honor, that's all we can ask. And we appreciate the time and the effort that the Court and its staff have put in to supporting this matter. And with that, I'll bid you good afternoon.

THE COURT: Thank you.

Any corrections to the timing?

ATTORNEY SELDEN: No, Your Honor. I was just going to say my UK partners are here and inform me that witness statements can be supplemented and are due late in December. So I do think that there is more time.

Nor do I know that a decision of this

court would need to be included in a witness statement, as opposed to coming from counsel.

THE COURT: Is it your position that they can't consider my decision? I can't give that a lot of weight.

ATTORNEY SELDEN: We happen to have the benefit of Cayman counsel, so I would just share that there is an opportunity to supplement late in the month.

THE COURT: All right. Thank you.

ATTORNEY SELDEN: To the extent helpful.

THE COURT: Thank you for your presentations. Safe travels. We are adjourned.

(Court adjourned at 4:32 p.m.)

- - -

CERTIFICATE

We, JULIANNE LABADIA and DEBRA A. DONNELLY, Official Reporters for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 112 contain a true and correct transcription of the proceedings as stenographically reported by us at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF we have hereunto set our hands at Wilmington, this 21st day of November, 2025.

/s/ Julianne LaBadia
Official Court Reporter

/s/ Debra A. Donnelly
Official Court Reporter

EXHIBIT W

Hallas, Laura

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Monday, December 8, 2025 4:25 PM
To: Michael Barlow; Shannon Doughty; Morgan Harrison; Garrett Moritz; Roger Stronach; Gage Whirley; Andrew Berdon; Rachel Epstein; Kathryn Bonacorsi; Jessica Reese; Jenny Braun; Taylor Jones; Hannah Dawson; John Ferraro; Jonathan M. Acevedo
Cc: Rohrbacher, Blake; Greer, Zachary R.; Allen, Benjamin O.; Selden, Shannon R.; Taft, William; Born, Natascha; Saltzman, Zachary H.; Wolf, Sarah; Micarelli, Carl; Dutz, Sebastian; Van Duyn, Andrew
Subject: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM
Attachments: ATPvRigmora_ Proposed Order.docx

EXTERNAL

Counsel,

Attached please see a proposed form of order implementing the Court's post-trial decision. Please let us know if this proposed order is agreed as to form.

Best,
Dan

RICHARDS LAYTON & FINGER

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

[PROPOSED] PARTIAL FINAL JUDGMENT AND ORDER PURSUANT TO RULE 54(b)

WHEREAS, the Court conducted a two-day trial on October 16 and 17, 2025;

WHEREAS, the Court issued its Post-Trial Memorandum Opinion (the "Opinion") on December 5, 2025;

WHEREAS, the Court did not resolve one of the pending claims; and

WHEREAS, the parties have agreed on a proposed form of order implementing the Opinion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. With respect to the Verified Complaint (Dkt. 1), judgment is hereby entered in favor of Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Defendants") and against Plaintiff ATP III

GP, Ltd. ("ATP") on the following counts: the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), and the Fourth Cause of Action (Global Default Charge).

2. The Court reserves decision on the Fifth Cause of Action (Declaratory Relief – Proper Actions of General Partner).

3. ATP is not entitled to its attorney's fees in connection with the above-captioned action.

4. With respect to ATP's additional breach of contract claim asserted in the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76) (the "Additional Claim"), judgment is hereby entered in favor of ATP and against Defendants. Defendants, jointly and severally, shall, within 10 days of the entry of this Partial Final Judgment and Order, pay to ATP Life Science Ventures, L.P. ("the Fund") $96,960,925.88 in satisfaction of the Capital Calls (as defined in the Opinion) issued on May 30, 2025 for Aethon Therapeutics, Apertor Pharmaceuticals, Ascidian Therapeutics, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marengo Therapeutics, Marlinspike Therapeutics, Red Queen Therapeutics, and ATLS fees and partnership expenses.

5. Each party shall bear its own costs.

6. All other requests for relief are denied.

7. Court of Chancery Rule 54(b) provides this Court with discretion to enter a partial final judgment if: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal.

8. The Post-Trial Opinion satisfies the requirements of Court of Chancery Rule 54(b).

9. This case involves multiple claims against multiple parties, and the Opinion resolved all of the claims except for one, on which the Court reserved judgment.

