Neutral Citation Number: [2026] CIGC (FSD) 64

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 161 OF 2018 (NSJ)

IN THE MATTER OF THE COMPANIES ACT (2026 REVISION) AND IN THE MATTER OF CHINA SHANSHUI CEMENT GROUP LIMITED

BETWEEN:

TIANRUI (INTERNATIONAL) HOLDING COMPANY LIMITED

PETITIONER

AND:

CHINA SHANSHUI CEMENT GROUP LIMITED

FIRST RESPONDENT

ASIA CEMENT CORPORATION

SECOND RESPONDENT

CHINA NATIONAL BUILDING MATERIAL CO. LTD

THIRD RESPONDENT

AND:

CAUSE NO. FSD 93 OF 2019 (NSJ)

TIANRUI (INTERNATIONAL) HOLDING COMPANY LIMITED

PLAINTIFF

AND

CHINA SHANSHUI CEMENT GROUP LIMITED

DEFENDANT

Before:	**The Hon. Justice Segal**
Appearances:	**Tom Lowe KC instructed by Gemma Bellfield, Corey Byrne and Holly Johnston of Ogier (Cayman) LLP for the Petitioner**
	Mr Vernon Flynn KC instructed by Jasmin Davies of Carey Olsen (in FSD 161 of 2018) and by Quentin Cregan and Adrian Davey of Maples and Calder (Cayman) LLP (in FSD 93 of 2019) appeared for the Company
	David Allison KC and Stefanie Wilkins instructed by Laure-Astrid Wigglesworth and Alexandra Stasiuk of Walkers (Cayman) LLP for the Second Respondent
	Alex Potts KC instructed by Clare Bradin and Anna-Rose Davies of Conyers Dill and Pearman LLP for the Third Respondent
Heard:	**8 July 2026**
Decision announced:	**29 July 2026**
Judgment circulated:	**7 August 2026**
Judgment handed down:	**14 August 2026**

REASONS FOR DECISION ON THE PETITIONER'S AMENDMENT SUMMONS, NON-PARTY DISCOVERY SUMMONS AND JOINT TRIAL SUMMONS

Introduction

1. On 8 July 2026 I heard a number of summonses issued by Tianrui (International) Holding Company Limited (the ***Petitioner***).

2. These summonses and applications arise in two sets of related proceedings. The background is summarised in my judgment dated 11 December 2025 (the ***December***

2025 Judgment) (see [2]). I shall use in this judgment the terms Petition Proceedings, Petition, Writ Proceedings and Writ as defined in the December 2025 Judgment.

3. The summonses heard on 8 July were as follows:

(a). the summons dated 15 May 2026 (the ***Specific Discovery and Amendment Summons***) in which the Petitioner seeks:

(i). orders (the ***Specific Discovery Orders***) against the Company and separately against the Second and Third Respondents requiring them to give discovery by way of list and inspection (and the provision of copies) of certain documents; and

(ii). an order (the ***Amendment Order***) granting leave to the Petitioner to file the Re-Re-Re-Amended Winding Up Petition (the ***Amended Petition***) in substantially the form of the draft exhibited at LX-13 to Ms Li's Thirteenth Affirmation (***Li 13***) and to make the amendments set out therein (the ***Proposed Pleading Amendments***).

(b). the summons (the ***Non-Party Discovery Summons***) also dated 15 May 2026 in which the Petitioner seeks, pursuant to CWR O.3, r.12(1)(i), orders (the ***Non-Party Discovery Orders***) for the production of documents from certain non-parties to the Petition being Cithara Global Multi-Strategy SPC (***Cithara***), TFI Investment Fund SPC (***TFI***), Greater Bay Investment Fund L.P. (***Greater Bay***) and JL Capital Global Investment SPC (***JL Capital***) (together, the ***Non-Parties***).

(c). the summonses dated 12 June 2026 (the ***Joint Trial Summonses***) which seek *inter alia* (i) further directions in the Writ Proceedings including an order that the trial of the Writ be listed together with the Petition (the ***Joint Trial Order***) and (ii) in the Petition, pursuant to GCR O.38, r.28, directions on the admissibility and weight to be given to the witness statements of Wu Ling-Ling dated 18 January 2018 and Chang Zhangli dated 24 January 2018 and filed in Hong Kong proceedings HCA 2880 of 2015 (the ***2880 Proceeding***).

4. On 21 July 2026 Walkers (the Cayman attorneys to the Second Respondent) sent an email to the Court in which they stated that the Second Respondent had discovered that some of the evidence which it had filed in relation and opposition to the Petitioner's application for the Specific Discovery Orders required correction. Walkers stated as follows:

> *It has come to our attention that there is some information which requires correction in the Second Affidavit of Ms Sit Sin Ting Maria which was filed in response to the Petitioner's Summons, dated 15 May 2026, for specific discovery and the amendment of its pleading (specifically, in the section of Ms Sit's evidence dealing with the Petitioner's request for specific discovery). Having identified this, we are working diligently with our client to address and correct this. In particular, we are taking urgent steps to prepare and file corrective evidence and will provide this to the Court and the parties as soon as possible.*

5. On 23 July 2026, my PA sent an email to the parties to confirm that in view of this development I would proceed, without waiting for the filing of the further evidence relating to the application for the Specific Discovery Orders, to give judgment on and inform the parties of my decisions in relation to the Petitioner's application for the Amendment Order, the Non-Party Discovery Summons and the Joint Trial Summonses.

6. On 29 July 2026, my PA emailed the parties to confirm that I had decided that:

   (a). the Petitioner's application for leave to make the Proposed Pleading Amendments would be dismissed.

   (b). the Petitioner's application in the Non-Party Discovery Summons for the Non-Party Discovery Orders in respect of the Non-Parties would be granted.

   (c). the Petitioner's application in the Joint Trial Summonses for the Joint Trial Order would be dismissed.

7. This judgment sets out my reasons for those decisions. I would note that there was a dispute between the parties as to whether the hearing was to be treated as a CMC or a PTR in relation to the Petition Proceedings. The order directing that there be a further hearing referred to a CMC/PTR and in my view nothing turns on this

distinction. While the trial of the Petition is only some three months away and certain of the summonses dealt with at the hearing related to directions for the trial, it seems to me that there may well need to be a further hearing before the trial (a true PTR) in order to undertake a final review of the status of the proceedings ahead of the trial.

The December 2025 Judgment

8. Before dealing with each of these applications it is worth recording, as relevant background, the previous applications that were made at the CMC on 11 November 2025 in respect of both the Petition and the Writ and my decisions as set out in the December 2025 Judgment. In the December 2025 Judgment I confirmed that I:

(a). declined to make an order at that time that the Petition Proceedings and the Writ Proceedings be heard and tried together and stated that steps should be taken to list the Petition for trial as soon as possible and that the parties should agree on further directions for this purpose.

(b). refused the Company's application to stay the Writ Proceedings and ordered that directions be given to progress the Writ Proceedings up to the completion of the discovery process.

(c). declined to make an order that discovery in the Petition Proceedings be treated as discovery in the Writ Proceedings.

9. As regards the Petitioner's application that there should be a joint trial of the Petition and the Writ, I said as follows at [4(a)] and [29] of the December 2025 Judgment (my underlining):

> *[I] had decided that Tianrui's applications for a Joint Trial Order should be dismissed and that steps should now be taken to progress the Petition Proceedings promptly to a trial during the Winter Term 2026. I explained that while I could see arguments on both sides and considered that there was clearly a substantial overlap between both sets of proceedings (which relate to a largely common factual background and raise many of the same factual disputes), <u>as a practical matter the further delay to the trial of the Petition that would result if</u>*

that trial had to wait until the Writ was ready for trial was likely to be substantial and cause serious prejudice to the Company (and ACC and CNBM), as well as being inconsistent with the overriding objective.

…..

It seems to me that in the circumstances, in particular in a case involving litigation that has already taken many years, while the arguments are finely balanced, the best way of dealing with the Petition Proceedings and the Writ Proceedings in a just, expeditious and economical manner is to give directions for the Petition Proceedings to proceed to trial as rapidly as possible and for the Writ Proceedings to progress in parallel to the point where discovery has been completed. This will ensure that the fact that the Writ Proceedings are significantly behind the Petition Proceedings will not further delay the already long delayed trial of the Petition and that, by the time of the trial of the Petition, the Writ Proceedings will have made substantial further progress and be in a position where they can progress to a trial if appropriate within a relatively short time after the trial of the Petition.

The application for the Amendment Order

The Proposed Pleading Amendments

10. In its Proposed Pleading Amendments (see pages 560 to 583 of the exhibit to Li 13), the Petitioner seeks to:

    (a). add a new section making complaints about transfers by five New Shareholders (being the shareholders who received shares in the Company under the New Share Issue on 31 October 2018) made after 31 October 2018 (the ***Subsequent Transfers***) and to plead that the Company (acting by its board) should have preserved the *status quo* pending determination of the Petition (the ***Subsequent Transfers Amendment***).

    (b). include an application for alternative relief pursuant to section 95(3) of the Companies Act that the Court orders (the ***Repurchase Order***) that the Company repurchase 974,825,988 shares from the Second Respondent, the Third Respondent and/or their nominees, being the number of shares said to be equivalent to the shares issued in the New Share Issue, with a corresponding reduction of capital and share capital account (the ***Alternative Relief Amendment***).

11. The Subsequent Transfers Amendment is drafted as follows (my underlining):

Transfer of Shares by the New Shareholders

51A In respect of the shareholders who received shares in the Company under the New Share Issue on 31 October 2018 (the "New Shareholders"), five of them have subsequently transferred their shares in the Company to third parties (the "Subsequent Transfers"). In particular, the Petitioner understands that:

(a) On 30 November 2018, Wong Ham Chi transferred his shares in the Company to an unknown third party;

(b) On 22 July 2020, TFI Investment Fund SPC – TFI Eon Global Benefit (the transferee of the bonds from TFI Asset Management Ltd) transferred its shares in the Company to an unknown third party which the Petitioner suspects to be Alphawise Core Fund SPC – Alphawise Value SP (a Cayman segregated portfolio company);

(c) On 4 October 2021, Wonderful Sky Financial Group Holdings and Luk Ching Sanna transferred their shares in the Company to an unknown third party which the Petitioner suspects to be Rich Knack International Limited (a BVI company); and

(d) On 7 January 2022, Cithara transferred its shares in the Company to Shen Neng International SPC – Green Planet SP.

