26-cv-495 (JLH)

United States District Court
for the District of Delaware

In re APPLE TREE LIFE SCIENCES, INC., *et al.*,
Debtors.

RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,

Appellants,

v.

ATP LIFE SCIENCE VENTURES, L.P., ATP III GP, LTD., and OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Appellees.

On Appeal from the United States Bankruptcy Court for the District of Delaware,
No. 25-12177
(Hon. Laurie Selber Silverstein)

APPENDIX IN SUPPORT OF APPELLANTS' OPENING BRIEF

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
APPLE TREE LIFE SCIENCES, INC., *et al.*,	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)

MEMORANDUM OPINION

1. **Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay (D.I. 125)**

2. **Amended Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd. (D.I. 204)**

Apple Tree Life Sciences Venture, L.P. (the "Fund" or "Partnership") is a venture capital fund formed as a Cayman Islands exempted limited partnership. Since 2012, its mission has been to invest in pharmaceutical and medically-related start-up companies. It has investments in fifteen portfolio companies whose research spans from developing treatments for tumors and cancers to obesity. Unless extended, the Fund's term expires on February 6, 2029. Of the $2.525 billion in committed funding approximately $25 million remains subject to future capital calls.

Between December 9, 2025 and January 15, 2026, ATP III GP, Ltd (the "General Partner"), which is charged with managing the Fund, filed voluntary chapter 11 petitions for itself, the Fund and seven of its portfolio companies. Since that time, certain limited partners (the "Rigmora LPs") akin to "silent investors," have objected to nearly all requests for relief. They have also filed the instant motions to dismiss and for relief from stay, to which Debtors have objected. Put in its most charitable light, the motions and associated objections reflect a difference of opinion on how to maximize the value of a "closed-end"

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venture capital fund nearing the end of its contractual and monetary lifespan. The General Partner believes the portfolio companies have promise such that continued funding over the next few years both brings value to the Fund and continues to promote the Fund's mission. The Rigmora LPs disagree believing that their investment in the Fund is best served by more selective funding, particularly of the Debtor portfolio companies, which are in the pre-clinical stage. The Rigmora LPs also contend that bankruptcy is not an option, the Fund has no problem to solve through bankruptcy and the Fund should be wound up in the Cayman Islands courts.

Having read the filings of the parties, received expert testimony on both venture capital funds generally and Cayman law and heard testimony from Debtors' representatives, the Rigmora LPs and certain of the Debtor portfolio companies, I am denying the motion to dismiss. I conclude that the Fund is eligible to be a debtor and that the Fund and the General Partner filed their cases in good faith.

But, I am granting limited relief from the stay to permit the partners to proceed with certain aspects of the winding up proceedings pending in in the Grand Court of the Cayman Islands. The winding up petition was filed by the Rigmora LPs on June 6, 2025 only one week after the General Partner sought relief in the Court of Chancery seeking, among other things, to enforce capital calls. While there was some jockeying among the partners for advantages in each court, ultimately, the Grand Court deferred trial on the winding up petition in order to provide the Court of Chancery the opportunity to rule on the matters before it. For its part, on December 5, 2025, the Court of Chancery ruled on matters it determined were ripe, reserved where they were not and deferred to the Grand Court on issues central to the winding up petition.

Under the unique circumstances of these cases, I will also defer to the Grand Court on two issues it is best positioned to resolve and grant limited relief from stay to permit the partners to proceed on the winding up petition so that the Grand Court can determine: (i) whether the Rigmora LPs can prove that they have justifiably and irretrievably lost all trust and confidence in the General Partner's ability to manage the Fund and (ii) whether the Fund has lost its substratum. The Rigmora LPs may also seek to have Joint Official Liquidators appointed to act in the stead of the General Partner if they are successful on one of the two grounds above. But the automatic stay is otherwise in place. The Rigmora LPs may not seek other relief from the Grand Court, including to transfer (or deem transferred) the rights or property of the Fund to the Joint Official Liquidators or to permit the Joint Official Liquidators to wind up the Partnership in the Grand Court. Further, this Court will not recognize a monetary judgment against the General Partner or the Fund. To be clear, while Debtors remain in bankruptcy the automatic stay is in force and will continue to apply to the Rigmora LPs and to any Joint Official Liquidators that may be appointed.

I recognize the challenging situation that any Joint Official Liquidators, to the extent appointed, may face. But, any challenges will be addressed when they surface and to the extent required, a protocol can be established to address any conflicts between the proceedings before me and any proceedings before the Grand Court.

Background[1]

The Fund, the General Partner and the Portfolio Companies

In 2012, Dr. Seth Harrison and Dr. Dimitry Rybolovlev, both doctors turned venture capitalists,[2] established Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P.[3] The Fund is a venture capital fund that was established for the "sole purpose" of investing in "pharmaceutical, medical and other medically-related business projects."[4] The relationship is embodied in that certain First Amended and Restated Partnership Agreement and its twenty-two amendments (collectively, the "LPA").[5]

The Fund is a Cayman Islands exempted limited partnership ("ELP") formed under the Exempted Limited Partnership Act ("ELP Act").[6] It has one general partner, two majority limited partners and at least 12 non-contributing limited partners.[7] It is capitalized

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[1] This Opinion constitutes my findings of fact and conclusions of law. My findings are derived from testimony presented at the January 20, 2026, February 19–20, 2026 and February 25–26, 2026, hearings as well as exhibits. Unfortunately, the parties did not agree to a joint set of exhibits. "JX __" refers to joint exhibits admitted at the hearing. "JA __" refers to joint authorities provided by the parties.

[2] Dr. Harrison received a Doctor of Medicine and a Master of Business Administration from Columbia University and trained as a surgeon at Columbia Presbyterian Medical Center. Hr'g Tr. 16:24–17:3, Jan. 20, 2026, Dkt No. 210. Dr. Rybolovlev received a Doctor of Medicine from Perm Medical Institute. JA-78, Post-Tr. Mem. Op., at 3.

[3] Hr'g Tr. 108:19–22, Feb. 26, 2026, Dkt. No. 426.

[4] JX-0, LPA ¶ 1(c).

[5] JX-0–JX-22.

[6] Exempted Limited Partnership Act (2025 Revision), JA-18. While I did not receive testimony on the benefits of forming a Cayman Islands exempted limited partnership, I assume they include favorable tax treatment, contractual flexibility and the ability to limit liability.

[7] The non-contributing limited partners are present or former employees of Apple Tree Life Sciences, Inc., a wholly-owned subsidiary of the Fund. JX-230, Second Witness Statement of Dr. Seth Harrison ¶¶ 29–32; JA-78, Post-Tr. Mem. Op., at 12 n.68.

by commitments from its contributing limited partners, which are referred to as "Contingent Subscriptions" in the LPA.[8] The term of the Fund expires on February 6, 2029; it can be extended for up to two one-year periods at the discretion of the General Partner.[9] By law, it cannot do outward facing business in the Cayman Islands.[10]

Debtor ATP III GP, Ltd., the General Partner, is a Cayman Islands company owned by Dr. Harrison.[11] As the managing director of the General Partner, Dr. Harrison manages the Fund[12] and he is on the board of many of the portfolio companies.[13] Dr. Harrison is also a limited partner; his Contingent Subscription amount is $75 million.[14]

The majority limited partners are controlled by Dr. Rybolovlev and his family trust (the "Family Office"). The Family Office manages its investments through Rigmora Holdings Limited ("Rigmora Holdings"), which has numerous investments in businesses unrelated to biotechnology and the Fund.[15] For its investment in the Fund, Rigmora Holdings formed Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (i.e., the Rigmora LPs), two special purpose entities.[16] The Rigmora LPs' original

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[8] JX-0, LPA ¶ 5(a)(i).

[9] JX-18, LPA Amend. 18; JX-20, LPA Amend. 20.

[10] JA-18, ELP Act § 4(1).

[11] H'rg Tr. 17:13–18:5, Jan. 20, 2026, Dkt. No. 210

[12] Hr'g Tr. 17:19–18:3, Jan. 20, 2026, Dkt, No. 210.

[13] Hr'g Tr. 102:20–24, Feb. 26, 2026, Dkt. No. 426.

[14] JA-78, Post-Tr. Mem. Op., at 48 n.270.

[15] Hr'g Tr 16:5–10, Feb. 25, 2026, Dkt. No. 425 ("So the trust has numerous investments in other businesses, in the cash funds, real estate, soccer club.").

[16] Hr'g Tr. 15:22–23, Feb. 25, 2026, Dkt. No. 425.

Contingent Subscription amount was $1.425 billion. Its current Contingent Subscription amount is $2.45 billion.[17]

Debtor Apple Tree Life Sciences, Inc. ("ATLS") is a Delaware corporation wholly-owned by the Fund and one of two management companies that oversee the Fund's investments.[18] It handles the operational aspects of the Fund. It employs all those involved in founding, managing and overseeing the portfolio companies and holds the Fund's leases and contract expenses in return for an annual fee.[19]

The Fund reached a value of approximately $6.5 billion in early 2025 and has distributed over $2 billion to its limited partners during its thirteen-year life.[20] The Fund currently holds and invests in fifteen portfolio companies (the "Portfolio Company(ies)") that are researching and developing treatments for conditions such as cancer, obesity and blindness.[21] Two are in the commercial stage, four in the clinical stage and nine in the pre-clinical stage.[22] All are located in the United States.[23]

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[17] JA-78, Post-Tr. Mem. Op., at 55.

[18] Hr'g Tr. 18:6–11, Jan. 20, 2026, Dkt. No. 210; JA-78, Post-Tr. Mem. Op., at 12 n.68.

[19] Hr'g Tr. 18:17–23, Jan. 20, 2026, Dkt. No. 210; Hr'g Tr. 102:9–15, Feb. 26, 2026, Dkt. No. 426 (ATLS employs those in the roles of "Venture partner, entrepreneur in residence, principals, various consultants . . . general counsel, finance team, et cetera.").

[20] Hr'g Tr. 167:7–14, Feb. 26, 2026, Dkt. No. 426.

[21] *See generally* Hr'g Tr. 20:2–21:12, 25:5–9, Jan. 20, 2026, Dkt. No. 210.

[22] Hr'g Tr. 23:24–24:25, Jan. 20, 2026, Dkt. No. 210.

[23] JX-23 (Nine Square Series A SPA); JX-24 (Initial Series A SPA); JX-25 (Nereid Series Seed SPA); JX-26 (Non-debtor Aulos Series A SPA); JX-27 (Apertor Series A SPA); JX-28 (Marlinspike Series A SPA); JX-29 (Evercrisp Series A SPA); JX-30 (Red Queen Series A SPA); JX-31 (Non debtor Aethon Series A SPA); JX-32 (Deep Apple Series A SPA); JX-33 (Non debtor Ascidian Series A SPA); JX-34 (Non debtor Marengo Series B SPA); JX-35 (Non debtor Replicate Series A SPA); JX-147 (Non debtor Aulos Series A-1 SPA); JX-148 (Non debtor Replicate SPA); JX-149

Generally, the Fund makes investments through the purchase of preferred stock as memorialized in individual Series A, B, or C Preferred Stock Purchase Agreements.[24] Dr. Harrison described this investment model as "hub and spokes" with the two management companies and the Fund serving as the hub and the Portfolio Companies being the spokes. Using this model gave the management companies and the Fund "the ability to found, manage and control" the Portfolio Companies "until they're essentially old enough to go out on their own."[25]

The Onset of Troubles

As set forth in the LPA, the General Partner manages the Fund's business. From 2012 through 2022, the Fund appears to have run relatively smoothly. Dr. Harrison along with other members of his management team sourced deals and presented them to the Family Office and/or Dr. Rybolovlev for approval.[26] Dr. Harrison, Anna Batarina, Dr. Rybolovlev and Rigmora Holdings' CEO, Anna Kolonchina, had a close relationship and met frequently by Zoom or in person to make all the decisions about the Rigmora LPs' participation in the Fund.[27]

But, no later than the fall of 2022, Rigmora Holdings was in financial trouble. On October 11, 2022, Yuri Bogdanov, then a special advisor to the trustees of the Rybolovlev

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(Non debtor Elstar Series A SPA); JX-150 (Non debtor Galvanize Series B SPA); JX-151 (Non debtor Galvanize Series C SPA); JX-152 (Non debtor Limelight Series A2 SPA).

[24] H'rg Tr. 111:5–112:4, Feb. 26, 2026, Dkt. No. 426.

[25] Hr'g Tr. 103:7–18, Feb. 26, 2026, Dkt. No. 426.

[26] Hr'g Tr. 110:14–112:4, Feb. 26, 2026, Dkt. No. 426.

[27] Hr'g Tr. 129:7–14, Feb. 26, 2026, Dkt. No. 426.

family trust and the Family Office,[28] authored "the latest version" of a memorandum describing Rigmora Holdings' financial situation and suggesting action ("Bogdanov Memorandum").[29] It is very straight forward and unambiguous. Mr. Bogdanov writes: "[w]e are in a liquidity crisis, the primary task is to provide for funding needs for the next 2-3 years[.]"[30] He recommends: "[a] possible long-term solution could be to create or acquire a cash flow business ('cash cow') + create a liquidity reserve ('cash buffer') for unforeseen circumstances + tight investment control[.]"[31] He also posits creating a new fund with a major partner, or alternatively, creating a new fund and setting up subscription rights for ordinary investors thereby ending up with two funds.[32] Regardless, Mr. Bogdanov states that Rigmora Holdings' current model is not sustainable.[33]

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[28] Hr'g Tr. 16:15–20, Feb. 25, 2026, Dkt. No. 425. Mr. Bogdanov holds a business and real estate valuation degree from the Finance University of Russia; he has no education or experience relevant to the medical or bioscience industries. Hr'g Tr. 14:23–15:4, 51:11–52:2, Feb. 25, 2026, Dkt. No. 425.

[29] JX-199.

[30] JX-199, at 2.

[31] JX-199, at 2.

[32] JX-199, at 3.

[33] Mr. Bogdanov concludes his memorandum as follows:

> **Summary**
> 1. The existing model cannot be stable
> 2. Resolving the crisis by divesting assets and reducing liabilities without changing the model will create conditions for new crisis
> 3. It is an objectively challenging moment now that forces us to put every effort to extinguish the fire, but we need to think right now about long term (ten years and above) development model with risk closure (cash buffer) and sustainability (cash cow) mechanisms
> 4. The first priority in this case is to put a "plug" on expenses (no new projects, reducing investment expenses), the tasks of creating cash buffer and finding new business can be solved in parallel

Consistent with the Bogdanov Memorandum, the relationship between the Rigmora LPs and the General Partner began to strain around the end of 2022/beginning of 2023.[34] In October 2022, Dr. Rybolovlev started to question already approved budgets for the pre-clinical Portfolio Companies.[35] And, in 2023, the Rigmora LPs requested distributions from Braeburn, Inc., the Fund's most valuable Portfolio Company.[36] The General Partner declined that request for many reasons including that Dr. Harrison thought Dr. Rybolovlev was going to default on previous funding commitments.[37] Further, Dr. Harrison linked the request for distributions from Braeburn and Dr. Rybolovlev's desire to stop funding the pre-clinical Portfolio Companies.[38] This first Braeburn distribution request was ultimately withdrawn.[39]

In 2024, the Rigmora LPs made a second Braeburn distribution request; two days later, they sued the General Partner in the Cayman Islands to compel the distribution.[40] The lawsuit was settled and on December 20, 2024 the parties executed Amendment 22 to the

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5. The proposed solutions are not ideal, do not address all possible challenges, but at the strategic planning stage they enable a discussion on how to get on a sustainable development path[,]

[34] Hr'g Tr. 123:19–125:22, Feb. 26, 2026, Dkt. No. 426.

[35] Hr'g Tr. 125:2–125:8, Feb. 26, 2026, Dkt. No. 426.

[36] Hr'g Tr. 125:9–17, 126:12–20, Feb. 26, 2026, Dkt. No. 426.

[37] Hr'g Tr. 123:3–12, Feb. 26, 2026, Dkt. No. 426.

[38] Hr'g Tr. 125:9-17, Feb. 26, 2026, Dkt. No. 426.

[39] Hr'g Tr. 125:18-22, Feb. 26, 2026, Dkt. No. 426.

[40] Hr'g Tr. 127:4–15, Feb. 26, 2026, Dkt. No. 426.

LPA.[41] Dr. Harrison tried to obtain funding for certain financially distressed Portfolio Companies as part of the settlement, but was not successful.[42] He was successful, however, in getting the Rigmora LPs' commitment to discuss new budgets for three clinical and two pre-clinical stage companies as part of Amendment 22.[43]

Within days of executing Amendment 22, the General Partner requested new budgets for those companies included in the amendment.[44] The Rigmora LPs agreed to funding for only one of the clinical stage companies.[45] Given the Rigmora LPs' reluctance to approve further budgets, the General Partner subsequently proposed reallocating funding

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[41] Hr'g Tr. 19:15–22, Feb. 25, 2026, Dkt. No. 425; Hr'g Tr. 127:16–128:1, Feb. 26, 2026, Dkt. No. 426.

[42] Hr'g Tr. 128:9–129:1, Feb. 26, 2026, Dkt. No. 426.

[43] Hr'g Tr. 19:15–22, Feb. 25, 2026, Dkt. No. 425; JX-22, LPA Amend. 22 ¶ 2:

> 2. **Additional Paragraphs of Agreement**. New Paragraphs 26, 27 and 28 are hereby added to the Agreement, to read in their entirety 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. . . .

[44] Hr'g Tr. 130:13–130:22, Feb. 26, 2026, Dkt. No. 426.

[45] Hr'g Tr. 130:23-131:8, Feb. 26, 2026, Dkt. No. 426.

from pre-clinical companies to clinical companies.[46] That, too, was not accepted by the Rigmora LPs.[47]

By the end of 2024 Anna Kolonchina stepped down as Rigmora Holding's CEO and Mr. Bogdanov became a co-CEO and the new chief investment officer.[48] Consistent with the Bogdanov Memorandum, his objective was made clear: minimize Rigmora Holdings' exposure—vis-à-vis the Fund—to pre-clinical stage Portfolio Companies by winding down or liquidating them.[49] By email dated May 15, 2025, Mr. Bogdanov informed Dr. Harrison of the Rigmora LPs' views that further funding of early-stage companies would waste the Fund's assets because (i) such companies did not meet certain milestones and the remaining budgets were insufficient to achieve them, (ii) such companies lacked interest from outside investors and (iii) the agreed budgets for these companies did not allow additional capital calls.[50] The Rigmora LPs were open to discussing, on a voluntary basis, new budgets for clinical stage companies but only "upon [Dr. Harrison's] agreement to wind down or liquidate" pre-clinical stage companies.[51]

The lack of funding compelled certain Portfolio Companies to reduce their workforces and halt research programs. For example, Apertor reduced its headcount from

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[46] Hr'g Tr. 153:3–10, Feb. 26, 2026, Dkt. No. 426. To the extent necessary, the Rigmora LPs' motion to strike as nonresponsive, at 153:23–24, is denied.

[47] JA-78, Post-Tr. Mem. Op., at 32.

[48] Hr'g Tr. 16:11–14, Feb. 25, 2026, Dkt. No. 425.

[49] Hr'g Tr. 56:5–11, Feb. 25, 2026, Dkt. No. 425; JX-200.

[50] JX-200.

[51] JX-200.

approximately twenty-two full-time employees to four.[52] Apertor was well on its way to deliver an IND within budget and on time, but the lack of funding prevented that from happening.[53] Evercrisp reduced its headcount from approximately twenty full-time employees to four.[54] Evercrisp relies on outside vendors for data sets which require payment to maintain access to and avoid losing such data sets.[55] Initial had delivered a molecule that was being considered as a clinical candidate but was unable to advance two regulatory toxicology studies.[56] Nine Square had received a term sheet for $30 million from a potential investor but was unable to produce key studies for it to move to contracting.[57] Red Queen was unable to carry forward its work on a COVID treatment.[58]

The Chancery Court Litigation

Against this backdrop, on May 30 and June 1, 2025, the General Partner called approximately $106 million in capital to fund six months of operations for seven pre-clinical companies, three clinical companies and management fees.[59] Also on May 30, the General Partner commenced an action in the Court of Chancery of the State of Delaware seeking

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[52] Hr'g Tr. 23:15–21, Feb. 26, 2026, Dkt. No. 426.

[53] Hr'g Tr. 24:9–10, Feb. 26, 2026, Dkt. No. 426.

[54] Hr'g Tr. 20:18–25, Feb. 19, 2026, JX-58.

[55] Hr'g Tr. 22:3–10, Feb. 19, 2026, JX-58.

[56] Hr'g Tr. 27:22–25, Feb. 26, 2026, Dkt. No. 426.

[57] Hr'g Tr. 30:6–18, Feb. 26, 2026, Dkt. No. 426.

[58] Hr'g Tr. 54:6–7, Feb. 19, 2026, JX-58.

[59] JA-78, Post-Tr. Mem. Op., at 35

declaratory judgment relief ("Chancery Court Action").[60] The central dispute was whether, under the LPA, the General Partner was entitled to specific performance of the May 30 and June 1 capital calls.

On December 5, 2025, the Court of Chancery issued its comprehensive 82-page Post-Trial Memorandum Opinion.[61] In the December 11 Order ("Order") implementing her decision, Chancellor McCormick ordered the Rigmora LPs to specifically perform their obligation to fund capital calls in the aggregate amount of $96,960,925.88.55 for Aethon, Apertor, Ascidian, Deep Apple, Evercrisp, Initial, Marengo, Marlispike, Red Queen and ATLS fees and partnership expenses. She did not order specific performance of the capital call made for Replicate. Chancellor McCormick declined to imply a good faith term into the Rigmora LPs' rights to budget approval under the LPA. She reserved judgment on the General Partner's request for declaratory relief concerning the exculpatory and discretionary action provisions in the LPA and dismissed, as not ripe, a limited declaration regarding certain defaulting partner provisions in the LPA.[62]

The Rigmora LPs have appealed the Order.

The Winding Up Petition

In response to the Court of Chancery Action, on June 6, 2025, the Rigmora LPs filed a winding up petition in the Grand Court (as subsequently amended, the "Winding Up

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[60] *ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, C.A. No. 2025-0607-KSJM (Del. Ch. May 30, 2025).

[61] JA-78, Post-Tr. Mem. Op.

[62] Partial Final J. and Order Pursuant to Rule 54(b), *ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, C.A. No. 2025-0607-KSJM (Del. Ch. Dec. 11, 2025).

Petition").[63] By the Winding Up Petition, the Rigmora LPs seek to wind up the Partnership 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).[64] They also seek the appointment of two Joint Official Liquidators to be vested with "all rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP."[65] The Winding Up Petition asserts three grounds for the relief sought: (1) justifiable and irretrievable loss of trust and confidence; (2) loss of substratum; and (3) need for an independent investigation into the Partnership's affairs.

Trial was scheduled for January 12, 2026 and the Grand Court set aside time for preparation and to write its opinion. Due to the bankruptcy filings, the Winding Up Petition has yet to be heard.

The Bankruptcy Filing

Four days after the Chancery Court's Post-Trial Memorandum Opinion, on December 9, 2025, ATLS, the Fund and the General Partner filed their voluntary bankruptcy petitions. Dr. Harrison testified that he sought bankruptcy protection for the Fund, the General Partner, ATLS and seven of the pre-clinical Portfolio Companies "to create a plan of reorganization that will preserve and maximize the value under the LPA for all the limited partners."[66] He premised his decision to file on three primary reasons. First,

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[63] JX-62, Winding Up Petition; JX-63, Amended Winding Up Petition.

[64] JX-63, at 1, 52.

[65] JX-63, at 52.

[66] Hr'g Tr. 140:16–141:2, 156:1–5, Feb. 26, 2026, Dkt. No. 426. When asked whether he "intend[s] to use the bankruptcy process to confiscate 50% of the Rigmora LPs' interest in the Fund[,]" Dr. Harrison testified: "No, I do not." Feb. 26, 2026, 148:13–16. When asked whether he intends "to use the bankruptcy process to have Rigmora declared a defaulting partner to avail [himself] of the

he believed based on the Rigmora LPs' past conduct, that they would refuse to pay the Chancery Court judgment.[67] Second, even if the Rigmora LPs paid the judgment, funding would only last for six months, "essentially a bridge to nowhere."[68] Third, the Fund lacked liquidity to meet its obligations and the LPA constrains its ability to raise capital.[69]

On December 9, 2025, Debtors' cash position was approximately $17.4 million—$17.3 million held between the Fund and ATLS and $100,000 held across Apertor, Evercrisp, Initial, Marlinspike, Nereid, Nine Square and Red Queen.[70] The Fund has obligations of approximately $350 million—$221 million in unfunded commitments to certain Debtor Portfolio Companies under certain Stock Purchase Agreements and $130 million in management fees and expenses through February, 2031.[71]

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option to impose a default charge[,]" Dr. Harrison testified: "No, it is not." Feb. 26, 2026, 149: 10–14.

[67] Hr'g Tr. 139:9–21, Feb. 26, 2026, Dkt. No. 426.

[68] Hr'g Tr. 139:10–14, Feb. 26, 2026, Dkt. No. 426.

[69] Hr'g Tr. 139:10–21, Feb. 26, 2026, Dkt. No. 426.

[70] Hr'g Tr. 43:15–24, Feb. 26, 2026, Dkt. No. 426.

[71] Hr'g Tr. 140:2–12, Feb. 26, 2026, Dkt. No. 426. As discussed below, the Rigmora LPs dispute these obligations.

Debtors' respective schedules of assets and liabilities, reflect the following as of their respective petition dates:

Debtor	Total Assets	Total Liabilities	Cash & Cash Equivalents
Fund[72]	$3,606,347,236.65	$221,708,538.00	$14,422,358.58[73]
GP[74]	$0.00	221,708,538.00	$0.00
ATLS[75]	$14,770,078.42	$256,853.24	$8,768,414.43
Apertor[76]	$21,680,146.87	$2,812,947.99	$9,997.69
Everscrisp[77]	$49,657,419.85	$3,557,458.40	$17,023.5
Initial[78]	$22,565,392.61	$2,740,526.00	$21,777.86
Marlinspike[79]	$38,509,944.84	$3,151,747.56	$84,783.08
Nereid[80]	$428,657.88	$13,177,849.49	$17,430.70
Nine Square[81]	$1,142,568.44	$2,587,129.97	$244,733.17
Red Queen[82]	$23,796,371.50	$290,577.69	$36,045.75

[72] Dkt. Nos. 238 (sealed), 239 (redacted).

[73] Mr. Mandarino testified that the correct amount is $17.3 million. Hr'g Tr. 43:15–23, 50:17–52:1, Feb. 26, 2026, Dkt. No. 426.

[74] Dkt. No. 241.

[75] Dkt. No. 236.

[76] Dkt. No. 429.

[77] Dkt. No. 446.

[78] Dkt. No. 431.

[79] Dkt. No. 433.

[80] Dkt. No. 441.

[81] Dkt. No. 439.

[82] Dkt. No. 435.

The Fund also holds a judgment against Alexion Pharmaceuticals in the approximate amount of $350 million in connection with the sale of a prior portfolio company, Syntimmune, Inc.[83] That judgment has yet to be collected.[84]

The General Partner's Schedules list a contingent, unliquidated and disputed claim held by Rigmora Biotech Investor One LP in an undetermined amount based on the LPA.[85] The General Partner's Schedules also list a contingent, unliquidated and disputed claim held by Rigmora Biotech Investor Two LP in an undetermined amount based on the Management Contract.[86] It also lists as assets, in an undetermined amount, any and all rights under the LPA and the Management Contract.

Procedural Posture

On December 9, 2025, ATLS, the Fund and the General Partner filed voluntary bankruptcy petitions in this court. On December 15, 2025, Apertor, Initial, Marlinspike, and Red Queen filed their voluntary petitions. On January 1, 2026, Evercrisp and Nine Square filed their petitions. Finally, on January 15, 2026, Nereid filed its petition. The bankruptcy cases have been consolidated for administrative purposes only.

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[83] Hr'g Tr. 168:13–169:4, Feb. 26, 2026, Dkt. No. 426. The "Notes Specific to Schedules of Assets and Liabilities" qualifying the Schedules describe the judgment this way: "Debtor ATP Life Science Ventures, L.P. is a potential beneficiary of an approximately $370 million Chancery Court damages award and judgment in *Shareholder Representative Services LLC v. Alexion Pharmaceuticals, Inc.*, No. 2020-1069-MTZ. However, this is not yet a final judgment and as such has been listed in the Schedules and Statements as a contingent and undetermined claim or cause of action." Global Notes, at 10, Dkt. Nos. 238 (sealed), 239 (redacted).

[84] *Id.*

[85] Schedule E/F, at 7, Dkt. No. 241.

[86] Schedule E/F, at 8, Dkt. No. 241; Hr'g Tr. 245:1–7, Feb. 26, 2026, Dkt. No. 426 (The Rigmora LPs have stated an "intent to try to claw back money that was spent by the GP defending the case in the Caymans[.]").

On December 12, 2025, the Rigmora LPs moved to dismiss the then-pending bankruptcy cases and, only secondarily, sought relief from stay to proceed with the Winding Up Petition.[87] They also sought to have the Motion to Dismiss heard on December 17, 2025. Movants informed me that the presiding judge, the Honorable Justice Asif KC, had a pre-trial conference scheduled on the Winding Up Petition for December 17 and trial set for January 12, 2026. In these circumstances, Chambers reached out to the parties to schedule a status conference for December 15, 2025.

At the status conference, Counsel for the Rigmora LPs asked that I grant limited relief from stay to permit the parties to appear at the pretrial conference so that Justice Asif could ask questions, get input and have dialogue with counsel. Our of courtesy to Justice Asif and his calendar, I granted that limited stay relief.[88] I certainly did not grant relief from stay for the Rigmora LPs to file an eighteen page skeleton argument with the Grand Court outlining new arguments, nor did the Rigmora LPs ask me to grant such relief or indicate

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[87] Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order (I) Dismissing the Chapter 11 Cases and/or (II) Granting Relief from the Automatic Stay, Dkt. Nos. 3 (sealed), 7 (redacted); Mot. to Shorten Notice and Obj. Periods for the Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order (I) Dismissing the Chapter 11 Cases and/or (II) Granting Relief from the Automatic Stay, Dkt. No. 5.

[88] Hr'g Tr. 31:18–32:2, Dec. 15, 2025, Dkt. No. 55:

> I will 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 might be established by the court, or what's really left before the judge to decide before the January 12th trial date. So, the parties -- I think the parties and judge can discuss that, but I will say that I don't anticipate that the January trial date is going to go forward given the need for me to decide what was filed, which is a motion to dismiss.

that under Grand Court procedures or Justice Asif's own procedures it would be necessary to do so in order for the pretrial conference to go forward.[89]

First day motions were heard on December 17, 2025. Debtors' motion to make secured loans to certain of the Portfolio Companies was heard on December 30, 2025 at which time the parties presented an agreed-to interim order permitting use of up to $2,950,000 to pay certain expenses of certain Portfolio Companies.[90] On January 20, 2026, during the middle of the contested final hearing on the motion, the Rigmora LPs agreed not to object to another approximately $11.91 million in funding and loans to/borrowing of an amount not to exceed $6,050,620.[91]

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[89] JX-68. The skeleton brief, among other things, seeks to inject different issues into the trial on the Winding Up Petition. The new relief sought includes a determination by the Grand Court of a ruling on "whether, as a consequence of the Chapter 11 Bankruptcy Proceedings, the Partnership has entered voluntary liquidation pursuant to paragraph 10(b) of the LPA." To be clear, stay relief is not granted to the Rigmora LPs to pursue this new theory.

[90] *Interim Order to (I) Make and Accept Secured Loans to Portfolio Companies, (II) Authorize to the Extent Outside the Ordinary Course of Business Payment of Management Company Expenses and (III) Grant Related Relief*, Dkt. No. 102.

[91] The Fund was authorized to provide funding as follows: (i) $979,780 to Apertor (ii) $997,656 to Initial Therapeutics, (iii) $699,500 to Marlinspike, (iv) $882,000 to Red Queen, (v) $1,446,684 to Evercrisp, (vi) $2,163,901 to non-Debtor Aethon Therapeutics, Inc., (vii) $210,000 to Nine Square Therapeutics, Inc., (viii) $835,000 to Nereid and (ix) $3,700,000 to non-Debtor Aulos Bioscience, Inc. The Debtor Portfolio Companies were also authorized to borrow up to $6,050,620 from the Fund. *Final Order to (I) Make and Accept Secured Loans to Portfolio Companies, (II) Authorize to the Extent Outside the Ordinary Course of Business Payment of Management Company Expenses and (III) Grant Related Relief*, Dkt. No. 206.

The Rigmora LPs did not go forward with their original motion to dismiss. Rather, on January 23, 2026, they filed the amended motion to dismiss presently before me.[92] Debtors filed an opposition[93] and the Rigmora LPs filed a reply.[94]

Separately, on January 6, 2026, the Rigmora LPs' filed their motion for relief from stay, which was originally scheduled to be heard on January 27.[95] Instead, on January 27, the parties submitted an agreed Scheduling Order for the two motions setting a hearing for February 25, which was So Ordered.[96] On January 30, Debtors filed their opposition to the motion for relief from stay[97] and the Rigmora LPs thereafter filed a reply.[98]

Discovery and discovery disputes ensued.

The motions were presented jointly on February 25 and 26. The evidence consists of live testimony from one expert witness and six fact witnesses as well as exhibits as reflected

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[92] Am. Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd, Dkt. Nos. 204 (sealed), 205 (redacted) ("Am. Mot. to Dismiss").

[93] Debtors' Opp'n to Rigmora's Mot. to Dismiss, Dkt. Nos. 245, (sealed), 260 redacted).

[94] Reply in Supp. of Am. Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd., Dkt. Nos. 371 (sealed), 449 (redacted).

[95] Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay, Dkt. No. 125 ("Mot. for Relief from Stay").

[96] Dkt. Nos. 211 (Certification of Counsel), 248 (Scheduling Order for Contested Motions).

[97] Debtors' Opp'n to the Rigmora LPs' Mot. for Relief from the Automatic Stay, Dkt. No. 244.