10. The unresolved claim involves issues being resolved in a pending litigation in the Cayman Islands and is "not a core dispute in this litigation." Accordingly, there is no just reason for delaying the finality of this Partial Final Judgment and Order pending appeal.

11. Pursuant to Court of Chancery Rule 54(b), the Court expressly directs (i) that this Partial Final Judgment and Order be entered as a final order and judgment with respect to all proceedings to date regarding the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), the Fourth Cause of Action

(Global Default Charge), and ATP's Additional Claim and (ii) that this Partial Final Judgment and Order be immediately appealable.

Chancellor Kathaleen St. Jude McCormick

EXHIBIT X

Hallas, Laura

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 9:34 PM
To: Kaprow, Daniel E.; Michael Barlow; Shannon Doughty; Morgan Harrison; Garrett Moritz; Roger Stronach; Gage Whirley; Rachel Epstein; Kathryn Bonacorsi; Jessica Reese; Jenny Braun; Taylor Jones; Hannah Dawson; John Ferraro; Jonathan M. Acevedo; Eric Winston
Cc: Rohrbacher, Blake; Greer, Zachary R.; Allen, Benjamin O.; Selden, Shannon R.; Taft, William; Born, Natascha; Saltzman, Zachary H.; Wolf, Sarah; Micarelli, Carl; Dutz, Sebastian; Van Duyn, Andrew
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM
Attachments: ATPvRigmora_ Proposed Order (QE 9PM)(17623830_1).docx

EXTERNAL

With the attachment this time.

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Wednesday, December 10, 2025 7:26 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

We do not consent. Attached is a markup of the draft you provided in clean and redline. Absent your agreement to this form, we are fine with your proposal to submit the competing drafts to the Court separately.

Best,
Dan

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 4:48 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

Does Rigmora consent to entry of an order in the form attached to my email yesterday afternoon? If not, does Rigmora wish to submit a joint letter to the Court attaching the parties' respective drafts? If not, we will send our draft to the Court separately.

Thanks very much.

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)
1.914.441.9470 (mobile)

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Tuesday, December 9, 2025 6:26:23 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Enclosed please find our proposed edits to the form of order together with a clean copy.

As you likely know, earlier today the Plaintiff, along with ATP Life Science Ventures, L.P. and a third entity, each commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. The automatic stay provided for in 11 U.S.C. § 362(a) went into effect and applies to the commencement or continuation of any proceedings against each debtor and exercises of control over property of each debtor, among other actions, anywhere in the world. However, since this Delaware Chancery Court action was commenced by a debtor, we do not believe the automatic stay applies to its continued prosecution.

Kind regards,

Andrew

Andrew Berdon
Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

295 Fifth Avenue
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From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Tuesday, December 9, 2025 2:26 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Thanks, when do you intend to provide your comments? The proposed order is due to the court tomorrow and we have yet to receive anything from you.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Monday, December 8, 2025 5:18 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

*** EXTERNAL EMAIL ***

Dan:

Received, and thank you. We are discussing with our clients and will have comments. This proposed order is not agreed as to form.

Best,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Monday, December 8, 2025 4:25 PM
To: Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro

<johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Counsel,

Attached please see a proposed form of order implementing the Court's post-trial decision. Please let us know if this proposed order is agreed as to form.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

[PROPOSED] PARTIAL FINAL JUDGMENT AND ORDER PURSUANT TO RULE 54(b)

WHEREAS, the Court conducted a two-day trial on October 16 and 17, 2025;

WHEREAS, the Court issued its Post-Trial Memorandum Opinion (the "Opinion") on December 5, 2025;

WHEREAS, the Court did not resolve one of the pending claims; and

WHEREAS, the parties have agreed on a proposed form of order implementing the Opinion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. With respect to the Second Cause of Action of the Verified Complaint, as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76) ("Count II") judgment is hereby entered in favor of Plaintiff

ATP III GP Ltd. in its capacity as General Partner of ATP Life Science Ventures, L.P. ("ATP") and against Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Defendants").

2. In respect of the judgement entered in Count II, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls (as defined in the Opinion) issued on May 30, 2025 for Aethon Therapeutics, Apertor Pharmaceuticals, Ascidian Therapeutics, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marengo Therapeutics, Marlinspike Therapeutics, Red Queen Therapeutics, and ATLS fees and partnership expenses in the amount of $96,960,925.88.