51B The Petitioner considers that since the Petition alleges that the New Share Issue is for an improper purpose, the Company and its Board had an obligation to ensure that the status quo was maintained pending the resolution of the Petition, including by taking steps to prevent the Subsequent Transfers. The Petitioner says that ACC and CNBM's failure to take such steps via their representatives on the Company's Board is further evidence of unfair and oppressive conduct and of a lack of probity.

12. The Alternative Relief Amendment is drafted as follows (my underlining):

54 If it is otherwise just and equitable that the Company be wound up, the Petitioner seeks, by way of alternative order under section 95(3) of the Companies Act, an order that the Company repurchase 974,825,988 shares from ACC, CNBM and/or their nominees at a price to be determined by the Court, being equivalent to the number of shares issued in the course of the New Shares Issue to the New Shareholders and that the Company's capital and share capital account be reduced accordingly.

55 The Petitioner says that it is appropriate that the Company be obliged to repurchase ACC and CNBM's shares in circumstances where:

(a) The Petitioner has been improperly diluted via the New Share Issue and deprived of its right of negative control and such an order would restore the status quo prior to the New Share Issue; and

> *(b) The Subsequent Transfers may have had the effect of frustrating any efforts by any official liquidators to unwind the New Share Issue and restore the status quo prior to the New Share Issue.*

13. [16] of the Prayer in the Amended Petition is in the following terms:

> *If the Honourable Court considers it just and equitable to make an order under section 95(3) of the Companies Act, the Petitioner seeks an alternative order that the Company repurchase 974,825,988 shares from ACC, CNBM and/or their nominees at a price to be determined by the Court, being equivalent to the number of shares issued in the course the New Shares Issue to the New Shareholders and that the Company's capital and share capital account be reduced accordingly.*

The Petitioner's position

14. In Li 13, Ms Li noted as follows (my underlining):

> *59. <u>Following a judgment of the Honourable Justice Segal on 27 January 2021, the Petition was amended on 17 March 2021 which included a new paragraph 54 which said</u>:*
>
> > *"If the Honourable Court considers it just and equitable to make an order under Section 95(3) of the Companies Act instead of appointing the Official Liquidators, the Petitioner will say that the Company's capital be reduced by a repurchase of the shares of ACC and CNBM and/or their nominees in proportions and at a value to be determined by the Court."*
>
> *60. <u>Despite this amendment, the Petitioner still sought winding up as the primary remedy and the purpose of this paragraph was to specify that, in the event that the Court were minded not to order liquidation, this is the alternative relief which would be sought by the Petitioner</u>.*
>
> *61. <u>Following challenges to this paragraph by ACC, at a directions hearing on 16 July 2021, the Petitioner's leading counsel Mr Lowe KC explained the above position and Justice Segal said</u>:*
>
> > *<u>"If nobody asks for it, and the court thinks alternative relief may be appropriate, the court is not going to address that question without giving the parties an opportunity, arguably, to amend their pleadings, but certainly to make submissions and put in evidence ……. Yes. So, to foreshadow the court of its own initiative, deciding to consider the question in the absence of anybody else raising it, is overly scrupulous as a matter of pleading. And to my mind, probably unnecessary.</u>"*
>
> *62. In response, Mr Lowe KC said:*

> *"Well, in that case, we can disregard it and omit it as an amendment. And we can reintroduce it if the time ever arises. Yes, I'm content with that. And so, as Your Lordship says, it's entirely hypothetical at this time, whether we ever need that. So, on that basis, liquidation is what we seek and all we seek."*

A copy of the transcript of this hearing is at pages 398 to 467 of LX-13.

63. *On 13 August 2021, the Petitioner amended the Petition to remove paragraph 54.*

64. *However, the Petitioner now seeks to reintroduce a modified purchase/reduction of capital order by way of alternative relief as the primary relief sought in the Amended Petition. It does so, given the material change in circumstances in the five years since 2021:*

    64.1 *The purpose of the Petition has always been to unwind the New Share Issue and restore the status quo prior to the Petitioner's improper dilution. This was confirmed at the directions hearing on 16 July 2021 when Mr Lowe KC said:*

    > *"We see the liquidation as a solution because we see the liquidators being able to reverse anything that Your Lordship might've concluded was wrong and might be able to do so much more efficiently than we can because the parties will all be in Hong Kong, and it can all be dealt with there, perhaps at that point."(emphasis added)*

    However, the Petitioner's understanding of the position has evolved in the last five years and the Petitioner now has significant concerns that any subsequently appointed liquidators may face significant hurdles in unwinding the New Share Issue due to the Subsequent Transfers. It is not presently known how many different shareholders are successors in title to the original New Shareholders or in what jurisdictions these shareholders are located. I am advised by Cayman counsel that it may therefore be difficult and potentially impossible for all of the New Share Issue to be unwound by the liquidators (which the Petitioner believes was the purpose of the Subsequent Transfers). Even if it could, it would result in very significant costs to be borne by the Company and its stakeholders.

    64.2 *The PRC cement industry has suffered a significant downturn since 2021 when alternative relief was last considered. In that regard, I note the following:*

    …….

    Accordingly, in the event that the Company is placed into liquidation, I believe that there are much lower chances of a successful restructure *of the Company or of any other competitors in the cement industry buying the Company's business and assets. In the circumstances, a winding up may have the effect of destroying significant value.*

65. Accordingly, the Petitioner believes that the best means by which the status quo could be restored is an order that requires the Company to repurchase 974,825,988 shares issued to ACC, CNBM and/or their nominees (being the equivalent to the amount of shares issued under the New Share Issue) at a price to be determined by the Court and that the Company's share capital be reduced accordingly.

66. The Petitioner confirms that it is not introducing alternative relief as a means of jeopardizing the trial presently set down for October and November 2026. I am informed by my Cayman attorneys and believe that the trial can determine the question of whether it is just and equitable to wind up the Company. If time does not permit the Court to determine whether the reduction of capital is the appropriate remedy or at what price the shares should be repurchased, it could do so at a subsequent hearing.

15. The Petitioner:

(a). submitted that the principles governing applications for permission to amend have always been that arguable amendments should be allowed so long as there was no prejudice which could not be compensated by costs (which general principles applied to winding up petitions on the just and equitable ground).

(b). cited the well-known dictum of Brett MR in *Clarapede & Co v Commercial Union Assurance* (1884) 32 WR 262 and submitted that this approach remained the law in this jurisdiction. They cited the judgment of Chief Justice Smellie (as he then was) in *Lemos v CIBC Bank and Trust Company (Cayman) Limited* (Unreported, 19 February 2015) who said at [16] that: *"In my view this dictum still represents good practice, despite the change in emphasis in the more recent case law*" (and *Cowan v Equis Special LP* (Unreported, Mangatal J, 3 October 2019) and my judgment in *Williams v Cayman National Bank Ltd* [2021 (1) CILR 538]). The Petitioner noted that in *Ketteman v Hansel Properties Ltd* [1987] AC 189 Lord Griffiths had said that "*However negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without prejudice to the other side. There is no injustice if the other side can be compensated by costs.*"

(c). noted that cases in England such as the English Court of Appeal's judgment in *CNM Estates (Tolworth Tower) Ltd v Carvill-Biggs* [2023] EWCA Civ 480 had held that even under the CPR the general rule was that, except in the case of "very late" amendments, unless it could be said that the amendments had no prospect of succeeding, their merits should be determined at a full trial. The Court of Appeal had found that a distinction should be drawn between "late" and "very late" amendments, with the latter being amendments that would cause the trial date to be lost. In the case of very late amendments, it was appropriate for the Court to assess the merits of the new case.

(d). as regards the Subsequent Transfers Amendment:

(i). submitted that Ms Du, the General Manager of the Legal Compliance Department of the Third Respondent, (in her Third Affirmation sworn on 11 June 2026 (***Du 3***)) had been wrong to assert that the Subsequent Transfers Amendment involved an allegation made against the board of the Company and not ACC and CNBM. The Subsequent Transfers Amendment made clear that it made an allegation against ACC and CNBM. It asserted that their failure as major shareholders with representatives on the board of the Company to take steps to prevent the Subsequent Transfers was further evidence of oppression.

(ii). asserted in its Written Skeleton Argument that "*In any event, given that the introduction of pleadings in relation to the Subsequent Transfers do not imperil the trial date and are not plainly unsustainable, this is not an application on which the Court should attempt to determine the merits of these claims.*"

(iii). argued that seeking at this stage permission to make the Subsequent Transfers Amendment was not an abuse of process. The Petitioner was entitled to change its position on the relief it sought (and doing so would not prejudice the Respondent's ability to oppose the Petition). Further, the proposed change had been expressly contemplated by the Court in the December 2025 Judgment (at [32]).

(e). as regards the Alternative Relief Amendment:

(i). argued that in the December 2025 Judgment I had left it open to the Petitioner to amend the Petition so as to add an alternative remedy. This was based on what I had said at [32] of the December 2025 Judgment:

> *I suspect that at least in practical terms Tianrui would need to decide at, and no later than, the time of the PTR/CMC in the Petition Proceedings whether it wishes to obtain a winding up order rather than seek the relief in the Writ Proceedings. As I understand it, while Tianrui wished there to be a joint trial of the Petition and the Writ, in the absence of this it still wishes to press ahead first with the Petition and to seek a winding up order.*

(ii). argued that in any event this proposed amendment was not to be characterised as very late. It would not cause or risk a delay to the trial (and the Petitioner did not wish or intend to cause such a delay). Adding the prayer for the proposed alternative relief did not change the fundamental question in the Petition, which was whether there were grounds for winding up the Company on the just and equitable ground. Although the amendment introduced a new question as to whether the Court had the jurisdiction to make the Repurchase Order and, if so, whether it should make the Repurchase Order or whether some other order should be made under section 95(3) of the Companies Act, this was a legal and not a factual question. It would not cause undue prejudice for the parties to address it in their legal submissions at trial, which could easily be done where the trial remained over three months away. No additional discovery would be needed from the parties. Whilst expert evidence may be necessary on the question of the Company's shares, this will not require further discovery from the parties and the valuation evidence could be left to and filed ahead of a second and separate hearing after the trial.