[98] Reply in Supp. of Mot. of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay, Dkt. No. 370.

in the Amended Joint Exhibit List filed on March 4. Argument was entertained on March 6 after which I took the matters under advisement.[99]

Discussion

I. The Court will not Dismiss the Bankruptcy Cases of the Fund and the General Partner

A. The Fund can be a debtor under the Bankruptcy Code

The Parties' Positions

While it was not their first argument,[100] the Rigmora LPs contend that the Fund is not eligible to be a debtor under § 109 of the Bankruptcy Code[101] so its case must be dismissed. Their argument is fairly straightforward. Under the ELP Act, as interpreted by the Privy Counsel, a Cayman exempted limited partnership does not have a legal personality and owns no property. The Rigmora LPs further contend that the Fund "has no assets or business in the United States—or anywhere at all."[102]

Debtors' argument is also straightforward. Debtors contend that the Fund is eligible to be a debtor as it is a partnership that has its place of business in the United States and has property in the United States by way of its ownership interest in the Portfolio Companies,

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[99] In the meantime, Debtors filed their Motion for Entry of Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief, Dkt. No. 228 and Debtors' Motion for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Incur Post-Petition Debt, (B) Granting Super-Priority Administrative Expense Claims, (C) Scheduling a Final Hearing, and (D) Granting Related Relief, Dkt. No. 313. A combined evidentiary hearing on these motions was held on February 19, 2025 and argument was heard on February 20. A separate opinion will issue on these motions.

[100] This argument was not made in the original motion to dismiss, is the last argument in the current motion to dismiss and was barely, if at all, discussed by the Rigmora LPs' counsel at argument. But, as it is a gating issue, I address it first.

[101] 11 U.S.C. §§ 101 *et seq.*

[102] Am. Mot. to Dismiss ¶ 87, Dkt. Nos. 204 (sealed), 205 (redacted).

which are all incorporated in the State of Delaware as well as cash it holds in accounts in banks located in the United States.

The one thing the parties agree on is that this is a matter of first impression.

Discussion

Of course, we start with the Bankruptcy Code. Section 109 provides, in relevant part:

> Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title.

In turn, "person" is defined as including "an individual, partnership, and corporation."[103] As the Fund is a partnership, as long as it has a place of business or property in the United States, it may be a debtor under the Bankruptcy Code.

In essence, the Rigmora LPs' argument is that I should ignore a code-based determination of who may file a bankruptcy in favor of non-bankruptcy law determinations and/or definitions of "person" or characteristics thereof. Relying on Cayman law, the Rigmora LPs argue that the Fund's lack of personality and alleged inability to own property[104] prevent it from qualifying as a debtor. In essence, they argue that an ELP is a "special" kind of partnership that therefore does not qualify as a person for purposes of § 109.

In support of their argument, the Rigmora LPs rely most heavily on two cases decided by the Judicial Committee of the Privy Council, the highest court in the Cayman Islands, as well as the testimony of Mark Phillips, K.C. who was qualified during trial as an

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[103] 11 U.S.C. § 101(41).

[104] The cases cited for the proposition that an alleged inability to own property means an entity cannot qualify to be a debtor address what is "property of the estate," a different concept.

expert on Cayman law.[105] In two recent decisions, the Privy Council has addressed circumstances in which a limited partner can bring actions before the Cayman courts. In *Aquapoint*,[106] the Privy Council ruled that a petitioning partner may seek to wind up an exempted limited partnership on "just and equitable grounds" under § 36(3)(g) of the ELP Act.[107] In *Kuwait Ports*, the Privy Council ruled that a limited partner can bring a derivative claim when a general partner is unwilling to do so; it does not need leave to bring the action.[108]

Not surprisingly, neither opinion addresses the issues before me nor is the holding of either opinion that an ELP cannot own property. Neither does either opinion address whether an ELP is eligible to be a debtor under title 11 of the United States Code. But, in each decision, the Privy Council lists or mentions certain general characteristics of Cayman ELPs, as follows:

- an ELP is a form of partnership.[109]
- an ELP must have at least one general partner and one limited partner.[110]

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[105] Without objection, Mr. Phillips was qualified as an expert in Cayman and English law including in insolvency and restructuring matters. Hr'g Tr. 105–06, Feb. 25, 2026, Dkt. No. 425. I sustained the hearsay objection to the admission of his declaration. Debtors did not present an expert on Cayman law.

[106] JA-25, *Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56.

[107] At least that is the Privy Council's "present view" as it acknowledged that it had not received submissions on the point. JA-25, *Aquapoint* at [46].

[108] JA-27, *Kuwait Ports Authority v Williams* [2024] UKPC 32 at [85(1)]. If challenged, the limited partner must show that it has met the requisites for pursuing the lawsuit. *Id.* at [85(3), (7)].

[109] JA-25, *Aquapoint* at [33].

[110] JA-25, *Aquapoint* at [33].

- an ELP has no separate legal personality.[111]
- "[t]he general partner of an ELP owes fiduciary duties to all the ELP's limited partners."[112]
- "[t]he general partner of an ELP holds the ELP's assets on trust for all the limited partners."[113]
- "[a] general partner is liable for all the debts and liabilities of an ELP to the extent of any deficit of assets . . . ."[114]
- the general partner conducts the management of the ELP's business; the limited partners may not take part in the management of the ELP's business at peril of losing thier limited liability status.[115]

Amplifying and discussing these cases, and others, Mr. Phillips testified that:

- a Cayman exempted limited partnership is a contractual relationship or arrangement among partners as to how to carry on a business with a view to making a profit.[116]
- a Cayman exempted limited partnership must have at least one general partner and one limited partner.[117]

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[111] JA-27, *Kuwait Ports* at [35(1)]; JA-25, *Aquapoint* at [33]. Note, while the Rigmora LPs consistently represent that *this* exempted limited partnership has no legal personality, the Privy Council actually uses the phrase "separate legal personality." Neither case discusses what this means in practical terms, but both cases address the relationship among partners, not, for example, the relationship between creditors and the partnership. *Cf.* Am. Mot. to Dismiss ¶ 15, Dkt. Nos. 204 (sealed), 205 (redacted) ("The Fund's inability to own property, together with its lack of legal personality under governing Cayman law, means that the Fund is not a 'person' at all, much less a 'person' with 'assets' or a 'place of business' in the United States.").

[112] JA-27, *Kuwait Ports* at [35(3)].

[113] JA-27, *Kuwait Ports* at [35(4)].

[114] JA-25, *Aquapoint* at [33].

[115] JA-25, *Aquapoint* at [33].

[116] Hr'g Tr. 108:12–16, Feb. 25, 2026, Dkt. No. 425.

[117] Hr'g Tr. 109:4–13, Feb. 25, 2026, Dkt. No. 425.

- the general partner manages the partnership's business and is liable if there is a deficiency of assets.[118]

- the limited partners cannot take part in management of an exempted limited partnership and have limited liability except as provided by the partnership agreement.[119]

- a fundamental principle of exempted limited partnerships is that they do not have separate legal personality.[120]

The characteristics of a Cayman exempted limited partnership do not seem foreign; rather they seem very much like the characteristics of a general partnership or limited partnership formed under the laws of one of the fifty states. It is only the lack of separate legal personality—or the effect thereof—which might require some explanation.[121] As reflected above, the Privy Council cases address the lack of separate legal personality (to the extent they do) in the context of relationships among partners and the appropriate parties to sue and be named in lawsuits. But, neither *Kuwait Ports* or *Aquapoint* nor Mr. Phillips address what this means in practical terms, such as in relation to ownership of property.

This question is not academic because notwithstanding the above-stated characteristics, and as reflected in several of them, under the ELP Act, an exempted limited partnership can transact business, have assets and create debts. For example, section 18 of the ELP Act provides:

> [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

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[118] Hr'g Tr. 113:11–20, 115:4–6, Feb. 25, 2026, Dkt. No. 425.

[119] Hr'g Tr. 114:18–21, Feb. 25, 2026, Dkt. No. 425.

[120] Hr'g Tr. 117:3–10, Feb. 25, 2026, Dkt. No. 425.

[121] To the extent that a Cayman ELP is a pass through entity for tax purposes, this too, is not a foreign concept.

> 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.[122]

Further, section 4(2) of the ELP Act provides:

> 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 and the obligations of the exempted limited partnership save as provided in the partnership agreement . . . .[123]

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[122] JA-18, ELP Act § 18; *See also id.* § 4(1):

> An exempted limited partnership may be formed for any lawful purpose to be carried out and undertaken either in or from with the Islands or elsewhere . . . 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.

Section 2 of the ELP Act also provides:

> "**insolvency of the exempted limited partnership**" means that the general partner is unable to pay the debts and obligations of the exempted limited partnership . . . 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 . . . .

JA-18, ELP Act § 2

While he did not issue a legal ruling on the issue, Justice Asif refers to the partnership's assets in paragraph 9 of his December 22, 2025 Judgment as follows:

> 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.

JA-76, *Unicorn Biotech Ventures One Ltd v ATP III, GP Ltd (No. 4)* [2025] CIGC (FSD) 124 at [9].

[123] JA-18, ELP Act § 4(2).

If an exempted limited partnership cannot create debt and have assets then the general partner would have no deficiency to be liable for and a limited partner would not need to limit its liability.[124]

Based on the legal authority cited and arguments of counsel, I conclude that an exempted limited partnership can own assets and create debt—even absent a separate legal personality from its partners.[125] This conclusion is also consistent with both the LPA and

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[124] Mr. Phillips acknowledges that an exempted limited partnership has its own assets although he at all times qualifies that acknowledgement by stating that the assets are held on trust for the benefit of the limited partners. *See, e.g.*, Hr'g Tr. 171:3–6, 173:10–13, Feb. 25, 2026, Dkt. No. 425.

[125] The Rigmora LPs argue that the issue of whether the Fund has a separate legal personality has already been decided by Justice Asif and should therefore be binding on the parties for all purposes. But, as with the Privy Council decisions, Justice Asif does not opine on the question before me, nor does he conclude that the Fund cannot own assets. His ruling is also in the context of the proper party to litigation, specifically the proper parties in a winding up petition on just and equitable grounds of an exempted limited partnership to determine who bears the costs of defending the petition. As he stated:

> 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 exempted 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.
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> 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 general partner. Neither side appears fully to have grappled with the consequences of this in the arguments that they have advanced before me.

JA-75, *In Re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106 at [30], [32].

Compare In re Bernard L. Madoff Inv. Sec. LLC, Adv. No. 12-01677, 2022 WL 4349859, at *2 (Bankr. S.D.N.Y. Sep. 19, 2022) (French funds sued by trustee moved to dismiss arguing that under French law they were "fonds commun de placement (FCP)," lacked personality and thus could not be sued. After considering competing expert submissions, the court concluded that French law did not state that FCPs could not be sued, only that the FCP's management company must assert the FCP's

the course of conduct of the Fund. For example, the LPA provides that the General Partner maintain books and records to "fully and accurately" record the "transactions of the Partnership" and that those books and records be maintained at a "principal office of the Partnership."[126] The LPA also requires the General Partner to provide the Rigmora LPs with the Fund's financial statements at the close of each fiscal year, which financial statements must include the statements of assets and liabilities and be audited by a firm of independent public accountants or auditors.[127] It provides that the "management, policies and control of the affairs, and the conduct of the business of the Partnership shall vest exclusively in the General Partner."[128] It provides for limited liability for the Rigmora LPs.[129] It also requires that the General Partner "not take any action that would be inconsistent with the treatment of the Partnership as a partnership for [United States Federal income tax] purposes."[130]

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claim or defend it. Accordingly, court denied motion to dismiss concluding that the funds were the real parties in interest and could be represented by attorneys engaged by the management company.).

[126] JX-0, LPA ¶ 16(b).

[127] JX-0, LPA ¶ 16(e). The Fund did, in fact, retain Grant Thornton to provide audited financial statements for year 2024. JX-115. Grant Thornton's Report of Independent Certified Public Accountants as of and for the Year Ended December 31, 2024 presented the Fund's financials on a consolidated basis with its wholly owned subsidiaries and its Portfolio Companies. JX-112.

[128] JX-0, LPA ¶ 2(b). *See also id.* ¶ 2(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' with the meaning of Sections 871, 882 or 897 of the U.S. Internal Revenue Code of 1986 . . . .

[129] JX-0, LPA ¶ 3(b) ("No Limited Partner, in its capacity as such, shall be liable for the debtor or obligations of the Partnership . . . .").

[130] JX-0, LPA ¶ 2(m)(iv).

Further, under Cayman law, an ELP can be the subject of a winding up petition (such as is the case here). An ELP can also be restructured consistent with the provisions of Part 5 of the Companies Act (2025 Revision)[131] and the Companies Winding Up Rules (2023 Consolidation).[132] In that event, a restructuring officer may be appointed for the ELP (construed as a "company" under the Companies Act) who can propose a compromise or arrangement between the ELP and its creditors, which can include a reorganization of the share capital of the company.[133] For purposes of Part 5 of the Companies Act, limited partners of ELPs are to be generally treated as shareholders of a company.[134]

In a recent opinion, this Court determined that a Singapore real estate investment trust (REIT) was eligible to be a debtor under the Bankruptcy Code after accepting competing expert testimony on Singapore law.[135] In coming to its conclusion that the REIT was a business trust under Singapore law (and, thus could be a debtor under § 109)[136] the

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[131] JA-19, Companies Act (2025 Revision).

[132] JA-18, ELP Act § 36(1), (3); JA-33, Companies Winding Up Rules (2023 Consolidation). Mr. Phillips testified that an exempted limited partnership can access the restructuring provisions of the Companies Act if it is insolvent. Hr'g Tr. 188:1–25, Feb. 25, 2026, Dkt. No. 425.

[133] JA-19, Companies Act § 91I. Mr. Phillips also testified that an exempted limited partnership can access the restructuring provisions of the Companies Act to present a compromise to its creditors. Hr'g Tr. 189:10–24, Feb. 25, 2026, Dkt. No. 425. But, he also suggests that this procedure would address only creditors, not investors in shares. *Id.* at 192:17-23.

[134] JA-18, ELP Act § 36(3)(b). The Rigmora LPs invoke the Companies Act, albeit § 92(e) in their Amended Winding Up Petition. JX-63, at 52.

[135] *In re EHT US1, Inc.*, 630 B.R. 410 (Bankr. D. Del. 2021) (determining whether a trust was a business trust for purposes of § 109).

[136] In *EHT*, the Court identifies and addresses a split of authority on the question of whether federal common law or the law of the jurisdiction in which the trust resides is determinative of whether the trust is a business trust. *Id.* at 423-425. Neither party briefed the appropriate law here. I am not ruling on that issue as the Rigmora LPs do not argue that the Fund is not a partnership, just that it does not have a legal personality.

Court accepted that the REIT might not have a legal personality. But, the Court concludes this "misses the point:"

> The question is not whether [REIT] is a legal person or legal entity. Congress has already determined that a corporation is a person and a business trust is a corporation. Thus, under the Bankruptcy Code, a business trust is a legal person.[137]

As applied here, the question is whether the Fund is a partnership. As it is, Congress has determined it may file a petition.[138]

Having considered the facts, legal authority and arguments of counsel, I conclude that the Fund is eligible to file a petition under the Bankruptcy Code. It is a "person" as defined in the Bankruptcy Code (i.e., a partnership) and has a principal place of business in New York.[139] While this is enough to qualify to be a debtor, I also conclude that the Fund has property in the United States (i.e., shares in the Portfolio Companies and $97 million in a bank account). The lack of separate legal personality under Cayman law is simply not relevant for these purposes.

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[137] *EHT*, 630 B.R. at 428.

[138] Notwithstanding its lack of separate legal personality, an exempted limited partnership is defined as a "legal person" for at least one purpose under Cayman law. *See* Cayman Islands Beneficial Ownership Transparency Act (2026 Revision) § 3(f) ("A legal person for purposes of this Act means — (f) an exempted limited partnership . . . ."). The Rigmora LPs also refer to the Fund as a "legal person" in their pre-trial skeleton brief. JX-68, at [40] ("Cayman substantive law includes the Court's long-standing 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.").

[139] JX-37, ATP Life Sciences Ventures L.P., Chapter 11 Petition. The place of business need not be a principal place of business. *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 201 (Bankr. D. Del. 2015). And, in the case of a partnership, a place of business may be where the general partner conducts administrative and/or substantive business on behalf of the partnership. *In re Paper I Partners, L.P.*, 283 B.R. 661, 672–73 (Bankr. S.D.N.Y. 2002) (limited partnerships act through their general partners such that a partnership's place of business can be where its partner conducts business).

B. The Bankruptcy Cases were filed in Good Faith

The Parties' Positions

The Rigmora LPs also contend that the Fund's and the General Partner's cases must be dismissed for cause because they were filed in bad faith. First, the Rigmora LPs argue that the cases are a two-party dispute and were filed to obtain a litigation advantage. Second, they argue that the cases serve no valid reorganizational purpose as neither the Fund nor the General Partner are in financial distress.

Debtors contend that the cases, when properly viewed, are not a two-party dispute as evidenced by the obligations owed to the Portfolio Company Debtors as well as the creditors at that level. They further contend that the cases were not filed to gain a litigation advantage, but to address acute financial distress.

Discussion

The Third Circuit has well-established case law holding that a bankruptcy case may be dismissed if it is not filed in good faith.[140] As this requirement is not in the Bankruptcy Code, it is "grounded in the 'equitable nature of bankruptcy' and the 'purposes underlying Chapter 11.'"[141] When raised, the debtor has the burden to establish that good faith exists.[142]

There is no definitive list of factors to examine. Rather, the test is of the "totality of the circumstances" kind, to determine where the petition falls along "the spectrum ranging

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[140] *In re SGL Carbon Corp.*, 200 F.3d 154 (3d Cir. 1999).

[141] *In re LTL Mgmt., LLC*, 64 F.4th 84, 100 (3d Cir. 2023) (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 161–62 (3d Cir. 1999)).

[142] *LTL*, 64 F.4th at 100.

from the clearly acceptable to the patently abusive."[143] The Third Circuit focuses on two inquiries of particular relevance to the determination: (1) whether the petition serves a legitimate bankruptcy purpose, e.g. by preserving a going concern or maximizing the value of the debtor's estate, and (2) whether the petition is filed to obtain a tactical advantage."[144] And, as the Third Circuit recently confirmed in *LTL*, a valid bankruptcy purposes "assumes a debtor in financial distress."[145]

i. Debtors are in Financial Distress

As with good faith in general, there is no definitive list of factors courts examine to see if a debtor is in financial distress. And, there is no test "to apply rigidly" in the evaluation.[146] "What we can do, case-by-case, is consider all relevant factors in light of the purposes of the Code."[147] Broadly speaking, courts consider the debtor's balance sheet, its ability to pay its debts, its ability to raise or borrow money and/or access to capital

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[143] *In re 15735 Mem'l Corp.*, 589 F.3d 605, 618 (3d Cir. 2009) (quoting *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004)).

[144] *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119-20 (3d Cir. 2004).

[145] *LTL*, 64 F.4th at 101 (quoting *Integrated Telecom*, 384 F.3d at 128).

[146] *LTL*, 64 F.4th at 102.

[147] *LTL*, 64 F.4th at 102.

markets.[148] Courts must also examine the nature and immediacy of the company's financial circumstances.[149]

The evidence presented shows, and the Rigmora LPs do not dispute, that the Portfolio Companies are in financial distress. The Rigmora LPs argue, however, that the Fund and the General Partner are not in distress and *LTL* mandates that I must isolate each debtor to make this determination.[150] Citing multiple pre-*LTL* cases,[151] Debtors argue I can consider the enterprise as a whole, or at least those entities that are in bankruptcy. I conclude that I can evaluate the financial distress of the Fund and the General Partner in the context of the affiliated cases. I also conclude that, like *LTL*, if I look at the Fund and the General Partner in isolation, my view of their financial condition may be informed by the financial condition of the Portfolio Companies.

As is well known in the bankruptcy/restructuring community, *LTL* addresses a singular fact pattern—the so-called "Texas two-step"—in the context of a mass tort

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[148] *SGL Carbon*, 200 F.3d at 166. *See also Bedmar LLC*, Case No. 25-11027, 2025 WL 2496260, at *10 (Bankr. D. Del. Aug. 29, 2025) (footnote omitted) (quoting *In re Rent-A-Wreck of Am., Inc.*, 580 B.R. 364, 375-76 (Bankr. D. Del. 2018) ("An analysis of financial distress is a fact specific inquiry and courts consider such facts as: solvency; cash reserves; recent financial performance and profitability; the proportion of debt owed to insiders; realistic estimates of actual or likely liability; the threat of litigation; whether a debt is fixed, substantial, and imminent; current cash position or current liquidity; ability to raise capital; and overdue debts or the ability to pay debts as they come due. Any given case may touch on one or more of these factors.")).

[149] *LTL*, 64 F.4th at 103.

[150] In fact, very little time was spent by the parties examining or discussing the financial distress of the General Partner. But, the General Partner's schedules show no assets and $221 million in liabilities. They also reflect a contingent liability and a contingent asset, both in undetermined amounts for claims under the LPA and the Management Agreement. Summ. of Assets and Liab., Schedule E/F, at 7–8, Dkt. No. 241.

[151] *See generally In re EHT US1, Inc.*, 630 B.R. 410 (Bankr. D. Del. 2021); *In re Energy Future Holdings Corp.*, 561 B.R. 630 (Bankr. D. Del. 2016); *In re Mirant Corp.*, 2005 WL 2148362, at *7 (Bankr. N.D. Tex. Jan. 26, 2005).

bankruptcy case. Before addressing the good faith question, the Third Circuit took a "detour" to address a "problem particular to [that] case."[152]

> For good faith purposes, should we judge the financial condition of LTL by looking to Old Consumer—the operating business with valuable assets, but damaging tort liability, that the restructuring and filing here aimed to protect? Or should we look to LTL, the entity that actually filed for bankruptcy? Or finally, like the Bankruptcy Court, should we consider "the financial risks and burdens facing both Old [Consumer] and [LTL]"?[153]

The Third Circuit landed on the second option—looking to the financial condition facing the entity that filed bankruptcy and not a defunct predecessor entity that no longer existed.[154] Nevertheless, it held that the financial condition of the non-debtor defunct entity was relevant to the extent it informed the view of debtor LTL's financial condition.[155] This approach respected the corporate separateness of the two entities (Old Consumer and LTL), but did not render the non-bankruptcy entity wholly irrelevant to the analysis.[156]

LTL did not address a multi-debtor scenario because it did not need to. Nor does it suggest that every debtor in a multi-debtor case must, itself, be in financial distress. Courts looking at that scenario, in cases with hundreds of debtors to a relative few, conclude that in affiliated debtor cases, courts can consider the interests of the group as a whole. In *EHT*,

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[152] *LTL*, 64 F.4th at 104.

[153] *LTL*, 64 F.4th at 104.

[154] *LTL*, 64 F.4th at 105 ("To say the financial condition of Old Consumer prior to the restructuring—which was not bolstered by such a contractual payment right—determines the availability of Chapter 11 to LTL would impose on the latter a look-back focused on the nonavailability of a funding backstop to what is now a nonentity.").

[155] *LTL*, 64 F.4th at 106.

[156] While LTL received all the tort liabilities of Old Consumer, it received an asset Old Consumer did not have, namely a payment right from J&J, which gave LTL direct access to J&J's "exceptionally strong balance sheet." *LTL*, 64 F.4th at 106.

this Court found an "identity of interest" between the parent debtors (formed under Singapore law) and its subsidiary debtors (US entities) because they were "part of a complex and integrated capital structure."[157] This Court concluded it was not bad faith to file the parent companies even though it was possible that funds could flow up to equity outside of chapter 11.[158] In *JER/Jameson*,[159] this Court ultimately dismissed one debtor in a four debtor case. The Court, nonetheless, ruled that it could consider the affiliate filings and noted that the debtor at issue was created as part of a larger enterprise. In that light, this Court considered all of the debtors "holistically."[160]

Here, the Fund was formed to make investments in start-up companies in the biomedical field. Each Debtor was designed to be part of that structure, which provided the Fund (managed by the General Partner and the management companies) "the ability to found, manage and control" each Portfolio Company. The Fund was formed as the investment vehicle. The General Partner was formed to manage the Fund. ATLS was formed to handle the operational aspects of the Fund. Each of the Portfolio Company Debtors is an investment of the Fund, with the Fund owning in excess of 75% of the equity of each Portfolio Company. Dr. Harrison and/or others employed by ATLS are on the board of each Portfolio Company Debtor. With a few exceptions, the Portfolio Companies

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[157] *EHT*, 630 B.R. at 432.

[158] *EHT*, 630 BR at 431. It also concluded it was not bad faith even if the parent debtors could have filed insolvency proceedings in Singapore. *Id.*

[159] *In re JER /Jameson Mezz Borrower II, LLC*, 461 B.R. 293 (Bankr. D. Del. 2011).

[160] *JER/Jameson*, 461 B.R. at 301 ("The Court concludes that it does not have to have blinders on and ignore events subsequent to the Mezz II filing, particularly the filing of its affiliates within ten days of its own bankruptcy filing. Nor does the Court have to ignore the fact that Mezz II was only created as part of the larger enterprise. Therefore, the Court concludes it must consider the Debtors holistically in order to determine if there is a realistic possibility that Mezz II can be rehabilitated.").

are wholly dependent on the Fund for their respective financing. In these circumstances, I conclude that I can consider Debtors holistically to determine if they are in financial distress.

On the filing of its petition, the Fund had approximately $17.4 million in cash. It was owed $97 million by the Rigmora LPs, but as discussed above, Dr. Harrison had concerns about collecting the Chancery Court judgment. The Fund also held the Syntimmune judgment and secured promissory notes from various Portfolio Companies of approximately $19.6 million. The General Partner could issue another $25 million in capital calls. The Fund's largest asset, by far, was its equity in the Portfolio Companies valued on the Schedules at $3.552 billion. Against these assets, it had liabilities of approximately $227 million in obligations to its Portfolio Companies under the Series A Stock Purchase Agreements and prospective management fees of $121 million owed to ATLS through February, 2031 (which, assumes the Fund is extended).

The Rigmora LPs had come to the end of their financial commitment under the LPA and had not agreed to increase their Contingent Subscription (indeed, the Rigmora LPs are seeking to get back the capital calls awarded in the Chancery Court litigation). The Fund had no agreement from any other funding source and no ability to borrow money without the consent of the Rigmora LPs.[161] Similarly, with the exception of certain syndications, the Portfolio Companies did not have an independent ability to raise capital. The $97 million capital call, even if collected, would only last, at most, six months and the $25 million remaining in capital calls, if honored, would only marginally increase the time before the Fund would have no available cash to support the Portfolio Companies and meet its own

[161] JX-0, LPA ¶ 2(i).

obligations. The General Partner tried to monetize the Syntimmune judgment, but the market did not produce an acceptable value.[162] The General Partner also considered an offer for Braeburn that was unacceptable.[163] In these circumstances, the Fund (through its general partner) and the General Partner determined to file bankruptcy petitions to provide liquidity and a go-forward path to maximize the value of the Fund.

The Rigmora LPs challenge not only the General Partner's business judgment, but also the alleged liabilities of the Fund. The Rigmora LPs' counsel spent significant time walking Dr. Harrison through each of the Stock Purchase Agreements to show, variously, that the Fund's obligations to invest further in the Portfolio Companies had to be in writing and/or were subject to the negotiation of acceptable milestones.[164] The Stock Purchase Agreements contain "entire agreement" provisions and provide that a commitment for future investment must be created in a writing.[165] The Rigmora LPs argue that the Fund has

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[162] Hr'g Tr. 188:15–189:7, Feb. 26, 2026, Dkt. No. 426.

[163] Hr'g Tr. 188:15–189:7, Feb. 26, 2026, Dkt. No. 426.

[164] Hr'g Tr. 208:11–241:6, Feb. 26, 2026, Dkt. No. 426.

[165] For example, the Series A Preferred Stock Purchase Agreement with Deep Apple provides:

> 1.3 Sale of Additional Shares of Preferred Stock.
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> (c) After the Initial Closing, the Company shall sell, and the Purchaser shall purchase, on the same terms and conditions as those contained in this Agreement as part of Additional Closings, up to an aggregate of 42,000,000 Additional Shares, at the request of the Board and upon the Company's achievement of certain milestones to be negotiated in good faith by the Company and the Purchaser after the Initial Closing (each, a "***Milestone***"). Following the agreement by the Company and the Purchaser of the terms and conditions of a Milestone, including the number of Additional Shares to be so purchased upon the achievement of such Milestone, the Company and the Purchaser will amend this Agreement to reflect such terms and conditions of such agreed upon Milestone, including the number of Additional Shares to be so purchased upon the achievement of such Milestone.
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> * * *

no enforceable obligations to the Portfolio Companies because there are no written amendments to the Stock Purchase Agreements. Even so, the two parties to each of the obligations, namely the Fund and the relevant Portfolio Companies, believe they exist. Further, such liabilities are at least arguable as Dr. Harrison suggests that the Fund's actions in depriving the Portfolio Companies of committed funding could be the basis for claims by

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> 6.9 Amendments and Waivers. Any term of this Agreement may be amended, terminated or waived only with the written consent of the Company and the Purchaser.
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> 6.12 Entire Agreement. This Agreement (including the Exhibits hereto), the Restated Certificate and the other Transaction Agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.
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> * * *
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> 6.16 No Commitment for Additional Financing. The Company acknowledges and agrees that the Purchaser has not made any representation, undertaking, commitment or agreement to provide or assist the Company in obtaining any financing, investment or other assistance, other than the purchase of the Shares as set forth herein and subject to the conditions set forth herein. In addition, the Company acknowledges and agrees that (a) no statements, whether written or oral, made by the Purchaser or its representatives on or after the date of this Agreement shall create an obligation, commitment or agreement to provide or assist the Company in obtaining any financing or investment, (b) the Company shall not rely on any such statement by the Purchaser or its representatives, and (c) an obligation, commitment or agreement to provide or assist the Company in obtaining any financing or investment may only be created by a written agreement, signed by the Purchaser and the Company, setting forth the terms and conditions of such financing or investment and stating that the parties intend for such writing to be a binding obligation or agreement. The Purchaser shall have the right, in its sole and absolute discretion, to refuse or decline to participate in any other financing of or investment in the Company, and shall have no obligation to assist or cooperate with the Company in obtaining any financing, investment or other assistance.

JX-32, at 2, 15–17.

the Portfolio Companies.[166] Ultimately, however, whether these obligations are valid or not does not rule the day.[167]

It is undisputed that as of its petition date, the Fund was balance sheet solvent. But, it is also undisputed that cash from Contingent Subscriptions (assuming collected) would fund, at most, another 6-9 months of Portfolio Company needs and the Rigmora LPs had not committed to further funding. It is also undisputed that the Rigmora LPs had filed the Winding Up Petition in the Grand Court. Further, if I credit Mr. Bogdanov's testimony (as opposed to his May 15, 2025 email) the Portfolio Companies are worth salvaging.[168] But, even in his May 15, 2025 email, Mr. Bogdanov purports to recognize the value of the Portfolio Companies: while the Portfolio Companies "in their current form" are not viable, there are "promising clinical stage companies" Rigmora Holdings wants to develop and "some early-stage companies" which might be salvaged with the right management.[169] Of necessity, this recognition acknowledges the need for additional funding for development or other type of financing even without addressing the Rigmora-disputed Fund obligations.

Further, as of the filing of the bankruptcy petitions, the need for further funding to maximize the value of both the Portfolio Companies and the Fund was not hypothetical or prospective. It was immediate. The Fund did not need to deplete its liquidity and/or wait

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[166] Hr'g Tr. 242:11–243:7, Feb. 26, 2026, Dkt. No. 426. Debtors also suggest textual arguments under the Series A Stock Purchase Agreements based on the use of the words "shall" and "may" in various contexts.

[167] It is also not appropriate to determine this dispute in the context of a motion to dismiss.

[168] Hr'g Tr. 38:2–5, Feb. 25, 2026, Dkt. No. 425.

[169] JX-200.

for the Portfolio Companies to sue on the Rigmora-disputed obligations.[170] Under the totality of the circumstances it was facing, the near-term conclusion of the Contingent Subscriptions is distress enough. In fact, Rigmora Holdings was doing its own prospective planning in the fall of 2025. Rigmora believed a decision in the Winding Up Petition could result in a distribution in kind of the Fund's interest in the Portfolio Companies to the limited partners.[171] In anticipation of such a ruling, Rigmora Holdings reached out to biotech firms, including KKR's biotech branch.[172] It also considered partnering with RTW.[173] Such arrangements of necessity contemplated additional financing sources to support some or all of the Portfolio Companies.

Against this backdrop and the evidence presented, the Rigmora LPs' argument that the Fund and the General Partner are not in financial distress for purposes of its Motion to Dismiss rings hollow.[174]

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[170] *In re Gen. Growth Props., Inc.*, 409 B.R. 43, 60 (Bankr. S.D.N.Y. 2009) (declining to adopt a rule that a debtor is not in financial distress if its principal debtor is not due for another one to three years).

[171] Hr'g Tr. 36:3–22, Feb. 25, 2026, Dkt. No. 425.

[172] Hr'g Tr. 37:12–38:10, Feb. 25, 2026, Dkt. No. 425.

[173] Hr'g Tr. 38:11–39:7, Feb. 25, 2026, Dkt. No. 425.

[174] Without citing to any authority, the Rigmora LPs argue:

> That the commitment has been exhausted does not mean the Fund is in financial trouble; rather it is an agreed consequence of the LPA. Certainly, it cannot provide grounds for the GP, without the LPs' consent, to use the Fund's assets to create a new or transformed Fund to which the parties never agreed.

