



ORDR-3174280426-0885



Claim No: CFI 039/2025

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

EMIRATES NBD BANK PJSC

Claimant

and

(1) RASHED ABULAZIZ ALMAKHAWI

(2) ABDULAZIZ RASHED ABDULAZIZ MOHAMMED ALMAKHAWI

(3) HESSA RASHED ABULAZIZ ALMAKHAWI

(4) SHAMMA RASHED ABULAZIZ ALMAKHAWI

Defendants

ORDER WITH REASONS OF H.E. JUSTICE MICHAEL BLACK

UPON the Claimant's Claim Form dated 10 April 2025 (the "Claim")

AND UPON the First Defendant's Application No. CFI-039-2025/1 dated 7 October 2025 seeking to contest the DIFC Courts jurisdiction (the "D1, 3, 4 Jurisdiction Challenge")

AND UPON the Claimant's Application No. CFI-039-2025/3 dated 23 December 2025 seeking a freezing order and/or the provision of information about property or assets (the "FO Application")

AND UPON the Second Defendant's Application No. CFI-039-2025/5 dated 16 February 2026 seeking to contest the DIFC Courts jurisdiction (the "D2 Jurisdiction Challenge")

AND UPON the Second Defendant's Application No. CFI-039-2025/6 dated 16 February 2026 seeking to an extension of time to make an application under Rule 12 of the Rules of the DIFC Courts ("RDC") disputing the DIFC Courts' jurisdiction (the "D2 EOT Application")

AND UPON hearing Counsel for the Claimant, and Counsel for the First Defendant and Counsel for the Second Defendant at a hearing held before H.E. Justice Michael Black on 17 March 2026 (the "Hearing")

IT IS HEREBY ORDERED THAT:

1. The D1, 3, 4 Jurisdiction Challenge and the D2 Jurisdiction Challenge are dismissed. It is declared that the Court has jurisdiction over the Claimant's Claims in these proceedings.
2. The FO Application is granted and a Freezing Order in the terms communicated to the parties is granted.
3. The D2 EOT Application is granted.
4. The Defendants shall pay the costs of the Claimant of all of the Applications to be assessed on the standard basis if not agreed in any event.
5. The Defendants are refused permission to appeal the finding of the Court that the Claimant is a DIFC Establishment or Licensed DIFC Establishment.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 3 April 2026
At: 2pm



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INTRODUCTION

1. In this judgment, I have adopted the references to the parties as used by the parties themselves, namely:
 - (1) The Claimant: “**C**”, “**the Bank**” or “**ENBD**”;
 - (2) The First Defendant: “**D1**” or “**RAM**”;
 - (3) The Second Defendant: “**D2**” or “**Abdulaziz**”;
 - (4) The Third Defendant: “**D3**” or “**Hessa**”;
 - (5) The Fourth Defendant: “**D4**” or “**Shamma**”; and
 - (6) D2, D3 and D4 collectively: “**the Children**”.

2. In this case, the Bank seeks to recover approximately USD 90 million from the Defendants and each of them on the basis that they have taken steps to frustrate the

execution of judgments in its favour of the Dubai Court of Cassation (the “**Cassation Judgment**”) and English Courts against D1 by participating in arrangements for the assets of D1 to be transferred to one or more of D2, D3 and D4. The Bank makes claims for:

- (1) damages for acts causing harm pursuant to Article 283 of the UAE Civil Code;
- (2) orders unwinding transfers of assets made to or by the Defendants to the detriment of D1’s creditors, pursuant to Article 391 of the UAE Civil Code; and
- (3) orders declaring transactions entered into between the Defendants to be sham transactions, pursuant to Articles 394 and 395 of the UAE Civil Code.

3. There are before the Court the following applications:

- (1) Application No. CFI-039-2025/1, dated 7 October 2025 – D1, D3 and D4’s application to contest the jurisdiction of the DIFC Courts pursuant to Part 12 of the Rules of the DIFC Courts (“**RDC**”) (“**D1, 3, 4 Jurisdiction Challenge**”);
- (2) Application No. CFI-039-2025/3, dated 23 December 2025 – the Bank’s application under RDC 25.1(6) and (7) for a freezing order and/or the provision of information about property or assets (“**FO Application**”);
- (3) Application No. CFI-039-2025/5, dated 16 February 2025 – D2’s application under RDC Part 12.4 (“**D2 Jurisdiction Challenge**”); and
- (4) Application No. CFI-039-2025/6, dated 16 February 2025 – D2’s application pursuant to RDC 4.2(1), for an order extending time to make an application under RDC Part 12 disputing the DIFC Courts’ jurisdiction (“**D2 EOT Application**”).