(iii). argued that there could and should be a two-stage, bifurcated, trial. The trial of the Petition would proceed and be heard starting on 12 October 2026 to determine two questions, namely (i) whether there are grounds for winding up the Company on the just and equitable ground and (ii) if so, whether the relief should be a winding up order or the Repurchase Order or some other order pursuant to section 95(3). If the Court finds that the Petitioner has made out its case and that there are grounds for winding up the Company and that the most appropriate order to make is the Repurchase Order, then a separate and subsequent hearing could take place to determine the question of the form and terms of the Repurchase Order and how much the Company should pay for the shares to be purchased. The Petitioner noted that such a bifurcated approach had recently been adopted by Justice Doyle in *Re Position Mobile Ltd SEZC* [2026] CIGC (FSD) 10 in which his Lordship had made the determination at the trial that the petitioner had established that the grounds for making a winding up order were made out and that a buy-out order was the appropriate remedy but directed that there be a further hearing to determine the amount to be paid if the parties failed to agree (see [456]-[457]).

The Second and Third Respondents' position

16. The Second Respondent in its skeleton argument referred to my judgment in *Williams v CNB* [2021 (1) CILR 538] at [20(a)] and [34(d)] where I referred to the commentary in the 1999 White Book at 20/0/2, which expressed the following principles:

> *The overriding principle with regard to amendments is that contained in r.8, namely, that, generally speaking, all amendments will be allowed at any stage of the proceedings and of any document in the proceedings (other than a judgment or order) on such terms as to costs or otherwise as the Court thinks just. This principle is subject to the countervailing rule or practice that an amendment will be refused or disallowed when, if it were made, it would result in prejudice or injury which cannot be properly compensated for by costs. Accordingly, as a general rule either party is allowed to make any amendment in his own pleadings or other proceedings which is reasonably necessary for the due presentation of his case on payment of the costs of and occasioned by the amendment, provided there has been no undue delay on his part, and provided also the amendment will not injure or prejudicially affect any vested rights of his opponent. But if the application is made male fide, or if the proposed amendment is sought to*

> *be made after undue delay, or will in any other way unfairly prejudice or cause detriment to the other party, or is irrelevant or useless or would raise merely a technical point, leave to amend will be refused.*

17. The Second and Third Respondents argued that in order to justify the granting of permission to amend the Petitioner had to (a) satisfy the merits test – the amendment must have a realistic prospect of success, (b) show that granting permission to amend would not result in prejudice to other parties that could not be compensated in costs and (c) show that there had not been undue delay. A failure to satisfy any one of these grounds could justify a refusal to grant permission. In the present case, the Petitioner had failed to satisfy each ground in relation to both of the Proposed Pleading Amendments.

18. As regards the Subsequent Transfers Amendment, the Second and Third Respondents argued that:

(a). it was too late – Ms Li's evidence (Li 13 at [45]-[46]) was that the Petitioner had learned on 7 February 2025 that since the filing of the Petition certain of the New Shareholders (a reference to the persons who had acquired shares in the 2018 share issue by which the Petitioner's holding was diluted) were no longer shareholders. There was no reason why the Petitioner could not have sought to amend the Petition sooner. No explanation had been given for why the amendment application was only made in May 2026.

(b). the Second and Third Respondents will suffer prejudice if the Court were to permit the Subsequent Transfers Amendment to be made. Allowing such amendments to be introduced at this extremely late stage would plainly deprive the Second and Third Respondents of their right fully and fairly to defend the new allegations and to a fair trial. The Court would be required to permit the Second and Third Respondents to consider further amendments to the Defences, which in turn might necessitate amendments to the Replies. Further discovery and evidence would be required. It was inconceivable that this work could be done before the trial was due to commence on 12 October 2026. Despite asserting that it did not wish to lose the trial date, the Petitioner had not demonstrated how the requisite steps could in practice be taken in time to avoid the loss of the trial date. The loss of the trial date in this case would cause very substantial prejudice to the Second and Third Respondents in view of the many years (eight years) in which the petition has already been outstanding (a factor to which I had made reference previously when deciding that the Petition Proceedings should be tried without waiting for the related Writ Proceedings to catch-up) and the fact that the Company has been unable to pay dividends to its shareholders during that period (see Ms Sit's Second Affidavit (***Sit 2***) sworn on 16 June 2026 at [15] – Ms Sit is a partner in Hogan Lovells Cadwalader in Hong Kong, the law firm advising the Second Respondent). This is in addition to the fact that the current listing allowed me to conduct the trial and I am familiar with these proceedings as the Judge to whom the proceedings have been assigned for some time (but I was unlikely to be able to conduct a delayed trial because of my upcoming retirement this year).

(c). the amendment was premised on (i) a new case asserting a breach *by the Company* of a newly asserted obligation, the basis for which has not been explained or established and (ii) a new case against the Second and Third Respondents in circumstances where the facts supporting the allegation of a failure by the Respondents to prevent the Subsequent Transfers are not properly pleaded or particularised. The Subsequent Transfers Amendment alleges that the asserted failures evidence a lack of probity and therefore requires full particulars of such a serious allegation of misconduct. As currently pleaded/formulated, the case made in the Subsequent Transfers Amendment had no real prospect of success.

(d). the Petitioner had had the opportunity to make the Subsequent Transfers Amendment at an earlier stage in the proceedings. As Ms Sit had pointed out at [13] of Sit 2, the Petitioner had sought leave to amend the Writ to refer to the Subsequent Transfers at the hearing on 11 November 2025 and could easily have also sought to amend the Petition at the same time. There was no proper justification for the Petitioner not having done so and for its subsequent delay.

19. As regards the Alternative Relief Amendment, the Second and Third Respondents argued that:

(a). the Alternative Relief Amendment represented a volte-face from the position that the Petitioner had previously advanced in these proceedings (the procedural history had been set out in Sit 2 at [21]). It was an abuse of process for the Petitioner to seek to change tack at this very late stage of the proceedings.

(b). insofar as the Subsequent Transfers were relied on as a change in circumstances justifying the application for alternative relief, the Petitioner had, as already noted, known about those since 7 February 2025 and there was no evidence or proper explanation as to how or why the Subsequent Transfers would affect the conduct of any subsequent liquidation and prejudice a claim by a liquidator to unwind the bond and share issues criticised and challenged in the Petition. The Petitioner relied on mere assertion unsupported by proper evidence.

(c). once again, allowing the Alternative Relief Amendment would put the trial date at risk. If the claim for alternative relief were to be properly pleaded, there would be substantial questions to be dealt with at the trial about (i) whether it would be appropriate to grant alternative relief and (ii) the valuation of the shares, including issues such as the appropriate valuation date and the application of discounts (see Sit 2 at [23(c)]). There was no realistic prospect of such issues being properly joined into the petition and maintaining the trial date. This would require further responsive pleadings from the Respondents, further discovery and further evidence including expert evidence all in advance of 12 October.

(d). the Petitioner had suggested, without a detailed explanation, that the trial date could be maintained by splitting the trial so that the current listing would deal with the issues of whether the Petitioner had made out its case of oppression and improper treatment and whether to grant alternative relief and a second and subsequent trial would, if the Court concluded that alternative relief should be granted, deal with the separate issues of the form and terms of the alternative relief including any valuation evidence and disputes. But the Second and Third Respondents did not accept that, even if such a split trial was appropriate and was ordered, the first part of the trial could proceed without further pleadings, discovery and evidence (including valuation evidence) as these would be needed by the Court when deciding whether to grant alternative relief. A decision by the Court as to whether alternative relief rather than a winding up was appropriate could not be made at the first hearing/trial in a factual vacuum.

20. The Second Respondent's position (with which the Third Respondent agreed) was set out very clearly by Ms Sit in Sit 2 and is worth quoting at length. The following are the relevant paragraphs (my underlining):

> *20. ACC opposes this application in the strongest terms. The Petitioner's attempt to reintroduce alternative relief represents a complete volte-face from the position it has repeatedly adopted, and on the basis of which the Court has made substantive procedural orders, throughout the history of these proceedings.*
>
> *21. The Petitioner's account of the procedural history in respect of alternative relief is selective and incomplete. For the benefit of the Court, the full relevant chronology is set out below:*
>
> *a. In his Judgment dated 27 January 2021 (In re China Shanshui [2021 (1) CILR 253]), Segal J noted at paragraph 33(p) that the Petitioner had yet to plead a claim for alternative orders, but intended to do so and would provide the Respondents with details of the claims for the alternative relief it intended to make. Segal J expressly characterised the Petitioner's approach as " surprising and unsatisfactory" and stated that the Petitioner should "plead whether it seeks alternative relief and precisely what relief is claimed."*
>
> *b. Upon ACC being joined to the Petition Proceedings and served with the Re- Amended Petition, Walkers wrote to Ogier on 12 May 2021 (see **pages 1 to 4** of Exhibit SSTM-2) noting that the Petitioner's amendments regarding its claim for alternative relief were contradictory and confusing. In particular, Walkers noted that paragraphs 53 and 54 of the Re-Amended Petition stated, on the one hand, that "The Petitioner seeks no alternative relief' whilst, on the other, inviting the Court to make an order of its own initiative requiring the Company to repurchase ACC and CNBM's shares. In that correspondence, Walkers invited the Petitioner to prepare a revised draft Re-Re-Amended Petition to address these deficiencies.*
>
> *c. Ogier responded on 4 June 2021 (see **pages 5 to 9** of Exhibit SSTM-2) and disagreed that any further amendments regarding the Petitioner's claim for alternative relief were necessary.*

d. *The above dispute resulted in a directions hearing on 16 July 2021 (the **"Directions Hearing"**), for the purpose of seeking further and better particulars in respect of the Petitioner's claim for alternative relief as well as directions concerning, inter alia, (i) the proper treatment of the Petition Proceeding as an inter partes dispute between the Petitioner, ACC and CNBM, (ii) the Petition standing as the Petitioner's points of claim, (iii) service of pleadings between the parties, and (iv) the simultaneous hearing of the Petition and the Writ in Cause No. FSD 93 of 2019 (NSJ).*

e. *At the Directions Hearing, ACC submitted that the Petitioner's claim for alternative relief was defective and required further and better particulars. In particular, and as the Petitioner appears to have done on this occasion again, ACC noted that the Petitioner had not included any pleaded case on (i) the basis of valuation for any share repurchase; (ii) the valuation date; or (iii) the application of an appropriate discount or adjustment.*

f. *Also at the Directions Hearing, when challenged on the alternative relief, the Petitioner's leading counsel, Mr Lowe KC, made the following unequivocal concession:*

"Well, in that case, we can disregard it, and omit it as an amendment. And we can reintroduce it if the time ever arises. Yes, I'm content with that. And so, as Your Lordship says, it's entirely hypothetical at this time, whether we ever need that. So, on that basis, liquidation is what we seek and all we seek."

g. *This was said in circumstances where Segal J had indicated that:*

"If nobody asks for it, and the court thinks alternative relief may be appropriate, the court is not going to address that question without giving the parties an opportunity, arguably, to amend their pleadings, but certainly to make submissions and put in evidence ..."