Am. Mot. to Dismiss ¶ 54, Dkt. Nos. 204 (sealed), 205 (redacted). While the exhaustion of capital commitments may not always result in a conclusion that a fund is in financial distress it also does not have to result in a conclusion that it must be wound up.

ii. The Cases Serve a Proper Bankruptcy Purpose

Dr. Harrison testified to three principal reasons the bankruptcy cases were filed. One, he was uncertain whether the Rigmora LPs would pay the $97 million Chancery Court judgment. Two, even if the Rigmora LPs paid the judgment, it would not be enough. The Portfolio Companies could not continue to live on "drip funding," but needed committed funding, or at least funding coming from a source committed to their respective projects. Three, the Fund lacked liquidity to meet its obligations.

Debtors backed each of these reasons by testimony that the Portfolio Companies are worth continuing to support and that their current research, or research in another direction (i.e., after a pivot), could prove fruitful, thereby maximizing the value of the Portfolio Companies and thus the Fund.[175] While Dr. Harrison can make no guarantees, he, Dr. Karson, Dr. Eisenberg and Dr. Liras genuinely believe in the research performed by the Portfolio Companies and that the science is worthy of continued funding.[176] Thus, Debtors

[175] Hr'g Tr. 216:19–24, Feb. 26, 2026, Dkt. No. 426 ("In addition, as I think has been testified to by others of my team and by myself, our job is to manage the companies in a very careful way to identify opportunities as they emerge because so many of them are at a quite early state, and it's impossible to predict research. And a research result can spring up, and that becomes your next path.").

[176] Each of Dr. Karson and Dr. Liras were wholly credible (as was Dr. Harrison). Dr. Karson joined Evercrisp in September 2024 after a 25-year career in early-stage biotech companies. Hr'g Tr. 11:24–12:9, Feb. 19, 2026, JX-58. One of Evercrisp's founders is a Nobel laureate. *Id.* at 14:16–22. Dr. Karson is requesting funding to deliver two specific data sets to further Evercrisp's research which could revolutionize the field of genetic medicine. *Id.* at 17:15–20:17. Dr. Liras' role within the enterprise is to "identify exciting breakthrough science that could deliver value." Hr'g Tr. 14:2–9, Feb. 26, 2026, Dkt. No. 426. He is a co-founder of Deep Apple, Evercrisp, Initial and Nine Square and on the board of each. *Id.* at 15:5–11. The scientists as the Portfolio Companies "are renown scientists [from] across the world, National Academy of Medicine, National Academy of Engineering, breakthrough prize winners, Nobel prize winners, amongst others." *Id.* at 14:9–14. Similar testimony convinced the Court of Chancery that the Portfolio Companies were worthy of continued support.

argue, the bankruptcy filings serve to preserve going concerns and to maximize the value of the estates, both proper bankruptcy purposes.

To counter this evidence, Mr. Bogdanov testified that the Rigmora LPs had never failed to meet a capital call and that they were prepared to pay the Chancery Court judgment. Mr. Bogdanov now testifies (in contradiction to his 2022 Memorandum) that Rigmora Holdings is willing to consider how to go forward with at least some of the Portfolio Companies.[177] And, the Rigmora LPs argue, in this court, that the Winding Up Petition will not necessarily result in a liquidation (or fire sale) of the Fund's entire portfolio.

The Rigmora LPs also relied on the testimony of Dr. Ilonna Rimm. Dr. Rimm was qualified as an expert in biotech investing. She testified variously that a prudent investor (or she) would not invest in the Portfolio Companies relying, primarily, on missed milestones.[178] While Dr. Rimm may disagree with the General Partner's assessment of the Portfolio Companies, I cannot say for purposes of a good faith argument that her opinion carries much, if any, weight.[179]

The General Partner, which is charged with making all operational decisions for the business under both the LPA and the ELP Act, has the view that the way to maximize the Fund is to continue supporting the Portfolio Companies, including the pre-clinical

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[177] It is hard to credit some of Mr. Bogdanov's testimony. Except for perhaps Braeburn, funding the Portfolio Companies were and are not part of Rigmora Holdings' cash buffer strategy regardless of their respective merit. Mr. Bogdanov was sheepish when questioned on cross about the Bogdanov Memorandum suggesting he was embarrassed it showed the real motivation behind the Rigmora LPs' decision not to fund certain Portfolio Companies—a motivation that had nothing to do with the good of the Fund and everything to do with the good of Rigmora Holdings.

[178] *See generally* Hr'g Tr. 204:4–227:5, Feb. 19, 2026, JX-58.

[179] Dr. Harrison testified that due to the slowing of financing from 2022 forward, it was a certainty that the Portfolio Companies would miss milestones, so he took that into consideration when making decisions. Hr'g Tr. 216:6–217:4, Feb. 26, 2026, Dkt. No. 426.

companies and its efforts outside of court in that regard were not successful. While the General Partner may or may not be correct, I cannot find that view to be unreasonable.[180]

The Rigmora LPs' real issue is not that they believe that the General Partner is not sincere in its position, but that it is wrong. Further, the Rigmora LPs contend that they alone get to determine the future of the Fund, how the Fund will address its current situation and whether "underperforming portfolio companies" should be "cut loose."[181] They contend that the General Partner is ignoring the LPA and its duties thereunder in determining that the Debtor Portfolio Companies are worth further investment and in filing the bankruptcy petition for the Fund and the General Partner.[182] But, while that argument may support other relief, it does not support dismissal on bad faith grounds. In this regard, it is the Rigmora LPs that are ignoring the LPA. The LPA provides that, until removed, the

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[180] *In re Soundview Elite, Ltd.*, 503 B.R. 571, 580-81 (Bankr. S.D.N.Y. 2014) (footnotes omitted) (declining to dismiss the bankruptcy case and holding: "Here I find that the Debtors' filings had a valid business purpose, and were not in bad faith. The Debtors' management was dealing with frozen assets and impaired liquidity—with an inability to reach the bulk of the Debtors' liquid assets before the Wilmington Trust interpleader action was resolved, and very limited liquidity with respect to the remainder. The Debtors' management also had the view—which may or may not be correct, but which cannot be said to be unreasonable—that it could realize more on the Debtors' illiquid assets than any court-appointed fiduciaries could. Although I readily accept as true the JOLs' argument that 'the explicit purpose' of the filings was to 'delay[ ] the Winding Up Proceeding and prevent[ ] the Grand Court from appointing [the Debtors' management's replacement],' that is insufficient, without more, to establish bad faith or unenumerated cause in the presence of the valid business purposes just described.").

[181] Am. Mot. to Dismiss, ¶ 53, Dkt. Nos. 204 (sealed), 205 (redacted) ("The fact that some ***portfolio companies*** may be financially troubled does not mean that the ***Fund*** or its ***GP*** are in financial distress. Rather, the need to decide whether to cut loose underperforming portfolio companies is to be expected in any managed fund that invests in portfolio companies, particularly when the investments are in start-ups. The GP may not like that the LPs are given a say in that process under the terms of the LPA, but that frustration with a contract it agreed to does not entitle the GP to a remedy under the Bankruptcy Code, and the failures of the least successful portfolio companies are not a reason to reorganize their financially healthy investor.").

[182] The Rigmora LPs do not argue that the bankruptcy filings were not authorized.

General Partner controls the affairs and conducts the business of the Fund.[183] To date, the General Partner has not been removed.[184] On this point, the LPA is consistent with the ELP Act, which provides that limited partners "shall not" be part of conducting the business of the partnership[185] and that "[a]ny difference arising as to matters connected with the business of the exempted limited partnership shall be decided by the general partner . . . ."[186]

Moreover, the evidence reveals that Rigmora Holdings is looking to maximize itself, and not the Fund. It is clear that Rigmora Holdings' real motivation behind its decision to stop funding the early-stage companies was its own change in investment strategy in 2022. Rigmora Holdings was facing its own "liquidity crisis" which would affect it for the next two to three years. It needed to create a cash buffer and the way to start was to "drastically reduce" payments (i.e., capital calls) to the Fund. With respect to biotech investments, only commercial stage companies could possibly fit into Rigmora Holdings' new investment

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[183] Paragraph 2(b) of the Limited Partnership Agreement provides:

> (b) Control. The management, policies and control of the affairs, and the conduct of the 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 time 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").

JX-0, LPA ¶ 2(b).

[184] While they brought the winding up proceeding, the Rigmora LPs have not sought to remove the General Partner under Paragraph 4, "Removal of General Partner." Hr'g Tr. 47:22–48:6, Feb. 25, 2026, Dkt. No. 426. Paragraph 4 requires only ten days' notice of a "Removal Event" (i.e., criminal conviction of entered against Dr. Harrison in relation to Partnership business, willful fraud, willful misconduct or Gross Negligence (as defined) or various other violations). JX-0, LPA ¶ 4(c).

[185] JA-18, ELP Act § 14(1).

[186] JA-18, ELP Act § 23.

strategy. Except for perhaps Braeburn, the Fund was not part of Rigmora Holdings' new investment strategy regardless of the merit of the Portfolio Companies.[187]

The Rigmora LPs also contend that the filing of the bankruptcy case was to gain a tactical advantage in a two-party dispute. They argue that the General Partner filed the Fund and the General Partner cases on December 9, 2025 to obtain the benefit of the automatic stay and prevent the Winding Up Petition from going forward on January 12, 2026. They further contend that the bankruptcy cases are just a continuation of the disputes between the General Partner and the Rigmora LPs in a third court.

Debtors respond that this is not a two-party dispute as there are other stakeholders. The bankruptcy cases involve all fifteen Portfolio Companies, their various employees and patients in ongoing clinical trials in addition to the pre-clinical companies which have been mothballed because of the lack of consistent funding. The Committee argues that the creditors at each of the Debtor Portfolio Companies are also stakeholders.

I mainly agree with Debtors. Only one aspect of these cases is a two-party dispute and that is the request before the Grand Court to appoint Joint Official Liquidators to replace the General Partner relative to the Fund.[188] But, all other aspects of these bankruptcy cases involve multiple parties. The Fund's bankruptcy (or even its winding up) impacts all of its Portfolio Companies, for which it is the principle, if not sole, source of

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[187] Mr. Bogdanov was sheepish when questioned on cross-examination about the Bogdanov Memorandum suggesting he was embarrassed it showed the true motivation behind the Rigmora LPs' decision not to fund certain Portfolio Companies—a motivation that had nothing to do with the good of the Fund and everything to do with the good of Rigmora Holdings.

[188] While the Rigmora LPs and the General Partner are involved in all three cases, the disputes they seek to resolve are not the same. In the Chancery Court action, the General Partner sought to establish the obligations of the Rigmora LPs under the LPA. In the winding up petition, the Rigmora LPs seek to replace the General Partner. In the bankruptcy cases, the General Partner and the Fund seek to reorganize their capital structure.

capital. This, in turn, impacts all creditors (employees, vendors, landlords) and partners to the Portfolio Companies—all of which can have a voice in these bankruptcy cases. The General Partner had been dealing with funding constraints for several years and, after the Chancery Court ruling, now knows that the remaining Contingent Subscription is $25 million, not another $400 million, as it argued in the Court of Chancery Action.[189]

Finally, the evidence does not inexorably point to the conclusion that Debtors filed to obtain the benefit of the automatic stay. As shown above, there is a valid bankruptcy purpose. But, under the circumstances here, it would not be fatal if it did.[190] Even cases cited by the Rigmora LPs show that a desire to stop pending litigation is only one of many factors a court can review in assessing good faith on a motion to dismiss.[191] Looking at the totality of the circumstances here, I conclude that these bankruptcy cases were filed in good faith, including those filed by the Fund and the General Partner.

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[189] The General Partner took the position that Rigmora's Contingent Subscription was $2.85 billion. JA-78, Post-Tr. Mem. Op., at 46.

[190] *Soundview Elite*, 503 B.R. at 580 (footnote omitted) ("The JOLs' principal contention, instead, is that the Debtors admittedly filed their chapter 11 petitions to take advantage of the automatic stay, and that the petitions were filed at the 'eleventh hour'—to block the imminent appointment of liquidators in the Cayman Islands, who now are the JOLs. But while I agree with the JOLs that such was the Debtors' purpose, these facts, in the absence of more, are insufficient for me to find either bad faith or unenumerated cause. Indeed, if I or any other U.S. court were to consider a desire to invoke the stay to be sufficient, a very significant portion of perfectly unobjectionable chapter 11 cases could never be filed.").

[191] *See, e.g.*, *Integrated Telecom*, 384 F.3d at 120 (recognizing that filing a bankruptcy case "merely to obtain tactical litigation advantages" is not a proper bankruptcy purpose); *In re Primestone Inv. Partners L.P.*, 272 B.R. 554, 557 (D. Del. 2002) (listing 12 factors courts consider in performing an analysis of whether case should be dismissed for one of the enumerated reasons in § 1112 (single asset case; few unsecured creditors; no ongoing business or employees; petition filed on eve of foreclosure; two party dispute which can be resolved in pending state court action; no cash or income; no pressure from non-moving creditors; previous bankruptcy petition; prepetition conduct was improper; no possibility of reorganization; debtor formed immediately prepetition; debtor filed solely to create automatic stay; and subjective intent of the debtor)).

II. The Court will not Dismiss the Bankruptcy Cases of the Fund and the General Partner under Section 305

The Parties' Positions

In addition to, or in the alternative, the Rigmora LPs ask me to dismiss these cases "on grounds of abstention" under § 305 of the Bankruptcy Code. They argue that I should abstain based on considerations of comity, cost and efficiency, that the Winding Up Petition was first filed and that the Fund is organized under Cayman law. The Rigmora LPs also argue that the filing of the General Partner now mandates a winding up proceeding under the LPA and the ELP Act. Finally, they again assert that the Fund's and the General Partner's cases were not commenced for a proper purpose.

Debtors counter that dismissal/abstention is extraordinary relief, not a substitute for dismissal. They argue that all of the Partnership's assets are located in the United States and that resolution of disputes under the LPA may take place in Delaware courts. Further, Debtors contend that the Rigmora LPs' change in theory in its Winding Up Petition shows gamesmanship in its Cayman proceedings. Finally, Debtors contend it is more efficient to address all Debtors' obligations in these cases.

Discussion

Section 305 provides in relevant part:

> (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
>
> (1) the interests of creditors and the debtor would be better served by such dismissal or suspension . . . .

This section is designed to provide a bankruptcy court discretion to decline to exercise jurisdiction over cases in certain circumstances.[192] It is "an extraordinary remedy that should be used sparingly and not as a substitute for a motion to dismiss under other sections of the Bankruptcy Code."[193] Ultimately, it is a matter of discretion.[194] Courts consider the totality of the circumstances.[195] The burden is on the movant.[196]

As I have already found, the bankruptcy cases were filed for a proper purpose. The Fund and/or the General Partner's business is conducted and its assets are located in the United States. The Fund and the General Partner also have creditors (some listed as disputed and/or contingent) in the United States—including $221 million asserted by the Portfolio Companies. A comprehensive resolution of claims can be achieved in this court.

For these reasons and others, neither do the dictates of comity require me to dismiss these cases. While certainly the Fund and the General Partner could expect that their disputes might be settled in the Cayman Islands court system, there is no evidence that the Portfolio Companies would expect to have their disputes with the Fund resolved there. The

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[192] 2 Collier on Bankruptcy ¶ 305.01 (16th ed. 2026).

[193] *In re AIG Fin. Prods. Corp.*, 2024 WL 3967465, at *11 (D. Del. Aug. 28, 2024) (quoting 2 Collier on Bankruptcy ¶ 305.02), *appeal dismissed*, 2025 WL 2806745 (3d Cir. June 4 2025)).

[194] *In re Diamondhead Casino Corp.*, 2025 WL 2169864, at *15 (Bankr. D. Del. July 30, 2025) (quoting *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 203 (Bankr. D. Del. 2015)).

[195] Those factors include "(1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction has been sought." *Diamondhead Casino*, 2025 WL 2169864, at *15.

[196] *Id.*

Series A Stock Purchase Agreements provide that they are governed by Delaware law and that the parties submit to the jurisdiction of the various courts in the United States for any disputes arising under the agreements.[197] And, again, the Fund and the General Partner conduct their business in the United States and the Fund's assets are in the United States.

Whether these cases are the most efficient and economical way to resolve these cases is certainly a legitimate question. But, I cannot conclude they are not. Since last May, it appears that the Rigmora LPs and Debtors have spared no expense in sparring with each other to the detriment of the Portfolio Companies and their respective employees and creditors. If Debtors are ultimately proven to be correct in their assessment of the Portfolio Companies, the value of the Fund has been diminished. Regardless, it is apparent the lawyers are the main beneficiaries of this all out litigation strategy. I do not see the run rate lessening even were I to dismiss these cases. And, because the Rigmora LPs do not seek to dismiss the Debtor Portfolio Companies' cases, litigation will proceed here regardless.

Because I cannot find that Debtors' interests as well as their creditors' would be better served by dismissal of these cases, I decline to abstain under § 305.

III. The Court Will Grant Limited Relief from the Automatic Stay

Alternatively, the Rigmora LPs seek relief from the automatic stay to continue with the Winding Up Petition in the Grand Court.

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[197] *See, e.g.*, JX-23 (Nine Square Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.15 (California courts)); JX-24 (Initial Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.14 (California courts)); JX-25 (Nereid Series Seed SPA, ¶ 7.3 (Delaware law), ¶ 7.14 (Delaware courts)); JX-26 (Non-debtor Aulos Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.14 (New York courts)); JX-27 (Apertor Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.15 (California courts)); JX-28 (Marlinspike Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.14 (Massachusetts courts)); JX-29 (Evercrisp Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.15 (New York courts)); JX-30 (Red Queen Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.14 (Massachusetts courts)); JX-31 (Non debtor Aethon Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.14 (New York courts)); JX-32 (Non-debtor Deep Apple Series A SPA, ¶ 6.3 (Delaware law), ¶ 6.15 (California courts)).

By the Winding Up Petition, the Rigmora LPs request that the Fund be wound up under 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). In that connection, they seek the appointment of two Joint Official Liquidators to be vested with "all rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP."[198] The Winding Up Petition asserts three grounds for the relief sought: (1) justifiable and irretrievable loss of trust and confidence; (2) loss of substratum; and (3) need for an independent investigation into the Partnership's affairs. Through its skeleton brief filed in connection with the final case status conference, the Rigmora LPs seek to inject different issues into the trial on the Winding Up Petition, including a determination by the Grand Court on "whether, as a consequence of the Chapter 11 Bankruptcy Proceedings, the Partnership has entered voluntary liquidation pursuant to paragraph 10(b) of the LPA."[199]

The Winding Up Petition was filed on June 6, 2026 against both the Fund and the General Partner.[200] The General Partner sought to stay the case, but at an August 1 hearing, agreed to a trial on the merits in January 2026.[201] Justice Asif thereafter entered a "directions order" providing a schedule leading up to the trial, deadlines for the General Partner's filing of a defense (June 20), the Rigmora LPs' filing of its reply to defense (September 3), discovery (originally September, extended through October) and a case

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[198] JX-63, at 52.

[199] JX-68, at 5.

[200] JX-62, ¶ 2.

[201] Hr'g Tr. 86:11–87:2, Feb. 25, 2026, Dkt. No. 425.

management conference on (October 31).[202] At the October 31 case management conference, Justice Asif provided further deadlines for witness statements (December 5), the final case status conference (December 17) and "trial bundles" (December 18). A five-day trial was scheduled to commence on January 12.[203] I understand Justice Asif set aside time for preparation and to write his opinion.

The Parties' Positions

The Rigmora LPs' arguments fall into five buckets. One, the Winding Up Petition is a governance dispute, an issue they believe should be decided by the Grand Court. Two, any disposition of the Fund's assets or alteration of the Rigmora LPs' interests in the Fund approved in these cases will be void if the Grand Court enters a compulsory winding up order.[204] Three, the *Rexene* standard for relief from stay is satisfied because (i) the Fund will suffer no harm as it is solvent, not in distress and the Winding Up Petition does not include a claim for damages, (ii) any hardship to the Fund is outweighed because the Rigmora LPs are being denied the right to maximize the Fund on their terms and (iii) only a slight probability of success is necessary. Four, comity compels relief from stay.

Debtors' opposition falls into four buckets. One, the General Partner's management rights are property of its estate. Two, any argument that the General Partner's rights ended on the filing of its bankruptcy petition (whether under the LPA or the Act) are unenforceable *ipso facto* provisions. Three, the Rigmora LPs do not meet the *Rexene*

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[202] Hr'g Tr. 87:3–87:19, Feb. 25, 2026, Dkt. No. 425.

[203] H'g Tr. 87:19–8:2, Feb. 25, 2026, Dkt. No. 425.

[204] The Rigmora LPs also contend that because the General Partner filed for bankruptcy, it could only act to wind up the Fund in accordance with the LPA and thus filing the case was *ultra vires*. I note only that the Rigmora LPs did not move to dismiss the Fund's case as unauthorized. Mot. for Relief from Stay, ¶ 57, Dkt. No. 125.

standard because (i) Debtors are prejudiced as the Rigmora LPs seek to displace the General Partner and Debtors are in financial distress, (ii) there is no prejudice to the Rigmora LPs because they can raise all issues here, including seeking the appointment of a chapter 11 trustee or conversion of the cases and (iii) the Rigmora LPs cannot prevail on the merits because the relief they seek violates the Bankruptcy Code. Four, for this same reason, comity does not apply.

Discussion

> Section 362(d)(1) of the Bankruptcy Code provides:
>
> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . for cause.[205]

"Cause" is not defined by the Bankruptcy Code. Rather, "it is a flexible concept, determined on a case-by-case basis."[206] Courts consider the totality of the circumstances when determining whether cause exists.[207] As both parties recognized, courts in this district often analyze requests to continue prepetition litigation against a debtor in another forum using the three-part balancing test articulated in *Rexene*:

> (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 creditor has a probability of prevailing on the merits.[208]

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[205] 11 U.S.C. § 362(d)(1).

[206] *In re F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 548 (Bankr. D. Del. 2016) (citing *In re Tribune*, 418 B.R. 116, 126 (Bankr. D. Del. 2009)).

[207] *In re Wilson*, 116 F.3d 87, 90 (3d Cir. 1997).

[208] *F-Squared*, 546 B.R. at 548 (citing *In re Rexene Prods. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992)).

"The movant has the initial burden of proof to put forth a prima facie case for cause before the debtor must then rebut the case."[209]

Ultimately, I need not decide the interesting and nuanced issue of whether the Winding Up Petition constitutes a dispute over governance rights (which subsist in bankruptcy absent "clear abuse")[210] or is a simple contract dispute. Regardless, I have determined that limited relief from stay should be granted to permit certain aspects of the Winding Up Petition to proceed. First, the Winding Up Petition is (essentially) fully ready to go to trial. Justice Asif has indicated his willingness to hear argument and evidence and the dispute before him involves a Cayman exempted limited partnership governed by Cayman law. Certainly, the General Partner would anticipate being hailed into a Cayman court to resolve this dispute.

Second, while the Winding Up Petition was undoubtedly filed in response to the commencement of the Chancery Court Action, it was not filed in reaction to the bankruptcy cases or any specific relief sought in these cases. It was filed six months before these cases existed.

Third, while there will be additional expense to relevant estates, this is outweighed by the potential, but real, concerns raised by applicable Cayman law. As courts have recognized, when proceedings are occurring simultaneously in different countries, there can be "inconsistencies and conflicts."[211] Section 99 of the Companies Act provides:

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[209] *In re Scarborough-St. James Corp.*, 535 B.R. 60, 68 (Bankr. D. Del. 2015) (citing *Rexene*, 141 B.R. at 577).

[210] *In re Johns-Manville Corp.*, 801 F.2d 60 (2d Cir. 1986).

[211] *Soundview Elite*, 503 B.R. at 590 (citing *In re Maxwell Commc'ns*, 93 F.3d 1036, 1041 (2d Cir. 1996)).

> **Avoidance of property dispositions, etc.**
> 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.[212]

In their motion, the Rigmora LPs suggest that if a plan is confirmed, it may not be recognized in the Cayman Islands, but rather may be void.[213] Debtors provide no substantive response to this argument. This possibility weighs heavily in favor of relief from stay.

Moreover, the automatic stay is temporal in nature, not permanent. It is meant to centralize disputes in one forum and to provide a breathing spell for the debtor. But, it is not meant to permanently block the resolution of a dispute. So, for example, in *Rexene* the question was simply which forum was best suited to liquidate the creditors' claim, not whether it would be resolved at all. The issue in the Winding Up Petition is not before this

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[212] JA-19, Companies Act § 99.

[213] 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.

* * *

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.

Mot. for Relief from Stay ¶¶ 56, 58, Dkt. No. 125.

court, nor is there a suggestion that it could be even in some other fashion. While Debtors suggest that the Rigmora LPs could seek a chapter 11 trustee or to convert the case, those remedies serve distinctly different purposes and are decided under distinctly different standards.[214]

Under the above circumstances and considering the arguments of counsel as well as the potential for conflict between the laws of the United States and the Cayman Islands, I will grant limited relief from stay to afford the parties the ability to seek relief from the Grand Court that is distinctly within its purview. Specifically, I will grant relief from stay so that the partners can proceed on the Winding Up Petition so that the Grand Court can determine: (i) whether the Rigmora LPs can prove that they have justifiably and irretrievably lost all trust and confidence in the General Partner's ability to manage the Fund and (ii) whether the Fund has lost its substratum. The Rigmora LPs may also seek to have Joint Official Liquidators appointed to act in the stead of the General Partner if they are successful on one of the two grounds above.

I will not grant relief from stay for the Rigmora LPs to pursue their newly minted "10(b) claim." Whether the General Partner's bankruptcy filing has dissolved the Fund is a matter of US law for purposes of these cases and one which I will decide when and if necessary. Further, the Rigmora LPs may not seek any other relief from the Grand Court, including to transfer (or deem transferred) the rights or property of the Fund to the Joint Official Liquidators or to permit the Joint Official Liquidators to wind up the Partnership in the Grand Court. Further, this Court will not recognize a monetary judgment against the

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[214] *See Soundview Elite*, 503 B.R. at 583 (appointing chapter 11 trustees notwithstanding the existence of joint official liquidators).

General Partner or the Fund. To be clear, while Debtors remain in bankruptcy the automatic stay is in force and will continue to apply to the Rigmora LPs and to any Joint Official Liquidators that may be appointed by the Grand Court.

Again, I recognize that any Joint Official Liquidators appointed may be in a challenging position. But, those challenges will be addressed as necessary. In that event, I would expect parties to work together to construct a protocol to be presented to both courts such that maximum cooperation can be achieved.

Conclusion

For the reasons set forth above, I will deny the amended motion to dismiss and grant limited relief from the automatic stay. Separate orders will enter.

Dated: April 14, 2026

LAURIE SELBER SILVERSTEIN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
APPLE TREE LIFE SCIENCES, INC., *et al.*,	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)
	Re: Docket Nos. 204

ORDER DENYING AMENDED MOTION TO DISMISS

For the reasons set forth in the accompanying Memorandum Opinion of even date,

IT IS HEREBY ORDERED that the Amended Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd. (D.I. 204) is **DENIED**.

Dated: April 14, 2026

Laurie Selber Silverstein
United States Bankruptcy Judge

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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)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Venture One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd hereby submit this notice of appeal in conformity with Bankruptcy Form 417A and in accordance with Federal Rule of Bankruptcy Procedure 8003.

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Rigmora Biotech Investor One LP, by its general partner Unicorn Venture One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Venture Two Ltd.

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal: Equityholders and parties in interest

Part 2: Identify the subject of this appeal

1. Describe the judgment—or the appealable order or decree—from which the appeal is taken:

   Order Denying Amended Motion to Dismiss [Docket No. 550] and the accompanying *Memorandum Opinion* [Docket No. 548] only to the extent it relates to the Order Denying

[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); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

Docket No. 601
Filed: 4/28/26

Amended Motion to Dismiss. A copy of the Order is attached hereto as **Exhibit A** and a copy of the Opinion is attached hereto as **Exhibit B**.

2. State the date on which the judgment—or the appealable order or decree was entered: April 14, 2026.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

Appellants:	**Counsel to Appellants:**
Rigmora Biotech Investor One LP (by and through its general partner Unicorn Biotech Ventures One Ltd) and Rigmora Biotech Investor Two LP (by and through its general partner Unicorn Biotech Ventures Two Ltd)	**RICHARDS, LAYTON & FINGER, P.A.** John H. Knight Michael J. Merchant Daniel E. Kaprow Clint M. Carlisle Nicholas A. Franchi One Rodney Square 920 North King Street Wilmington, DE 19801 Telephone: (302) 651-7700 Facsimile: (302) 651-7701 Email: knight@rlf.com merchant@rlf.com kaprow@rlf.com carlisle@rlf.com franchi@rlf.com -and-

	DEBEVOISE & PLIMPTON LLP Shannon Rose Selden M. Natasha Labovitz William H. Taft V Daniel S. Shamah Zachary H. Saltzman Natascha Born Carl Micarelli Sebastian Dutz 66 Hudson Boulevard New York, New York 10001 Telephone: (212) 909-6000 Email: srselden@debevoise.com nlabovitz@debevoise.com whtaft@debevoise.com dshamah@debevoise.com zsaltzman@debevoise.com nborn@debevoise.com cmicarelli@debevoise.com spdutz@debevoise.com
Appellees: Apple Tree Life Sciences, Inc., *et al.* (**Debtors**)	**Counsel to Appellees:** **POTTER ANDERSON & CORROON LLP** L. Katherine Good Brett M. Haywood Shannon A. Forshay Ethan H. Sulik 1313 N. Market Street, 6th Floor Wilmington, DE 19801 Telephone: (302) 984-6000 Facsimile: (302) 658-1192 Email: kgood@potteranderson.com bhaywood@potteranderson.com sforshay@potteranderson.com esulik@potteranderson.com -and-

	QUINN EMANUEL URQUHART & SULLIVAN LLP Andrew M. Berdon Patricia B. Tomasco Rachel E. Epstein Alain Jaquet Rachel Harrington 295 5th Avenue, 9th Floor New York, New York 10016 Telephone: (212) 849-7000 Facsimile: (212) 849-7100 Email: andrewberdon@quinnemanuel.com pattytomasco@quinnemanuel.com rachelepstein@quinnemanuel.com alainjaquet@quinnemanuel.com rachelharrington@quinnemanuel.com -and- Eric D. Winston Razmig Izakelian Benjamin Roth 865 S. Figueroa Street, 10th Floor Los Angeles, California 90017 Telephone: (213) 443-3000 Facsimile: (212) 443-3100 Email: ericwinston@quinnemanuel.com razmigizakelian@quinnemanuel.com benroth@quinnemanuel.com

Part 4: Optional election to have appeal heard by District Court

N/A

Part 5: Sign Below

Dated: April 28, 2026
Wilmington, Delaware

Respectfully Submitted,

RICHARDS, LAYTON & FINGER, P.A.

/s/ Clint M. Carlisle
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Counsel for Rigmora Biotech Investor One LP (by and through its general partner Unicorn Biotech Ventures One Ltd) and Rigmora Biotech Investor Two LP (by and through its general partner Unicorn Biotech Ventures Two Ltd)

Walkers

BY EMAIL

8 September 2025 Our Ref: JG/SW/RB/197133

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman KY1-9010
Cayman Islands

Attention: Liam Faulkner, Hugo Farmer and Jordie Fienberg

Dear Sirs

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) V ATP III GP, LTD (IN ITS CAPACITY AS GENERAL PARTNER OF ATP LIFE SCIENCE VENTURES, L.P.)
CAUSE NO. FSD 146 OF 2025 (JAJ)

IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.
CAUSE NO.: FSD 151 OF 2025 (JAJ)

1. We refer to your first letter of 5 September 2025. Unless otherwise stated we adopt the definitions used in your letter and our previous correspondence.

The funding emergency caused by the Rigmora LPs

2. We are surprised by the tenor of your letter, both with regard to your clients' claim to be unaware of the Braeburn Repayment (which we address further below) and the implication that there may be something improper in the Investment Deals or the information provided to your clients in respect of the same.

3. As you are aware, the Delaware Proceedings, Cayman Writ Action and Winding Up Petition all concern your clients' obligation to fund the Partnership through capital calls and to approve budgets for the further investment in the Partnership's portfolio companies. Those issues will be determined by the Delaware Court following the hearing listed for 18-19 September 2025, i.e., in ten days.

4. In the meantime, our client has been placed in an impossible position, whereby it is unable to discharge its duties to the Partnership, both with regard to funding the Partnership's portfolio companies and in respect of the Partnership's expenses. This situation has been caused

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JX-161

Joint Exhibit
JX-2130
C.A. No. 2025-0607-KSJM

solely by your clients starving the Partnership of funding by refusing to meet capital calls or approve budgets in accordance with their obligations under the LPA.

5. The situation the Partnership finds itself in is an emergency. If the Partnership is unable to fund the portfolio companies, those companies will collapse – along with any value they hold for the Partnership. This will have a devastating impact on the value of the Partnership, not to mention the termination of multiple ground-breaking medical research projects.

6. The interim funding discussions between our respective clients have been fruitless. In the circumstances, our client has had no choice but to find alternative means of funding the Partnership's essential expenditure to avoid the catastrophic consequences noted at paragraph 5 above. Similarly, the portfolio companies have had to rely on sources of funding outside of the Partnership. There is nothing improper about that. All transactions undertaken by any portfolio company are fully authorised by their charters, SPAs, etc., and boards.

The Braeburn Repayment and Tendyne Earnout

7. At the outset, we note that it is plainly incorrect to suggest that our client would be required to provide your clients with information regarding the Braeburn Repayment either during the negotiation phrase or immediately upon execution of the deal. The obligations under both section 22 of the ELP Act and paragraph 16(b) and (c) of the LPA relate to a limited partner's right to request (and receive) information.

8. Neither provision imposes an obligation on the general partner to inform limited partners of every business transaction concerning the Partnership as and when it arises. That is in line with sections 14(1) and 20 of the ELP Act and paragraph 2(b) of the LPA, which provide that the day-to-day management of an exempted limited partnership is a matter for the GP. Instead, the LPA imposes annual and quarterly reporting obligations on the GP. Your clients, in a thinly veiled attempt to support their false narrative of the GP providing inadequate information, now attempt to imply there are more stringent reporting obligations than those it agreed to under the terms of the LPA (or indeed, are provided for under the ELP Act).