3. Defendants, jointly and severally, shall make such payments to ATP Life Science Ventures, L.P. in satisfaction of the Capital Calls by paying $96,960,925.88 to a segregated account within 10 days of the entry of this Partial Final Judgment and Order. Such funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware. The parties shall work in good faith to establish such segregated account.

4. Judgment is hereby entered in favor of Defendants and against Plaintiff ATP on the following counts: the First Cause of Action (Breach of Contract – Budget Approvals), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), and the Fourth Cause of Action (Global Default Charge).

5. The Court reserves decision on the Fifth Cause of Action (Declaratory Relief – Proper Actions of General Partner).

6. ATP's request for attorney's fees in connection with the above-captioned action is denied.

7. All other requests for relief are denied.

8. Court of Chancery Rule 54(b) provides this Court with discretion to enter a partial final judgment if: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal.

9. The Post-Trial Opinion satisfies the requirements of Court of Chancery Rule 54(b).

10. This case involves multiple claims against multiple parties, and the Opinion resolved all of the claims except for one, on which the Court reserved judgment.

11. The unresolved claim involves issues being resolved in a pending litigation in the Cayman Islands and is "not a core dispute in this litigation." Accordingly, there is no just reason for delaying the finality of this Partial Final Judgment and Order pending appeal.

12. Pursuant to Court of Chancery Rule 54(b), the Court expressly directs (i) that this Partial Final Judgment and Order be entered as a final order and judgment

with respect to all proceedings to date regarding the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies) (as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76)), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), the Fourth Cause of Action (Global Default Charge), and (ii) that this Partial Final Judgment and Order be immediately appealable.

Chancellor Kathaleen St. Jude McCormick

EXHIBIT Y

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Monday, December 22, 2025 1:21 PM
To: Born, Natascha; Kaprow, Daniel E.; Michael Barlow; Shannon Doughty; Morgan Harrison; Garrett Moritz; Roger Stronach; Gage Whirley; Rachel Epstein; Kathryn Bonacorsi; Jessica Reese; Jenny Braun; Taylor Jones; Hannah Dawson; John Ferraro; Jonathan M. Acevedo; Eric Winston
Cc: Rohrbacher, Blake; Greer, Zachary R.; Allen, Benjamin O.; Selden, Shannon R.; Taft, William; Saltzman, Zachary H.; Wolf, Sarah; Micarelli, Carl; Dutz, Sebastian; Van Duyn, Andrew; QE- ATP-Restructuring; L. Katherine Good; Patty Tomasco
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

EXTERNAL

Funds received at Bank of California.

Best,

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)
1.914.441.9470 (mobile)

From: Born, Natascha <nborn@debevoise.com>
Sent: Monday, December 22, 2025 2:16:56 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; Selden, Shannon R. <srselden@debevoise.com>; Taft, William <whtaft@debevoise.com>; Saltzman, Zachary H. <saltzmzh@debevoise.com>; Wolf, Sarah <swolf@debevoise.com>; Micarelli, Carl <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; Van Duyn, Andrew <amvanduyn@debevoise.com>; QE- ATP-Restructuring <qe-atp-restructuring@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from nborn@debevoise.com]

Andrew and Katie,

Attached are Julius Baer's confirmations that the funds have been transferred. Please let us know as soon as ATP receives the payment.

Best,

Natascha

Natascha Born | Partner | Debevoise & Plimpton LLP | nborn@debevoise.com | +1 212 909 6821 | 66 Hudson Boulevard, New York, NY 10001 | www.debevoise.com

---

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The latest version of our Privacy Policy, which includes information about how we collect, use and protect personal data, is at www.debevoise.com.

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Thursday, December 18, 2025 4:51 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
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Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

EXTERNAL

Daniel:

We disagree with your characterization. It was your clients' attempt to drive merits issues into the approval of a cash management order that created this delay. There was no need to build a restriction regarding the segregated account into the cash management order. The bank just asked to see an order entered. You objected to the entry of a plain-vanilla order.

Please include Katie Good at Potter Anderson, Eric Winston and Patty Tomasco of our restructuring group in our correspondence moving forward.
Katie should be your point of contact moving forward on the cash management order. We are sympathetic to the timing issue and are working to get this resolved.