h. *Pursuant to the Directions Order dated 5 August 2021, Segal J ordered (at paragraph 3) that the Petitioner shall file and serve a Re-Re-Amended Petition that deletes its claim for alternative relief.*

i. *On 13 August 2021, the Petitioner duly filed its Re-Re-Amended Petition with former paragraph 54 of the Re-Amended Petition (which had contained the plea for alternative relief) was deleted in its entirety. Further, paragraph 53 (now the final substantive paragraph) maintained the unambiguous statement that "The Petitioner seeks no alternative relief."*

22. *The significance of this procedural history cannot be overstated. The Petitioner's current application to reintroduce alternative relief is not merely a routine application to amend. It is an attempt to reverse a position which:*

a. *the Petitioner's leading counsel expressly adopted before the Court, confirming that "liquidation is what we seek and all we seek;*

b. *was the basis on which Segal J made a specific direction ordering the deletion of the alternative relief plea;*

c. *was implemented by the Petitioner in its Re-Re-Amended Petition;*

d. *has been the understood basis of the proceedings for the past five years, during which all parties have prepared their respective cases (including discovery and factual evidence) on the footing that the only relief sought by the Petitioner is a winding-up order; and*

e. *there has been no discovery, factual evidence or expert evidence put before the Grand Court which is addressed at the question of whether there should be an order for the repurchase by the Company of 974,825,988 shares issued to ACC, CNBM and/or their nominees or the valuation issues which would arise in such circumstances.*

23. *The Petitioner now seeks, in the Li Affirmation [Li 13], to explain this reversal by reference to an alleged "material change in circumstances in the five years since 2021", arising principally from the Subsequent Transfers. This explanation is wholly inadequate for the following reasons:*

a. *the Petitioner has been aware of the Subsequent Transfers for well over a year but has taken no procedural steps to account for this knowledge until now;*

b. *The Petitioner's stated concern that "any subsequently appointed liquidators may face significant hurdles in unwinding the New Share Issue due to the Subsequent Transfers" is entirely speculative. There is no evidence before the Court that a winding up would be impracticable or that liquidators would be unable to deal with the consequences of any Subsequent Transfers;*

c. *The Petitioner's suggestion that the introduction of alternative relief would not jeopardise the trial is contradicted by the reality of the situation. As previously argued by the parties at the Directions Hearing, a properly pleaded claim for alternative relief would raise substantial issues regarding (i) the basis of valuation; (ii) the valuation date; and (iii) the application of discounts or adjustments, none of which have been addressed in the Amended Petition and all of which would require further pleadings, discovery, and expert evidence. ACC cannot be expected to respond to a fundamentally different case a matter of weeks before the trial.*

d. *The alternative relief now sought, namely an order requiring the Company to repurchase 974,825,988 shares at a price to be determined by the Court, is a remedy of considerable complexity and significance. It is a remedy that directly affects the financial position of ACC and CNBM and requires a valuation exercise that may itself require a separate hearing (which the Petitioner itself admits).*

e. *Critically, the Petitioner's evidence offers no solution as to how such an amendment could be rendered workable within the current timetable. The Li Affirmation is silent on how the substantial additional steps that would inevitably follow from the introduction of alternative relief including further pleadings, discovery, and expert evidence on valuation, could be accommodated without imperilling the trial fixture. The suggestion that valuation could be dealt with at a further hearing does not resolve this difficulty; it merely underscores the extent to which the introduction of alternative relief would fundamentally alter the scope and complexity of these proceedings at this late stage. After eight years of litigation, the parties are entitled to finality. To suggest that, following a trial which has been years in the making, there would need to be yet a further hearing to* *determine valuation would only serve to prolong these proceedings indefinitely and is plainly unsatisfactory.*

24. *In the circumstances, ACC submits that the Petitioner should not be permitted to resile from its unequivocal position that it seeks no alternative relief. The parties have conducted these proceedings on the basis that the only relief in issue is a winding-up order. To permit the amendment at this stage would cause serious and irremediable prejudice to ACC (and, indeed, the other parties to the Petition Proceeding) and would seriously jeopardise the trial fixture.*

My decision

21. GCR O.20, r.5 gives the Court a wide power to grant leave to amend. It states as follows:

> *…. the Court may at any stage of the proceedings allow the plaintiff to amend the plaintiff's writ, or any party to amend that party's pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.*

22. Whether an amendment should be granted is a matter for the discretion of the Court, which should be guided in the exercise of the discretion by an assessment of where justice lies. Many factors will bear on the exercise of this discretion (see *Ketteman v Hansel Properties Ltd* [1987] AC 189 (HL) per Lord Griffiths at page 220).

23. The traditional approach has been to make it clear that amendments, even late amendments, should be allowed if they can be made without injustice to the other party and that there is no injustice if the other party can be compensated by an order for costs. As Chief Justice Smellie (as he then was) said in *Lemos* reiterating the dictum of Brett MR in *Clarapede & Co v Commercial Union Association* (1883) 32 W.R. 262, 263, a plaintiff is entitled to amend his/her pleadings however negligent or careless the omission, and however late the proposed amendment, provided there would be no injustice to the defendant and there would be no injustice if the defendant could be compensated by costs.

24. In *Lemos*, Smellie CJ said as follows (my underlining):

16. *In my view, this dictum [of Brett MR in Clarapede] still represents good practice, despite the change in emphasis in the more recent case law. I describe the change as one of emphasis because the more recent case law emphasizes the need for pro-active judicial case management to ensure the timely dispensation of justice, while not purporting to detract from the importance of doing justice in each particular case. And so, where the more recent case law cited above speaks of "a heavy onus" resting upon an applicant seeking leave to amend (here pursuant to Grand Court Rules Order 20 rule 5) the primary question must still be - however late in the day the application may be - whether or not injustice or prejudice will result from leave to amend being granted. As Lord Griffiths declared in Ketterman (above) (at p.82):*

> *"Whether an amendment should be granted is a matter for the discretion of the trial judge and he should be guided in the exercise of the discretion by the assessment of where justice lies. "*

17. *If the answer to that question is that prejudice will ultimately result from allowing the amendment, then leave should not be granted. If not, and the resultant costs can be made good by an order for costs of the amendment in favour of the other side, then the amendment would ordinarily be allowed for much the same reasons as the Court of Appeal in Iorgulescu explained.*

18. *The further concern recognised by the more recent cases - that is: whether resultant delay will have a knock-on detrimental impact upon other cases and court users - does not, in my view, extend the principles any further.*

19. *I say this because even while a judge should always be mindful of the consequences of delay upon the timely and effective disposal of cases, it is hardly likely that an otherwise just and proper amendment will be disallowed out of such general concerns, not directly related to the case at bar. And where the amendment would be unjust, doomed to fail or otherwise improper; it will be disallowed, in any event. Thus, while at first glance the approach in the recent English cases may seem rather less liberal than that approved in Iorgulescu; on closer examination the practical difference will likely be inconsequential. The "heavy onus" is not imposed simply to discountenance applications for leave to amend, it is imposed to discountenance late applications which are likely to result in delay and so likely to prejudice the fair and timely disposal of the case in which it is made and perhaps other cases as well. There is nothing inconsistent between that approach and the principles laid down in the earlier case law as adopted in this jurisdiction in the Iorgulescu case, especially when regard is*

had to the qualifying words of the Iorgulescu dictum: "if it can be made without prejudice to the other side.

25. In my view it is clear that there may be a serious injustice which is incapable of being compensated by an award of costs where the proposed amendment is so late that granting permission to make it would result in a real risk that the trial date would be lost *and* the circumstances demonstrate that a material delay in holding the trial will cause loss or prejudice to the other party beyond the lost costs of preparing for the adjourned trial and the additional costs of preparing for the new trial date.

26. As Chief Justice Smellie discussed in *Lemos*, the post-CPR case law in England makes it clear that parties seeking permission to make a "*very late*" amendment, that is one which would cause the trial date to be lost, bear a heavy onus to justify the granting of permission (including showing that the amendment sets out a strong case: see for example *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm)). As the Chief Justice noted, while the heavy onus formula is not used in this jurisdiction, the approach adopted here is similar. "*applications which are likely to result in delay and so likely to prejudice the fair and timely disposal of the case in which [they are] made and perhaps other cases as well*" will be discouraged and generally refused.

27. Accordingly, permission may be refused where the defendant can demonstrate that giving permission would result in the loss of the trial or, as it seems to me must be the case, would result in a real and serious risk that the trial date would be lost *and* there are circumstances which demonstrate that the defendant would be materially prejudiced even if an order for the payment of his/her costs occasioned by the adjournment of the trial was made.

28. For the reasons given by the Second and Third Respondents, this seems to me to be such a case. I recognise the importance of giving the Petitioner the opportunity to make its case and add further factual grounds to support its claims of oppression and unfair prejudice and to seek the relief which it considers to be most appropriate. But in these proceedings, the balance of prejudice in my view clearly lies in the Respondents' favour. The proceedings (in relation both to the Writ and the Petition) have been hotly contested and as a result slow to make progress. I do not for current purposes assign

blame for the delays (and certainly do not blame the Petitioner). But I have already recognised the need for trial of the Petition to be listed, and made orders directing that the trial of the Petition come on, as soon as practicable and it is unjustifiable now, at this very late stage with the trial listed to start in a few months' time, to allow the Petitioner to make significant late amendments which it has not shown can be made without putting the trial date at serious risk and where the Petitioner has been unable to show that it had not had a proper opportunity to apply many months ago for permission to make the amendments.

29. The first question is whether granting permission to the Petitioner to make the Proposed Pleading Amendments will mean, or will create a real and serious risk, that the trial will be unable to go ahead from 12 October 2026 (now less than three months away). The second question is whether in this case any such delays could be compensated by an order for costs.

30. As regards the Subsequent Transfers Amendment:

(a). new [51B] in the Amended Petition is the key paragraph. It states that:

> *The Petitioner considers that since the Petition alleges that the New Share Issue is for an improper purpose, the Company and its Board had an obligation to ensure that the status quo was maintained pending the resolution of the Petition, including by taking steps to prevent the Subsequent Transfers. The Petitioner says that ACC and CNBM's failure to take such steps via their representatives on the Company's Board is further evidence of unfair and oppressive conduct and of a lack of probity.*

(b). this is not, as Ms Du suggested at [16] of Du 3, at least not primarily, a new and independent claim against the Company, rather it is (as the Petitioner argued) an averment of alleged facts which support the Petitioner's claim that the Second and Third Respondents, acting through their representatives on the board, have acted in an unfair and oppressive manner and that the affairs of the Company have been conducted with a lack of probity such that the Petitioner has justifiably lost confidence in the management of the Company (see [51] of the Amended Petition).