9. In response to your questions regarding the Braeburn Repayment, we confirm that the repayment constituted an early repayment by Braeburn Inc. of certain convertible loan notes. The Partnership offered the Braeburn board of directors a 10% discount in return for early repayment, which the Braeburn board accepted in order to reduce its interest payments.[1]

10. Notwithstanding the fact that our client was not required to inform your clients of the Braeburn Repayment until the Q3 2025 Quarterly Report, it rejects the claim that the first your clients were aware of the Braeburn Repayment was through Yanchik's Deposition. Mr Yanchik even stated in his deposition that your clients "*had been receiving all the iterations of the documents.*" Further, on 28 July 2025, Patrik Blochlinger and Yuri Bogdanov were both copied to an email from Sarah Gohary of Wilson Sonsini Goodrich & Rosati, attaching the latest draft Loan and Security Agreement, making it clear from the content of her email that the

[1] We confirm that Dr Harrison and Mr Yanchik recused themselves from the Braeburn board vote in this respect.

agreement now included the option for Braeburn to make a prepayment of the convertible notes up to US$42 million and that the prepayment would occur "*substantially concurrently with the Second Amendment [i.e. the Loan and Security Agreement] Effective Date*". Your clients raised no objections or concerns upon receiving this email.

11. The repayment received was US$41,736,871.30 on 1 August 2025. In addition, on 31 July 2025, the Partnership received a post-closing earnout payment from Abbott Laboratories in the amount of US$20,025,952.54 in respect of an exit from Tendyne, an older investment of the Partnership ("**Tendyne Earnout**"). As at 1 August 2025, the Partnership therefore held funds of US$61,762,823.84 from these two sources combined (the "**Q32025 Receipts**").[2]

12. The terms of the LPA are clear that the GP is entitled to apply these funds to (a) invest in projects and (b) discharge the Partnership's own expenses. Paragraph 8(c) of the LPA (as amended pursuant to Amendment 4 dated 1 April 2015) 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) end (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 written consent of the holders of a majority of the Preferred Units."* (emphasis added)

13. In the circumstances, the GP is entitled, under the terms of the LPA, to apply the US$61,762,823.84 to the extent necessary to discharge the Partnership's expenses and invest in the portfolio companies, and has done so, as more particularly set out below.

14. The Schedule to this letter sets out all payments made to and from the Partnership's bank account from 31 July 2025 to 4 September 2025. These payments are explained in more detail below. All are types of expenditure that the GP has discharged on behalf of the Partnership for years, without any objection from your clients until recently. The total in outgoing payments since 31 July 2025 made using the Q32025 Receipts is $39,306,044.00. The remaining sum of US$22,456,779.84 is in the Partnership's Banc of California account.

15. In pre-empting any arguments your clients might attempt to run with regard to these being payments made with "their" money, your clients cannot continue to gloss over the reality of the relationship between the parties. If Dr Rybolovlev had wanted to set up a personal investment vehicle over which he had complete control, he could have done so. However, he wanted Dr Harrison's knowledge, expertise, ability and network. In order for Dr Rybolovlev to access

[2] The Partnership's bank account held c.US$2,021,608.60 at the time of the Tendyne Earnout. However, all but c.US$152,000 of this was funds received pursuant to previous capital calls and was therefore ring-fenced for use by the portfolio company in question.

those benefits, the parties agreed to a partnership structure, run by a general partner, pursuant to the Cayman Islands statutory provisions which put that general partner in control of the business. It also included the so-called "*draconian*" default provisions, of which Dr Rybolovlev was well aware when he entered into the LPA via his affiliated entities and which were, and remain, necessary to ensure the proper operation of the Partnership. Dr Harrison explained clearly at the time why the global default mechanism was essential to the effective functioning of the Partnership, and Dr Rybolovlev entered into the arrangement on that basis. Those default measures have gone unchanged for nearly 14 years and throughout 22 amendments.

16. Dr Rybolovlev, through your clients, has now manufactured allegations of there being a breakdown in trust and confidence in order to extricate himself from his contractual obligations – obligations that he well understood and would have been well advised about – because he cannot or does not want to comply with his obligations for further funding. This will be brought out in evidence in both the Delaware and Cayman Proceedings. Given the constraints on the GP in light of the injunction order made by the Cayman Islands Court, the GP must, acting in the best interests of the Partnership, take steps to preserve the Partnership and its assets until such time as your clients' Winding Up Petition has been determined.

Application of Q32025 Receipts

Funding the essential needs of, and investments in, portfolio companies with approved budgets

17. The following companies have essential funding needs relating to running costs and/or research and development pursuant to approved budgets. The following payments have therefore been made:[3]

	Payment made (US$)
Ascidian	6,000,000
Aethon	2,000,000
Replicate	1,500,000
Evercrisp	250,000

18. In the case of the US$6,000,000 budget for Ascidian, this is reflective of the capital call dated 30 May 2025 and represents the total remaining budget for Ascidian. As explained in Dr Harrison's third affidavit in cause number FSD 146 of 2025 (JAJ), US$6,000,000 represents only a small fraction of the funds that Ascidian needs to stay on track with its groundbreaking research into congenital blindness. However, after re-forecasting their budgets, Ascidian management indicated that a US$6,000,000 injection of funding would make a difference to their ability to keep their clinical trial on track. Given the starvation of funding from the Partnership, Ascidian has had to make deep budget cuts and explore alternative funding, hence the discussions with Eli Lilly (described further below) which, assuming the deal closes, comes just in time for Ascidian to make up a portion of missing capital (combined with budget

[3] The payments to Initial Therapeutics and Apertor listed in the Schedule were made from money held pursuant to prior capital calls and were not made from the Q32025 Receipts.

cuts and the US$6,000,000 from the Partnership). Without further funding, Ascidian would have gone to cash zero during the fourth quarter of 2025.

19. The US$2,000,000 paid to Aethon was made to support the company's collaboration agreement with Revolution Medicines, a public biotech company. Revolution Medicines made it clear they had concerns as to Aethon's viability in light of your clients' default and were disinclined to continue the relationship unless Aethon could demonstrate some minimum viability. The Partnership's venture partner overseeing the investment, Paul Jardine, indicated that US$2,000,000 should be sufficient to preserve the Revolution Medicines relationship in the immediate term. However, it is a far cry from the amount Aethon needs to drive its programmes forward.

20. The US$1,500,000 paid to Replicate represents the total amount remaining in Replicate's budget prior to the closing of an upcoming LATAM partnership with Instituto Butantan for the continued development of Replicate's rabies vaccine candidate, which is due to close in Q3 2025.

21. There are payments to Evercrisp totalling US$250,000. Evercrisp has essential funding needs to the end of the year in relation to wages, severance pay, insurance and legal expenses (c. US$555,000) and payments to creditors (c. US$247,000).

22. The basis for the Partnership making these payments is clear: this is expenditure representing the bare minimum for Evercrisp to continue to function. Without it, Evercrisp would collapse; a situation that would mean irreparable harm being caused to the Partnership before the disputes between the parties are resolved. The same is true of all the Early-Stage portfolio companies that do not receive funding.

Funding the needs of Nereid and Nine Square

23. There are two portfolio companies with requirements to preserve asset value for the benefit of the Partnership, where small payments have been made as follows:

	Payments made (US$)
Nereid	250,000
Nine Square	150,000
TOTAL	**400,000**

24. These payments were made to meet severance costs and other payments relating to asset preservation, pending the resolution of the present Court proceedings. Your clients cannot seriously object to the Partnership making funds available to meet such critical expenditure in circumstances where the reason these companies are unable to survive is because of your clients' unreasonable refusal to approve further budgets. Moreover, as your clients are aware, these companies have legally-binding obligations in relation to payroll and taxes, in respect of which the officers and directors of the company may be held personally liable.

ATLS Fee

25. On 4 August 2025, the Partnership discharged US$8,906,044 overdue in respect of the 2H 2025 ATLS Fee.

26. As your client will be aware, the bi-annual fee due to ATLS does not require any fresh budget approval in the same manner as projects relating to portfolio company expenditure. The LPA contains a specific mechanism for the payment of these fees and for the approval of the level of the fee. If the parties are not able to reach agreement on the fee level, the LPA provides that the amount payable shall be the amount last approved by the parties. Your clients defaulted on the capital call that would have covered the ATLS Fee for the second half of 2025. The GP is therefore entitled to utilise the Q32025 Receipts to discharge the ATLS Fee (which, amongst other things, cover the salaries of the GP's employees) and it is certainly holding the ring and in the best interests of the Partnership as a whole that this is paid, to enable the Partnership to continue to function.

Legal Fees

27. The Partnership's legal fees have already been the subject of *inter partes* correspondence. At the outset, we note that the Partnership's transfer of US$20 million into the client account of Quinn Emanuel, does not in itself constitute a disposition of the Partnership's property, as those funds remain beneficially owned by the Partnership. The US$20 million is intended to be available to discharge both Quinn Emanuel's and Walkers' fees in relation to all the current legal proceedings between the parties.

28. In addition to the provisions of paragraph 8(c) of the LPA, as we have previously set out in correspondence, paragraph 11 of Amendment 9 to the LPA dated 22 December 2017 provides that, with the exception of certain defined expenses that are paid from the ATLS Fee, 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 LPA, including without limitation professional fees, including legal expenses for the Partnership (including the Partnership's in-house counsel), and all expenses relating to any actual or threatened litigation or proceedings involving the Partnership. As a result, the legal fees that the GP has incurred on behalf of the Partnership fall to be paid by the Partnership. In circumstances where your clients have refused to meet any further capital calls, it is plain that paragraph 8(c) can and should be read so as to cover those legal expenses that would otherwise be met from capital calls.

29. With regard to the funding of the Delaware Proceedings, the Partnership needs, and is entitled to access Partnership funds in order to prosecute genuine and *bona fide* litigation in Delaware, in circumstances where that is necessary to resolve the disputes between the parties.

30. We note you have previously sought to rely on paragraph 15(c) of the LPA to argue that the GP is not entitled to utilise Partnership funds to discharge its legal costs in respect of the Cayman Proceedings, however, this is a misreading of the provision. The paragraph provides that:

"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."

31. The provision is only applicable to legal expenses incurred by an Indemnified Party defending any action taken against that Indemnified Party and, similarly in respect of the carve out at the end of the paragraph, where proceedings are "*initiated against such Indemnified Party.*" It therefore has no application to legal expenses incurred by the Partnership.

32. The Cayman Writ Action has been initiated against the ATP III GP Ltd (in its capacity as general partner of ATP Life Science Ventures, LP). It is clear that paragraph 15(c) does not apply to the Cayman Writ Action.

33. With regard to the Winding Up Petition, whilst we note there is an unresolved dispute between the parties as to the correct respondent to the Winding Up Petition we note:

    (a) the Court has not directed that the GP be added as a respondent. Any legal costs are necessarily being incurred by the Partnership as the subject of a winding up petition presented against it; and

    (b) for reasons that we have already aired in correspondence and in the Partnership's skeleton argument for the 1 August 2025 hearing, your contention that the Winding Up Petition should proceed as an *inter partes* proceeding between your clients and the GP in its own right, has no proper basis in law.

34. Furthermore, paragraph 18(g)(iv) of the LPA provides that:

    "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." (emphasis added)

35. The terms of the LPA are therefore clear. Where a limited partner has breached the LPA (which, for the reasons set out in the Delaware Complaint, your clients have) the GP may take such action as it considers necessary in its sole discretion and that action is taken *"for the*

Partnership and the other Partners." This would naturally extend to defending a winding up petition brought by a limited partner with the goal of avoiding the consequences of its breaches under the LPA and as a blatant retaliatory move for the filing of the Delaware Complaint.

36. In any event, paragraph 15(c) cannot sensibly be read so to leave a GP acting on behalf of the Partnership, completely powerless to protect the Partnership against an attack by your clients even where that attack was improper and meritless. That would be to allow your clients to win any litigation by default simply by bringing it.

37. In the circumstances, our client is entitled to draw on Partnership funds to discharge the legal expenses it incurs acting in its capacity as GP of the Partnership. We would also stress that the level of the legal fees has escalated entirely due to your clients' actions in bringing two sets of parallel proceedings in the Cayman Islands. These costs continue to be exacerbated by correspondence such as this, where our client is forced to explain ordinary course of business actions. Your clients well know these activities are ordinary course, but, for strategic reasons, seek to portray them as improper. As the Chancellor of the Delaware Court noted in the Motion to Stay hearing on 27 June 2025, the Cayman Islands filings were reactionary in nature and she declined to grant a stay, as to do so would credit your clients for "*their forum selection maneuvers*". The same principle applies to the legal expenses now being incurred on behalf of the Partnership. Your clients chose to bring duplicative and unwarranted legal proceedings in the Cayman Islands despite the existence of the Delaware proceedings, and cannot now complain of the costs that are being incurred as a result of that decision.

38. You will also note that there was a payment of US$250,000 to Wilson Sonsini Goodrich Rosati on 22 August 2025. This payment was made on behalf of Initial Therapeutics ($77,000), Marlinspike ($100,000) and Nereid ($73,000).

Validation of transactions

39. As we set out in our letter of 10 July 2025, our client is cognisant of the provisions of section 99 of the Companies Act (2025 Revision). As you will be aware, section 99 does not operate to prevent companies or partnerships from operating in the ordinary course of business where there is an extant winding up petition. The Cayman Islands Courts have also made it clear that it is entirely possible for a retrospective application for validation of a transaction to be brought.

40. In a recent judgment of Asif J, he noted that, *"there is no difference in the principles to be applied where validation is sought retrospectively, but it should be possible for the evidence presented to the court in support of the application for retrospective validation more directly to address the impact of the transaction on the statutory requirement under s.99 of maintaining the status quo."*[4]

41. Asif J further noted that such transactions may even be adopted by a liquidator even if a winding up order is ultimately made:

[4] *AllFunds Bank S.A. v Rasmala Trade Finance Fund* (unreported Judgment 20 March 2025) at [17]

> *"In my judgment, it is important to bear in mind that where a winding up petition has been presented against a company, whether or not a validation order is sought or granted does not of itself prevent the company from continuing to carry out its normal business and does not prevent its directors from causing the company to enter into appropriate transactions. It simply has the result that such transactions may be susceptible to avoidance by the liquidator if a winding up order is made in due course. In fact, it is not uncommon for a liquidator in such a situation to adopt transactions that are bona fide and are not prejudicial to the company and the persons interested in the liquidation."*[5]

42. The transactions set out above clearly lie within the boundaries of transactions that it would be highly appropriate for the Court to validate, if an application for validation were made. They are exactly of the nature that "holds the ring" to ensure the survival of the Partnership and/or its assets until determination of the Winding Up Petition, although that is without prejudice to our client's position that truly "holding the ring" would involve the Partnership continuing to invest in the portfolio companies in line with the express stated purpose in the LPA. Our client is therefore confident that were a validation application made (whether retrospectively or prospectively) in respect of any of the transactions or payments outlined above, such transactions would be validated by the Cayman Islands Court. However, our client does not consider it necessary to trouble the Court with an urgent application for prospective validation in relation to transactions that are entirely ordinary course, in circumstances where it is clear from the Cayman Islands jurisprudence that a retrospective application is entirely possible (and in some cases preferable).

43. Our client will therefore make an application to Court seeking the validation of the above transactions if and when it considers it appropriate to do so.

Investment Deals

44. Finally, we address the Investment Deals referred to in your letter. We have already set out above why your clients are unjustified in using the Investment Deals as supposed evidence of our client withholding information improperly. In any event, your clients have now received the relevant transaction documents via our client's US lawyers, Quinn Emmanuel.

45. As Quinn Emmanuel set out in their email accompanying the disclosure of the transaction documents, the Q2 2025 Quarterly Report (the "**Q2 Report**") sent to your clients on 4 September provided such information as was appropriate in relation to the Investment Deals, as at the end of Q2 2025. It is therefore simply not the case that the GP is not meeting its reporting obligations. The Investment Deals all concluded in Q3 and would have been included in the Q3 2025 Quarterly Report.

46. By way of further information in respect of the Investment Deals:

    (a) Replicate: the Q2 Report refers to Replicate "*advancing discussions for three strategic partnerships*" including, *inter alia*, Novo Nordisk. As you are aware, this deal (a

[5] *Ibid* at [54]

Collaboration and Licence Agreement) closed on 26 August 2025. Whilst the overall deal figure is US$550 million, the upfront payment that Replicate will receive is an extremely modest US$6,500,000, with other payments either made by Novo Nordisk in the negotiated deal to fund its own project at Replicate or subject to milestones to be achieved in the collaboration. Furthermore, the Novo Nordisk deal relates to a particular preclinical collaboration. This is plainly not a case of a wholesale satisfaction of all of Replicate's funding needs.

(b) Aulos: the Q2 Report states that *"[o]wing to budget approval disputes arising in the Litigation, the company structured an interim financing round led by the family office of its CEO, an experienced oncology pharmaceutical and biotech executive. ATP did not participate*". The financing that concluded in August 2025 was not a Series B financing (in respect of which Dr Ehlers was mistaken) but a convertible note financing and was for only US$9,427,432.33.

The Partnership did not participate in this financing, given your clients' refusal to even discuss new budgets that would have allowed them to do so. To put this refusal into context, Aulos is a clinical-stage company that is currently trialling a drug for the treatment of deadly cancer that is showing promise in patients for whom other treatments have failed. The August 2025 financing was to ensure the continuation of the current phase 2 clinical trial. The total funding needs to conclude the trial are around US$20 million. It will be apparent that the funding actually raised falls far short of what is required and the company will run out of funding by year end. The provision of emergency funding from its CEO is not how a biotech company, much less a clinical-stage company, operates and has caused serious reputational damage to the Partnership as the investor that should be providing these funds.

The Partnership's lack of participation in the latest financing not only excludes the Partnership from a potentially lucrative business opportunity but has grave consequences for the lives of the patients relying on the clinical trial continuing.

(c) Ascidian: the Q2 Report refers to *"[c]ollaboration discussions"* with Eli Lilly. Our client wishes to make clear that it is far from certain that the transaction between Ascidian and Eli Lilly will close and when. This was acknowledged by Dr Ehlers' in his deposition: *"Never underestimate how slowly big pharma can move. But they've been -- I've -- it could be as early as October that it closes. That would be frigging land speed record for big pharma, but they like us, we like them…So as early as October, and certainly, I hope no later than January."* The deal would not close until Q4 2025 at the earliest, if it closes at all. Your clients will be aware of the deal between Ascidian and Astellas last year, which fell through at the very last minute (i.e. after signature pages were prepared for execution documents), indicative of the precarious nature of the Eli Lilly deal at term sheet stage,

The disclosure of the Ascidian/Eli Lilly term sheet deck to your clients at this juncture is without prejudice to our client's position that such disclosure is premature and outside the scope of what your clients would be entitled to, even pursuant to section 22 ELP Act or paragraph 16(b) or (c) of the LPA. However, the document has been provided to put to

bed the meritless allegation of our client being obstructive with regard to the provision of information.

(d) Galvanize: the Q2 Report refers to "*term sheet discussions regarding a Series C financing in the amount of $100 million to be led by Sofinnova Partners, with what was emerging as an oversubscribed book of major institutional investors.*" The Partnership's participation in this transaction was limited to the conversion of an old promissory note into stock and did not involve the Partnership providing any additional funds. The purpose of the financing is for Galvanize's ongoing operations.

47. It is unclear from your letter whether your clients contend there is something improper in the Investment Deals themselves. However, it should be apparent that there would be no credible basis for such a contention. The Investment Deals are, largely, transactions between portfolio companies and third parties. They represent steps taken by the portfolio companies in the face of being starved of funding from the Partnership. They are in no respects an adequate substitute for the proper financing by the Partnership.

48. We trust the information in this letter will bring an end to this particularly unproductive line of correspondence.

Yours faithfully

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

SCHEDULE OF PAYMENTS

DATE	AMOUNT	PAYMENT DETAILS	NOTES
31/07/2025	$20,025,952.54	Incoming wire – Tendyne earnout payment	
01/08/2025	$41,736,871.30	Incoming wire – Braeburn Repayment	
04/08/2025	($20,000,000.00)	Outgoing wire – Quinn Emanual Urquhart Sullivan	
04/08/2025	($8,906,044.00)	Payment of 2H 2025 ATLS Fee	
08/08/2025	$13,528.64	Payment from Tendyne	Return of funds from Tendyne litigation escrow account. In 2020, the Partnership put $335,025 into the litigation account along with other investors to total $500,000. Of that $500,000, c.$20,000 remained at the time of the earnout. Since there are no more earnouts, the remaining funds were distributed pro rata to the investors who contributed to the litigation escrow.
11/08/2025	($2,000,000.00)	Outgoing wire to Aethon Therapeutics	
11/08/2025	($6,000,000.00)	Outgoing wire to Ascidian Therapeutics	
14/08/2025	($120,000.00)	Outgoing wire to Evercrisp Biosciences	
14/08/2025	($150,000.00)	Outgoing wire to Nine Square Therapeutics	
14/08/2025	($250,000.00)	Outgoing wire to Nereid Therapeutics	
14/08/2025	($575,000.00)	Outgoing wire to Initial Therapeutics	Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout).
21/08/2025	($1,500,000.00)	Outgoing wire to Replicate Biosciences	
22/08/2025	($250,000.00)	Outgoing wire to Wilson Sonsini Goodrich Rosati	
27/08/2025	($130,000.00)	Outgoing wire to Evercrisp Biosciences	
04/09/2025	($42,410.00)	Outgoing wire to Apertor Pharmaceuticals	Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout).

EFiled: Jun 05 2025 05:15PM EDT
Transaction ID 76407162
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: June 6, 2025**
Defendants.	)	

VERIFIED COMPLAINT

Plaintiff ATP III GP, Ltd. ("ATP," the or the "Plaintiff"), by and through its undersigned attorneys, brings this Verified Complaint in its capacity as general partner of ATP Life Sciences Ventures, L.P. (the "Fund" or the "Partnership") against Defendants Rigmora Biotech Investor One LP ("Rigmora One") and Rigmora Biotech Investor Two LP ("Rigmora Two," and with Rigmora One, "Defendants," or the "Family Office LP"), and alleges as follows:

INTRODUCTION

1. This is an action for specific performance and equitable relief to address the Defendants' premeditated financial destruction of [redacted] Delaware portfolio companies that would otherwise be actively engaged in productive, cutting edge research and clinical development of new drug therapies. This attack is being

carried out by the Fund's own [redacted] limited partners, the Family Office LP, [redacted] Dr. Dmitry Rybolovlev, a Russian-born citizen of Cyprus. The Family Office LP has now repudiated [redacted] in funding commitments by (1) preemptively refusing to fund capital calls that the Family Office LP is contractually obligated to meet and that are essential to sustain the Fund's [redacted], and (2) arbitrarily and irrationally refusing to approve new budgets for [redacted] portfolio companies [redacted], but whose initial funding has run out. The Family Office LP's funding repudiation will have the immediate and dire effect of [redacted].

2. ATP is the General Partner of the Fund, and is led by Dr. Seth Harrison, a trained surgeon and fund manager who has launched more than thirty transformative companies working on therapies for unmet medical needs. The

parties' Limited Partnership Agreement (as amended, the "LPA"; *see* Ex. 1),[1] requires the Family Office LP to contribute capital when ATP makes a capital call for portfolio companies so long as the Family Office LP has already approved budgets for those companies. And for the first ten-plus years of the relationship between ATP and the Family Office LP, this approach worked without fail: ATP would present investment memoranda to the Family Office LP, followed by proposed budgets for approval; the Family Office LP would approve them, sometimes without comment or question, and sometimes after reasonable, commercially-focused inquiry or comment; ATP would call for capital from time to time against the approved budgets; and the Family Office LP would meet its obligations when capital was called. This course of dealing under the LPA worked so well that, in 2020 and 2021, the Family Office LP endorsed the Fund's direction and ATP's leadership by committing an additional [redacted] to support additional funding for portfolio companies and, after an extensive review and vetting process, approved budgets for those companies.

3. But the Family Office LP's enthusiasm began to wane in late 2021, and disappeared entirely following Russia's invasion of Ukraine in early 2022. Since

[1] All capitalized terms not otherwise defined herein have the same meaning as those in the LPA. The LPA and the Parties also sometimes refer to ATP as the "General Partner," and the Family Office LP as the "Subject Limited Partners" or "SLP."

then, and particularly over the last 18 months, the Family Office LP, [redacted], became desperate to avoid its capital commitments; declining to fund its commitments while simultaneously attempting to strip from the Fund of gains from other hugely successful Fund investments for [redacted] the Family Office LP. [redacted]

4. This is an emergency. **In total, [redacted] portfolio companies, each incorporated in Delaware and headquartered in the United States, face imminent collapse** [redacted] The unfunded and/or unapproved amounts are substantial and vital for continued operation. This is not a question of the portfolio companies having over-spent or not meriting future investment. For example:

a. [redacted], which is out of money in [redacted], will need [redacted] in which it has to date seen unprecedented results.

b. [redacted], is also in the midst of a [redacted] with breakthrough potential and yet will run out of money as early as [redacted] and [redacted] at latest.

c. [redacted], which has already achieved clinical proof-of-concept and is in contract negotiations to conclude two strategic alliances, will run out of money as early as [redacted] (depending on those negotiations, and in any event, by [redacted]); and

d. [redacted], which has demonstrated [redacted] a therapy with commercial potential, and which is [redacted], will also run out of money by [redacted].

5. In total, of the Family Office LP's commitments made in 2020 and 2021, approximately [redacted] remains unfunded, consisting of [redacted] of

committed but unbudgeted funds, and [redacted] under budgets approved by the Family Office LP but not yet called.

6. 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: discovering new therapeutic modalities at the frontier of medical treatment for [redacted] among many others.

7. 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 while simultaneously capturing solely for itself any future value in the portfolio companies. The Family Office LP apparently believes that by forcing the shutdown of [redacted] and putting [redacted] companies at risk by delaying budget expansion, it can absolve itself of financial commitments to certain companies while preserving its optionality in others.

8. The Family Office LP's disruption of funding has already caused layoffs and will trigger further layoffs that could affect over two hundred highly skilled scientists and support staff. If unchecked, [redacted], each of whom chose to trust the economic future of their life's work with the Fund based on their expressed confidence in ATP's and the Fund's financial reliability and expertise. It will also cause the [redacted]. Research of this kind is vital to providing innovative treatments to patients in need of life-saving and life-enhancing interventions, and the Family Office's breaches risk not just delays in breakthroughs, but the possible abandonment of promising lines of research altogether. Absent prompt affirmative relief from this Court, the Family Office LP will drive these [redacted] companies to closure.

9. The following chart provides a stark depiction of the current situation:



10. As the table shows, the Family Office LP has starved [redacted] portfolio companies to the point of imminent collapse, with the [redacted] to follow by [redacted], even though ATP still has the right to call capital on [redacted] in approved and budgeted amounts for those companies. [redacted] will run out of cash by [redacted] [redacted] by [redacted], and [redacted]. The [redacted] company is only sufficiently capitalized for operations until [redacted].

11. The Family Office LP is doing so irrespective of its obligations under the LPA, and without regard for the scientific merit and progress of any of the companies.

12. 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]

[redacted] companies and negotiate new budgets for [redacted] companies. But, on May 15, 2025, the Family Office LP unequivocally repudiated its contractual obligations to fund capital calls for the [redacted] companies with remaining approved budget amounts. The Family Office LP described its contractual obligations to meet capital calls for these companies as merely "discretion[ary]," claiming that "(i) further investment is not in accordance with the LPA; and (ii) the does not presently have any outstanding capital commitments," which is contrary to the express language of the LPA.

13. The Family Office LP also refuses to approve any new budgets drawing on its prior as-yet-unbudgeted capital commitments, irrespective of the progress or merit of the individual company or its development programs and in contravention of its express contractual obligations, spuriously claiming that it has no "outstanding capital commitments to ATP Fund." Worse, in its most recent correspondence the Family Office LP conditioned any budget conversations on ATP's acquiescence in the shutdown of [redacted] companies: "***The SLP are available to initiate these discussions immediately upon your agreement to wind down or liquidate the*** [redacted] ***Companies . . . .***" The refusal to approve new budgets despite existing capital commitments is neither rational nor done in good faith, and poses an existential threat to the [redacted] companies, [redacted]. The Family Office LP is making ATP choose between [redacted] portfolio and

[redacted] companies, refusing to fund the latter unless ATP agrees to abandon the former.

14. To save the portfolio from the Family Office LP's predation, ATP now seeks to hold the Family Office LP to its obligations under the LPA by obtaining a judgment that the Family Office LP is in material breach of its funding obligations under the LPA and has violated its implied contractual duty to exercise its contractual discretion rationally and in good faith. Specifically, for the companies without approved budgets sufficient to fund continuing operations, ATP seeks declaratory relief that the Family Office LP has breached its contractual obligation to act rationally and in good faith to consider and approve reasonable budgets for continued operations; declaratory relief that the Family Office LP has waived its right to approve budgets; an order of specific performance requiring the Family Office LP to contribute capital in response to capital calls in the amounts equal to budgets submitted in January 2025 and upon which the Family Office LP has refused to even engage; and an order of specific performance directing the Family Office LP to contribute the remainder of its commitments under the LPA, and other relief specified below. For the portfolio companies that have approved but unfunded budgets, ATP seeks: declaratory relief establishing that the Family Office LP is liable for anticipatory breach of its obligation to contribute capital in response to capital calls for amounts contained in approved budgets; and an order of specific

performance requiring the Family Office LP to fund immediately its prior approved but unfunded budgets (in total [redacted]) in response to contractually required capital calls as and when they are received from ATP.

15. ATP also seeks a declaratory judgment that will afford the parties legal certainty going forward. The LPA gives ATP the right to impose a default charge against a limited partner that fails to timely make a contribution in response to a valid capital call. The charge is an amount determined by the General Partner up to 50% of the defaulting party's interest in the Fund. The Family Office LP disputes that this provision remains in effect. There is, as a result, a ripe dispute regarding both ATP's right to impose a default charge and the scope of that default charge. ATP therefore seeks a declaratory judgment that: the Family Office LP's repudiation and breach of its contractual agreement to make contributions in response to capital calls constitutes a payment default under the Agreement making them Defaulting Partners enabling and authorizing ATP to impose a Default Charge; that it may impose such a charge against the Family Office LP's overall interests in the Fund, so it can rapidly organize to fund the portfolio; and that pursuant to Section 18(f), the Family Office LP shall not have the right to vote on or grant or withhold consent or approval with respect to any matter arising under the LPA.

16. Finally, despite ATP's track record of success and value creation over the last fifteen years, the Family Office LP has now accused ATP of disloyalty and

breaching its own fiduciary duties by calling capital to fund [redacted] companies—even though ATP would have risked breach of binding Series A funding commitments to those companies had it failed to do so. ATP thus seeks a declaratory judgment that it has not breached its fiduciary duties owed to the Family Office LP by calling capital for companies with approved budgets or by bringing this action seeking to enforce the LPA.

PARTIES

17. Plaintiff ATP III GP, Ltd. is a Cayman Islands exempted company, acting on behalf of Apple Tree Partners Life Sciences Ventures, L.P., a Cayman Islands exempted limited partnership.

18. Defendant Rigmora Biotech Investor One LP is a limited partnership organized under the laws of the British Virgin Islands with its registered office in Tortola, British Virgin Islands.

19. Defendant Rigmora Biotech Investor Two LP is a limited partnership organized under the laws of the British Virgin Islands with its registered office in Tortola, British Virgin Islands.

20. [redacted].

21. Defendants, herein referred to as the Family Office LP, are limited partners and investors in the Fund. They obtained their limited partner interests in

the Fund via transfer agreements executed with former limited partners of the Fund, Blue Horizon and Ezbon. Rigmora One is the successor to all the rights and obligations of Blue Horizon under the LPA. Rigmora Two is the successor to all the rights and obligations of Ezbon under the LPA. [redacted].

From 2017 until late 2024, the Family Office LP was represented in many of its dealings with ATP by Anna Kolonchina, who was then CEO and Chief Investment Officer of Rigmora Holdings, Ltd. On information and belief, Ms. Kolonchina's former role is now held by Mr. Yuri Bogdanov.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction under 10 *Del. C.* §§ 341 and 342 because ATP seeks equitable remedies and has no adequate remedy at law.[2] Furthermore, this Court has subject matter jurisdiction over ATP's claims for declaratory relief pursuant to 10 *Del. C.* § 6501. This Court has clean-up jurisdiction over ATP's remaining claims because all of its claims arise out of the same controversy.

[2] At least some of the claims alleged herein are matters and causes that arise in equity under the law of the Cayman Islands. Paragraph 18(g)(vi) of the LPA states that the LPA and [redacted]

23. ATP seeks declaratory relief that the Family Office LP has breached its contractual obligation to act rationally and in good faith to consider and approve reasonable budgets for continued operations; declaratory relief that the Family Office LP is in default and has waived its right to approve budgets; an order of specific performance requiring the Family Office LP to contribute capital in response to capital calls in the amounts equal to budgets submitted in January 2025 and upon which the Family Office LP has refused to even engage; and an order of specific performance directing the Family Office LP to contribute the remainder of its commitments under the LPA, and other relief specified below. ATP has no adequate remedy at law to deliver the committed capital and approved budget amounts to these unique portfolio company assets.

24. This Court has personal jurisdiction over the Family Office LP and venue is proper in this Court because the Family Office LP has consented to jurisdiction and venue in this Court in Delaware. Paragraph 18(g)(vi) of the LPA provides that:

[redacted]

[redacted]

LPA ¶ 18(g)(vi), *see* Ex. 1 at 75.

FACTUAL BACKGROUND

A. ATP AND DR. RYBOLOVLEV BEGIN THEIR COLLABORATION.

1. The ATP Strategy

25. In 2010, Dr. Rybolovlev was exploring investing in early-stage companies developing new technologies and medicines in the life sciences industry. Early-stage pharmaceutical and biotechnology assets that have yet to progress to human clinical trials typically command lower prices than those that have reached clinical proof-of-concept. By investing in early drug research, Dr. Rybolovlev sought to ensure that his Family Office would maximize its share of the rewards if any of the product candidates gained clinical proof-of-concept or regulatory approval.