4. There was an application by D2 (Application No. CFI-039-2025/4, dated 22 January 2026) for an order setting aside a Default Judgment issued by H.E Justice Nassir Al Nasser against D2 dated 9 January 2026 which was unopposed and made by a Consent Order dated 12 March 2026.

5. The following evidence was filed in relation to the Applications:

- (1) D1, 3, 4 Jurisdiction Challenge was supported by the following evidence -
 - (a) In support -

- (i) the First Witness Statement of Rashed Abdulaziz Almkhawi dated 20 February 2026 (“**RAM 1**”);
- (ii) The revised First Witness Statement of Emily Rose Beirne dated 20 February 2026 on behalf of D3 and D4 (“**Beirne 1**”);
- (b) In opposition -
 - (i) the First Affidavit of James Fox dated 23 December 2025 (“**Fox 1**”);
 - (ii) the Second Affidavit of James Fox dated 5 March 2026 (“**Fox 2**”).
- (2) FO Application-
 - (a) In support - Fox 2;
 - (b) In opposition -
 - (i) the First Witness Statement of Abdulaziz Rashed Abdulaziz Mohammed Almkhawi dated 22 January 2026 (“**Abdulaziz 1**”);
 - (ii) the First Witness Statement of Dr Mahmood Hussain Ali Ahmad dated 26 January 2026 (“**Hussain 1**”);
 - (iii) RAM 1;
 - (iv) the First Witness Statement of Hessa Rashed Abdulaziz Almkhawi dated 20 February 2026 (“**Hessa 1**”);
 - (v) the First Witness Statement of Shamma Rashed Abdulaziz Almkhawi dated 20 February 2026 (“**Shamma 1**”);
 - (vi) the Second Witness Statement of Abdulaziz Rashed Abdulaziz Mohammed Almkhawi dated 16 March 2026 (“**Abdulaziz 2**”). This witness statement did not reach me until the morning of the hearing on 17 March 2026. I made it clear that I did not consider that this was acceptable but I allowed reference to be made to the witness statement.
- (3) D2 Jurisdiction Challenge -
 - (a) In support – the Second Witness Statement of Dr Mahmood Hussain Ali Ahmad dated 13 February 2026 (“**Hussain 2**”);

- (b) In opposition - Fox 2.
- (4) D2 EOT Application –
 - (a) In support - the Third Witness Statement of Dr Mahmood Hussain Ali Ahmad dated 13 February 2026 (“**Hussain 3**”);
 - (b) In opposition - Fox 2.
- 6. The oral hearing of the 4 Applications took place remotely on 17 March 2026. The Bank was represented by James Weale and Gregor Hogan instructed by DWF (MIDDLE EAST) LTD (“**DWF**”). D1 was represented by Martin Khoshdel instructed Noora Ahmad, Lawyers and Legal Consultant (“**Noor Ahmad**”). D2 was represented by Karishma Vora instructed by Mahmood Hussain Advocates & Legal Consultancy (“**M&Co**”). Timothy Killen (now KC) and Richard Clarke of Kobre & Kim (GCC) LLP (“**K&K**”) represented D3 and D4.
- 7. The Parties agreed that D3 and D4 would open the Jurisdiction Challenge supported by D1 and D2 (subject success on the EOT Application), that each Defendant would have equal time to reply to the FO Application and that D2 would then make the EOT Application. Accordingly, the Court will first address the Jurisdiction Challenge and if it finds that it has jurisdiction it will consider the Defendants’ submissions that the Court should not exercise its jurisdiction on the grounds of *forum non conveniens*, the D2 EOT Application, the C’s submission that Ds 1, 3 and 4 are to be treated as having accepted that the Court has jurisdiction to try the claim and that in any event Ds 2, 3 and 4 should be joined as necessary or proper parties. The Court will then address the FO Application.

JURISDICTION CHALLENGE

Introduction

- 8. The jurisdiction of the DIFC Courts is entirely statutory. Unless the claim satisfies one of the statutory gateways the Court will not have jurisdiction. (*Dr. Lothar Ludwig Hardt and Hardt Trading F.Z.E. v DAMAC (DIFC) Company Limited et al* [2009] DIFC CFI 036, [33]).
- 9. In the present case, ENBD brings its claim on the basis that it is a member of NASDAQ Dubai and has been entered onto the DFSA’s list of “*Recognised Members*”. (Capital letters are used inconsistently by the DFSA in the legislation and in the DFSA Rulebook: I will use capitals as it is a term of art, save where they are not used in a direct quotation).