Best,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Thursday, December 18, 2025 3:49 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; oger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

As you know, the Partial Final Judgment contemplates payment "to a segregated account within 10 days of the entry of this Partial Final Judgment and Order," that "[s]uch funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware," and that "[t]he parties shall work in good faith to establish such segregated account."

Given the entry of this order on December 11, 2025, and assuming there is a segregated account identified to us sufficiently in advance, payment is to be made on or before December 26, 2025. *See* Ct. Ch. R. 6 ("When the period is stated in days or a longer unit of time: (A) Exclude the day of the event that triggers the period. (B) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.").

As you can see below, I reached out twice already (on Monday and Tuesday) for information regarding the segregated account so that Rigmora could make the payment. You have yet to identify the account and the 26th is quickly approaching. Considering the size of the payment, that it is cross-border, and that it will involve a new bank account, bank personnel on both sides will need time to process, and we have holidays coming up that

will leave them short-staffed. Given that you have yet to identify the account, can we agree that once you identify the account, Rigmora will pay the amount within five business days?

We are at a loss for ATP's delays. ATP's proposed cash management order did not even expressly address this necessary segregated account. Given the Court's instructions yesterday, we believe this process can move forward if you provide a discrete form of order for a segregated debtor account. We would be able to promptly consent to such a non-controversial order. That should allow the payment to be made so the parties can address the broader issues.

Please let us know if we can expect a discrete and narrow proposed cash management order so that we can get the payment made. Please also let me know if you agree that payment can be made on or before five business days after you identify the account for Rigmora.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Tuesday, December 16, 2025 3:36 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew'

<amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

I am informed that the account will be opened as soon as the Bankruptcy Court in the Chapter 11 case enters a cash management order.

Kind regards,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Tuesday, December 16, 2025 2:37 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
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Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Following up on the below.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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From: Kaprow, Daniel E.
Sent: Monday, December 15, 2025 2:34 PM
To: 'Andrew Berdon' <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Andrew,

Will you please identify the segregated bank account to receive the funds covered by Chancellor McCormick's order, and provide wire instructions?

Best,
Dan

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 10:59 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William'

<whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Have a good evening.

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
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1.914.441.9470 (mobile)

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Wednesday, December 10, 2025 10:57:34 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Yes, that's correct.

Best,
Dan

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 10:38 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

Are we filing separately?

Best,

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)

1.914.441.9470 (mobile)

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Wednesday, December 10, 2025 7:26:02 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

We do not consent. Attached is a markup of the draft you provided in clean and redline. Absent your agreement to this form, we are fine with your proposal to submit the competing drafts to the Court separately.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 4:48 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

Does Rigmora consent to entry of an order in the form attached to my email yesterday afternoon? If not, does Rigmora wish to submit a joint letter to the Court attaching the parties' respective drafts? If not, we will send our draft to the Court separately.

Thanks very much.

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)
1.914.441.9470 (mobile)

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Tuesday, December 9, 2025 6:26:23 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>;

'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Enclosed please find our proposed edits to the form of order together with a clean copy.

As you likely know, earlier today the Plaintiff, along with ATP Life Science Ventures, L.P. and a third entity, each commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. The automatic stay provided for in 11 U.S.C. § 362(a) went into effect and applies to the commencement or continuation of any proceedings against each debtor and exercises of control over property of each debtor, among other actions, anywhere in the world. However, since this Delaware Chancery Court action was commenced by a debtor, we do not believe the automatic stay applies to its continued prosecution.

Kind regards,

Andrew

Andrew Berdon
Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

295 Fifth Avenue
New York, NY 10016
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From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Tuesday, December 9, 2025 2:26 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William'

<whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Thanks, when do you intend to provide your comments? The proposed order is due to the court tomorrow and we have yet to receive anything from you.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Monday, December 8, 2025 5:18 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl'

<cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

*** EXTERNAL EMAIL ***

Dan:

Received, and thank you. We are discussing with our clients and will have comments. This proposed order is not agreed as to form.

Best,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Monday, December 8, 2025 4:25 PM
To: Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Counsel,

Attached please see a proposed form of order implementing the Court's post-trial decision. Please let us know if this proposed order is agreed as to form.