26. To realize this vision, Dr. Rybolovlev sought a partner with deep experience in both venture capital investment and the life sciences. It was in that context that Dr. Rybolovlev met Dr. Harrison.

27. Dr. Harrison holds both an MD and an MBA from Columbia University. When Dr. Harrison and Dr. Rybolovlev met in 2010 to begin discussing the venture that would become the Fund, Dr. Harrison had been running his own life

sciences venture capital firm for over a decade. Dr. Harrison had a track record of successful investments, and was in particular experienced in building and operating startups in the life sciences space.

28. Dr. Rybolovlev and Dr. Harrison began with [redacted] to make investments under Dr. Harrison's direction. In 2012, the project scaled up when Dr. Harrison and Dr. Rybolovlev formed the Fund and agreed that ATP would use [redacted] capital commitment from the Family Office LP to the Fund to make early-stage investments in a variety of companies. The model for the Fund that emerged, over multiple iterations, was two-part: (1) to invest in a specialty pharmaceutical company that would generate cash flow; and (2) to found Delaware start-up companies headquartered in the United States and seek to own them entirely over time, starting with intellectual property or projects at various stages in breakthrough drug discovery areas. In the second part of this model, the Fund would provide initial financing in the range of [redacted] to each portfolio company to fund the early-stage research required to develop platform technologies and to identify lead compounds or drug candidates deriving from them. Such companies would become the ATP life sciences portfolio, and many of the companies in this portfolio grew to be some of the Fund's most successful exits. After the initial round of funding, ATP and the Family Office LP would then consider and approve subsequent rounds of financing on a case-by-case basis to provide follow-on funding needed to take the

drug candidate through to a clinical or regulatory "value" inflection point that could provide the basis for a funded research collaboration with a pharmaceutical or large biotech company and/or funding for a clinical trial to demonstrate proof-of-concept of a drug. Once invested, the Fund and the portfolio company would have several options to raise the substantial capital required to fund later stages of drug development. These options included (among other things) an initial public offering of company stock, a strategic sale, or continuing to be held by the Fund, to be developed into a private pharmaceutical company, which was Dr. Rybolovlev's oft-stated goal.

29. By putting Dr. Harrison at the helm of the Fund, Dr. Rybolovlev was able to benefit from Dr. Harrison's established network and reputation for selecting advantageous deals and founding and building successful pharmaceutical companies. This allowed ATP to recruit, and in turn gave the Fund and Dr. Rybolovlev the benefit of, a highly regarded team of pharmaceutical and biotech professionals. This team, in turn, allowed ATP to establish credibility with inventors and startup founders to help build and operate their companies. These strong roots were the reason that the inventors and founders of the new technologies, who were crucial to the ATP strategy, agreed to give control of their inventions, and to make ongoing intellectual property, professional, reputational, and sweat equity

contributions, to what were ultimately offshore entities affiliated with Dr. Rybolovlev, a Russian national and citizen of Cyprus.

30. From the outset, the Family Office was adamant that each of the Fund's portfolio companies shun outside investors (often referred to as "syndication"). This allowed the Fund to retain exclusive control over the portfolio companies. [redacted]

31. The process the Fund followed was simple. ATP created the companies and supported the founders by providing them with detailed research and development plans and proposed budgets. The plans and budgets would then be submitted to the Family Office LP for detailed discussion and review between Dr. Harrison and representatives of the Family Office.

32. When the Family Office LP approved a budget, ATP did not immediately release 100% of the funds to the portfolio company. The Fund made cash available to the portfolio companies in tranches. ATP executives with substantial R&D industry experience co-founded and served in C-suite roles at each of the portfolio companies, and ATP controlled the companies' boards of directors.

33. The Fund's strategy—making investments in cutting-edge human therapeutics and treatments—meant that the timelines for achieving early clinical proof-of-concept would be long and there was a substantial risk of setbacks and temporary or total technical failure. Dr. Harrison, Dr. Rybolovlev, and the Family Office LP discussed timelines and risk of technical failure in connection with the approval of each new budget. The Family Office LP fully understood that it would need to make and hold investments for periods that could run to many years while the portfolio companies performed each step in the research and pre-clinical development of new products and technologies.

34. Executives throughout the biotech and pharmaceutical industries and at biotech venture funds are fully familiar with the risks of drug discovery and research. The art of serving on venture-backed biotech and pharmaceutical boards both public and private is to determine how best to chaperone and capitalize ongoing projects as evidence of their value accrues, often ambiguously, through ongoing research and development. It is common for high-risk projects to reach difficult decision points during development and still realize great value in the end. Biotech and pharmaceutical research and development managers, including executives at biotech venture funds, use knowledge and experience to adjudicate the results of ongoing experiments, as well as information from other related sources such as research projects in academia and in industry, to determine whether or not a project should

continue, and how to modify projects underway to optimize them given changing landscapes of information. This is hardly an exact science; in fact, some of the industry's greatest successes have come about via reversals of projects that were first deemed failures. No successful project goes according to its original plan from beginning to end. A project may miss its milestones but then hit or exceed the schedule later in the process. The risks and variabilities in this space are immense, which is one reason the returns, when success is achieved, are so high.

35. Dr. Harrison and his team all have long tenure in the industry and have navigated these processes regularly. ATP was open and transparent with Dr. Rybolovlev from the outset of their relationship and through each investment that results would be uncertain at each stage, that positive results could turn negative, and that negative results could be reversed. This transparency included meeting whenever and wherever Dr. Rybolovlev requested to walk through details of the projects under development at the Fund, as well as the integration of a representative personally appointed by Dr. Rybolovlev into the ATP team and onto multiple portfolio company boards. Dr. Rybolovlev was involved in discussions of the complexities of projects as they went along, and regularly assessed with the ATP team probabilities of success and failure.

36. Trust in Dr. Harrison and his team, which included heads of research from major biotech and pharmaceutical companies, led Dr. Rybolovlev to offer to

provide the additional [redacted] in 2020 (memorialized in Amendment No. 18), which underpins [redacted] companies that Dr. Rybolovlev now wishes to shut down owing to "missed milestones." This is a pretext to abrogate the LPA and, where convenient, take control of select assets in a manner that avoids the ATP capital tree and the Family Office LP's obligations. Dr. Rybolovlev well understands how successes and failures in drug research and development work; he is an experienced hand at this point in light of the Fund's longevity, and its direct beneficiary: every IPO and every corporate acquisition within the initial [redacted] of Fund capital resulted from a company that started with one research plan and migrated to another, over a series of successes and unforeseen failures that were managed through by the ATP team.

37. Indeed, most of the current [redacted] companies within the portfolio, including [redacted] and [redacted], resulted from turnarounds within the portfolio. These successes resulted from the ATP team constantly re-examining technical outcomes in the context of the competitive environment. The Family Office LP openly and enthusiastically embraced these turnaround opportunities; Dr. Rybolovlev was fully informed throughout these processes of change and development and was more than supportive, agreeing to provide the necessary capital. It was this enthusiasm that led to the expansion of the Family Office LP's total commitment to the Fund to include another [redacted] for these companies.

38. As discussed in greater detail below, under certain amendments to the LPA, the Fund's portfolio companies are accounted for in different "Pools," including Pool Braeburn (which exclusively holds the assets of Braeburn Inc.), Pool ATP V-3 (which holds certain of the Fund's turnaround clinical-stage assets, including [redacted] and [redacted]), Pool ATP IV (which hold ATP's residual interests in older deals that have had successful exits), and Pools ATP V-1 and V-2 (which hold ATP's interests in [redacted] companies founded since 2020, but which also include [redacted] deals, [redacted] and [redacted]).

39. Today, these turnaround companies represent [redacted] portion of the Fund's clinical portfolio and have achieved or are about to achieve clinical proof-of-concept. But rather than continuing to let these companies add value to the Fund, the Family Office LP has repudiated remaining approved budgets within Pool ATP V-3 of [redacted] The Family Office LP has conditioned further discussion of budgets for the Pool V-3 companies on ATP's "***agreement to wind down or liquidate*** [redacted] ***Companies***" and adoption of an onerous review process never before used in the course of the Parties' dealing, while expressly reserving for itself the option to fund those companies outside of ATP. *See, e.g.*, Ex. 2, Bogdanov email to Harrison ("[W]e suggest that the SLP engage in discussions with [redacted] about potentially investing in it directly, i.e. outside ATP").

2. The ATP Structure

40. The relationship between ATP, [redacted] Family Office LP, and the Fund's other limited partners is governed by the LPA, signed in 2012 and since amended twenty-two times. These amendments reflected the development and refinement of ATP's business model, and were based on oral understandings negotiated in person during meetings between Dr. Harrison, members of his team, and Dr. Rybolovlev and representatives of the Family Office LP.

41. Under Amendment No. 1 to the LPA, dated January 1, 2014, the parties memorialized their agreement that [redacted] LPA Am. 1 ¶ 1(c), *see* Ex. 1 at 98.

42. Plaintiff ATP acts as the General Partner of the Fund. The LPA provides that [redacted] and that ATP shall [redacted] LPA ¶ 2(b), *see* Ex. 1 at 6.

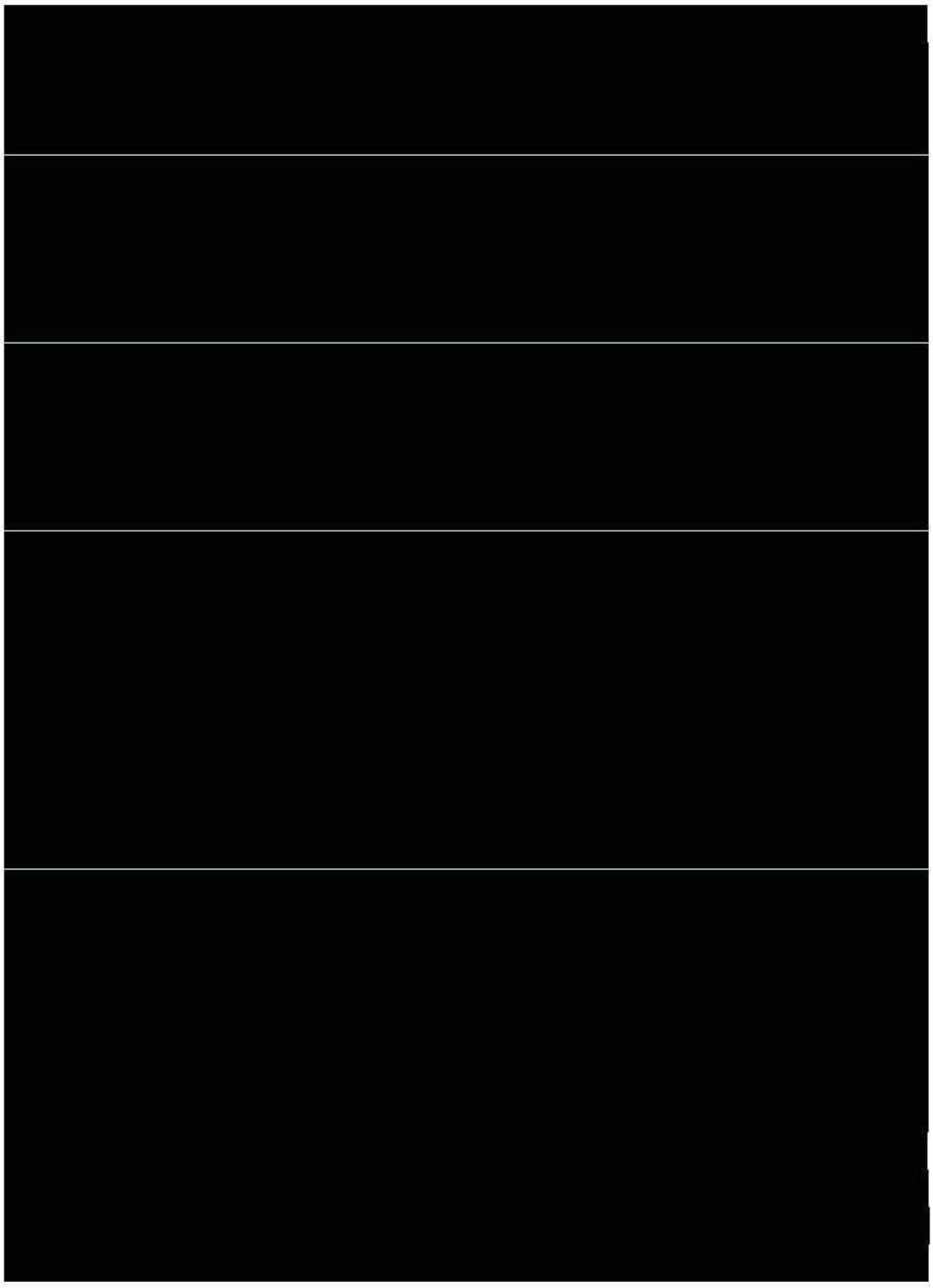
43. Two limited partner entities controlled by the Family Office have always held [redacted] of the partnership interests issued by the Fund. In addition to the Family Office LP, there are 17 other limited partners in the Fund, each of which owns a portion of equity in the Fund. The other limited partners are

individuals or are the family trusts of individuals who are current or former employees of ATP, and they hold percentage interests in the profits of the Fund.

44. Dr. Harrison is a limited partner of the Fund, and has contributed [redacted] into the Fund. A portion of Dr. Harrison's interests are now held through another limited partner, Les Pommes LLC, a trust established for the benefit of his children.

45. The continued health and growth of the Fund depends—by the Family Office LP's own design—upon the Family Office LP's timely contributions in response to capital calls made in accordance with approved budgets as well as the approval of new budgets for portfolio companies that are making good progress but have exhausted the funds from their initial budgeted investments. The LPA reserves for the Family Office LP the right to [redacted] budgets for each of the Fund's investments in [redacted] LPA Am. 2, Schedule C, *see* Ex. 1 at 107. [redacted]

46. Once a budget is approved, ATP has the right to make capital calls upon the limited partners (including the Family Office LP) to fulfill the approved budgeted amounts. Under Paragraph 5 of the LPA:



[redacted]

LPA Am. 3 ¶ 5(a)(ii), *see* Ex. 1 at 112 (emphasis added).[3]

47. Limited Partners "[redacted]" LPA ¶ 5(a)(i), *see* Ex. 1 at 18 (emphasis added).

48. Once a budget is approved by the Family Office LP as per Schedule C of the LPA (granting it the right to "[redacted]" budgets, *see* Ex. 1 at 107), ATP has the discretion to call capital under Paragraph 5(a)(ii) for projects "[redacted]." The LPA does not require capital calls to be tied to specific milestones because it would be inconsistent with how biotech and pharmaceutical research and development takes place. At the time of a capital call, and indeed over the course of dealings at the Fund, a portfolio company might be ahead of, behind, or meeting any of the milestones that were developed between

[3] Certain terms used in the LPA were deleted or rendered superfluous by later amendments. These include all references to Apple Tree Consolidated ("ATC") and the "Board", which were eliminated by Amendment No. 14. Unless specifically addressed in a written amendment, all other terms and conditions of the LPA remain in full force and effect.

ATP and the company as an initial roadmap, or that were included in the investment memorandum accompanying the initial budget request. Every biotech and pharmaceutical company attempts to put in place milestones and budgets, however they seldom if ever go exactly to plan. The text of the LPA, even after twenty-two amendments, never included satisfaction of milestones as a condition precedent for capital calls on contributions for companies with approved budgets, and calling capital for budgets was entirely left to General Partner discretion. The LPA only provides for one exception: when the General Partner requests an acceleration of capital. In this case, the LPA does require ATP to represent "[redacted]" and to provide the Family Office LP "[redacted]." LPA Am. 3 ¶ 5(a)(ii), see Ex. 1 at 112. It is worth noting that accelerated calls occurred rarely and only for projects that the General Partner determined would substantially benefit from an earlier-than-planned capital infusion. This was the case for the Fund's portfolio company [redacted] in 2021, and that company has since progressed to the clinical-stage group. However, since the Family Office LP's call for "austerity budgets" (*see* ¶ 79, *infra*), the ATP has not called for an accelerated tranche of capital.

49. Through extensive quarterly reporting procedures and discussions, during the integration of Dr. Rybolovlev's trusted representative into the Fund for eight years and her incorporation onto multiple boards, throughout dozens of meetings, often face-to-face and multi-day, involving Dr. Harrison, ATP subject matter experts, and portfolio company management, and throughout the operating history of the Fund up until May 2025, the Family Office LP *never* objected to meeting a capital call on the grounds that a portfolio company had missed a particular milestone.

50. There can be no doubt, both by contract and by an invariant course of dealing throughout a fifteen-year history, that if ATP makes a capital call to fund an approved budget, the Family Office LP is required to contribute such capital to the Fund.

51. Given the Fund would be seeking to invest in multiple early-stage companies at the beginning of a lengthy period of research and drug development, it was important for the LPA to include a mechanism through which ATP could ensure a reliable stream of funding for the portfolio companies, and ensure accountability from and to the limited partners and to the stakeholders across the entire portfolio.

52. Accordingly, the LPA contains a "global default" provision that has not changed since the agreement was executed in 2012. Under the global default provision, if a limited partner fails to make a required capital contribution in

response to a valid capital call, the LPA authorizes the General Partner to, after notice and 30 days to cure, deem such limited partner a "Defaulting Partner." The General Partner can then "[redacted]," 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 Fund, with those interests then being distributed to the non-defaulting holders of interests in the Fund:

[redacted]

LPA ¶ 5(c), *see* Ex. 1 at 23.

53. Once a Default Charge has been imposed, "[redacted]

[redacted]." LPA ¶ 18(f), *see* Ex. 1 at 74.

54. The LPA requires that any changes to its provisions be subject to ATP's express written approval. LPA ¶¶ 17, 18(l), *see* Ex. 1 at 70, 77.

55. The "Global Default Charge" was an important protection for ATP, Dr. Harrison, and the startup founders who, in many cases, were entrusting ATP with their life's work. It made credible the Family Office LP's commitment to the Fund over the long term—a commitment on which it now reneges. Indeed, many of the Fund's investments wound up being predicated on Dr. Harrison's answering questions from founders, key hires, development partners, and prospective ATP team members regarding how the Fund dealt with the risk of having [redacted]. In response to such queries, Dr. Harrison described the Global Default Charge, which each stakeholder found satisfying, either by their own review or through advice of counsel. The protection of the Global Default Charge predicated their respective decisions to partner, join, and/or align with the Fund. Not just the Fund but many of the Fund's counterparties relied upon the guaranty of funding implicit in and afforded by the Global Default Charge mechanism.

56. The global default provision also allows ATP to, among other alternatives: "[redacted]

[redacted]" LPA § 5(c), *see* Ex. 1 at 23.

57. This default is referred to as "global" because it does not allow the Family Office LP to pick and choose which portions of the portfolio it funds *after* providing budget approvals, meaning it does not allow the Family Office LP to fund some projects and not others, or some pools and not others. The global default provision does not limit the scope of the Default Charge solely to the Defaulting Partner's interest in the specific project for which the capital was called. None of the twenty-two amendments have altered the default provision. It exists to prevent a limited partner from, at any moment, reaping the benefits of self-selected Fund assets while simultaneously ignoring obligations to meet capital calls across the rest of the portfolio.

3. The Fund Generates Excellent Returns.

58. After the Fund was set up and over the next several years, with the Family Office LP's approval, ATP made investments in numerous pharmaceutical and medical device companies. Generally, the initial investment was calibrated to allow a company to reach an intermediate milestone, such as selection of a drug

candidate, with the understanding that additional budgets would be approved for subsequent development stages.

59. The strategy wound up paying off. For example, two of the Fund's startups, Stoke Therapeutics and Akero Therapeutics, made initial public offerings in 2019. The Fund's total investments in those two companies from 2014 to 2019 was [redacted]; in 2020, those positions were distributed to the limited partners at a value of [redacted] combined—nearly [redacted] the value paid in by the Fund. The Family Office LP received [redacted] of that distribution. The Family Office LP also realized huge returns from other investments, such as the [redacted] in distributions it received from the sale of Chinook Therapeutics compared to a [redacted] capital contribution.

60. The Fund, and by extension, the Family Office LP, also realized substantial profits from strategic transactions. In 2018, the Fund sold its position in Syntimmune, Inc., built on a [redacted] investment over two rounds of funding, to Alexion Pharmaceuticals for [redacted] in up-front consideration and up to [redacted] more in milestone payments tied to the achievement of certain key clinical and regulatory events. And in 2020, the Fund realized [redacted] in profits when it sold its stake in Corvidia Therapeutics to Novo Nordisk, and stands to realize [redacted] in milestones.

61. Braeburn, the Fund's specialty pharmaceutical company, after many years of unanticipated regulatory and legal difficulties which the Fund successfully managed, launched its flagship product in late 2023 and exceeded forecasts. It is expecting revenue of [redacted] in 2025. The business, wholly owned by ATP and still private, is valued on a discounted cash flow basis at approximately [redacted]. Approximately [redacted] of this value has already been distributed in the form of a royalty contract, leaving the Fund holding approximately [redacted] of Braeburn value.

B. THE FAMILY OFFICE INCREASED ITS FUNDING COMMITMENTS SO THE PARTNERSHIP COULD PURSUE NEW INVESTMENTS.

62. In 2020, because of ATP's track record of founding companies and bringing them to successful exits, the Family Office LP sought to expand its capital commitment to ATP beyond the [redacted] amount established in 2012. Through a series of amendments culminating in Amendments Nos. 17 and 18 to the LPA, dated September 9, 2020 and November 5, 2020, respectively (*see* Ex. 1 at 198, 215), the Family Office LP agreed to commit "[redacted]" [redacted]. *See* Ex. 1 at 215. The Fund was then instructed and authorized to use this capital to establish new companies targeting the discovery of a host of new therapies to treat serious and life-threatening diseases. The parties understood that, consistent with

their course of dealing since 2012, the Family Office LP promised to review budget requests reasonably, and to judge budget requests rationally and in good faith based on technical and financial merit.

63. With this understanding, ATP founded and financed the establishment of [redacted] new companies to be held in [redacted]. A description of the focus and status of the projects currently in process at each of these companies is set forth in Exhibit 3, and incorporated here by reference.

64. The Fund made its initial investments in these companies from 2020 through 2022. During these diligence discussions, both the Family Office LP's obligation to contribute capital in response to calls consistent with approved budgets, as well as ATP's ability to enforce those provisions through application of the Global Default Charge against all of the Family Office LP holdings, were essential to convincing founders to rely on ATP for their critical Series A funding needs. S*ee* ¶ 55, *supra*.

65. After the Family Office LP's [redacted] commitment provided for in Amendment Nos. 17 and 18, Amendment No. 20 also contained a new commitment of [redacted] in new cash capital contributions from the Family Office LP, subject to budget approval, [redacted] This pool included [redacted], which the Family Office LP arbitrarily shut down in 2023, and the

breakthrough [redacted] companies [redacted] and [redacted] in the current ATP portfolio. [redacted] is a cutting-edge [redacted] company in the [redacted] for the most common [redacted], with a major strategic alliance [redacted]. [redacted] is a breakthrough [redacted] company conducting [redacted] on a potential [redacted], with two major strategic alliances [redacted]

66. The new [redacted] was to draw on "[redacted] (i) [redacted] (ii) [redacted]" LPA Am. 20 ¶ 22(b), Ex. 1 at 237.

67. The current controversy arises from Dr. Rybolovlev's express repudiation of the Family Office LP's obligation to contribute capital to Pools ATP V-1, V-2, and V-3 and the scope, force and effect of the Global Default Charge mechanism under the express terms of the LPA.

C. BRAEBURN INC.

68. The Fund's most valuable current asset is its investment in Braeburn Inc. Braeburn is a specialty pharmaceutical company founded in 2012 to develop and commercialize pharmaceutical products designed to address clinically important, unmet medical needs of patients with opioid use disorder. Braeburn is currently in the middle of a successful commercial launch of the company's flagship product, Brixadi® (buprenorphine extended-release injection for subcutaneous use).

69. But Braeburn's likelihood of achieving commercial success was uncertain for many years. Indeed, Braeburn's current success and value can be viewed as a case study in how best to persevere through setbacks. The problems at Braeburn were major: an FDA announcement that scuttled a product candidate; two unexpected FDA regulatory delays that did not originate with any act or omission by Braeburn; a licensing dispute and arbitration won in all respects by Braeburn; a manufacturing compliance delay of more than two years; and a rebellious syndicate of Series B investors who refused to let ATP finance the company. And yet, ATP, working together with the Family Office LP, persevered through each of these setbacks. 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.

70. Before Braeburn's success, because Braeburn had a net negative value before 2021, ATP could not make distributions in the Fund from other, successful investments. In 2021, ATP and the Family Office LP agreed to two changes to the Fund to address this and other significant issues.

71. The Family Office LP and ATP executed Amendment No. 20 to the LPA on June 21, 2021, to both establish [redacted] and segregate the Fund's investment in Braeburn from the rest of the Fund's investments for the calculation of high-water marks and carried interest determination. Amendment No. 20 therefore also created "Pool Braeburn", consisting solely of "[redacted]." LPA Am. 20 § 21, *see* Ex. 1 at 236. By segregating the profits and losses of Braeburn into this new Pool, it allowed the Fund's limited partners to receive distributions from other portfolio companies, including distributions of profits from the Fund's investments in Stoke and Akero, which had reached proof-of-concept and IPO. As a result of Amendment No. 20, the Family Office LP realized [redacted] in positive returns from the Stoke and Akero distributions, while obtaining a qualified right to demand distributions of the Fund's assets in Braeburn. Amendment No. 20 did not modify the Family Office LP's other funding commitments set forth in Amendment Nos. 17 and 18, nor did it alter the global default mechanism in Paragraph 5(c) of the LPA.

72. The Family Office LP obtained a conditional right to call for the distribution of the assets in Pool Braeburn in the future.

73. When it appeared that Braeburn's flagship product, Brixadi, was approaching approval, the Fund and Braeburn sought syndication via Series B financing from outside investors. This financing was intended to bridge Braeburn to an IPO. It is typical that private equity financings come with conditions that prevent investee companies from taking on additional debt or equity without approval from the investors, and in the case of Braeburn's Series B round, these terms were as expected. However, after the Series B round was completed, Brixadi encountered more regulatory delays. ATP, together with the Family Office LP, went to work and overcame these issues, yet even once those regulatory issues were resolved, the Series B investors refused to approve any new debt or equity financing to fund Braeburn's launch of Brixadi. They wanted to sell the company for very little cash, just sufficient to cover their investment, and none of ATP's prior investments; ATP had a veto right, and exercised it.

74. ATP and the Family Office LP next entered into the only form of financing over which the Series B investors had no approval right, a royalty financing, culminating in the closing of a Royalty Purchase Agreement (the "RPA", *see* Ex. 4) with Braeburn on July 2, 2021. The RPA allowed Braeburn to raise additional capital from the Fund to finance Brixadi's launch costs. This arrangement

also permitted the Fund to eventually buy out the Series B investors, returning full control of the company to ATP.

D. THE FAMILY OFFICE LP PREPARES TO WALK AWAY FROM THE FUND AND SPURN ITS OBLIGATIONS.

75. ATP entered into Amendment Nos. 17, 18, and 20 with the full expectation that the Family Office LP would continue to meet funding requirements for the Fund's portfolio companies. These expectations reasonably derived from more than a decade of extensive discussions with Dr. Rybolovlev and representatives of the Family Office LP the specific funding commitments in these Amendments, and provisions of the LPA, including the Fund's stated purpose and the global default provision.

76. Indeed, the Family Office LP gave every indication that it was committed to continuing to pursue the Fund's investment strategy. This was how the Fund had worked in the past, before Amendment Nos. 17, 18, and 20. Starting with the LPA itself in 2012, the Family Office LP committed to invest [redacted] into the Fund, and the Family Office LP approved the initial phase budgets for the Fund's portfolio companies.

77. But just months after reaffirming its new cash commitments in Amendment No. 20 (totaling [redacted] across Amendment Nos. 17, 18, and 20), the Family Office LP's behavior started to change, and the change accelerated through the end of 2021. Since then, the Family Office LP has capriciously withheld

budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing, cut off funding for [redacted], and now has expressly refused to fund [redacted] portfolio companies and withheld reasonable budget approvals [redacted]. This behavior contravenes the plain language of the LPA and was inconsistent with the parties' course of dealings under the agreements during the prior decade..

78. [redacted] seemed to be the catalyst for the Family Office LP's hardening of its resolve to eliminate its financial commitments to the Fund. [redacted]

In that atmosphere of financial uncertainty, the Family Office LP began to pull back from its [redacted] commitment to make new contributions for the growth of the [redacted] companies, and its [redacted] commitment to certain of the Fund's [redacted] assets.

79. In September 2022, [redacted], Dr. Harrison met with Dr. Rybolovlev and the Family Office's then-chief investment officer, Anna Kolonchina, in Monaco. At this meeting, Ms. Kolonchina made clear that the Family Office LP would only be approving "austerity" budgets going forward.

80. Dr. Rybolovlev also said that he could no longer fund new investments by the Fund, and if he had the choice, he would not fund [redacted] That is, if ATP made a valid capital call under Paragraph 5(a)(ii) of the LPA, Dr. Rybolovlev would direct the Family Office LP to decline to respond to that call with a contribution, in breach of Paragraph 5(a)(i) ("[redacted].").

81. The following month, in a series of follow-up meetings in New York between October 11 and 21, 2022 that included Dr. Rybolovlev, Ms. Kolonchina explained that financing the Fund was becoming increasingly challenging; that Dr. Rybolovlev no longer wanted to fund new deals; that, if forced to choose, he would not fund the newer deals in order to prioritize older deals; and that if capital calls could not be met, the defaults would be focused on those newer investments situated [redacted]

82. Dr. Rybolovlev took the position that the LPA did not have a global default mechanism and that he was essentially free to abandon his commitments to [redacted] companies without any consequence.

83. Ms. Kolonchina reiterated this baseless position in a sworn affidavit in 2024: "[the Family Office LP] do[es] not agree (and ha[s] never agreed) that a '*global default mechanism*' exists in the LPA." Second Kolonchina Affidavit in the Cayman Action, ¶ 29, *see* Ex. 5 at 11.

84. This position is fantasy. The Global Default Charge provision has gone unmodified through twenty-two separate amendments, including the heavily-negotiated amendments, Amendment Nos. 17 and 20, that led to the establishment of the Pool system. In fact, Amendment No. 20 expressly reaffirms all of the existing obligations in the LPA and the LPA expressly requires that any alterations or amendments, like a change to the Global Default Charge Provision, could only become effective with ATP's express written consent. LPA ¶¶ 17, 18(l), *see* Ex. 1 at 70, 77. The LPA does not give the Family Office LP license to choose which of its investments might be the subject of a Global Default Charge. LPA Am. 20 § 14, *see* Ex. 1 at 248.

85. Dr. Harrison immediately rebutted the Family Office LP's fictitious position, replying on November 29, 2022, that "there was never any discussion about removing [the global default] concept from the LPA as part of the introduction of the pools structure, let alone any changes agreed to the relevant wording of the LPA. The concept of a series partnership (which is the effect of a pool-by-pool default) does not exist as a matter of Cayman Islands law." He reminded the Family Office LP 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 "[f]or these reasons, the global default mechanism has

always been a matter of fundamental importance, even after the introduction of the pools concept."

86. The situation escalated further in May 2023, when Dr. Rybolovlev and the Family Office LP announced that it intended to cap [redacted] investment in the Fund at [redacted]—a cap that was never previously disclosed and that ran counter to the strategy and planning behind [redacted] and also ran counter to the [redacted] in additional funding promised by the Family Office LP through the RPA.

87. This was shocking news to receive, not least because a [redacted] cap conflicted with the commitments the Family Office LP made in Amendment Nos. 17, 18, and 20, which had committed the Family Office LP to fund [redacted] for the older investments in Pool ATP IV, [redacted] more for the investments in Pools ATP V-1, V-2, and V-3, and [redacted] more to Braeburn under the RPA.

E. THE FAMILY OFFICE LP TAKES ACTION TO DESTROY THE PORTFOLIO.

88. Beginning in the third quarter of 2023, Dr. Rybolovlev's threats turned to active hostilities.

1. The Family Office LP Abandons A Portfolio Company.

89. In mid-2023, the Family Office LP cut off support for one of the portfolio's promising early-stage investments, [redacted]. At the time, [redacted]

[redacted]; the technological approach was breakthrough and proved, and remains, to the best of the Fund's knowledge, unique in the world: [redacted]. Between 2021 and Q2 of 2023, the Family Office LP approved and funded budgets of [redacted] for [redacted]. In Q3 of 2023, the Family Office LP suddenly decided to stop funding [redacted], without any credible explanation for this change in position—this was despite the company's successful demonstration that its [redacted]. Without funding, [redacted]—the project then being managed by a highly qualified CEO who had been [redacted]—was left with no choice but to file for bankruptcy and terminate all of its employees.

90. In the bankruptcy, the [redacted] estate sold the company's [redacted] technology for a fraction of its actual value to [redacted]. On information and belief, [redacted] is currently making commercial use of the technology it acquired from the [redacted] bankruptcy. Meanwhile, [redacted] project within ATP to discover and develop [redacted] was abandoned entirely.

2. The Family Office LP Makes Improper Demands to Take the Value of Braeburn's Success Out of the Fund.

91. In June 2023, after years of delay, the FDA finally approved Braeburn's drug, Brixadi, for marketing in the United States. At that time, Braeburn still required substantial investment in its commercial launch. In an effort to reduce the Family Office LP's exposure under the RPA and responding to the Family Office LP continually stating its cash flow limitations, and with full control of Braeburn now that the Series B shares were retired, ATP arranged for a [redacted] loan between itself, Braeburn, and [redacted]. As is market practice, [redacted] under the Loan and Security Agreement (the "LSA", see Ex. 6), executed among the parties [redacted].