(c). having said that, it does appear from the drafting of [51B] that the Petitioner asserts that the directors had and had acted in breach of, and relies on the directors having had and having breached, a duty to preserve the *status quo* and to take action to prevent any sales of shares by the New Shareholders. The Petitioner did not set out the legal basis for such an obligation and did not discuss or consider in its submissions the impact of section 99 of the Companies Act on such a claim (*When a winding up order has been made, …. 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*). The Petitioner did not address the question of whether section 99 resulted in the Subsequent Transfers being of no effect as against the Company and its official liquidator or whether, if it had that effect, it obviated the need for the directors to take any steps (or obviated the need for the directors to have a duty to take steps to prevent the Subsequent Transfers being agreed or implemented).

(d). but it is clear that the new pleading does rely on new facts which had not previously been pleaded relating to what Subsequent Transfers took place and what the Company's board and the Respondents knew about, and did in relation to, such transfers. The new pleading puts in issue what the board (at least the Second and Third Respondents' representatives on the board) and other representatives of the Second and Third Respondents knew about the Subsequent Transfers and what action they took in response and relation to the Subsequent Transfers.

(e). accordingly, further discovery would be required (from the Second and Third Respondents and the Company) and the Second and Third Respondents (and the Company) would need to be given an opportunity to adduce further evidence and amend their pleaded defences. Indeed, the application for the Specific Discovery Orders includes an application for discovery of "*All documents, correspondence, records and materials relating to, concerning or evidencing the sale, transfer or other disposal of the Company's shares by [five of the] New Shareholders on or about the below [the dates in 2018, 2020, 2021 and 2022 specified] including (without limitation) any transaction records, sale or* *purchase agreements, transfer instruments, confirmations, settlement records, instructions, and related communications*".

(f). the Petitioner did not seek to explain in any detail (or provide a proposed procedural timetable setting out) how all this could be done in time and without giving rise to a serious risk of the trial being put in jeopardy. Instead, the Petitioner relied on less than helpful general assertions that directions could be given for the necessary steps to be taken in time and that all would be well.

(g). the Petitioner's position seems to me to be unrealistic. In the absence of particulars and assistance from the Petitioner to establish a more reliable timetable, and based on the long and contested history of these proceedings, it seems to me that I must assume that the process of requiring further discovery and the adducing of further evidence on this issue is likely to take multiple months (taking us up to or very close to the start of the trial on 12 October), thereby giving rise to a serious risk of delays to the trial as well as disruption to trial preparation.

(h). such a risk to the trial date is not of itself determinative. However, I regard it as a factor of very significant weight in this case where, as I have noted, I have already held (and remain satisfied) that the need to adjourn and find another date for the trial of the Petition will cause serious prejudice to the Respondents and the Company which cannot be compensated in costs.

(i). in the December 2025 Judgment I held that "*as a practical matter the further delay to the trial of the Petition that would result if that trial had to wait until the Writ was ready for trial was likely to be substantial and cause serious prejudice to the Company (and ACC and CNBM), as well as being inconsistent with the overriding objective.*" That decision was based on the anticipated delay to the trial of the Petition that was likely to be caused if that trial had to wait until the Writ was ready to be tried. The issue now is the extent of the risk that the trial will be unable to start on 12 October 2026 and the likely consequences of having to vacate the trial date. But in the December 2025 Judgment I recognised and accepted that a delay to the trial of the Petition would, in view of the many years since the start of the Petition Proceedings and the adverse effect of the Petition on the Company's ability to pay dividends (and on the conduct of its business, which the uncertainty caused by the presentation of a winding up petition was bound to have) would cause real prejudice to the Respondents (and the Company) which would go well beyond and could not be compensated by an order that the Petitioner pay their costs wasted as a result of the adjournment of the trial and the extra costs incurred in preparing for the new trial.

(j). I accept that the Petitioner will also be prejudiced by losing the ability to add this further factual basis for its claim of oppression and unfair treatment but the evidence makes it clear that it only has itself to blame for unduly and unjustifiably delaying this application.

31. As regards the Alternative Relief Amendment:

(a). new [55] in the Amended Petition sets out the matters that the Petitioner asserts and relies on as grounds for the alternative relief (my underlining):

> *55 The Petitioner says that it is appropriate that the Company be obliged to repurchase ACC and CNBM's shares in circumstances where:*
>
> *(a) The Petitioner has been improperly diluted via the New Share Issue and deprived of its right of negative control and such an order would restore the status quo prior to the New Share Issue; <u>and</u>*
>
> *(b) The Subsequent Transfers may have had the effect of frustrating any efforts by any official liquidators to unwind the New Share Issue and restore the status quo prior to the New Share Issue.*

(b). the Petitioner relies on two matters. First, the improper dilution resulting from the unfair and oppressive conduct pleaded elsewhere and second the risk that the Subsequent Transfers will prevent a liquidator from unwinding the alleged improper bond and share issues (it is averred that the Subsequent Transfers *may* have had the relevant effect) so that a winding up will not achieve in the remedying and reversal of the objectionable conduct.

(c). the first limb is based on the existing factual assertions and claims made in the current form of the Petition (although no doubt if given permission to add its claims regarding the alleged failures of the Respondents' representatives on the Company's board to prevent the Subsequent Transfers, the Petitioner will rely on its new and amended case in support of its claim to alternative relief). The second limb is based on (or at least relates to) the Petitioner's new material which it now seeks to introduce (in [51A] and [51B]) regarding the Subsequent Transfers. It is not clear to me whether the Petitioner claims that alternative relief would be appropriate based only on the first limb if it were not permitted to make amendments to introduce the factual assertions regarding the Subsequent Transfers. It appears not, as the Petitioner's case is that it now needs to be able to seek alternative relief (a buy-out order) rather than a winding up order because the existence of the Subsequent Transfers has resulted in a risk that a winding up will not achieve the objective of reversing the effect of the allegedly improper and oppressive share issues.

(d). but, as the Second and Third Respondents submitted (see for example Sit 2 at [23b]), the Petitioner had not sought, and in any event had failed, to justify or explain the basis for its assertion that the "*Subsequent Transfers may have had the effect of frustrating any efforts by any official liquidators to unwind the New Share Issue and restore the status quo prior to the New Share Issue*." One obvious difficulty is, as I have already noted, that it is far from clear that the Subsequent Share Transfers will be treated as effective (as against a liquidator) in view of the terms of section 99 of the Companies Act, and this issue was not addressed at all by the Petitioner.

(e). in addition to not having made out an arguable basis for the claim that it would be prejudiced if left only with its application for a winding up order because it has failed to put forward a case as to how the Subsequent Transfers would be valid absent a validation order and adversely affect the ability of a liquidator to challenge the share and bond issues, the Petitioner's new proposed pleading of the basis on which alternative relief is said to be justified appears to depend, as I have noted, on the Subsequent Transfers. But since I have dismissed the Petitioner's application for permission to make the proposed amendments relating to the Subsequent Transfers, it is unable to rely on them and one of the main grounds on which the claim to alternative relief is said to be based therefore falls away. I have considered whether the Petitioner ought to be permitted to amend the Petition simply to refer to the Subsequent Transfers without making allegations regarding the Respondents' and the Company's conduct in relation to them, on the basis that such a narrowed pleading would avoid the need for further discovery and evidence (and therefore avoid any risk to the trial date). But I had decided that it would not be justified to rule that such an adjusted amendment should be permitted where the Petitioner has not sought it and the other parties have not had an opportunity to make submissions, and where it appears that the introduction of even such a narrowed pleading relating to the Subsequent Transfers would be bound to involve some further discovery and evidence whose precise scope the Court is not currently in a position to ascertain.

(f). the Petitioner has also failed to provide an adequate justification for leaving to the last minute its application to amend the Petition to introduce the Alternative Relief Amendment. The Petitioner has no reasonable or sufficient excuse for doing so.

(g). it also seems to me that, once again as the Second and Third Respondents submitted, the Petitioner was not justified in arguing that the December 2025 Judgment had left it open to the Petitioner to amend (and had given the Petitioner the option of amending) the Petition subsequently so as to add an alternative remedy by way of additional relief. As a reading of the relevant paragraphs in the December 2025 Judgment makes plain, the discussion at [32] was concerned with the relationship between the Writ and the Petition (the need for the Petitioner to choose between the relief sought in the Writ and the Petition), and did not concern the Petitioner having the opportunity to amend the relief sought in the Petition. In [31] I had said that the Writ Proceedings should be allowed to progress to the completion of discovery with a further CMC to follow and I then said this (my underlining):

> *32. I suspect that at least in practical terms Tianrui would need to decide at, and no later than, the time of the PTR/CMC in the Petition Proceedings whether it wishes to obtain a winding up order rather than seek the relief in the Writ Proceedings. As I understand it, while Tianrui wished there to be a joint trial of the Petition and the Writ, in the absence of this it still wishes to press ahead first with the Petition and to seek a winding up order.*
>
> *33. But I agree that because of the inconsistent remedies sought in the Petition and the Writ it would be inappropriate and disproportionate to have a joint trial. It would mean, on Tianrui's case as I understand it, that both sets of proceedings would be tried and that Tianrui would then have the right and ability to elect (at the end of the trial and before judgment) as to which remedy it wished the Court to grant.*
>
> *34. If the trial of the Petition Proceedings goes ahead and a winding-up order is made, it would be open to the liquidators to bring any proceedings to challenge the validity of the bond issues, the accelerated conversions and the share issues and the directors' decision making in connection therewith. If they did so, perhaps funded by Tianrui, there might be no need to continue the Writ Proceedings. It would also be necessary to consider whether Tianrui could and would be permitted to continue the Writ Proceedings after the making of a winding up order. If Tianrui wished to pursue a claim for damages, it might be possible for that to be adjudicated and dealt with in the winding up. If the Petition is dismissed, it would then be open to Tianrui to proceed with the Writ Proceedings (it would need to assess whether it was worthwhile doing so in light of the Court's findings and decision in the Petition Proceedings). If the Writ Proceedings had reached the discovery stage by the time of the trial of the Petition it would be possible to have a further CMC after judgment in the Petition Proceedings for the purpose of giving further directions in light of that judgment.*

(h). accordingly, I did not envisage or seek to give advance encouragement let alone approval to an application by the Petitioner for permission to change (by adding a claim for a buy-out order) the relief sought in the Petition.