Best,
Dan

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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EXHIBIT Z

From: Hugo Farmer | Campbells <HFarmer@campbellslegal.com>
Sent: Wednesday, December 10, 2025 4:22 PM
To: Lauren Wood; FSD Registry
Cc: Walkers-ATP; Rigmora
Subject: RE: FSD 146 of 2025 (JAJ) - Unicorn Biotech Ventures One Ltd and Anor. v ATP III GP Ltd and FSD 151 of 2025 (JAJ) - In the Matter of ATP Life Science Ventures L.P. [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

Dear Ms Wood,

We act for the Petitioners in the Petition Proceedings and the Plaintiffs in the Writ Proceedings. We would be grateful if you could provide this email to Justice Asif KC.

Neither we nor our clients were provided with advance notice of the Chapter 11 proceedings referred to in Ms Moseley's email below. We do not consent to the pre-trial review or the trial date being vacated. We request that this Court maintain the status quo and that the parties have the opportunity to address these developments at the scheduled status conference hearing (PTR) before Justice Asif on 17 December 2025.

Given the recent developments in the US, including the Chapter 11 proceedings and in light of the hand down of the trial decision of Chancellor McCormick on 5 December 2025, we consider that the Court may wish to extend the length of the hearing to the full day or otherwise as long as Justice Asif is available (it is currently scheduled for two hours).

If there is any further information that is needed at this stage, we would be happy to assist.

Kind regards,
Hugo

Hugo Farmer
Counsel

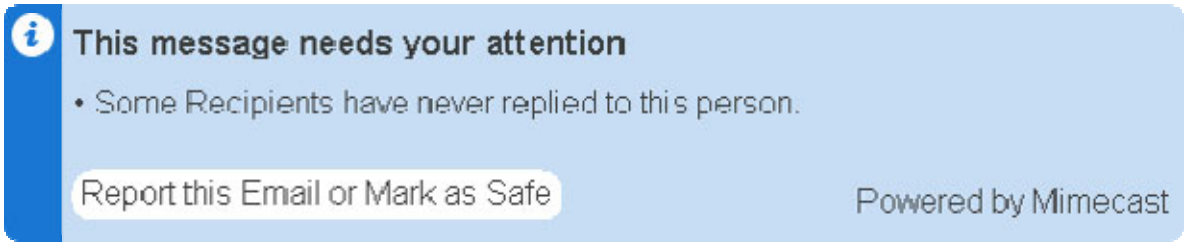
E hfarmer@campbellslegal.com
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CAYMAN | BVI | HONG KONG

From: Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>
Sent: Wednesday, December 10, 2025 10:52 AM
To: Lauren Wood <lauren.wood@judicial.ky>; FSD Registry <fsdregistry@judicial.ky>
Cc: Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
Subject: FSD 146 of 2025 (JAJ) - Unicorn Biotech Ventures One Ltd and Anor. v ATP III GP Ltd and FSD 151 of 2025 (JAJ) - In the Matter of ATP Life Science Ventures L.P. [WALKERS-AMER_DOCS.FID559398]

EXTERNAL EMAIL: This email originated from outside of Campbells.



Dear Ms Wood

FSD 146 of 2025 (JAJ) – Unicorn Biotech Ventures One Ltd and Anor. v ATP III GP Ltd (the "Writ Proceedings")
FSD 151 of 2025 (JAJ) – In the Matter of ATP Life Science Ventures L.P. (the "Petition Proceedings")

We would be most grateful if you could please bring this email and the **attached** letter to the attention of the Learned Justice Asif at your earliest convenience.

As the letter confirms, yesterday afternoon our clients ATP Life Science Ventures, L.P. (acting by its GP) and ATP III GP, Ltd., along with Apple Tree Life Sciences, Inc., commenced Chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. We wanted the Court to be made aware of those developments as soon as possible.

Those filings bring into effect the automatic stay provided for in 11 U.S.C. § 362(a). That stay applies to the commencement or continuation of any proceedings against each debtor anywhere in the world. In those circumstances, the above-captioned Writ Proceedings and Petition Proceedings are both subject to the automatic stay.

We will liaise separately with Campbells regarding both the automatic stay and the orderly approach to vacating the upcoming PTR and trial dates. We will update the Court as soon as we can.

Kind regards

Rebecca

Rebecca Moseley
Associate
Walkers (Cayman) LLP

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Secretary
Wendy James | **T** +1 345 814 6860 | **E** Wendy.James@walkersglobal.com

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