92. Initially, the Family Office LP blocked the loan. Then, it asked that the lender's [redacted]. The lender refused that request. Then, just before the loan was scheduled to close, the Family Office LP demanded a distribution of the Fund's shares of Braeburn under Amendment No. 20. This distribution would have transferred [redacted] of Braeburn's voting stock from the Fund to the Family Office LP—two offshore holding companies with no experience in the development, marketing, and distribution of pharmaceutical

drugs—and out of ATP's reach should the Family Office LP default on its funding obligations.

93. As ATP explained to the Family Office LP, under the Cayman Exempted Limited Partnerships ("ELP") Law such a distribution would not have been in the best interests of the Fund:

> ATP owes fiduciary duties to the Fund, including a duty to avoid causing the Fund to become unable to meet its financial and other commitments. ATP has serious and well-founded concerns regarding [the Family Office LP's] ability and willingness to continue to comply with all of their funding obligations to the Fund following a distribution of the assets of Pool Braeburn. Accordingly, making such a distribution without first being satisfied that [the Family Office LP] can and will continue to comply with all of those obligations would expose the Fund and its portfolio companies to a substantial and unacceptable risk of insolvency and would therefore not be consistent with ATP's fiduciary duties.

See Ex. 7 at 1.

94. Although it did not concede the points in Dr. Harrison's email explicitly, the Family Office LP temporarily stood down on its 2023 request.

3. The Requested Braeburn Distribution Was Not Allowed Under the LPA.

95. Preserving the Braeburn assets remained critical to preserving the value of the Global Default Charge provision, because the Family Office LP was refusing to approve new budgets and was pressuring ATP to keep spending [redacted] to austerity levels, while ATP was simultaneously finding it impossible to

syndicate or find alternative sources of funding for [redacted]

96. [redacted] Outside investors were understandably reluctant to intertwine themselves as co-investors or buyers with either the Fund or one of its portfolio companies through a syndicated funding round or asset sale.[4]

[4] Even the Family Office LP has acknowledged the potential risks posed by [redacted]

(footnote continued)

97. Given its capital constraints at the time, the Family Office LP had changed its preference against both syndication and selling Fund assets. ATP explored potential transactions but repeatedly ran into the same [redacted] concerns. Even where ATP was able to spark the interest of a third-party investor for a syndication or sale, [redacted] again became a roadblock.

4. In Response to ATP's Valid Contractual Objections to the Braeburn Distribution, the Family Office LP Attempted to Strongarm ATP.

98. Ignoring ATP's efforts to ease the financial burdens on the Family Office LP while preserving the value of the startups [redacted] the Family Office LP renewed its demand for a distribution of the Pool Braeburn assets on July 30, 2024. After failing to dispute ATP's reasoned response to the first distribution request, and sitting idle for over six months, the Family Office LP demanded an immediate response to its second demand.

99. ATP responded two days later, explaining that ATP would consider the request and respond after consulting with its legal counsel, again referencing the detailed concerns that Dr. Harrison had laid out in his September 29, 2023 email. *See* Ex. 7.

[redacted]

100. The Family Office LP did not wait for ATP's response. Instead, they filed an abbreviated "originating summons" in the Grand Court of the Cayman Islands (the "Cayman Action"), seeking a ruling that Amendment No. 20 ***required*** ATP to make the distribution. The originating summons omitted the conditions to distribution contained in Amendment No. 20 and failed to provide any evidence that the common shares of Braeburn could not be released from escrow to make a distribution possible, absent pre-payment of Braeburn's current outstanding [redacted] debt to [redacted]

101. The Cayman Action represented another naked grab for control of Braeburn's equity after its long-delayed commercial launch had driven its estimated value from under [redacted] to, at that point in time in 2024, over [redacted].

102. Despite the filing of the Cayman Action, ATP continued to believe that the distribution of Pool Braeburn remained improper because it would: potentially render Braeburn insolvent due to the tax implications of the distribution; go against Braeburn's internal policies by, among other things, impeding its ability to retain key personnel; and enable the Family Office LP to default on its larger obligations to the Fund by removing the single most valuable asset that would be targeted with the Global Default Charge.

5. The Family Office LP Disclaimed its Funding Commitments.

103. The Family Office LP had already killed one portfolio company, demanded the distribution of the Fund's most valuable asset, refused outside help from third party investors, and stated repeatedly its intention to default on its commitments. It was in this context and in the middle of the Cayman lawsuit that the Family Office LP breached the LPA by disclaiming altogether its obligation to meet capital calls, even with respect to fully approved budgets. Specifically, in response to a duly-issued capital call in connection with the Fund's investment in [redacted] on October 14, 2024, Ms. Kolonchina revealed the Family Office LP's new position: "We are going to pay this capital call, but ***our position is that we are not obligated to do so***." Ex. 8. While Ms. Kolonchina suggested that the Family Office LP would "make further contributions this year that are provided for in the budget," she doubled-down on the claim that such payments would be "made on a ***voluntary*** basis and without prejudice to ***our position that we are not obligated to make these payments***." She said this despite over [redacted] in remaining approved budgeted funds for [redacted].

104. This new position runs contrary to the plain language of the LPA, which requires the Family Office LP to respond to capital calls made pursuant to approved budgets, and it further evidences a high likelihood that the Family Office LP would breach its contractual commitments to respond to capital calls under the LPA, even

with respect to approved budgets, destroying the value that ATP has built up in the Fund over many years. As modern research and drug development requires planning years in advance, including clinical trials that require years to complete, the insecurity of future funding and the threat that even already-approved financing might be withdrawn at the whim of the Family Office LP posed grave threats to the Fund and destabilized [redacted] portfolio companies.

105. This position also has no basis in the course of dealings between the parties. Taking the example of [redacted], the Family Office LP approved a [redacted] project budget for the company in 2021. Over the next four years, ATP issued nine capital calls on that budget totaling [redacted] which the Family Office LP paid without objection or reservation. At no point in the course of these nine transactions funding [redacted] did Ms. Kolonchina, or any other representative of the Family Office, suggest that the Family Office LP was providing funds in response to those capital calls "voluntarily." Discovery will demonstrate that from 2012 until 2024, the Family Office LP never once disclaimed, for any reason whatsoever, its contractual obligation to make contributions in response to capital calls drawn against approved budgets.

F. THE FAMILY OFFICE LP APPEARS TO BACK DOWN, THUS RESOLVING THE BRAEBURN DISTRIBUTION DISPUTE.

106. Perhaps out of a recognition that their distribution requests and hostage-taking tactics regarding budgets had little merit and even less chance of ultimate

success, the Family Office LP ultimately settled the Cayman Action on December 20, 2024, agreeing to Amendment No. 22 to the LPA, and to an amended agreement regarding the Fund's control of Braeburn (the "LLCA"). This series of concurrent transactions resulted in the Family Office LP obtaining distribution of the [redacted] valued at date of distribution at [redacted] ATP LLC, which meant that the [redacted] was no longer subject to the Global Default Charge. This partially achieved one of the Family Office LP's stated objectives, while on the surface appearing to provide ATP and the portfolio companies with greater security as to future funding commitments.

107. In return for this distribution and reorganization, the Family Office LP agreed in Paragraph 26 of the LPA to negotiate budgets to fund certain portfolio companies that were nearing the end of their previously-approved funds:

[redacted]

LPA Am. 22, ¶ 26, *see* Ex. 1 at 260.

108. Paragraph 26 of the LPA, which was introduced by Amendment No. 22, also states that "[redacted]" *Id.* The "[redacted]" referred to in Paragraph 26 is a "[redacted]."

109. In pursuing the financing, as well as reviewing and approving budget proposals, each party agreed to "[redacted]." LPA Am. 22, Miscellaneous Provisions, *see* Ex. 1 at 261.

110. As part of the negotiations and discussions regarding Amendment No. 22, the Family Office LP expressed a high degree of confidence it would execute [redacted]. ATP, which has experience in such transactions, offered on multiple occasions to assist the Family Office LP in securing [redacted]. The Family Office LP refused ATP's help. ATP then agreed to commence budget discussions related to Amendment No. 22 after the Family Office LP [redacted], based on its representations and in an effort to accommodate the Family Office LP.

111. Over six months since the Parties executed Amendment No. 22, the Family Office LP has still not [redacted].

G. IGNORING AMENDMENT NO. 22, THE FAMILY OFFICE LP HAS ABANDONED RATIONAL ECONOMIC DECISION-MAKING AND THREATENS TO DESTROY MORE PORTFOLIO COMPANIES.

112. Immediately after the parties agreed to amend the LPA and LLCA, on December 25, 2024, ATP sent the Family Office LP proposed budgets for [redacted], and [redacted]—the [redacted] companies referenced in Amendment No. 22 to the LPA. In 2025, ATP also requested further funding for [redacted].

113. Specifically, immediately following Amendment No. 22, ATP requested [redacted] in total: [redacted] for [redacted] for [redacted], and [redacted] for [redacted]. Dr. Harrison's email containing the budgets noted a 2025 and onward budget request for [redacted] would be forthcoming as well. He also urged the Family Office LP to promptly approve the proposals, explaining that "[redacted] will run out of cash [redacted]."

114. Despite its most recent set of commitments, and having had the proposed budgets for nearly six months, the Family Office LP has not entered into good faith discussions regarding or approved the budgets submitted on December 25, 2025, with the exception of a limited budget approval for [redacted].

115. The Family Office LP's attempts to [redacted] deal are moribund. The ATP portfolio companies are no better off than they were prior to Amendment No. 22 and the settlement of the Cayman Action.

116. As discussed above, the Family Office LP's abrogation of its funding commitments has put [redacted] ATP portfolio companies on the brink of insolvency (*see* ¶ 4, *supra*). Even though those companies have submitted reasonable budgets, the Family Office LP refuses to approve them. This starvation strategy has put at risk the sweat equity and life's work of the founders, inventors, executives, and other stakeholders, many of whom had competitive offers but apparently agreed to trust ATP's structure with their companies based on the global default provision. These companies depend on the Family Office LP's fulfillments of its commitments, which it has expressly disclaimed.

1. <u>The Family Office LP Erects New Obstacles to Funding.</u>

117. The Family Office LP has now repeatedly made clear that it will not honor the funding obligations to which it agreed in Amendment Nos. 17, 18, 20, and 22. In a further demonstration of bad faith, the Family Office LP inaugurated a new process for assessing the budget proposals that introduced needless complications into the process at the worst possible time: when [redacted] was just [redacted]. All of this recent behavior is consistent with Dr. Rybolovlev's threat to Dr. Harrison in May 2024 that the Family Office was fully

willing to "write off" its investments [redacted] and allow these portfolio companies to die.

118. On January 5, 2025, the Family Office LP imposed what appeared to be a new, highly onerous process for assessing the [redacted] budget proposal by sending Dr. Harrison a list of over 30 questions about the facts underpinning the [redacted] budget request. No such request had ever been made before, and was thus inconsistent with a long and consistent course of dealing. The imposition of such a condition made no sense whatsoever given the urgency of the situation. Nor did the request itself, asking for such things as board minutes and a new financial valuation of the company, have any diligence logic in assessing the merits of a highly technical biotech company.

119. On January 6, 2025, Dr. Harrison again reminded the Family Office LP that "[redacted] will run out of cash in [redacted]." He explained that [redacted] had [redacted] provided that the Family Office LP approved the [redacted] proposal. Then, in desperation, Dr. Harrison suggested a one-month bridge funding of [redacted] for [redacted], which the Family Office LP approved.

120. The Family Office LP ultimately (and arbitrarily given its refusal to discuss budgets for the other [redacted] companies), agreed to fund a [redacted] budget increase for [redacted] at the last possible moment, with another [redacted]

contingent on the execution of [redacted]. In a scenario where the full [redacted] is released, [redacted] will still only have funding sufficient through [redacted].

2. The Family Office LP Distorts the Purpose of Amendment No. 22.

121. Since the [redacted] process, the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy the Fund. Instead of defaulting on obligations to individual companies, the Family Office LP is attempting to avoid its funding commitments under the LPA and related amendments by refusing to discuss new budgets unless ATP agrees to shutter the [redacted] companies, eliminating [redacted] in callable capital contracts.

122. Amendment No. 22 ***required*** the Family Office LP to pursue a [redacted] in short order, before each of the portfolio companies mentioned had used up "[redacted]

[redacted]." LPA Am. 22, *see* Ex. 1 at 260.

123. [redacted], with the exception of [redacted], the [redacted] portfolio companies are in extremis. At the same time, the Family Office LP has also doubled down on its position that it is free to default on capital calls for [redacted] companies without consequence. Specifically, in an email dated January 25, 2025, Mr. Bogdanov restated the Family Office LP's view that it may default on contributions to certain Pools without triggering the default provision of Paragraph 5(c) of the LPA because it has been relieved of any obligation to meet capital calls. But nothing in Amendment No. 22, or any other amendment, gives the Family Office LP that out.

3. The Family Office Rejects a Practical Solution to Reallocate Its Prior Commitments.

124. Currently, there is about [redacted]. Of those approved amounts, [redacted] remains uncalled for the [redacted] companies and [redacted] uncalled for the [redacted] companies. The [redacted] companies hold more current value to the Fund in the near and medium term, while the [redacted] companies represent investments with meaningful scientific promise if given the opportunity to survive, containing projects that on relatively small investments can lead to clinical programs. Indeed, practically every late stage exit or product success in ATP's history, and in Dr. Harrison's history prior to founding ATP in 1999, and every

single late stage exit for the Family Office LP from ATP, resulted from an ATP-founded startup, that started at an early-stage and progressed to and through the clinic.

125. In April 2025, aware of the Family Office LP's failure to obtain a [redacted], and in an effort to prevent the [redacted] bankruptcy of [redacted] portfolio companies that are developing potential blockbuster therapies [redacted], ATP put together its reallocation plan to keep the Family Office LP's funding commitments steady at already approved budget levels. It would reallocate amounts approved for investment in [redacted] companies to the [redacted] companies. ATP determined that by allocating approximately [redacted] of the approved budgets from across the portfolio to the [redacted] companies, it could fund [redacted] and still keep the most promising opportunities within the [redacted] companies moving forward with the [redacted] remainder.

126. It was only due to Dr. Rybolovlev's starvation of the Fund's [redacted] companies that ATP was driven to propose what amounted to a triage strategy. This is not what ATP or Dr. Harrison believed was right for the Fund or the portfolio. To the contrary, ATP and Dr. Harrison continue to believe that there is great merit in the investment theses for substantially all of the [redacted]

[redacted] and that the Family Office LP would be destroying substantial value by denying adequate funding to the [redacted] companies.

127. ATP and Dr. Harrison also decided that patience in the face of intransigence was, while difficult, important to try given the stakes for the Fund, the portfolio companies and their stakeholders. Thus, rather than immediately come to blows with the Family Office LP, ATP and Dr. Harrison tried to encourage the Family Office to live up to its most basic obligations and to allow the portfolio companies to proceed, albeit in a manner that was damaged by the Family Office's failure to meet its contractual funding obligations in a timely and reliable manner.

128. To the end of limiting harm and finding a constructive way forward, therefore, ATP explained to the Family Office LP that reallocation now appeared to be the only route to avoiding bankruptcies within the [redacted] companies and [redacted] that are actively treating patients with deadly or life altering diseases. When initially discussed with the Family Office LP on May 9, 2025, the reception to the plan appeared to be positive. But just three days later, the Family Office LP rejected the reallocation plan, jeopardizing the [redacted] companies, even though it would not have cost the Family Office LP one additional dollar beyond its existing commitments.

129. ATP gave the Family Office LP every chance to resolve the situation, including alternatives that avoid having to commit to new funding in the near term,

but the Family Office LP appears to remain committed to deliberately degrading and destroying the Fund's assets, including [redacted]

H. THE FAMILY OFFICE LP REPUDIATES THE LPA.

1. The Repudiation of Funding Obligations to Early-Stage Companies with Approved Budgets and Obligations to Consider in Good Faith New Budgets for Clinical-Stage Companies.

130. As of this date, ATP's operational success has translated directly into superior financial performance as measured by standard industry metrics such as total value to paid-in capital (TVPI) and distributions to paid-in (DPI) rate. As measured in early 1Q 2025, for example, the Fund had achieved a TVPI of [redacted] and a [redacted] of DPI, the latter meaning that the Family Office LP has already received distributions of cash and assets [redacted] These metrics significantly exceeded the median TVPI [redacted] and DPI [redacted] of other large biotech venture funds, as also measured in 1Q 2025.

131. On May 5, 2025, pursuant to previously-approved budgets, and in order to maintain basic operations while the Family Office LP was purporting to consider the reallocation proposal, ATP made capital calls for early-stage companies [redacted]

[redacted] and [redacted] in the amounts of [redacted] and [redacted], respectively.

132. On May 15, 2025, Dr. Harrison once again asked Dr. Rybolovlev and Mr. Bogdanov to consider approving new budgets for [redacted] companies [redacted] and [redacted], which are [redacted], asking that "***the SLP immediately engage with us to avoid this significant loss of value***." *See* Ex. 9 (emphasis added).

133. In response to this grave situation, the Family Office LP did "immediately engage," but not to "avoid this significant loss of value." Instead, it repudiated its funding obligations to the [redacted] companies with approved budgets left for ATP to call and made clear that it had no intention to consider or approve new budgets for the [redacted] companies in good faith and that any future budget approvals would hinge on ATP's first agreeing to wind down and liquidate the [redacted] companies.

134. The Family Office LP wrote:

> "This email puts you on notice that **the [Family Office LP] are [sic] of the strong opinion that it is in the best interests of ATP Fund NOT to allocate any further funding for the following portfolio companies of the ATP Fund** [redacted].
>
> 1. [redacted]
> 2.
> 3.
> 4.
> 5.

6. [redacted]
7. [redacted]

The [Family Office LP] see[s] no way for a path to commercial success for these [redacted] Companies, *inter alia*, because: they have failed to meet the milestones set out in the investment memoranda on which [Family Office LP]'s initial funding was premised, the remaining budgets are not sufficient to achieve them, there is no third party interest to invest in these [redacted] 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 [redacted] Companies (and the [Family Office LP] ha[s] not consented to these budgets being changed). ***The [Family Office LP]'s position is therefore that further funding of those [redacted] Companies will waste the ATP Fund's assets.*** We understand that you hold a similar view, as you recently proposed that the amounts budgeted for the [redacted] Companies be reallocated to different investments (which you would not have done if you genuinely believed that continued investment in the [redacted] Companies was a good idea).

If you disagree with the above and consider that the [Family Office LP is] obligated to contribute further capital to the [redacted] Companies then please respond with a detailed explanation of your position. The [Family Office LP], of course, intend[s] to comply with the requirements of the LPA and will be cooperative if you can demonstrate that the LPA allows you to call further capital in regards to the [redacted] Companies. If you agree with our position, then please provide us with any proposals you may have for salvaging value from the [redacted] Companies to the extent possible.

Separately from the [redacted] Companies, and in line with Amendment 22, **the [Family Office LP] will consider new budgets that you wish to propose for clinical stage businesses that are commercially viable and have a greater likelihood of providing meaningful returns to the ATP Fund and its investors.** The [Family Office LP] see[s] this proposal as directionally aligned with yours of May 12, 2025, **but any new budgets must be based upon objective information — e.g. new milestones, expected return on invested capital, business theses etc. — that you must provide** (please resend if you believe you already provided the information). Your prompt

> provision of that information will facilitate the discussion of new budgets and milestones upon which it might be possible for agreement to be reached.
>
> ***The SLP are available to initiate these discussions immediately upon your agreement to wind down or liquidate the [redacted] Companies.*** We remind you, however, that the [Family Office LP] do[es] 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 you come up with."

Ex. 10 (emphasis added).

135. Having previously taken the position that a Global Default Charge does not exist in the LPA, and that any default would isolate a charge to the Pool in question, the Family Office LP effectively shifted tactics with this message. Now, it sought to avoid the Global Default Charge altogether, by improperly claiming that approved budgets are invalid. The goal of this move is obvious: to eliminate triggers on the Global Default Charge.

136. With that, the Family Office LP 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 Fund, even in response to capital calls on approved budgets, including for the [redacted] companies with uncalled budgeted amounts. It also stated that there would be no further budget approvals for the [redacted] companies unless ATP agreed first to the destruction of the [redacted] companies.

137. As of the date of Mr. Bogdanov's email, the [redacted] Companies" he identified had a combined [redacted] in budgeted amounts on which ATP could make binding capital calls. The [redacted] companies had a combined [redacted] in approved and uncalled budget commitments. The Family Office LP has expressly and unequivocally repudiated its contractual obligation to contribute those amounts.

138. The Family Office LP's rationale for its anticipatory breach of the LPA makes little difference, because none of the reasons are sufficient to excuse its performance under the LPA. But it did so on bases that were factually flawed, without support in the LPA, and wholly inconsistent with the parties' prior course of dealings, demonstrating that it is doing so in bad faith.

139. The Family Office LP's assertion that met milestones are a requirement under the LPA is wholly and newly invented. *See* ¶¶ 48-49, *supra*. Until May 2025, the Family Office LP *never* objected to meeting a capital call on the grounds that a portfolio company had missed a particular milestone. And per the LPA, milestones were not integrated into budgets, and calling capital for budgets was entirely left to ATP's discretion—except under the rare circumstance when capital was requested on an accelerated basis.

140. Likewise, the Family Office LP's opinion that it sees "no way for a path to commercial success for" the Early-Stage Companies ignores the considered

scientific and business judgment of ATP's team of experienced R&D executives and technical subject matter experts, as well as the reporting of company management. [redacted] Companies are engaged in the discovery of new therapeutic modalities that are outside the scope of traditional drug therapies. The near-term goal of that research is to (a) validate a potential mechanism of action, (b) select a proposed drug candidate, (c) determine whether the proposed drug candidate can be manufactured in a controlled and reproducible manner, and (d) initiate the pre-clinical study and development of a drug candidate with the goal of filing an IND. The Family Office LP is fully aware, but chooses to ignore, that determinations concerning the potential for commercial success are data driven. Where data reveals a safety signal or other material obstacle that calls into question the longer-term viability of the project, ATP's practice is to investigate the issue and make a fact-based determination whether further investment in the program is warranted. The Family Office LP's broad brush condemnation of [redacted] Companies as a whole, without reference to any specific facts or data, ignores the facts and data that ATP has provided over the many months that it has been discussing new capital calls and budget approvals. This evidences bad faith.

141. Mr. Bogdanov's claim that funding for the [redacted] Companies is somehow inappropriate because they have "failed to meet the milestones set out in the investment memoranda on which the [Family Office LP]'s initial funding was

premised" is both a sweeping generalization and factually incorrect. For example, both [redacted] and [redacted] are on target and not behind on the plans contained in their respective investment memoranda. [redacted] is ahead of its plan. At no point during the Fund's operating history has ATP or the Family Office LP viewed adherence to the milestones proposed in the investment memoranda as being strict prerequisites to further funding. Indeed, in no case where the Fund has made a successful and highly profitable exit has the portfolio company met the initial timelines set out in its original investment memorandum. Each one experienced some form of delay and yet received follow-on funding from the Family Office LP because strict adherence to original milestone timing has never been a prerequisite to new budget approvals.

142. Mr. Bogdanov's claim that "the remaining budgets are not sufficient to achieve" the milestones set out in the investment memoranda is conclusory and could not possibly apply to [redacted] Companies equally. Here, each of [redacted] Companies have their own records of progress towards these milestones, and each should be assessed on its individual technical merit. Blanket rejection of funding for [redacted] Companies based on their likely need for additional funding to get to early clinical proof of concept is entirely arbitrary and irrational.

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.

144. The Family Office LP cannot drive ATP to breach its funding agreements with the portfolio companies based on the Family Office LP's substitution of its judgment over ATP's in connection with the management of the Fund. The LPA expressly grants ATP full discretion in that regard. LPA ¶ 2(b), *see* Ex. 1 at 6 ("[redacted]."). The parties' course of dealings is also entirely inconsistent with this construct. ATP provides detailed quarterly reports concerning the progress of each portfolio company, and the Family Office LP has never taken the position that revisions of milestones or project plans require separate budget approvals or consents. The Family Office LP cannot unilaterally impose such a requirement where ATP has acted in reliance on its contractual right to manage the portfolio.

145. The LPA on its face permits ATP to call capital with respect to projects where there is an approved budget. It also requires the Family Office LP to respond rationally and non-arbitrarily to budget proposals drawing on the funds the Family Office LP has already committed to the Fund under the LPA.

146. Mr. Bogdanov's email is a clear repudiation of the Family Office LP's obligations to respond to capital calls made pursuant to Paragraph 5(a)(ii) of the LPA.

147. Although the Family Office LP ultimately funded the capital calls for [redacted] and [redacted] issued on May 5, 2025, their contributions only provided for another [redacted] of operations, and they did so while maintaining the fiction that they were under no obligation, and indicated their expectation that the money would only be directed towards shutting these companies down.

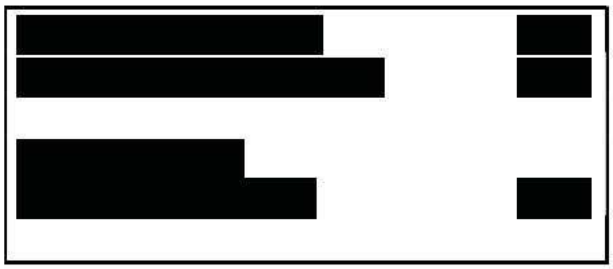
148. The Family Office LP's May 20, 2025 letter to ATP stated:

> "We refer to the capital calls dated 6 May 2025 in relation to the two [redacted] Companies [redacted] and [redacted].
>
> As you know, these capital calls were received prior to my email to you dated 15 May 2025 in which I raised serious concerns about the continued funding of the [redacted] Companies, which have failed to meet the milestones set out in the investment memorandum on which the SLP's initial funding was premised. I don't intend to repeat the points made in that email. The concerns we have expressed are serious and your recent email has failed to address those concerns. We will respond separately in that regard.
>
> Despite the issues we have raised regarding the [redacted] Companies, the SLP are content to pay these capital calls. They do so without prejudice to their position that: (i) further investment in these companies is not in accordance with the LPA; and (ii) the SLP does not presently have any outstanding capital commitments to ATP Fund. However, given the size of the capital call, we have assumed that these calls are intended to meet immediate administrative costs and the potential wind-down costs if that becomes necessary. Funding on this basis is acceptable to the SLP as it will enable the orderly wind-down of these companies which is in everyone's interest."

Ex. 11.

2. The Family Office LP's Blanket Repudiation of All Contractual Funding Obligations to the Fund Triggers an Emergency for the Fund and its Portfolio Companies.

149. As a direct result of the Family Office LP's repudiation of its funding obligations and budget approval commitments, [redacted] and [redacted] are all facing [redacted]. [redacted], [redacted], and [redacted] will follow. [redacted] has an opportunity for [redacted] and [redacted]'s already-called capital will last until [redacted]. Without relief, however, over two hundred people will lose their jobs. The prior forced bankruptcy of [redacted] underscores that the threat of irreparable harm to the Fund and its portfolio companies is genuine and, regrettably, imminent. A chart depicting ATP's current good faith estimate of remaining approved budgets and committed amounts is reproduced below:



150. The Fund has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies. *See* ¶¶ 22-23, *supra*.

151. Defendants' failure to comply with the Family Office LP's obligations threatens the loss of unique assets and opportunities to develop breakthrough

medications. The opportunities to capitalize these portfolio companies are unique because each is particularly positioned to realize significant growth and the development of new, first-in-class drug therapeutics. Failure to provide budget approval and agreed support for these portfolio companies now, while each is engaged in this work, threatens the loss of their employees, their scientists, their clinicians, and potentially the loss of the drug candidate entirely. It also threatens significant loss of the goodwill gained over years by the Fund. No damages award could allow the Fund to recreate the unique opportunity the Fund has at this moment to capitalize on the opportunities that it has developed. The loss to the Fund, to the portfolio companies, and to science and medicine and people in dire need of innovative treatments, would be both substantial and unquantifiable.[5]

152. Therefore, based on the Family Office LP's (a) clear and unequivocal repudiation of its obligations to make contributions to the Fund in response to capital calls for portfolio companies with approved budgets, and (b) improper and bad faith insistence that it will not consider new budget requests for the clinical-stage companies unless ATP first abandons its obligations to the [redacted] Companies and dooms them to liquidation, ATP asks that the Court issue an order of specific performance requiring the Family Office LP to (a) engage in the budget approval

[5] Beyond any liabilities associated with forcing both ATP and the companies to potentially violate vendor, employment, and lease agreements during the wind-up and closure of these companies.

process under the terms of the LPA for the [redacted] companies based on their individual merit and (b) fund capital calls up to the total outstanding amount previously committed in approved budgets for the [redacted] Companies identified in the May 15, 2025 email of [redacted] and the [redacted] companies in the amount of [redacted].

153. ATP also asks the Court to issue declaratory relief finding that the Family Office LP (1) is in material breach of the express terms of the LPA for its failure to engage in negotiations for budget approvals for the [redacted] companies, (2) has materially and anticipatorily breached its obligations to meet valid capital calls for companies with approved budgets, and (3) has violated its implied duties under Cayman Islands Common Law.

154. ATP asks that the Court issue an order of specific performance requiring the Family Office LP to (a) engage in the budget approval process under the terms of the LPA for the [redacted] companies based on their individual merit and (b) fund capital calls up to the total outstanding amount previously committed in approved budgets for the [redacted] Companies identified in the May 15, 2025 email of [redacted] and the [redacted] companies in the amount of [redacted].

FIRST CAUSE OF ACTION
(Breach of Contract – Budget Approvals)

155. All the allegations set forth in paragraphs 1 through 154 are realleged and incorporated as if fully stated herein.

156. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways.

157. In Amendment Nos. 17, 18, and 20 of the LPA, the Family Office LP agreed to make additional capital contributions up to [redacted] to fund portfolio companies.

158. ATP and the portfolio companies relied on those promises when founding the companies, hiring highly qualified drug researchers and other subject matter experts, and entering into third party agreements for various assets and services, and believed that the Family Office LP would engage in reasonable negotiations around such budgets.

159. Instead, the Family Office LP has refused to engage in substantive discussions of new budgets, irrespective of the technical, regulatory, or commercial merits of the specific company or program and, imposed improper pre-conditions for the occurrence of budget discussions in its May 15, 2025 email. As a result, other than for [redacted], no budget approvals have occurred. The Fund's [redacted] companies will all be out of cash [redacted]. The Fund's [redacted] companies will all be out of cash and without resources to continue [redacted]. Those consequences will affect not only ATP and the other limited partners, but the employees, patients, and other stakeholders of the companies as well.

160. The Family Office LP has refused to entertain any new budgets or engage in negotiations regarding those budgets with ATP without promises that ATP "wind down or liquidate" the [redacted] Companies.

161. On May 15, 2025, the Family Office LP expressly repudiated any obligation to consider new budget proposals for the [redacted] companies, claiming that it "do[es] 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 you come up with." This constitutes a repudiation of the Family Office LP's contractual obligation to consider and approve reasonable budget proposals calling on the funds committed in the LPA.

162. The Family Office LP's refusal to consider reasonable budget proposals is a material breach of the LPA, including its recent commitment under Amendment No. 22 to "[redacted]."

163. ATP requests a declaratory judgment that the Family Office LP is currently in material breach of its contractual duties under the LPA and has waived its right to approve budgets.

164. ATP also requests an order of specific performance ordering the Family Office LP to pay (i) the [redacted] in budgets proposed in January for [redacted] and [redacted] which the Family Office LP has yet to approve (*see* ¶ 112 *supra*.); and (ii) an amount to be determined at trial, up to [redacted] in remaining capital commitments, including for those companies specifically named in Amendment No. 22—[redacted], and [redacted]; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith. This includes the Family Office LP's obligations to consider such reasonable budgets individually, and based on the technical, regulatory, and commercial merits of the proposal. ATP has no adequate remedy at law for this relief.

SECOND CAUSE OF ACTION
(Anticipatory Breach of Contract – Contributions for Budgeted Companies)

165. All the allegations set forth in paragraphs 1 through 164 are realleged and incorporated as if fully stated herein.

166. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways.

167. Per Paragraph 5(a) of the LPA, the Family Office LP is obligated fund capital calls made pursuant to the budgets it approved: "[redacted]."

168. As a Limited Partner, the Family Office LP "[redacted]" LPA § 5(a)(i), *see* Ex. 1 at 18.

169. On May 15, 2025, the Family Office LP repudiated its obligations to fund (at least) capital calls made pursuant to approved budgets for [redacted], and [redacted] – in total, [redacted] in outstanding obligations. On May 20, 2025, the Family Office LP agreed only to fund two specific small capital calls for [redacted] and [redacted] to "enable to orderly wind-down of these companies," a position that does not meet the Family Office LP's obligations under the LPA.

170. By saying it "do[es] 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 you come up with," the Family Office LP has

anticipatorily and materially breached its obligations to meet future capital calls that are properly issued by ATP under Paragraph 5(a)(ii) of the LPA.

171. The harm arising from these refusals to fund capital calls on approved budgets is material, a clear breach of the LPA, a payment default, and an event of Default under the LPA. It would be futile to wait for the notice period under Paragraph 5(c) to lapse before the Family Office LP is declared a Defaulting Partner.

172. The LPA's global default provision permits ATP to impose a "Default Charge" for each instance of Default equal to up to 50% of the Defaulting Partner's interest in the Fund, with those interests then being distributed to the non-defaulting holders of interests in the Fund. This mechanism, in place and unaltered since the LPA was executed in 2012, is to ensure accountability of the limited partners and prevent a limited partner from, at any moment, reaping the benefits of self-selected Fund assets while simultaneously ignoring obligations to meet capital calls across the rest of the portfolio.

173. The LPA's checks and balances, specifically the Global Default Charge, have allowed the Fund to acquire its interests in the portfolio companies, which require assurances to counterparties that the Fund's [redacted] limited partner would meet its financial commitments.

174. ATP requests a declaratory judgment that the Family Office LP has anticipatorily and materially breached its obligations to meet capital calls under the

LPA and an order of specific performance requiring the Family Office LP to fund capital calls on the [redacted] Companies identified in the May 15, 2025 email, at an amount to be determined at trial, up to [redacted] in remaining approved budgets.