(i). nor do I consider that the basis on which the Petitioner previously amended the Petition (on 13 August 2021) to delete [54] was that it would be able if it so chose to re-amend the Petition to re-introduce a claim for alternative relief. Ms Li refers in Li 13 at [59]-[63] (quoted above) to the discussion between Mr Lowe KC and me at the directions hearing on 16 July 2021. But that discussion related to the risk that at the trial of the Petition the Court might conclude that the Petitioner had available to it an alternative remedy and as a result it was not appropriate to make a winding up order. It appeared that the Petitioner considered that it needed to include an application for alternative relief (and the new [54] was added for this purpose) in order to deal with that risk and possibility. I simply pointed out to Mr Lowe that I considered that if the Court were ever minded on its own motion (assuming that this would be appropriate where a defence based on an alleged unreasonable refusal to accept a buyout offer or to accept an alternative remedy had not been pleaded or raised) to consider declining to make a winding up order on the basis that an alternative remedy was available the Court would inform the Petitioner of this and give the Petitioner (and the other parties) the opportunity to make submissions before making a final determination, and that pleading a claim for alternative relief (when that was not the relief sought by the Petitioner) was unnecessary and inappropriate. It appears that in light of this analysis and reassurance Mr Lowe and the Petitioner decided to withdraw [54]. But this has nothing to do with the Petitioner being permitted to change the primary relief sought in the Petition and an application for permission to amend the Petition to introduce as the Petitioner's primary remedy a claim for a buyout order by way of alternative relief (in similar terms to [54]). Mr Lowe did state that "*we can reintroduce [[54]] if the time ever arises*" but this comment was in the context of the discussion of what would happen if the Court formed the view that an alternative remedy would be more suitable than a winding up order (which, as he also said, was "*entirely hypothetical*" at that time).

(j). I do not accept Mr Potts' argument that the Petitioner's application for permission to make the Alternative Relief Amendment should be refused because the Petitioner's previous confirmations that it was only seeking a winding up meant that the application and its change of position were an abuse of process. Abuse of process adds nothing in this context to the test applied in determining whether to grant permission to make the amendment. The test, in the case of a proposed amendment, even a late or last-minute amendment, is (as I have noted above) whether the amendment can be made without injustice to the other party and there is no injustice if the other party can be compensated by an order for costs. A party is permitted to make even a late or last-minute amendment and change the relief it seeks provided that doing so will not cause injustice to the other parties. If a late amendment would prevent there being a fair trial because the other parties would have insufficient time to prepare their response to the amendment and for the trial, then the Court would conclude that they could not be fully compensated by an order for costs and dismiss the application for permission to amend. There would be no need to rely on the abuse of process principle. A classic statement explaining what is meant by an abuse of process is Lord Diplock's statement in *Hunter v Chief Constable of the West Midlands Police* [1981] UKHL 13, [1982] AC 529, 536, which was approved by the Supreme Court in *Summers v Fairclough Homes Ltd* [2012] UKSC 26, [2012] 1 WLR 2004, at [35(ii)]:

> *This is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.*

The Non-Party Discovery Summons

The relief sought

32. The Non-Party Discovery Orders sought by the Petitioner in the Non-Party Discovery Summons are as follows:

> *1. Pursuant to Order 3, rule 12(1)(i) of the Companies Winding Up Rules (2023 Consolidation) (the CWR):*
>
> *(a) Cithara Global Multi-Strategy SPC of c/o Appleby Global Services (Cayman) Limited, 60 Nexus Way, Camana Bay, 9th Floor, KY1-1104 Grand Cayman, Cayman Islands (Cithara) shall disclose and produce for inspection*

the following documents (or such part of them as are in the Cithara's possession, custody or power):

(i) all communications, correspondence, agreements or other records (both internal and external) between 1 July 2018 and 31 October 2018 relating to:

(A) the purchase of convertible bonds in the Company on 6 August and/or 31 August 2018;

(B) the agreement to convert those bonds into new shares in the Company on 6 October 2018; and

(C) the conversion of the bonds into new shares in the Company on 31 October 2018; and

(ii) the documents described in Schedule 1 of this summons (in each case limited to its segregated portfolio known as CMB Chung Wai Greater China Alpha Strategy SP) containing information relating to the period from the date of incorporation until 17 February 2022.

(b) TFI Investment Fund SPC of c/o Chartered Financial Partners Limited, PO Box 477, #5-204 Governors Square, Grand Cayman, Cayman Islands (TFI) shall disclose and produce for inspection the following documents (or such part of them as are in TFI's possession, custody or power):

(i) all communications, correspondence, agreements or other records (both internal and external) between 1 July 2018 and 31 October 2018 relating to:

(A) the purchase of convertible bonds in the Company on 6 August and/or 31 August 2018;

(B) the agreement to convert those bonds into new shares in the Company on 6 October 2018; and

(C) the conversion of the bonds into new shares in the Company on 31 October 2018; and

(ii) the documents described in Schedule 1 of this summons (in each case limited to its segregated portfolio known as TFI Eon Global Benefit SP) containing information relating to the period from the date of incorporation until 22 August 2020 .

(c) Greater Bay Investment Fund L.P. of c/o Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands (Greater Bay) shall disclose and produce for inspection the following documents (or such part of them as are in Greater Bay's possession, custody or power):

(i) all communications, correspondence, agreements or other records (both internal and external) between 1 July 2018 and 31 October 2018 relating to:

(A) the purchase of convertible bonds in the Company on 6 August and/or 31 August 2018;

(B) the agreement to convert those bonds into new shares in the Company on 6 October 2018; and

(C) the conversion of the bonds into new shares in the Company on 31 October 2018; and

(ii) the documents described in Schedule 2 of this summons containing information relating to the period from the date of incorporation until the date of any order under this summons.

(d) JL Capital Global Investment SPC of c/o Appleby Global Services (Cayman) Limited, Po Box 500, Suite 210, 2nd Floor, Windward III, Grand Cayman, Cayman Islands (JL Capital) shall disclose and produce for inspection the following documents (or such part of them as are in JL Capital's possession, custody or power):

(i) all communications, correspondence, agreements or other records (both internal and external) between 1 July 2018 and 31 October 2018 relating to:

(A) the agreement to enter into a subscription agreement with the Company on 6 October 2018; and

(B) the issuance of new shares in the Company on 31 October 2018; and

(ii) the documents described in Schedule 1 of this summons (in each case limited to its segregated portfolio known as JL Global Income and Growth Investment SP2) containing information relating to the period from the date of incorporation until the date of any order under this summons.

2. Pursuant to Order 3, rule 12(1)(i) of the CWR, directions that Cithara, TFI, Greater Bay and JL Capital (together the ***Non-Parties****, each such entity being a Non-Party) shall swear and file an affidavit stating whether any documents specified or described in the Order are, or at any time have been, in the Non-Parties' possession, custody or power and, if any such documents are not now in their possession, custody or power, stating when the Non-Parties parted with them and what has become of them.*

33. Schedule 1 to the Non-Party Discovery Summons identified a large number of documents relating to the constitution, management, control and shareholdings in the

three segregated portfolios relating to Cithara, TFI and JL Capital insofar as the documents contained information relating to the periods mentioned in Non-Party Discovery Summons (at sub-paragraphs 1(a)(ii), 1(b)(ii), 1(c)(ii) and 1(d)(ii)) (it is unclear to me why there is a reference here to [1(c)(ii)] which relates to Greater Bay, whose documents are listed separately in Schedule 2 but since I did not see how the reference to [1(c)(ii)] could be read as applying to the three other Non-Parties, and therefore did not expand the scope and date range of documents to be produced by them, the addition of this reference did not seem to give rise to any issues). The documents included all materials held or maintained for the purposes of identifying and verifying the identity of each shareholder of the relevant segregated portfolio and, where applicable, each shareholder's beneficial owner(s) and/or controlling persons and related materials; any admission/subscription documentation in respect of each shareholder; any register(s), schedule(s), resolutions or board minutes maintained or held by or in respect of the Non-Parties in respect of a relevant segregated portfolio identifying beneficial owners (including look-through information obtained for legal person / legal arrangement / nominee / intermediary / custodian investors), any authorised signatories, agents or representatives, controllers or persons giving instructions on behalf of any shareholder and any investor classification) and documents identifying the person(s) and/or service provider(s) responsible for providing any AML or CRS services to a Non-Party in respect of a relevant segregated portfolio.

34. Schedule 2 to the Non-Party Discovery Summons identified a similarly wide range of documents in respect of Greater Bay containing information relating to the period from the date of incorporation until the date of any order made on the Non-Party Discovery Summons.

35 In the Non-Party Discovery Summons the Petitioner confirmed that it accepted and sought an order that it should pay the reasonable costs of the Non-Parties in complying with any order made pursuant to the Non-Party Discovery Summons.

The Petitioner's evidence

36. The Petitioner relies on the evidence of Mr Alastair Michael Lagrange set out in his First Affidavit sworn on 15 May 2026 (***Lagrange 1***) and in Li 13.

37. Mr Lagrange is a regulatory partner in Ogier, the Petitioner's Cayman attorneys. He said that the purpose of his evidence was to set out his understanding of certain documentation and document retention requirements and typical local market practice under the Cayman Islands' anti-money laundering (***AML***), countering the financing of terrorism (***CFT***) and the countering proliferation financing regime (the ***AML Regime***); the Cayman beneficial ownership transparency regime (the ***BOT Regime***) and the OECD consolidated text of the Common Reporting Standard as implemented in this jurisdiction (the ***CRS Regime***). Mr Lagrange said that he sought to explain the AML Regime, the BOT Regime and the CRS Regime relevant to the categories of documents and information commonly collected and held in connection with investor/shareholder onboarding, satisfying ongoing regulatory requirements and related record keeping. Mr Lagrange as an attorney advising and instructed by the Petitioner was obviously not independent and he only dealt with the law of this jurisdiction. But the Petitioner considered that because the relevant areas of law and regulation were technical and complex, it would assist the Court to have a summary provided by a local specialist when assessing whether the documents sought from the Non-Parties were likely to be held by them.