175. ATP requests in the alternative a declaratory judgment that the Family Office LP has anticipatorily and materially breached its obligations to meet capital calls and is a Defaulting Partner under Paragraph 5(c) of the LPA. By reason of that payment default, ATP is authorized to impose a Global Default Charge on the Family Office LP, remove the Family Office LP's voting rights under Paragraph 18(f) of the LPA, and to seek compensatory damages.

THIRD CAUSE OF ACTION
(Obligation to Act Rationally and in Good Faith)

176. All the allegations set forth in paragraphs 1 through 175 are realleged and incorporated as if fully stated herein.

177. Cayman Islands contract law recognizes an implied rational and good faith obligation in exercising discretionary rights (absent clear language to the contrary). This duty applies even if the party granted discretion (such as a limited partner) has no other duties under the relevant agreement. No language in the LPA relieved the Family Office of its obligation to act rationally and in good faith.

178. Courts must assess (a) whether the decision maker neglected or refused to take something into account that they should have taken into account, or took into

account something that was irrelevant; and (b) whether the decision was so perverse that no reasonable person, acting reasonably, could have made it, even if the decision-making process itself was sound.

179. The Family Office LP breached this implied obligation by refusing to even consider requests for new budgets for the Fund's [redacted] portfolio companies including [redacted], and [redacted] Its action was so perverse that no reasonable person acting rationally could have made it because as a direct result of this decision the clinical development of [redacted] potential novel therapies for serious diseases were put in jeopardy for the purpose of coercing ATP to suspend funding of the [redacted] Companies. This was not in the spirit of the Family Office LP's commitments in Amendment Nos. 17, 18, and 20, as well as earlier amendments to the LPA. As a result of this course of conduct, the Fund and its [redacted] portfolio companies have been denied up to [redacted] in remaining capital commitments, and face imminent bankruptcy. The resulting harm will include [redacted].

The Family Office LP has created this situation by arbitrarily refusing to engage in the budget approval process, without regard to the merits of the individual companies.

180. An actual case or controversy exists between ATP and the Family Office LP as to whether it is implied as a matter of law and/or needed to give business efficacy to the LPA that the Family Office LP must engage in budget negotiations rationally and in good faith under the LPA.

181. As explained in paragraphs 45 through 50, *supra*, (1) the Family Office LP may not exercise its discretion over the budget and financing negotiations to the detriment of the Fund, ATP, the other limited partners, and the portfolio companies and their stakeholders; (2) the Family Office LP may not exercise its discretion over the negotiations (or lack thereof) to the detriment of the Fund, ATP, the other limited partners, and the portfolio companies and their stakeholders; and therefore (3) the Family Office LP may not continue its current course of action of applying blanket refusals to consider new budget requests irrespective of the individual merit of any particular request.

182. ATP therefore seeks equitable relief from this Court in the form of an order deeming all pending budget requests approved and requiring the Family Office LP to fund new budget requests up to the amount of the Family Office LP's remaining commitment of [redacted] towards the funding of the portfolio companies [redacted]; or, in the alternative an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith.

FOURTH CAUSE OF ACTION
(Global Default Charge)

183. All the allegations set forth in paragraphs 1 through 182 are realleged and incorporated as if fully stated herein.

184. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways, as set forth in the First, Second, and Third Causes of Action.

185. ATP has fully performed all of its obligations under the LPA to date and is ready, willing, and able to continue so performing until the LPA is properly terminated.

186. There is an actual and justiciable controversy between ATP and the Family Office LP regarding whether the default provisions of Paragraph 5(c) of the LPA impose a "global default" penalty on a defaulting limited partner, that is, across all of a defaulting limited partner's interests in the Fund.

187. ATP is ready, willing, and able to apply Global Default Charge procedures per Paragraph 5 of the LPA.

188. A declaratory judgment from this Court is needed finding the Family Office LP in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner;

189. ATP also seeks equitable relief in the form of an Order permitting ATP to impose a Default Charge against all of the Family Office LP's interests.

190. In the alternative, ATP requests equitable relief in the form of Entering 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.

191. ATP also seeks equitable relief in the form of an order finding that the Family Office LP has waived or otherwise forfeited its voting and budget approval rights and that it "[redacted]" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA.

192. ATP also seeks an order enjoining the Family Office LP 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;

FIFTH CAUSE OF ACTION
(Declaratory Relief – Proper Actions of General Partner)

193. All the allegations set forth in paragraphs 1 through 192 are realleged and incorporated as if fully stated herein.

194. Paragraph 2(g) of the LPA states that "[redacted]

[redacted]."

195. An actual case or controversy exists between ATP and the Family Office LP as to whether ATP has breached its fiduciary duties by bringing this action.

196. A declaratory judgment from this Court is needed to confirm that the Fund's filing of this action is neither (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 this Agreement.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff ATP respectfully requests that the Court enter a judgment, on an expedited basis:

a. Finding that the Family Office LP has breached the LPA by refusing to consider and has waived its right to approve budgets;

b. Entering an order of specific performance requiring the Family Office LP to pay the [redacted] in reasonable budget requests from January 2025, and budget proposals drawing on up to [redacted] in remaining capital

commitments, including for those companies specifically named in Amendment No. 22 – [redacted], and [redacted], drawing on commitments to the Fund under the LPA; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith.

c. Finding that the Family Office LP has breached the LPA by preemptively refusing to respond to capital calls relating to approved budgets,

d. An order of specific performance requiring the Family Office LP to fund capital calls on the [redacted] Companies identified in the May 15, 2025 email, at an amount to be determined at trial, up to [redacted] in remaining approved budgets

e. Finding that the Family Office LP has breached its Common Law duties to exercise its discretion in approving budgets in a rational and good faith manner, and has waived its right to approve budgets; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith;

f. Finding the Family Office LP in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner;

g. Entering 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.

h. Entering an order finding that the Family Office LP has waived or otherwise forfeited its voting and budget approval rights and that it "[redacted]" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA;

i. An order enjoining the Family Office LP 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;

j. Declaring that ATP's filing of this action on behalf of the Fund 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,

k. Awarding ATP its fees, costs, and expenses under the "loser pays" principles of Cayman Island laws and the Common Law.

/s/ Michael A. Barlow

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DATED: May 30, 2025

[2010 (2) CILR 154]

IN THE MATTER OF FREERIDER LIMITED

Grand Court, Financial Services Division

(Foster, J.)

16 September 2010

Companies—compulsory winding up—dispositions and transfers during winding up—validation by court—grant of security over all company's assets may be within "ordinary course of company's business" for purpose of consent validation order but depends on context—relevant considerations include but not limited to (a) circumstances of case; (b) how objective observer would regard; and (c) prior practices, focusing on businesses in ordinary operation and not abnormal financial difficulties—not to qualify if for purpose of funding one shareholder's litigation against another or merely because non-fraudulent and within company's objects

Companies—compulsory winding up—dispositions and transfers during winding up—validation by court—grant of security over all company's assets usually to be prospectively validated by court, though may retrospectively validate—relevant considerations include but not limited to whether (a) within directors' powers; (b) directors believed it necessary; (c) in good faith; (d) backed by good reasons; and (e) irregularities in company's affairs—court to avoid prejudice to unsecured creditors

The company was in official liquidation in the Grand Court.

The company was a part of a corporate structure for the exploitation of an invention of Mr. Heinen, and was a quasi-partnership between himself and Mr. Le Comte with each of them holding 50% of the voting shares. Its principal assets were intellectual property rights in the invention. Mr. Le Comte was of the view that the company's assets were highly valuable, and had good commercial prospects. They entered into a shareholder agreement, one of the terms of which was that "All votes [are] to be carried in favour of, and/or all actions to be taken and documents and instruments [are] to be executed in accordance with, the recommendation with regard thereto made by Mr. Le Comte in his sole discretion." Over time, the relationship between the two broke down, and the company experienced significant financial difficulties. Legal proceedings between them were commenced in New York and the Netherlands, and, in March 2009, Mr. Heinen applied to the Grand Court to wind up the company. Subsequently, in June 2009, Mr. Le Comte proposed that the company obtain a validation order to enable it to carry on its general business, notwithstanding the existence of the winding-up petition. Mr. Heinen

formally consented to the validation order, the terms of which permitted "payments and other dispositions of property made by the company in the ordinary course of its business for proper value," and requested details of the transactions that Mr. Le Comte sought to validate. No such details were ever provided. In August and December 2009, Mr. Le Comte, purporting to act on behalf of the company, entered into two promissory notes with 733 Properties, a company which was part of the Durst Organization in New York. One of the heads of the Durst Organization was Mr. Durst, a personal friend of Mr. Le Comte's. In entering into the notes, both 733 Properties and the Durst Organization relied on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge. The notes, which were in substantially identical terms, each provided (a) for a credit line of up to US$1m., to be repaid with interest, to be made available to the company; (b) for the grant by the company of security over all of its assets; and (c) that the institution against the company of any liquidation proceeding, which remained undismissed for 90 days, would amount to default, rendering the note immediately due and payable and allowing 733 Properties to exercise its rights pursuant to the security. Correspondence between Mr. Durst and Mr. Le Comte indicated that they had previously discussed the proposal to grant the security, with the aim of preventing Mr. Heinen from gaining control over the company's assets, and that the proposal and subsequent grant had been concealed from Mr. Heinen. Nonetheless, Mr. Le Comte and his wife provided to the Durst Organization personal guarantees of the company's obligations under the notes. Mr. Le Comte and Mr. Heinen both agreed that the company was solvent on a balance sheet test at this time, although the reason Mr. Le Comte gave for entering into the notes was that the company was unable to pay its debts as they fell due.

The Grand Court (Foster, Ag. J.) directed (in proceedings reported at *2009 CILR 604*) that, since the winding-up petition was in reality a dispute between Mr. Le Comte and Mr. Heinen, the petition be heard *inter partes* between them, with the company not able to participate. In May 2010, the Grand Court (Foster, J.) ordered the winding up of the company on the just and equitable ground (in proceedings reported at *2010 (1) CILR 486*), finding that Mr. Le Comte had been guilty of a lack of probity in his management of the company's affairs. This had the effect, pursuant to s.99 of the Companies Law (2010 Revision), that any disposition of the company's property made after the presentation of the winding-up petition in March 2009 would be void unless validated by the court. Liquidators were appointed in respect of the company. The company's bank statements showed that a significant amount of the sums drawn down under the notes were used by Mr. Le Comte to settle the accounts of the attorneys acting on his instructions in the winding-up proceedings. Shortly thereafter, 733 Properties gave notice that the winding-up order constituted a default, that all sums and obligations to it had become due, and that it intended to exercise its rights pursuant to the security. 733 Properties subsequently assigned its rights to its subsidiary, the GCF Group.

The liquidators applied for a declaration that the purported grant of the security over all the company's assets was void under s.99 of the Companies Law (2010 Revision). They submitted that the grant of the security was not within the terms of the validation order, since it (a) had been for the inappropriate purpose of funding Mr. Le Comte's litigation against Mr. Heinen; (b) was not part of the ordinary operation of the business, but rather a response to abnormal financial difficulties, with major consequences; (c) was not analogous to the loans that the company had previously taken from Mr. Le Comte himself or the proposed third-party financing he had discussed with Mr. Heinen; (d) was concealed from Mr. Heinen, when, under the terms of the shareholders' agreement between himself and Mr. Le Comte, he should have been consulted and the matter put to a vote; (e) was disproportionate to the amount of borrowing enabled by the notes, given Mr. Le Comte's high valuation of the company; (f) inappropriately provided for an immediate default upon the execution of the notes; (g) had the collateral purpose of giving the Durst Organization a priority claim over the assets and thereby preventing Mr. Heinen from gaining control; and (h) was therefore not in the ordinary course of the company's business. They further submitted that it should not now be retrospectively validated, since (i) granting the security was not in the interests of the company, nor could a reasonable and honest director have believed it to be; (j) there had been irregularities in the company's affairs in that Mr. Le Comte was guilty of a lack of probity; (k) retrospective validation at this time would frustrate the official liquidators' taking control of the assets; and (l) declaring the grant of the security void would not be unfair to 733 Properties or the Durst Organization, since it was their decision to rely on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge.

The GCF Group submitted in reply that the grant of the security was within the terms of the validation order and should not be declared void under s.99 of the Companies Law, since (a) the company's articles of association provided that the company's objects were unrestricted; (b) the company had relied on loans from Mr. Le Comte in the past; (c) Mr. Heinen and Mr. Le Comte had previously discussed proposals to obtain third party financing; (d) meeting the costs of the ongoing litigation through borrowing money had become an existing practice of the company; (e) by virtue of the shareholders' agreement between them, Mr. Le Comte was not required to inform Mr. Heinen of the proposed grant; (f) the existence of the winding-up petition, of which the Durst Group was already aware, was not intended to qualify as a default; (g) the fact that Mr. Le Comte and his wife had provided personal guarantees of the company's obligations under the notes was inconsistent with the inference of a collateral purpose; and consequently (h) the grant of the security was in "the ordinary course of the company's business." In the alternative, GCF applied for an order retrospectively validating the grant of the security, submitting that (i) the court had an unfettered jurisdiction to validate dispositions, including retrospectively; (j) the company was

solvent at the relevant time, and therefore the validation of the grant of the security should not be seen as prejudicial to unsecured creditors; and (k) declaring the grant of the security void would be unfair to 733 Properties and the Durst Organization.

The court considered (a) the test for whether a company's actions came within "the ordinary course of business"; and (b) when it would exercise its discretion to validate a disposition of a company's property so that the disposition would not be void under s.99 of the Companies Law.

Held, declaring the purported grant of the security void:

(1) The court would declare the grant of the security to be void under s.99 of the Companies Law (2010 Revision). Since it was established law that a grant of security over a company's assets was a disposition of its property, in order to determine whether it was within the terms of the validation order the question was whether it was made in "the ordinary course of the company's business." In answering this, the relevant considerations included the circumstances in which the grant occurred, whether an objective observer would consider it as having occurred in the ordinary course of business, and the prior practices of the company. The focus needed to be on the ordinary operational activities of businesses, and not responses to abnormal financial difficulties. However, not all these factors would be applicable in every case, no single factor would be conclusive, and the list was not exclusive. A disposition could be in the ordinary course of business despite being unprecedented, and conversely, a disposition would not automatically qualify simply because it was non-fraudulent and within the objects of the company's articles of association. A grant of security over all of a company's assets during winding up could fall within the ordinary course of a company's business, but the court needed to consider all the circumstances. Moreover, the grant of such security should usually be the subject of a prospective validation application to the court, in order that all the potential consequences could be properly analyzed (paras. 13–17).

(2) The grant of the security was outside the ordinary course of the company's business in a number of ways. First, the purpose of obtaining money in return for security was to finance Mr. Le Comte's litigation against Mr. Heinen, of which the company was merely the subject-matter, and it would not be in the ordinary course of any company's business to borrow money to fund litigation by one shareholder against another. Secondly, it was a response to abnormal financial difficulties, and not within the ordinary operational activities of the company. Neither the loans the company had previously taken from Mr. Le Comte himself nor the proposed third-party financing he had discussed with Mr. Heinen before their relationship broke down were analogous to granting security over all the company's assets, which was a highly unusual step with major consequences. Thirdly, Mr. Le Comte had deliberately concealed from Mr. Heinen the grant of the security, when the shareholders' agreement required Mr. Le Comte to consult with Mr. Heinen, and arguably to put the

matter to a vote. Fourthly, the extent of the security was disproportionate to the amount of borrowing enabled by the notes, given Mr. Le Comte's much higher valuation of the company. It was also surprising that—on a usual construction without reference to the parties' intentions, as required by Cayman law—the notes provided for an immediate default upon their execution. Fifthly, there was clear evidence that Mr. Le Comte's grant of the security had the collateral purpose of giving the Durst Organization a priority claim, thereby preventing Mr. Heinen from gaining control of the assets. In the circumstances, the grant of the security was clearly not in the ordinary course of the company's business and therefore fell outside the terms of the consent validation order (para. 31; paras. 42–49).

(3) Moreover, the court would not retrospectively validate the grant of security over all of the company's assets. The grant of such security should usually be the subject of a prospective validation application to the court, in order that all the potential consequences could be properly analyzed. Nonetheless, the court had an unfettered discretion whether to validate any particular disposition, including doing so retrospectively, so that it would not be void under s.99 of the Companies Law. In determining whether to exercise this discretion, the relevant considerations would be: whether the disposition was within the directors' powers; whether the directors believed it to be necessary or in the interests of the company; whether it was made in good faith; whether there were good reasons for it; and whether there had been irregularities in the affairs of the company. Not all of these factors would always be applicable, nor was it an exclusive list—every case would turn on its own circumstances. The court's principal concern would be to avoid prejudice to the body of unsecured creditors as a whole. If the company were solvent, the usual assumption would be that the disposition would not be prejudicial to the creditors as it should not affect their repayment, although even this would not be conclusive if, as here, the winding-up petition were based on grounds other than insolvency (para. 25; paras. 51–59).

(4) In these circumstances, it was unclear whether the company was solvent at the time of the grant of the security. It appeared that, although it was solvent on a balance sheet test, it was not solvent in that it was unable to pay its debts as they fell due. However, even if it were solvent when the grant of the security was proposed, the court would not have validated the grant of the security at that time. As the court had already concluded, the grant was not in the ordinary course of the company's business, and there was no evidence suggesting that the reasons for granting it were in the interests of the company or could have been held by a reasonable and honest director. Rather, it appeared to be purely in Mr. Le Comte's personal interests. Irregularities in the affairs of the company had also been shown, in that Mr. Le Comte had been guilty of a lack of probity and had granted the security to achieve a collateral purpose. Even if the court would have validated it at the time of its proposal, it would not now do so retrospectively, since, the company having entered official liquidation,

validation of the grant of the security would frustrate the official liquidators' taking control of the assets. Nor would this be unfair to 733 Properties or the Durst Organization, since it was their decision to rely on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge. The grant of the security would therefore not be validated retrospectively, and would be void under s.99 of the Companies Law (paras. 61–67).

Cases cited:

(1) *Ashborder BV v. Green Gas Power Ltd.*, [2005] 1 BCLC 623; [2005] BCC 634; [2004] EWHC 1517 (Ch), applied.

(2) *Burton & Deakin Ltd., In re*, [1977] 1 W.L.R. 390; [1977] 1 All E.R. 631, referred to.

(3) *Countrywide Banking Corp. Ltd. v. Dean*, [1998] A.C. 338; [1998] 2 W.L.R. 441; [1998] 3 LRC 107; [1998] 1 BCLC 306; [1998] BCC 105, applied.

(4) *Crossmore Elec. & Civil Engr. Ltd., In re* (1988), 5 BCC 37; [1989] BCLC 137, referred to.

(5) *Cybervest Fund, In re*, 2006 CILR 80, *dicta* of Smellie, C.J. applied.

(6) *Denney v. John Hudson & Co. Ltd.*, [1992] BCLC 901; [1992] BCC 503, referred to.

(7) *Fairway Graphics Ltd., Re*, [1991] BCLC 468, referred to.

(8) *Fortuna Dev. Corp., In re*, 2004–05 CILR 533, *dicta* of Henderson, J. applied.

(9) *Gray's Inn Constr. Co. Ltd., In re*, [1980] 1 W.L.R. 711; [1980] 1 All E.R. 814, *dictum* of Buckley, L.J. applied.

(10) *Mal Bower's Macquarie Elec. Centre Pty. Ltd., Re*, [1974] 1 N.S.W.L.R. 254, referred to.

(11) *Scotiabank (C.I.) Ltd. v. Treasure Island Resort (Cayman) Ltd.*, 2004–05 CILR 423, referred to.

(12) *Steane's (Bournemouth) Ltd., Re*, [1950] 1 All E.R. 21, applied.

(13) *Tellsa Furniture Pty. Ltd., Re* (1985), 81 FLR 185; 9 ACLR 869, applied.

Legislation construed:

Companies Law (2010 Revision), s.99: The relevant terms of this section are set out at para. 4.

s.100(2): The relevant terms of this sub-section are set out at para. 4.

s.142(1): The relevant terms of this sub-section are set out at para. 37.

A.A. Galatopoulos and *Ms. R.A. Collins* for the liquidators;

J.G. Manning and *A.J. Walters* for the GCF Group;

G. Halkerston and *Ms. K. Brown* for Mr. Heinen;

A. Turner and *Ms. R. Lawrence* for Mr. Le Comte.

1. **FOSTER, J.:** This is the ruling on the application of the joint official liquidators ("the JOLs") of Freerider Ltd. ("the company," and in official

liquidation) by summons dated August 30th, 2010 seeking a declaration that the security over all the assets of the company purportedly granted under two convertible revolving secured promissory notes and security agreements, respectively dated August 17th, 2009 ("the first note") and December 3rd, 2009 ("the second note," and together, "the notes") in favour of 733 Properties Inc. and subsequently assigned to its subsidiary, GCF Group LLC, is not within the terms of a validation order made by consent on June 29th, 2009 ("the consent validation order"), not having been granted in the ordinary course of the company's business for proper value, and is therefore void under s.99 of the Companies Law (2010 Revision) ("the Law"). The ruling also relates to the summons of GCF, also dated August 30th, 2010, seeking an order that, if the court finds that the security is not within the terms of the consent validation order, the grant of the security should now be retrospectively validated and accordingly not be void pursuant to s.99 of the Law.

General background

2. The company was ordered to be wound up on just and equitable grounds on May 13th, 2010 on the petition of Mr. Heinen, who is one of the two voting shareholders, which was vigorously opposed by the only other voting shareholder, Mr. Le Comte. Mr. Le Comte subsequently appealed to the Court of Appeal against the winding-up order, but his appeal was refused on August 24th, 2010. In a previous ruling dated November 11th, 2009, the court had directed pursuant to O.3, r.11(2) of the Companies Winding Up Rules 2008 that the company itself should not be able to participate in the winding-up proceedings, as it was merely the subject-matter of the proceedings, which should be treated as *inter partes* proceedings between Mr. Heinen and Mr. Le Comte.

3. The background to the dispute between Mr. Heinen and Mr. Le Comte concerning the company is fully set out in the reasons for the winding-up order dated May 13th, 2010, and I do not consider it necessary to rehearse that background.

The consent validation order

4. Section 99 of the Law 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."

Section 100(2) of the Law provides:

"In any other circumstance not specified in subsection (1) [none of which are applicable here], 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."

Both s.99 and s.100(2) are intended to protect the unsecured creditors of the company once winding-up proceedings have commenced. The companies law in the United Kingdom, Australia, Canada and most other Commonwealth common law jurisdictions has been to the same effect since the 19th century.

5. On June 22nd, 2009, the attorneys then representing the company on Mr. Le Comte's instructions, Turner & Roulstone, wrote to Mr. Heinen's attorneys, Appleby, proposing that the parties should agree to a validation order to enable the company to carry on its general business notwithstanding the presentation of the winding-up petition, thus avoiding the consequences of s.99 of the Law. Turner & Roulstone requested an urgent response. The following day, June 23rd, 2009, Appleby responded stating that they were taking instructions in relation to the proposed validation order and in the meantime requested details of the transactions which it was sought to validate. By reply email on June 24th, Turner & Roulstone responded, again requesting that Mr. Heinen's attorneys revert to them on the proposed orders without delay. Their email then said:

"*The company needs to have the ability to conduct its general business* and this type of order is given as of right where a just and equitable petition has been issued. There is no obligation on the company to provide specific details of the transactions which it wishes to conduct." [Emphasis supplied.]

6. By reply letter dated June 29th, 2009, Appleby confirmed that their client, Mr. Heinen, was prepared to agree to the terms of the "draft consent order validating payments and other dispositions of property made by the company in the ordinary course of its business for proper value pending the determination of the petition." Appleby went on to contend that their client was entitled to details of all such transactions and requested confirmation by return that such details would be provided. It seems that no response to that request was ever received.

7. The consent validation order, being a consent order, was dealt with administratively and signed by the clerk of court. There was no hearing by or involvement of the court. The consent validation order provided as follows:

"It is hereby ordered by consent that, notwithstanding the presentation of the petition against Freerider Ltd. ("the company"):

(1) payments made into or out of the bank accounts of the company in the ordinary course of business of the company; and

(2) dispositions of the property of the company made in the ordinary course of its business for proper value;

between the date of presentation of the petition and the date of judgment on the petition or further order in the meantime shall not be void by virtue of the provisions of s.99 of the Companies (Amendment) Law 2007 [now s.99 of the Law] in the event of an order for the winding up of the company being made on the said petition."

It is para. 2 of the consent validation order which is now in issue.

Procedure

8. I should note that Mr. Heinen had previously issued a summons, dated June 16th, 2010, subsequently amended on July 15th, 2010, by which he himself sought a declaration that the notes and the security were both void pursuant to s.99 of the Law. This summons as amended therefore predated the JOLs' summons, which is the subject of this ruling. Both counsel for GCF and counsel for Mr. Le Comte raised an issue as to Mr. Heinen's *locus* to make such an application, contending that the JOLs were the only appropriate parties to seek a declaration under s.99 of the Law. As the JOLs have since done that (albeit that their application relates only to the grant of the security and not to the promissory notes as such), I declined to hear Mr. Heinen's amended summons or the related arguments on the question of Mr. Heinen's *locus* in the course of hearing the JOLs' summons. However, I indicated that I would deal with any issues arising out of Mr. Heinen's amended summons, if necessary, at some future date. Nonetheless, since Mr. Heinen and Mr. Le Comte are both contributories and were respectively the petitioner and the respondent in the winding-up proceedings, I did agree to hear and did hear submissions on behalf of Mr. Heinen in support of the JOLs' summons and in opposition to GCF's summons and submission on behalf of Mr. Le Comte in opposition to the JOLs' summons and in support of GCF's summons.

9. I should also note that counsel for Mr. Heinen indicated that he wished to argue that the grant of the security was not anyway a disposition of the property of the company because, he contended, Mr. Le Comte had no authority to enter into the notes and to grant the security on behalf of the company. Since, at a previous directions hearing on August 27th, 2010, I had already directed that the sole issue for determination at the hearing before me in the event that the JOLs issued a summons would be whether the grant of the security was made in the ordinary course of the company's business in terms of the consent validation order, I declined to allow Mr. Heinen's counsel to make his proposed argument at the hearing of the JOLs' summons. However, I accepted that Mr. Heinen's counsel was entitled to consider his position in light of this ruling and, if he considered

it necessary and appropriate, to make an application in that regard at some future date.

The disposition in issue

10. The affidavit evidence establishes that Mr. Le Comte, purporting to act on behalf of the company, as the borrower and 733 Properties as the lender entered into the first note on August 17th, 2009, approximately two months after the date of the consent validation order. 733 Properties is a company which is part of the Durst Organization of New York, which carries on business principally as an owner, builder and manager of commercial and residential real estate in New York. The Durst Organization is headed by Mr. Jonathan Durst and a cousin of his. Mr. Durst's wife is a close personal friend of Mr. Le Comte's wife. According to Mr. Durst's affidavit, he has been a friend of Mr. Le Comte and his family for almost 20 years, principally through the friendship of their respective wives and children. Mr. Le Comte's evidence confirms this.

11. The first note relates to a sum of up to US$1m. together with interest. The second note relates to a further sum of up to US$1m. together with interest. The notes are otherwise in substantially identical terms and by cl. 3 in each case provide for the grant by the company of security (referred to in the notes as "collateral") over all of the company's assets, wherever located, including all intellectual property rights and any claims against third parties. The notes also provide (cl. 2) *inter alia* that the institution against the company of any liquidation proceeding which remains undismissed for 90 days is an event of default as a result of which the note in each case becomes automatically and immediately due and payable and 733 Properties has the right to exercise its rights under the note with regard *inter alia* to the security.

12. On May 21st, 2010 (just over a week after the winding-up order of May 13th, 2010 was made), 733 Properties gave formal notice that the winding-up order constituted a default under the notes and that all sums and obligations under the notes were then due and payable and that 733 Properties intended to exercise its rights and remedies under the notes, including all its rights to proceed against the "collateral" (*i.e.* the security). Since then, there has been an ongoing disagreement between 733 Properties (and its subsequent assignee, GCF) and the JOLs and Mr. Heinen over the right of the JOLs or 733 Properties, now GCF, to possession and control of the assets of the company, including the right to control the litigation instigated by Mr. Le Comte in the name of the company in New York and the Netherlands. Subsequently, as I understand it, by consent of the parties, including the JOLs, the legal proceedings in New York were stayed by the court until November 30th, 2010 to enable determination of the validity of the purported grant of the security by the company, which is, of course, a matter of Cayman law, by this court.

The relevant law on the ordinary course of business

13. Section 99 of the Law applies when there is a disposition of a company's property after the commencement of a winding up and the court has not made an order that the disposition concerned is not thereby void. It was accepted by all parties that the expression "disposition of property" in this context encompasses encumbrances granted over a company's property, such as the security in this case. That is clearly established by authority and not in doubt. Furthermore, as the petition for winding up the company was presented (*i.e.* filed with the court and initiated) on March 6th, 2009 and a winding-up order has since been made, the winding up of the company is deemed, pursuant to s.100(2) of the Law, to have commenced on March 6th, 2009. Accordingly, the security was clearly granted after the commencement of the winding up. There is again no doubt about that and there was no dispute in that regard either between the parties.

14. The court has not made any order specifically validating the granting of the security. The only validation order made is the consent validation order which validates dispositions made by the company "in the ordinary course of its business for proper value." The phrase "in the ordinary course of business" has been considered by various Commonwealth courts on a number of occasions and in a number of contexts, the circumstances of all of which are inevitably different. However, the opinion of the Privy Council in *Countrywide Banking Corp. Ltd.* v. *Dean* (3), which is of course binding on this court, is in my opinion the appropriate authority for determination of the meaning of that expression in Cayman law. The Privy Council made reference to several decisions in other courts, but ultimately declined to adopt any particular formulation of the phrase. It said ([1998] A.C. at 349):

"There are difficulties in drawing upon formulations in different words of statutory tests and treating them as applicable in all circumstances. Such difficulties are increased where those formulations originate in different legal or factual contexts. This is particularly so where the test is essentially one of fact in any event. For these reasons, as presently informed by the argument in this case, their Lordships do not adopt any particular formulation. Nor is it necessary for this case to make any comprehensive statement, suitable for all cases, of the criteria for determining when a transaction is to be held to have taken place in the ordinary course of business for the purpose of [the English legislation under consideration].

. . .

Plainly the transaction must be examined in the actual setting in which it took place. That defines the circumstances in which it is to

be determined whether it was in the ordinary course of business. The determination then is to be made objectively by reference to the standard of what amounts to the ordinary course of business. As was said by Fisher, J. in the *Modern Terrazzo Ltd.* case, 10 October 1997, the transaction must be such that it would be viewed by an objective observer as having taken place in the ordinary course of business. While there is to be reference to business practices in the commercial world in general, the focus must still be the ordinary operational activities of businesses as going concerns, not responses to abnormal financial difficulties. Their Lordships respectfully agree with the judge's conclusion by reference to the policy of the section:

'Whether a payment should be regarded as commercially routine at a day to day trading and operating level will turn at least in part upon a comparison with the practices of the commercial community in general. But equally, the way in which the particular company has acted in the past, and its dealings with the particular creditor, would seem pertinent. That the payment was simply a repetition of past patterns of behaviour would make it more difficult to argue that it represented special assistance to an insider or the result of special enforcement measures or a situation in which the subject creditor ought to have investigated before extending credit. So at a policy level there is something to be said for the view that relevant considerations should extend to the prior practices of the particular company.'"

15. It was submitted on behalf of the JOLs, in my opinion correctly, that the opinion of the Privy Council makes it clear that there are no comprehensive criteria for what constitutes "in the ordinary course of business." It is essentially a matter of fact in the light of the particular circumstances in each case. Nonetheless, certain key points were made clear, namely:

(a) the transaction must be examined in the circumstances in which it occurred;

(b) the transaction must be such that an objective observer would view it as having taken place in the ordinary course of business;

(c) the focus of the enquiry must be on the ordinary operational activities of businesses, not responses to abnormal financial difficulties; and

(d) prior practices of the company will be a relevant consideration.

16. Of course, the Privy Council made it clear that none of these points is necessarily applicable in every case, they are not conclusive and are not intended to be comprehensive or exclusive. They are simply guidelines.

There was no substantial disagreement between the parties about this analysis, although their respective interpretation of the circumstances of the granting of the security differed considerably, and consequently their proposed application of these guidelines to such circumstances also differed.

17. I also found assistance from the judgment in the English case of *Ashborder BV* v. *Green Gas Power Ltd.* (1), which was a case involving interpretation of the phrase "in the ordinary course of business" in the context of a floating charge over assets of a company which had borrowed funds from lenders in the Enron group. The judge (Etherton, J., now a judge of the English Court of Appeal), in concluding that certain agreements fell outside the scope of the ordinary course of the business of the company concerned, held that the words of the phrase were ordinary words of the English language which had to be given the meaning which ordinary business people would be expected to give them against the factual and commercial background in which the agreements concerned were made. He said that a transaction could be in the ordinary course of business even if it were exceptional or unprecedented, but that a transaction was not to be regarded as in the ordinary course of a company's business merely because it was not fraudulent and was within the company's objects in its memorandum of association. He said that meaning must be given to the word "ordinary" in the phrase. He then held that, in the circumstances of that case, the transactions were not in the ordinary course of the company's business by reason *inter alia* of the non-disclosure to all the directors of the material terms of the agreements and because of his concerns about concealment of the transactions. He also relied on the fact that the company was in abnormal financial difficulty at the time and the agreements were entered into as an exceptional abnormal response to that. These factors were, in the view of the judge, sufficiently unusual features to take the transactions out of the scope of the company's ordinary course of business.

The circumstances of the grant of the security

18. There was no contemporaneous documentary evidence before me to indicate when discussions between Mr. Le Comte and Mr. Durst concerning the proposed first note started. The first available email communication is dated April 6th, 2009. It is from Mr. Le Comte to Mr. Durst under the heading "Freerider—Durst Convertible Secured Promissory Note" and, among other matters (as to which I shall comment further below), attached a proposed agreement. In the email, Mr. Le Comte said he had "tried to capture the spirit of our conversations in order to protect your interests as best I could." Clearly therefore, there had been previous conversations between Mr. Le Comte and Mr. Durst about the proposed loan, as to which there was no evidence before me. Clearly, Mr. Le Comte

was also endeavouring to protect the interests of the Dursts. There then followed a series of email exchanges between Mr. Le Comte and Mr. Durst, which culminated with the execution of the first note dated August 17th, 2009.

19. It is clear from this correspondence that the proposed and subsequent grant of the security was intentionally concealed by Mr. Le Comte from his co-director and contributory, Mr. Heinen, and that Mr. Durst was expressly told that this would be the case. In fact Mr. Heinen was not made aware of the existence of either of the notes and the grant of the security until after 733 Properties told the JOLs of them subsequent to the winding-up order. Mr. Le Comte sought to justify this to Mr. Durst at the time, and again in his affidavit evidence produced at the hearing before me, on the basis that his purported grant of the security on behalf of the company fell within his exclusive domain and overriding authority pursuant to the first shareholder agreement dated July 19th, 2003 between him and Mr. Heinen ("the shareholder agreement"). I should add that it was also argued before me that Mr. Heinen would anyway have had a conflict of interest with regard to the grant of the security since the borrowing secured thereby was, it was contended, to be used to meet the company's past and ongoing legal costs of the various litigation against him. Mr. Le Comte's position was that significant sums were and would in future be owed to attorneys in New York, the Netherlands and the Cayman Islands by, on his case, the company, which the company urgently needed and would in future need to settle in order to progress the litigation, and that Mr. Heinen, as the principal opposing party in such litigation, would have had a conflict of interest in being involved in the decision as to whether the company should grant the security in respect of borrowing from the Dursts for such purposes.

20. It appears from the email correspondence between Mr. Le Comte and Mr. Durst that Mr. Le Comte's request was that the company should be given access to a credit line for sums up to US$1m. pursuant to each note, and this appears to be what in practice occurred. GCF claims that Mr. Le Comte, purportedly on behalf of the company, drew down a total principal sum of US$1,550,000 under the notes and that, as at May 31st, 2010, interest amounting to US$38,836.77 had accrued on that sum.

21. Mr. Le Comte provided no evidence as to how the various sums drawn down under the notes were in fact used. His affidavit evidence was that they were used to settle outstanding debts of the company due principally to the attorneys acting in the litigation in New York, the Netherlands and in this country, and to fund the ongoing costs of such litigation. However, no evidence to support that general assertion was produced. Evidence from certain of the company's bank statements showed that a significant portion of the sums drawn down was used by Mr.

Le Comte to settle the accounts of the Cayman attorneys, Turner & Roulstone, acting on his instructions in the winding-up proceedings.

Analysis and comment

22. It seems to me that, in order to determine whether the grant of the security was in the ordinary course of the company's business, I must first consider what the business of the company was. As explained in the reasons for the winding-up order dated May 13th, 2010, the company was established to enable payments generated by the commercial exploitation of the intellectual property in TheWheel and associated technology to be made to an entity in a tax-free jurisdiction and also so that the intellectual property rights concerned could be held outside the Dutch company, e-Traction Europe BV, which actually carries out the physical work on and development of TheWheel and associated technology (see *2010 (1) CILR 486, at paras. 14* and *69*). Accordingly, the company's business essentially consists of the holding and control of the intellectual property rights in TheWheel and other related technology.

23. It was submitted on behalf of GCF that the company's memorandum of association provides that the company's objects are unrestricted and that, accordingly, the grant of the security was within the company's objects. I was also referred to art. 95 of the company's articles of association, which provides that—

"the directors may exercise all the powers of the company to borrow money or to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligations of the company or of any third party."

It was contended that, accordingly, the provision of the security pursuant to the notes was within the company's objects and within the powers of its directors.

24. It was further submitted that, since the company has been reliant from time to time in the past on loans from Mr. Le Comte to meet its day to day operating expenses, borrowing money was within the ordinary course of the company's business. It was said that the grant of security as a condition of borrowing is clearly a usual practice of the business community in general.

25. It is, of course, the grant of the security over all of the company's assets and rights which is in issue, not the borrowing of money. The grant of such security obviously impacts adversely upon the position of unsecured creditors and is clearly an important and significant transaction. The principal purpose of the statutory scheme applicable to winding up is

to protect unsecured creditors and their entitlement to eventual *pari passu* distribution in a winding up and to enable the winding up of the company in an orderly manner by officers of the court. This is the principal reason why, in my opinion, a proposal by the directors of a company to grant security over all of its assets and rights after winding-up proceedings have been initiated would and should normally be the subject of a prospective validation application to the court so that the benefit to the company, which the directors contend derives from such secured borrowing, may be properly and fully analyzed and fairly balanced against the rights and interests of unsecured creditors in advance of any such security being granted. No doubt the court, in doing so, would have regard to the views of unsecured creditors, but an overall approach, having regard to all the circumstances, will be taken.

26. In fact, the company has never previously granted security of any kind in respect of its borrowings, which have always been from Mr. Le Comte as a shareholder and investor in the company. Both he and Mr. Heinen are on record as having said on several occasions that they consider the intellectual property rights currently held by the company to be of very substantial value having regard to the considerable financial potential from exploitation of TheWheel and associated technology. Those rights are also the company's only asset of any significance. Mr. Le Comte also estimated the realizations from the litigation, particularly in New York, if successful, would be very significant. In such circumstances, to grant security over all of the company's assets and rights, including all of the intellectual property rights it holds, was, as I have said, clearly a very significant and important step, particularly having regard to the fact that such security was granted pursuant to the first note in respect of a loan of up to US$1m., a relatively small amount in proportion to Mr. Le Comte's own opinion of the very high value of the company's assets and rights.

27. It was also contended on behalf of Mr. Le Comte that, since the company has been carrying on litigation over the past three years (albeit procured by him), meeting the costs of such litigation through borrowing has been a prior practice and become part of the ordinary course of the company's business. I shall comment on that suggestion later in this ruling.

28. As I have already mentioned, in deliberately not informing his co-director, Mr. Heinen, of the proposed grant of the security, Mr. Le Comte relied on the provisions of the shareholder agreement and in particular s.1, as he did in his unsuccessful opposition to the winding up of the company. In the present context, Mr. Le Comte contends that the effect of the shareholder agreement is that he has the sole right to determine all management issues of the company of a non-technical nature and that accordingly it was solely up to him whether or not the company should enter into the notes and grant the security. In his view, Mr. Heinen was not

entitled to any say in the matter. However, in my opinion, apart from the fact that, as Mr. Le Comte was well aware at the time, it is anyway contended by Mr. Heinen that the shareholder agreement is not valid, that is not quite what the shareholder agreement provides. Section 1(2) provides, with regard to business and other non-technical issues:

"All votes [are] to be carried in favour of, and/or all actions to be taken and documents and instruments [are] to be executed in accordance with, the recommendation with regard thereto made by Mr. Le Comte in his sole discretion."

29. This clearly, at the least, requires there to be a recommendation with regard to the proposed action by Mr. Le Comte provided to Mr. Heinen, and, arguably, also a vote. The section does not, in my view, simply entitle Mr. Le Comte to ignore Mr. Heinen entirely and to make decisions and take actions unilaterally in respect of the company without at least informing his co-director (described in the shareholders agreement, as he and Mr. Le Comte both are, as a "manager" of the business). Mr. Le Comte, of course, alleges that he had removed Mr. Heinen as a director of the company. However, he was well aware that that was strongly disputed and that Mr. Heinen had refused to resign. Mr. Le Comte was aware of all this when he claimed to Mr. Durst that he had the sole right to procure the company to grant the security and that he did not intend to inform Mr. Heinen of what he proposed. Nor do I consider that the fact that he considered Mr. Heinen would have had a conflict of interest meant that he was not required to inform Mr. Heinen of his proposed action on behalf of the company.

30. A further point which was the subject of argument before me related to the provisions regarding default in the notes. It was submitted by counsel for the JOLs and counsel for Mr. Heinen that the wording of cl. 2(a)(iii) of each of the notes meant that, upon execution, the notes would become automatically and immediately due and payable because liquidation proceedings against the company had at the date of execution been commenced and remained undismissed for 90 days. This would have brought about an immediate acceleration of liability under the notes and the obligation of the company to pay an increased interest rate and legal and other expenses. There was affidavit evidence from the New York attorney representing the Durst Group in which he commented on that submission. He stated that the language in cl. 2(a)(iii) of each note is merely *pro forma*, that it was not contemplated that the existence of the winding-up petition, of which he and the company's New York attorneys were well aware, would qualify as a default and that he did not believe the company would have executed the notes if it had believed there was already an existing default.

31. The notes are, of course, governed by New York law, although the

law in this country is that foreign law is presumed to be the same as Cayman law in the absence of expert evidence of the relevant foreign law. No such expert evidence on the law of New York relating to the construction and interpretation of legal documents such as the notes was made available to me. Under Cayman law, it is well established that such documents are to be construed and interpreted solely upon the basis of their wording and that evidence of preliminary negotiations, of the subjective intentions of the parties and those connected to them and of subsequent actions is not relevant or admissible as an aid to their construction. There is no evidence before me as to whether or not that also represents the law of New York, but, on a construction of cl. 2(a)(iii) in accordance with Cayman law, the submissions on behalf of the JOLs and Mr. Heinen in this regard are, in my opinion, clearly correct. It seems to me, to put it at its lowest, that the construction and effect of documentation which the directors of a company subject to winding-up proceedings propose to enter into, allegedly in the best interests of the company, such as the notes and the associated security, should and would properly be the subject of scrutiny by the court in considering whether or not a disposition pursuant to such documentation should be validated.

32. I have already made passing reference to some of the email communications between Mr. Le Comte and Mr. Durst but in my view they warrant further analysis and comment. I should say that the general tone of this series of emails is informal and friendly and makes it clear that there is considerable family friendship between Mr. Le Comte and his family on the one hand and Mr. Durst and his family on the other. There do appear to me to be gaps in the correspondences produced to me. As I have said, it is also clear from the correspondence that there were meetings and discussions between Mr. Le Comte and Mr. Durst, the content of which were either not recorded or such records were not produced and which was not disclosed nor explained in the affidavit evidence.

33. The first email produced, dated April 6th, 2009, from Mr. Le Comte to Mr. Durst, to which I have already referred in part, commences as follows:

"All went according to plan in Luxembourg, though not without noteworthy incidents. [Mr. Heinen] has been set up for the next round without knowing and/or realizing it.

The 'pearls of wisdom' have meanwhile materialized. Please find attached a proposed agreement . . ."

I consider it reasonable to assume that Mr. Durst understood what Mr. Le Comte was talking about. There is no evidence or suggestion otherwise.

34. In a subsequent email, dated May 29th, 2009, Mr. Le Comte informed Mr. Durst that it was—

"imperative that a parallel research and development production facility be created in the United States. A successful participation in this project would represent an enormous economic opportunity for the combined companies.

[Mr. Le Comte then referred to a pilot program for a people-mover system at Frankfurt Airport.]

Let's talk about this at your leisure. Incidentally, I did speak with your friend Tedd and gave him my best advice based on my assessment of the financial feasibility of his project . . ."

Again, it is not entirely clear what Mr. Le Comte is referring to by "the combined companies," but Mr. Durst must have known.

35. The reference to Mr. Durst's friend Tedd is to a contact he had provided to Mr. Le Comte who was interested in the possibility of using the technology associated with TheWheel. Mr. Heinen emphatically denied in his affidavit evidence that he had ever agreed that there should be a research and development facility in the US and he gave various credible reasons why he would never have agreed to that. It was submitted that this email was indicative of Mr. Le Comte's alleged plan to take over the intellectual property rights in TheWheel and associated technology entirely. It also seems that he may have been discussing doing so jointly with the Dursts.

36. On June 5th, 2009, Mr. Le Comte emailed Mr. Marx at the Durst Organization, with a copy to Mr. Durst, attaching a copy of the original draft agreement. He said:

"I have since come to the conclusion that a specific lien on the intellectual property and/or certain rights thereto should be added to ensure the ability to have a priority claim in recovering the debt, which should also serve in signalling to the 'opposition' that the actions being contemplated by them at this time are unlikely to allow them to gain control over the principal company assets (e-Traction Europe BV and the intellectual property) . . ."

A subsequent email from Mr. Le Comte to Mr. Durst, dated June 15th, 2009, makes it clear that there was also a conversation between them the same day as Mr. Le Comte's June 5th email.

37. Section 142(1) of the Companies Law (2009 Revision) (now s.142(1) of the 2010 Revision) provides:

"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 his security without the leave of the Court and without reference to the liquidator."

The evidence shows that Mr. Le Comte, Mr. Durst and their respective New York lawyers were well aware of this provision.

38. In my view, the inference from the email correspondence between Mr. Le Comte and Mr. Durst to which I have referred above, taken with Mr. Le Comte's deliberate action in not informing Mr. Heinen of his proposal to grant the security and the other circumstances at the time, is that Mr. Le Comte's intention, at least in part, was that the priority claim effected by the grant of the security to his friends the Dursts' company would prevent Mr. Heinen, through an official liquidator appointed on a winding up pursuant to Mr. Heinen's petition, from taking control of the assets of the company, particularly the intellectual property rights.

39. It was argued on behalf of GCF that the fact that Mr. Le Comte provided the Dursts with joint personal guarantees by himself and his wife of the company's obligations under the notes is inconsistent with this inference. Having regard to the particular circumstances of this matter, I do not agree. As I have already said, Mr. Le Comte was clearly of the firm view that the assets of the company "make it a very valuable company" with "enormous commercial prospects and valuable assets," and is on record as emphasizing that view on several occasions, including to Mr. Durst (see for example the email dated July 20th, 2009). He said that it was "simply inconceivable that in three years, when the loan comes due, [the company] would be worth less than the maximum amount of the credit line." If, as Mr. Le Comte believed, it was inconceivable that the company would be unable to repay the sums drawn down under the notes, the risk to him in providing the unsecured joint guarantees was negligible. In my judgment, the provision of the joint guarantees does not detract from the inference from the email correspondence, and from the other circumstances which I have already mentioned, that Mr. Le Comte's offer to add the security to the proposed borrowing arrangements was intended, at least in part, to prevent a liquidator appointed by this court from taking possession and control of the company's assets. He wished to ensure that, in the event of a winding up, the company's assets would be under the possession and control of his friends the Dursts.

40. Mr. Le Comte's deliberate concealment of the proposed and actual grant of the security is, in my opinion, entirely consistent with this analysis. Although by the time of the consent validation order on June 29th, 2009, discussions and negotiations between Mr. Le Comte and Mr. Durst with regard to the proposed borrowing and the grant of the security were well underway, no mention of the proposed transaction, and particularly the grant of the security, was made by Mr. Le Comte's Cayman attorneys, Turner & Roulstone, in their correspondence proposing the

consent validation order to Mr. Heinen's Cayman attorneys, Appleby. The explanation of the proposed validation order in Turner & Roulstone's email dated June 24th, 2009 that "the company needs to have the ability to conduct its general business" was, in the circumstances, disingenuous to say the least. Despite requests from Appleby for details of the transactions in question, no such information was provided, and no indication of the proposed grant of the security was given. I am also concerned that no mention of the grant of the security was made to the court at any time prior to or during the hearing of the winding-up petition in April 2010. Given the extent and effect of the purported grant of the security, it was clearly likely to be a significant factor in the court's consideration of whether a winding-up order should be made and official liquidators appointed to take possession and control of the company's assets. In my opinion the existence of the security should have been disclosed.

Conclusions on the "ordinary course of business" issue

41. Etherton, J. pointed out in *Ashborder BV* v. *Green Gas Power Ltd.* (1) that there may be circumstances in which the grant of security over all the assets of a company may be held to fall within the scope of the ordinary course of that company's business. Equally, however, even if *prima facie* such a grant may be considered to fall within the scope of that phrase, there may nonetheless be such unusual features surrounding such a disposition that it will nonetheless fall outside the scope of the ordinary course of the company's business.

42. In the present case I do not consider the grant of the security, which extended to all of the assets of the company, which Mr. Le Comte himself expressly considered to be of enormous commercial value, to have been in the ordinary course of the company's business at all. I have already explained the nature of the company's business. In my opinion, the fact that Mr. Le Comte has procured the company to engage in litigation with his co-director and contributory in New York, the Netherlands and Luxembourg over the past three years or so in no sense means that litigation is a business of the company. Certainly, the litigation in this court leading up to the winding-up order was not properly litigation by the company anyway: it was litigation between Mr. Le Comte and Mr. Heinen personally. It was essentially and obviously a dispute between Mr. Le Comte and Mr. Heinen, as quasi-partners in the business, the subject of which was the company. Furthermore, it was very clearly not the ordinary business of the company, or of any company, to borrow money to fund litigation by one shareholder against another. Even the litigation in New York and the Netherlands, in which Mr. Le Comte has procured the company to engage, is principally litigation against an equal shareholder/contributory of the company. In my opinion that does not fall within the realm of what an objective observer would consider to be within the

ordinary course of the company's business. Borrowing for that purpose, and the grant of security over the assets of the company to enable such borrowing, is no different.

43. The transaction between Mr. Le Comte and the Dursts was, on Mr. Le Comte's own case, a response to abnormal financial difficulties and not within the ordinary operational activities of the company. It was in no sense a routine or typical transaction for the company. I am not persuaded by the argument that the prior practices of the company in taking loans from Mr. Le Comte, a shareholder and investor in the company, were in any sense akin to the dispositions involving the grant of the security. Even if it is correct that in the past, before the deadlock between them arose, Mr. Le Comte and Mr. Heinen together made attempts to obtain third-party financing for the company and that such financing would probably have involved the company being required to give security for such financing, there is no evidence at all with regard to the type or extent of any borrowing or of any security which may have been discussed. Furthermore, there is no obvious evidence that at that time any such borrowing was proposed to be used for the purposes of litigation by the company, still less litigation between the two principals of the company, and clearly that was not the case. In my opinion the only prior practice of the company in this respect has been the unsecured funding of the company from time to time by Mr. Le Comte as a shareholder and investor. That is entirely different from the grant of security over all the assets of the company in support of limited borrowing from friends of Mr. Le Comte. It is not something the company ordinarily would do. It was clearly a highly significant and unusual step for the company, and one with major potential consequences. I am of the opinion that, quite apart from the unusual features surrounding the transaction, the grant of the security pursuant to the first note, repeated pursuant to the second note, was clearly not within the ordinary course of the company's business.

44. I am also of the opinion that the unusual circumstances surrounding the purported grant of the security by the company through Mr. Le Comte take the grant out of the scope of the ordinary course of the company's business in any event. Not only were the proposals and discussions concerning the grant of the security made without the knowledge of the only other director at a time when all involved with the transaction knew that the winding-up petition had been initiated, but there was also a deliberate decision to conceal the proposal. Furthermore, Mr. Durst had been expressly told that there was another director who had refused to resign and that he was not to be informed about the proposed notes. The actual grant of the security was also subsequently and deliberately concealed from Mr. Heinen, not only in his capacity as a director of the company but also as a contributory and as the petitioner for the winding

up, until after the winding-up order had been made. It was also concealed from this court.

45. I have already commented on the surprising terms of the notes, which on a usual construction meant that there was an immediate default as soon as they were executed. In the circumstances, such a provision was not clearly in the best interests of the company, notwithstanding that in the event and with hindsight notice of default was not given until after the winding-up order was made.

46. A further significant feature of the security which I consider takes it outside the scope of the ordinary business of the company is its extent, which seems to me disproportionate to the amount of borrowing, which, pursuant to the first note, was up to US$1m. There does not appear to have been any discussion about the appropriate security or its nature or extent, simply the offer of security over all the company's assets by Mr. Le Comte. This in itself seems surprising and unusual to me.

47. In my opinion, it is also relevant that the whole transaction involving the grant of the security was with longstanding friends of Mr. Le Comte and his wife. Even if the affidavit evidence of Mr. Durst that the Dursts "would certainly not have made the loans to Freerider without having the security which it obtained under the notes" is accepted, he does say that he does "not recall specifically when or how the question of security was raised in our discussions." The fact of the matter is that it was Mr. Le Comte who voluntarily proposed that the security should be added to the proposed agreement with the Dursts to ensure they had a priority claim in order that, from Mr. Le Comte's perspective, the winding-up proceedings would not allow "the opposition" to gain control over the principal assets of the company.

48. Quite apart from the ostensible purpose of the borrowing in respect of which the security was purportedly granted by the company and the misuse by Mr. Le Comte, again purportedly on behalf of the company, of at least a portion of that borrowing for his own purposes (and this court has already ordered Mr. Le Comte to refund to the company those monies which he procured the company to pay to his Cayman attorneys for representing his interests in his dispute with Mr. Heinen about the winding up of the company on the grounds that such use was misfeasance by Mr. Le Comte as a director), there is, as I have already explained, clear evidence that there was a collateral purpose in Mr. Le Comte offering and purportedly granting the security on behalf of the company. In my opinion, that is a sufficiently unusual feature of this transaction of itself which takes the grant of the security out of the ordinary course of the company's business. However, there are anyway the other unusual features which I have discussed which also render the circumstances surrounding

grant of the security sufficiently extraordinary as to mean that it was clearly not in the ordinary course of the company's business.

49. In my judgment, when all the circumstances surrounding the purported grant of the security are considered, it cannot reasonably be said that it was in the ordinary course of the company's business. Accordingly, I make the declaration which the JOLs seek: that the grant of the security is not within the terms of the consent validation order dated June 29th, 2009.

Retrospective validation

50. In light of my conclusion that the grant of the security was not made in the ordinary course of the company's business, it is void pursuant to s.99 of the Law "unless the Court otherwise orders." In that case, GCF, by its summons dated August 30th, 2010, now seeks an order by way of retrospective validation of the grant of the security.

The relevant law on validation

51. Neither s.99 of the Law nor any other statutory provisions prescribe the circumstances in which the court may validate any particular disposition so that it is not void under the section. The court has an unfettered discretion whether to validate any disposition in its particular circumstances. The equivalent position in England was stated in *Re Steane's (Bournemouth) Ltd.* (12) ([1950] 1 All E.R. at 25):

"The legislature, by omitting to indicate any particular principles which should govern the exercise of the discretion vested in the court, must be deemed to have left it entirely at large, and controlled only by the general principles which apply to every kind of judicial discretion."

52. That was confirmed in the English Court of Appeal by Buckley, L.J. in *In re Gray's Inn Constr. Co. Ltd.* (9), who added ([1980] 1 W.L.R. at 717): ". . . [T]he discretion must, in my opinion, be exercised in the context of the liquidation provisions of the [UK companies legislation, which is generally equivalent to the Law]." Accordingly, the statutory scheme on winding up pursuant to the Law is clearly relevant. I have already summarized the purpose of s.99, which is part of that scheme, earlier in this ruling, as being to preserve the assets of a company in winding up for the protection of its creditors (see confirmation of this by Smellie, C.J. in *Scotiabank (C.I.) Ltd. v. Treasure Island Resort (Cayman) Ltd. (11) (2004–05 CILR 423, at para. 11*)).

53. Guidance on the matters to be taken into account by the court in considering validation was addressed by Henderson, J. in *In re Fortuna Dev. Corp. (8)*, as approved by Smellie, C.J. in *In re Cybervest Fund (5)*.

In the *Cybervest* case, Smellie, C.J. agreed with and adopted a summary of the guidelines set out in the *Fortuna* case, which in turn derived from statements of "broad guidelines" in an English case, *In re Burton & Deakin Ltd.* (2). In the *Fortuna* case, it was said (*2004–05 CILR 533, at para. 5*):

"Thus, there are four elements which must be established before an applicant is entitled to a validation order. First, the proposed disposition must appear to be within the powers of the directors . . . Secondly, the evidence must show that the directors believe the disposition is necessary or expedient in the interests of the company . . . Thirdly, it must appear that in reaching the decision the directors have acted in good faith. The burden of establishing bad faith is on the party opposing the application. Fourthly, the reasons for the disposition must be shown to be ones which an intelligent and honest director could reasonably hold."

54. Smellie, C.J. went on in the *Cybervest* case to add (*2006 CILR 80, at para. 29*):

"There is another consideration to add to this list, in light of the concerns raised in this matter, although arguably it is subsumed within the third and fourth elements. This would be whether irregularities in the conduct of the affairs of the company can be shown, even if the company is clearly solvent, as is alleged here."

55. Of course these guidelines are neither exclusive nor necessarily applicable to every case in which the court may or may not validate a disposition of a company's property when the company is subject to winding-up proceedings. Every case will turn on its own particular circumstances.

56. It also appears that different considerations may apply depending on whether the company concerned is solvent or insolvent. Solvency in this context has been said to mean that the court is satisfied by credible evidence that the company is able to pay its debts as they fall due (see *Re Fairway Graphics Ltd.* (7) ([1991] BCLC at 468–469)). As I will explain later, it does not appear to me that the company was solvent in that sense at the relevant time.

57. The usual assumption in a case where the company is solvent is that the particular disposition would not be prejudicial to the creditors as it should not affect their debts being repaid (see *Fortuna (8)*). However, even if a company is solvent, that is not necessarily conclusive where the winding-up petition is based on grounds other than insolvency, such as the just and equitable ground (see *Cybervest (5)*), as in the present case.

58. If it cannot be established that the company concerned is solvent, then the principal concern of the court in considering an application for a

validation order will be to seek to avoid prejudice to the interests of unsecured creditors of the company (see *Denney* v. *John Hudson & Co. Ltd.* (6)). Occasionally, in appropriate circumstances, the court has sanctioned the grant of a charge over a company's property as security for a loan to enable the company to continue its business as a going concern so that it can be can be sold as such, but in exercising its broad discretion the court must determine the question having regard to all the circumstances in each case. In the present case, I have, of course, already determined that the grant of security was not in the ordinary course of the company's business. It is, however, also clear that payments by a company (and by extension, security granted in respect of borrowing to fund such payments) in respect of disputes which are essentially between shareholders of the company would not be validated (see *In re Crossmore Elec. & Civil Engr. Ltd.* (4)).

59. It was submitted on behalf of GCF that it would be unfair to it (and the Dursts) if the grant of the security were not now validated. However, the purpose of s.99 of the Law is to minimize hardship to the general body of creditors as a whole: prejudice suffered by one particular creditor—in this case GCF/the Dursts—if the disposition is not validated is to be given relatively little weight (see *Re Tellsa Furniture Pty Ltd.* (13)). Of course, the nature and extent of any hardship suffered by the recipient of the disposition in issue will depend entirely on the facts and circumstances surrounding the disposition. As was said in the same case (*ibid.*), quoting from *Re Mal Bower's Macquarie Elec. Centre Pty. Ltd.* (10) (1 N.S.W.L.R. at 258)—

"the legislative intention, as disclosed by the terms of [the equivalent of s.99 of the Law] is such as to require an investigation of what happened to the property, that is to say, what was the disposition, and then to enable the liquidator to recover it upon the basis that the disposition was void. It is recovery from the disponee that forms the basic legislative purpose of [the equivalent section]."

Analysis and comment on the retrospective validation application

60. It is clear that the onus is on GCF to establish that a retrospective validation order should now be made in all the circumstances. The first note, pursuant to which the security was purportedly granted (it was in practical terms re-affirmed pursuant to the second note) was signed as of August 17th, 2009, a year before GCF made its application for validation thereof.

61. It is unclear whether the company was solvent at the relevant time, which in my view is at the time of the purported grant of the security pursuant to the first note. As I have already mentioned, both Mr. Le Comte and Mr. Heinen are firmly of the view that the company was and is solvent

on a balance sheet test. However, the very reason why, according to Mr. Le Comte, he procured the company to borrow from the Dursts was because the company was unable to pay its debts as they fell due. The JOLs have certified that the company is of doubtful solvency but that seems to be because they have had little or no access to the company's records and have accordingly been unable to reach a conclusion either way. The position appears to be that, at the time of the grant of security, the company may have been solvent on a balance sheet test but insolvent in being unable to pay its debts as they fell due.

62. However, assuming, in GCF's and Mr. Le Comte's favour for the sake of argument, that the company was solvent at the relevant time, then the test approved by Smellie, C.J. in *Cybervest (5)* should be applied to the circumstances surrounding the grant of the security, which I have already outlined in determining that the grant of the security was not within the ordinary course of the company's business. I do not think it necessary for me to repeat my summary of and comment on those circumstances.

63. There was no "body of evidence" presented to me to satisfy me that the reasons for the grant of the security were ones that an honest and intelligent director could reasonably have held. Indeed, apart from Mr. Le Comte's general comments in his affidavit evidence that the purpose of the borrowing, which was secured by the purported grant of the security, was largely to pay the legal costs of the litigation in New York, the Netherlands and this country, there was, as I have already mentioned, no detailed information provided by him as to precisely how the funds borrowed from the Dursts' company had been utilized, nor was there any evidence to justify the submission on his behalf that such borrowing was in the best interests of the company. For example, there was no expert opinion evidence as to the merits of the litigation in New York from the company's perspective in order to justify further expenditure on the litigation at that time, namely when the company was the subject of winding-up proceedings. The evidence, and the inference I have drawn from it, is that the money borrowed from 733 Properties/the Dursts was used not only to settle outstanding invoices but also in order to enable the litigation to progress. There was no explanation, still less professional opinion, as to why, for example, the legal proceedings in New York, and perhaps in the Netherlands, could not have been stayed on the company's application pending the determination of the winding-up proceedings, rather than the company spending more money on the litigation in such circumstances. There was no evidence, other than the bare assertions of Mr. Le Comte, that continuing to spend money on the litigation was in the best interests of the company at that time, rather than it being in his personal interests. The evidence, in my opinion, very much supported the latter interpretation.

64. I should also mention the consideration specifically referred to in

Cybervest, namely whether irregularities in the conduct of the affairs of the company can be shown. The court has already concluded that the members of the company have justifiably lost confidence in Mr. Le Comte based on a lack of probity in his conduct of the affairs of the business, including the company (see *2010 (1) CILR 486, at para. 72*) and I have already explained why I infer a collateral purpose on the part of Mr. Le Comte in offering and then purporting to grant the security to his friends' company. No authority has been submitted to me to the effect that the court has ever made a validation order, still less a retrospective one, in such circumstances.

65. It seems to me, having regard to the circumstances surrounding the grant of the security, most improbable that it would have been validated at or about the time of its proposed grant a year ago. Even if I am wrong about that, it does not follow that the grant of the security should now be validated retrospectively. The circumstances are now clearly different in that a winding-up order has since been made and the JOLs, who are officers of this court subject to this court's supervision, have been appointed to fulfil their statutory duties under the Law. The uncertainty with regard to the outcome of the winding-up proceedings which may have existed at the time when the security was purportedly granted now no longer exists. The grant of the security, which at the time may have possibly frustrated any official liquidators who might have been appointed in taking possession and control of the company's assets, now would definitely have that effect.

66. As far as 733 Properties and the Dursts are concerned, it was their decision to rely on an opinion by Mr. Le Comte's own attorneys, Turner & Roulstone, several of whose important assumptions were under challenge by Mr. Heinen, of which, at least in some respects, Mr. Durst was aware. For example, Turner & Roulstone did not point out the risks involved in not informing Mr. Heinen of the proposed transaction in light of the fact that Mr. Heinen had refused to resign as a director of the company. They did not point out the risk of the grant of the security, once it became known, being challenged and the risk of it being held by a court that it had not been granted in the ordinary course of the business of the company. They did not point out the risk involved in relying on the shareholder agreement which was under challenge and anyway open to other possible interpretation, or indeed the risks generally arising from the fact that Mr. Le Comte was involved in hostile litigation with Mr. Heinen in several jurisdictions which he was not inevitably bound to win in all respects. Furthermore, as I have already said, it seems to me reasonable to infer that Mr. Durst understood that Mr. Le Comte had offered the security at least in part for tactical collateral reasons of his own relating to his dispute with Mr. Heinen and also related to his suggestions concerning his future control and development of the company's intellectual property rights,

involving a proposal for a research and development facility in the US, perhaps even as a possible venture with the Dursts.

Conclusion on the retrospective validation application

67. Having regard to all the circumstances surrounding the grant of the security and in light of my analysis and comments above, in the exercise of my discretion I refuse the application of GCF for retrospective validation. I am satisfied that the grant of the security would probably not have been validated prospectively if an application for validation had been made prior to its grant, as in my opinion it should have been, and I do not consider that it should now be validated retrospectively. Indeed it seems to me that there are good additional reasons, as I have outlined above, why that should not be done. I therefore refuse the application by GCF by their summons dated August 30th, 2010 and declare the grant of the security to be void under s.99 of the Law. In the circumstances I will reserve the question of costs for further submissions from counsel in due course.

Declaration accordingly.

Maples & Calder for the liquidators; *Campbells* for the GCF Group; *Appleby* for Mr. Heinen; *Turner & Roulstone* for Mr. Le Comte.



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

JA-25

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.

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

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[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]

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[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

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[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]

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[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

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[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

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[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

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[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

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[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

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[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]

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[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

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[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

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[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

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[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

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[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

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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

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[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.

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

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.

Revised under the authority of the *Law Revision Act (2020 Revision)*.

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Act 56 of 2020-7th December, 2020
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



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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 —

Cap. 22-1st January, 1964	Law 10 of 2001-25th May, 2001
Law 9 of 1966-14th March, 1966	Law 29 of 2001-26th September, 2001
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

Law 14 of 1989-5th September, 1989
Law 10 of 1990-18th July, 1990
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
Law 2 of 1994-9th March, 1994
Law 8 of 1994-23rd September, 1994
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
Law 20 of 1998-15th February, 1999
Law 5 of 1999-14th April, 1999
Law 7 of 2000- 20th July, 2000
Law 5 of 2001-20th April, 2001
Law 6 of 2013-15th March, 2013
Law 14 of 2015-12th August, 2015
Law 3 of 2016-6th May, 2016
Law 2 of 2017-27th February, 2017
Law 42 of 2017-16th November, 2017
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 thousand dollars and a further 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 1st January, 2025, the commencement date 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 11 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, 2025, 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 item 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;	$600
	(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)

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