38. In Li 13, Ms Li states as follows (my underlining):

> *68. The Petitioner also seeks discovery from Cithara, TFI, Greater Bay and JL Capital (together, the Non-Parties). I am advised by Ogier that all four of these entities are investment funds based in the Cayman Islands.*
>
> *69. In respect of each of the Non-Parties, the documents sought fall into two categories:*
>
> > *69.1 Documents evidencing communications, correspondence, agreements or other records (both internal and external) between the Non-Parties and the Company between 1 July 2018 and 31 October 2018; and*
> >
> > *69.2 Documents evidencing their own customer due diligence, 'know your customer, onboarding, compliance, regulatory or risk assessment processes which are sought from all of the Non-Parties in respect of the relevant segregated portfolios that hold the Company's shares (if applicable) with a separate set of documents sought from Greater Bay given its status as a non-CIMA-registered entity.*
>
> *……*

70.1 In respect of the relevance of the documents sought, I refer to and repeat paragraph 7 above;

[7. The documents requested in ..... the Non-Party Discovery Summons are relevant to this central allegation of improper purpose on the part of the Company's board of directors. In particular, the discovery sought is relevant to the following issues pleaded in the Petition:

7.1 the connections and/or agreements and understandings between ACC/CNBM and the persons and entities that entered into subscription agreements with the Company on 6 and 30 August 2018 (the Subscription Agreements), being Cithara Global Muli-Strategy SPC-CMB Chung Wai Greater China Alpha Strategy SP(Cithara), Greater Bay Investment Fund L.P.(Greater Bay), TFI Investment Fund SPC-TFI Eon Global Benefit(TFI), Wonderful Sky Financial Group Holdings Ltd(Wonderful Sky), Luk Ching Sanna, Wong Ham Chi and Chiang Ching Feng(together, the Bondholders) who were subsequently issued bonds on 8 August and 3 September 2018(see paragraphs 41 and 45 of the Petition);

7.2 the ongoing failure or refusal by the Company to identify the ultimate beneficial owners of the Bondholders (paragraph 46 of the Petition);

7.3 the fact that the negotiations for the Subscription Agreements and the subsequent conversion of bonds into shares in the Company on 31 October 2018 (i.e. the New Share Issue) were not conducted at arms' length (paragraphs 41(f),45(f) and 46); and

7.4 the lack of any commercial justification for the Subscription Agreements (paragraph 41(c)).]

70.2 In respect of the necessity of obtaining [documents relating to the] negotiations between the Non-Parties and the Company, I refer to and repeat paragraphs 20 to 33 above;

[20. The Petitioner has cause to believe that the discovery of documents by the parties as to the negotiations between the Company (represented by Ms Doris Wu and Mr Chang Zhangli) and the Bondholders are incomplete. In that regard, based on a review of the documents produced by the parties conducted by the Petitioner and its attorneys, I note the following:….

……

27. In light of the apparent gaps in the correspondence between the Bondholders and the Company outlined in paragraphs 20 to 24 above (and in circumstances where relevant documents ought to have been captured by the CB Searches), the Petitioner considers that it is *necessary that the parties conduct searches and disclose all communications between 1 July 2018 to 31 October 2018 as follows:*

27.1 the Company disclose all communications and correspondence between the individuals listed in paragraphs 22 to 24 above and the custodians listed in Schedule 2 of the Discovery Protocol between 1 July 2018 and 31 October 2018; and

27.2 ACC and CNBM disclose all communications and correspondence between Ms Wu and Mr Chang and the New Shareholders (as defined below) which are held by them either via email (other than those email addresses listed in Schedule 2 to the Discovery Protocol), text message or other instant messaging applications such as WeChat and WhatsApp including communications with all of those individuals listed in both paragraph 1 of Schedule A and paragraph 1(b) of Schedule B to the Summons (the latter being those emails listed in CB Search 3).

70.3 In respect of the necessity of obtaining documents evidencing the underlying beneficial owners of the Non-Parties, I refer to and repeat paragraphs 34 to 37 above;

[34. In evidence given in support of the Company's application to strike out the Petition filed on 11 September 2018, Ms Wu on behalf of the Company stated the following:

34.1 Cithara holds the bonds issued on 8 August 2018 on behalf of Guotai Junan International Holding Limited (Guotai) (paragraphs 192 to 193 of the first affirmation of Ms Wu dated 26 September 2018); and

34.2 The Company has "completed a KYC exercise on each of the [Bondholders]." (paragraph 28 of the second affirmation of Ms Wu).

35. <u>However, none of the documents produced by any of the parties to date clarify who the beneficial owners of the New Shareholders are, nor do any documents disclosed confirm that any bonds are held for and on behalf of Guotai or outline the arrangement between Cithara, Guotai and the Company</u>.

36. The Petitioner has set out its knowledge of the New Shareholders in paragraph 249 of the Witness Statement of Li Liufa. Whilst it is not proposed to repeat this paragraph in full, in summary:

36.1 Three of the seven subscribers are Cayman segregated portfolio companies (Cithara, TFI and JL Capital) and one is a Cayman exempted limited partnership (Greater Bay). In respect of all four of these entities, no publicly accessible information is available *and the Company has never provided any information as to the shareholders in the relevant segregated portfolios and/or the limited partners of the partnership (or their underlying beneficial owners).*

36.2 Wonderful Sky and Luk Ching Sanna are connected parties of CNBM through Liu Tianni who is Ms Luk's husband and both Wonderful Sky's chairman and underlying beneficial owner. At all relevant times, Mr Liu was also a director of a CNBM subsidiary (Luoyang Glass Company Limited); and

36.3 The Petitioner does not know who Wong Ham Chi or Chiang Ching Feng are or how they discovered the opportunity to enter into the Subscription Agreements although it is notable that Mr Feng (a small investor) is a resident of Taiwan where ACC is based, when nobody else had any connection with Taiwan.

37. As an outsider to the Company's management at the time, the Petitioner is not aware how the Company's 'know-your-customer', customer due diligence, onboarding, compliance, regulatory or risk assessment processes were carried out nor who carried them out and where this information is retained or held within the Company's records. However, Ms Wu has expressly confirmed that these categories of documents exist. Such records are clearly relevant and are documents that are not only necessary but essential to the resolution of the Petition. Accordingly, the Petitioner considers that these categories of documents ought to be produced by the Company (and ought to have already been produced pursuant to the CB Searches).]

70.4 In respect of the likelihood of these documents being in the possession, custody or power of the Non-Parties:

(a) <u>I consider that it is likely that the Non-Parties would retain records regarding their investment in the shares of the Company given the size of those investments</u>; and

(b) <u>I am informed by Ogier that it is likely that they would have copies of documents that evidence their underlying beneficial owners due to their statutory and regulatory obligations under Cayman Islands law and refer to the affirmation of Alastair Michael Lagrange which sets out the documents they are legally required to hold</u>.

The Petitioner's submissions

39. The Petitioner relied on GCR O.24, r.7A, which has only recently been incorporated into the GCR (on 10 April 2026). The relevant parts of r.7A state as follows:

> ***7A. Application for pre-action discovery or for non-party discovery***
>
> ….
>
> *(2) An application after the commencement of proceedings for an order under section 34(2) of the English Senior Courts Act 1981, as applied in the Cayman Islands by section 11 of the Grand Court Act, for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.*
>
> *(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—*
>
> …..
>
> *(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.*
>
> ……
>
> *(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce –*
>
> …….
>
> *(b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.*

40. The Petitioner noted that no equivalent to GCR Order 24 Rule 7A was introduced into the Companies Winding Up Rules (the ***CWR***) but submitted that Justice Kawaley's reasoning in *Re Global Cord Blood Corporation* [2023 (2) CILR 298]) to the effect that CWR O.3, r.12(1)(i) could only sensibly be understood as conferring a wide jurisdiction to order discovery supported the conclusion that new jurisdiction introduced into the GCR to permit third-party discovery should also apply and be available in winding up proceedings governed by the CWR. The Petitioner argued that this was not a huge step as there was nothing to suggest that subpoenas were previously unavailable under the CWR. The rationale for the introduction of the jurisdiction in rule 7A was to increase efficiency and fill a recognised gap in the law. It would not make sense to do so only in relation to proceedings under the GCR but not the CWR.

41. The Petitioner argued that the Non-Party Discovery Orders ought to be made since:

(a). the documents were relevant to an important issue arising in the Petition, being the identity of the underlying beneficial owners of the Non-Parties. The Petitioner said that it appeared to be common ground that no evidence had been provided in that regard and argued that the Company's position appeared to have shifted, since it now said that it did not know who the underlying beneficial owners of the New Shareholders are. Neither ACC nor CNBM professed to know the identities of these entities either. They had provided no substantive evidence identifying them nor had they proposed to call witnesses with any firsthand knowledge of the bond issue, share conversion or share issuance.

(b). for reasons set out in Lagrange 1, which had not been challenged, the Non-Parties were likely to have the documents sought in the Non-Party Discovery Summons in their possession, custody or power.

(c). the documents were precisely described in the Non-Party Discovery Summons.

(d). the Petitioner had complied with the requirement to serve the Non-Parties and none of them had filed any evidence challenging or objected to the making of the Non-Party Discovery Orders.

The position of the Respondents and the Company

42. The Second Respondent expressed concerns that the process of obtaining discovery from and enforcing any orders for the production of documents by the Non-Parties was likely to take some time and that delays could jeopardise the trial date and prejudice and disrupt the Second Respondent’s preparation for the trial. For these reasons, it urged the Court to dismiss the Petitioner’s application.

43. The Third Respondent adopted the same approach. The Third Respondent also reserved its position as to the admissibility of Lagrange 1.

44. The Company adopted a similar approach.

My decision

45. In my view, on balance, it is appropriate to make the Non-Party Discovery Orders.

46. I accept the Petitioner's submission, at least for the purpose of this application, that Justice Kawaley's decision and reasoning in *Global Cord* supports the conclusion that the new jurisdiction to make non-party discovery orders applies to winding up proceedings governed by the CWR.

47. I have also concluded that the Petitioner has satisfied the requirements set out in GCR O.24, r.7A for the reasons given by the Petitioner:

(a). the Non-Party Discovery Summons specified and described with sufficient precision the documents in respect of which the Non-Party Discovery Orders were sought. I have had some real concerns as to the large number of documents sought by the Petitioner, in particular the wide range of documents set out in Schedules 1 and 2 of the Non-Party Discovery Summons and the date range applicable to the Schedule 2 documents to be produced by Greater Bay. I also had concerns arising from the fact that at least some of the documents and information sought will be confidential. However, it seems to me that it can fairly be said, at least as a *prima facie* matter, that having regard to the complex organisational structures of the Non-Parties the range of documents identified are reasonably needed in order to enable the Petitioner to ascertain the ultimate ownership and control of the Non-Parties. Further, I note that none of the Non-Parties wrote to the Petitioner or filed with the Court any objections of any kind, let alone on these grounds and that the drafts of the Non-Party Discovery Orders filed by the Petitioner make it clear that the Non-Parties will have liberty to apply and so could seek amendments to the form of orders (or to set them aside) if they do have concerns and consider that amendments are justified and needed.

(b). the Petitioner has shown by reference to the pleading in the Petition that the documents sought are relevant to an issue arising in the Petition Proceedings. Indeed, the identity of the beneficial owners of the New Shareholders is an important issue in the Petition Proceedings. Furthermore, it is in my view of significance and a factor to be taken into account when deciding whether to make the Non-Party Discovery Orders, that the identity of the New Shareholders has not been disclosed in the discovery produced and evidence filed to date. This means that the Non-Parties are the only sources from which relevant information and documents are likely to be available.

(c). the Petitioner has shown that the Non-Parties are likely to have or have had the documents to be produced by them in their possession, custody or power. I have read and noted what Mr Lagrange had to say on the relevant Cayman law but do not consider that it was necessary for a local attorney to give evidence of Cayman Islands law (and the local regulatory regime). These points could have been covered in submissions. In any event, it seems to me that the applicable law and regulations, and inferences to be drawn from the corporate structure of the Non-Parties, do show that there is real prospect that the Non- Parties will have the documents and information sought in their possession, power or control.

(d). the requirement is satisfied that no person shall be compelled to produce any documents which he could not be compelled to produce by way of a writ of subpoena duces tecum.

48. I have carefully considered whether permitting the Non-Party discovery at this stage would create a serious risk of the trial being put in jeopardy. On balance, it seems to me that while the Petitioner has made wide-ranging discovery requests (and that it would have been preferable for them to be narrower and more targeted) there is a real and reasonable prospect that useful and relevant documents and information can be obtained within a four to six week period (the draft Non-Party Discovery Orders will give the Non-Parties twenty-eight days in which to respond) and that it is just, fair and proportionate to allow the Petitioner to have the opportunity to see what documents can be obtained relating to an important issue in the proceedings. As Mr Lowe acknowledged during the hearing, the trial timetable will not be altered to give the Petitioner more time to complete this discovery exercise and the Petitioner will

therefore have a limited window within which to obtain and to add to the trial bundles relevant documents.

The Joint Trial Summonses

The Petitioner's position

49. The Petitioner also sought orders that the trial of the Writ Proceedings be listed on 12 October 2026 notwithstanding the December 2025 Judgment declining to make such an order at the time.

50. The Petitioner argued that there had been a change of circumstances. The Petitioner considered that recent events had made clear that with the Court's assistance, the Writ Proceedings could catch up with the Petition Proceedings and be ready for trial with relative ease. It remained the case, the Petitioner argued, that hearing the Petition and the Writ together was consistent with the overriding objective, saving costs and promoting efficiency.

51. As regards discovery, the Petitioner argued that the Writ Proceeding could easily catch up with the Petition and would have done so by now if the Company had not dragged its feet in dealing with discovery. The Petitioner asserted that the Company had delayed reaching agreement on the Discovery Protocol despite the form proposed by the Petitioner being in almost exactly the form proposed by the Company. The Petitioner said that the Company appeared to have been deliberately dragging its feet, raising objections and refusing to respond to the Petitioner or to agree the discovery parameters. There was very little justification for this as far as the Writ Proceedings was concerned; the Company had already disclosed all of the documents sought by the Petitioner in the Writ Proceedings, in the Petition and the Petitioner had already disclosed its own documents in the Writ Proceedings. It should be inferred that the Company was seeking to engineer a situation where the Writ Proceedings could not catch up with the Petition.

52. The Petitioner submitted that it was clear that the Writ Proceedings could catch up to the Petition without prejudicing the Company's defence in the Writ Proceedings and

that any prejudice which the Company may suffer by being forced now to prepare for and defend the Writ Proceedings was significantly outweighed by the prejudice to the Petitioner of having two separate trials based on the same issues, and the potential prejudice to the jurisdiction if two different judges come to different conclusions on the same facts (noting that I am due to retire after giving judgment following the conclusion of the trial of the Petition). Discovery had now taken place in the Petition and by mid-June 2026 discovery in the Writ Proceedings should have been a straightforward operation. The Company's position was that there were only 12 issues for discovery and those mirrored the issues in the Petition for which discovery had already been provided by the Company.

53. As regards witness statements, the Petitioner argued that the Company could prepare its evidence in short order. The Company's counsel now accepted that the Writ Proceedings was of a limited scope, and it was unlikely that the Company intended to produce any witness testimony additional to that produced by the Second and Third Respondents in the Petition (it had not said otherwise). Indeed, it did not seem that there was much evidence for the Company to give since it had conceded it did not know the identities of the ultimate beneficial owners of the New Shareholders.

The position of the Company

54. The Company opposed the Petitioner's applications in the Joint Trial Summonses. It said that the renewed and very late attempt by the Petitioner to reverse or modify the decision made in the December 2025 Judgment was unjustified, largely for the reasons relied on by the Company in opposing the application dealt with in that judgment.

55. In light of the December 2025 Judgment the Company had continued to play a neutral role in the Petition Proceedings and had still not reviewed the documents disclosed by the Petitioner and the Respondents in those proceedings. The Company submitted that there was simply insufficient time now for the Writ Proceedings to catch-up with the Petition Proceedings and to be ready for trial on 12 October. The Company had filed the Second Affirmation of Chang Ming-Cheng which explained why a discovery protocol had still not been agreed in the Writ Proceedings and rejected the criticisms of the Company made by the Petitioner.

56. The reasons set out and relied on by the Court in the December 2025 Judgment for refusing to order that there be a joint trial of the Petition and the Writ remained valid.

The position of the Second and Third Respondents

57. The Second and Third Respondents also opposed the Petitioner's applications in the Joint Trial Summonses.

58. The Second Respondent argued that the critical passage of reasoning on the joint trial issue in the December 2025 Judgment was at [29]:

> *It seems to me that in the circumstances, in particular in a case involving litigation that has already taken many years, while the arguments are finely balanced, the best way of dealing with the Petition Proceedings and the Writ Proceedings in a just, expeditious and economical manner is to give directions for the Petition Proceedings to proceed to trial as rapidly as possible and for the Writ Proceedings to progress in parallel to the point where discovery has been completed. This will ensure that the fact that the Writ Proceedings are significantly behind the Petition Proceedings will not further delay the already long delayed trial of the Petition and that, by the time of the trial of the Petition, the Writ Proceedings will have made substantial further progress and be in a position where they can progress to a trial if appropriate within a relatively short time after the trial of the Petition.*

59. The Second Respondent submitted that these remarks were equally apposite in the current circumstances.

60. The Second Respondent argued that the Petitioner had filed little evidence in support of the Joint Trial Summonses. The most detailed explanation of the Petitioner's reasons for seeking this relief appeared in a letter sent by Ogier to Maples (in relation to the Writ Proceedings). However, those reasons did not provide any justification for consolidating the Petition and the Writ Proceedings. The Petitioner had said that it would be desirable for the two proceedings to be heard by the same Judge, and the Petitioner had been unaware prior to 11 November 2025 that I would be retiring following the trial and handing down of the judgment in the Petition Proceedings. However, the Second Respondent pointed out that it is clearly possible for another Judge to hear the Writ. The Petitioner had also suggested that the evidence at the Writ Proceeding would be limited but it was presently unknown what the scope of that

evidence will be. The timetable proposed by the Petitioner involved the evidence in the Writ Proceedings closing only on 2 September 2026 and the Second Respondent submitted that it would be entirely unreasonable to expect it (and, indeed, the other parties) to prepare for a trial the scope of which was entirely unknown.

61. The Second Respondent argued that the correspondence sent by the Company (which is a party to the Writ Proceedings) made it clear that the parties to the Writ Proceedings had not yet even agreed the discovery protocol, that the Company had denied that it was due to provide its discovery by 19 June 2026 and that the Company denied that the Petitioner had properly provided discovery in the Writ Proceedings (see the letter of Maples acting for the Company to Ogier dated 18 June 2026). It therefore appeared that, contrary to the position asserted by the Petitioner, discovery had not in fact been completed in the Writ Proceedings and that the process of completing discovery would take some further time.

62. The Second Respondent argued that the reality was that the Petitioner's applications in the Joint Trial Summonses were an abusive attempt to relitigate my earlier case management decision set out in the December 2025 Judgment. In truth the position has not advanced or changed in material respects since the December 2025 Judgment was delivered refusing the Petitioner's previous attempt at consolidation.

63. The Second Respondent further submitted that the matters relied upon by the Petitioner were in any event insufficient when balanced against the prejudice that would likely be suffered by it. The position was explained in detail in the letters sent by Walkers on 9 October 2025 (in relation to the previous consolidation summons heard in November 2025) and on 25 June 2026 (in relation to the Petitioner's further application for a joint trial). First, and most importantly, the Writ Proceedings were at a comparatively nascent stage (compared to the Petition). It appeared from the information available to the Second Respondent that there must be a very substantial doubt over whether the Writ Proceedings could be ready for trial in October. Further, if an order was made consolidating the proceedings, there was an obvious risk to the trial date of the Petition, with all the resulting prejudice which I have discussed above. Further, the Second Respondent argued that there appeared to be a prospect of adverse costs consequences to it if the proceedings were to be joined.

64. The Third Respondent's position followed that of the Second Respondent.

My decision

65. I accept the submissions made by the Company and the Respondents.

66. In my view, while the Petitioner complained about the failures of the Company properly to progress the discovery process (the merits of which the Court is not in a position to decide upon) and the resulting delays in completing discovery and made generalised statements regarding the nature and volume of the evidence to be adduced in the Writ Proceedings, it failed to demonstrate how realistically, in light of developments since the December 2025 Judgment, the Writ Proceedings could be ready for trial in early October. In fact, as the expression goes, all evidence to the contrary.

67. I appreciate that the Petitioner prefaced much of its case with the statement that the Writ Proceedings could be made ready for trial by 12 October 2026 with the assistance of the Court and had set out a procedural timetable for achieving that, which it wished the Court to confirm in a directions order. But in view of the state of play in the Writ Proceedings this timetable seemed to me to be unrealistic, and it would not be permissible to impose the proposed timetable on the Company.

68. In my view, the Petitioner has failed to address or resolve the issues identified in the December 2025 Judgment and there has been an insufficient change in the procedural status of the Writ Proceedings since then to justify a different decision.

The Hon. Justice Segal

Judge of the Grand Court of the Cayman Islands

14 August 2026