It is accordingly registered by the DFSA to carry on financial services in accordance with DIFC laws and constitutes a Licensed DIFC Establishment and/or a DIFC Establishment (*simpliciter*) for the purposes of Article 14(A)(1) of Dubai Law No. (2) of 2025, *Concerning Dubai International Financial Centre Courts*, (the “**Courts Law**”) which provides:

“The DIFC Courts have exclusive jurisdiction to hear and determine ... Civil or commercial and employment claims and applications by or against the DIFC Bodies or DIFC Establishments and those to which DIFC Bodies or DIFC Establishments are party.”

“*DIFC Establishment*” is defined as

“Any entity or business established, licensed, registered, or permitted to operate or to carry on any activity in or through the DIFC pursuant to the DIFC Laws and the DIFC Regulations, including Licensed DIFC Establishments.”

and “*Licensed DIFC Establishment*” as

“Any entity or business licensed, registered, authorised, or recognised by the Dubai Financial Services Authority (DFSA) to carry on Financial Services or Ancillary Services under Law No. (5) of 2021 and the DIFC Laws.”

10. The Defendants contend that ENBD is neither a DIFC Establishment nor a Licensed DIFC Establishment. They concede that ENBD may have been able to have satisfied the definition under the Courts Law’s statutory predecessor, Dubai Law No.12 of 2004, *in respect of The Judicial Authority at Dubai International Financial Centre*, as amended (the “**JAL**”), but contend that the definitions have been narrowed and make the (at first sight) surprising submission that the Courts Law has restricted the DIFC Courts’ jurisdiction as opposed to expanding it, contrary to the impression gained by the DIFC Court of Appeal (“**CoA**”) in (1) *Nadil* (2) *Noshaba v (1) Nameer (2) Naseema*, (13 June 2025), [77] where it stated with reference to the Courts’ jurisdiction to grant interim orders: *“It would be surprising if the New Court Law had the effect of contracting the jurisdiction and powers of the Court in this respect.”* I do not however treat that as a binding statement as the CoA was careful to point out that, *“As the appeal was heard ex parte, this Court should not, in the absence of a contradictor make a final decision on the question of jurisdiction in this case”*.
11. The Defendants look to the JAL to distinguish the decisions of the Court of First Instance (“**CFI**”) in *Larmag Holdings BV v First Abu Dhabi Bank PJSC & Another* [2019] DIFC CFI 030 (4 August 2019) and of the CoA *sub nom. First Abu Dhabi Bank PJSC & Another v Larmag Holdings BV* [2019] DIFC CA 010 (23 March 2020) in which it was held that First Abu Dhabi Bank was a DIFC Licensed Establishment by virtue of the Dubai Financial

Services Authority (“DFSA”) entering its name into the list of “Recognized Members” entitling it to trade on NASDAQ Dubai as members of that exchange with DIFC customers whereby it was authorised or registered by the DFSA to provide financial services in accordance with DIFC laws (per Justice Sir Richard Field at [36] in the CFI).

12. Those decisions were under Article 5(A)(1)(a) of the JAL:

“The Court of First Instance shall have exclusive jurisdiction to hear and determine ... Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;”

Licensed DIFC Establishments were defined as:

“Any entity or enterprise licensed, registered or authorised by the Dubai Financial Services Authority to provide financial services, or conduct any other activities in accordance with the DIFC Laws.”

13. The Defendants say that these decisions have been overturned by legislation because the definition of “financial services” has changed.

14. The Defendants refer to the decision of H.E. Justice Bathurst in *Atul Ashok Chand Dhawan v Zurich International Life Ltd* [2025] DIFC CFI 019 (9th September 2025) in which he stated that the relevant jurisdiction provision is that in force at the time of jurisdictional hearing [11]. I agree; indeed in *Larmag*, Sir Richard Field stated:

“In my judgment, when construing the definitions in Article 2 and Article 5(A)(1)(a) of the JAL, the Court should have regard to the background financial services regulatory regime as it exists at the time the construction exercise is being undertaken and should not conduct a process of comparison between former and current regulatory backgrounds. That said, I reject the Respondents’ contention that the Article 2 definitions are to be construed strictly in the light of a narrow, technical meaning to be given to the wording of the background regulatory regime. I do so having regard to the legislative intent underlying Article 5(A)(1)(a) of the JAL which I hold to be to render those entities which are formally permitted by the DIFC regulatory authorities to provide financial services to customers in the DIFC, or otherwise carry on business or conduct any activity in the DIFC, susceptible to the jurisdiction of the DIFC Courts.

35. Accordingly, I propose to abstain from construing the definitions in Articles 2 and the wording in Article 5(A)(1)(A) by taking a literalist approach to the background regulatory regime and instead I shall look at the substance of the component parts of the regime, all the time keeping in mind the purpose and intent of Article 5(A)(1)(A).”

15. It follows that I must interpret the Courts Law from first principles in the light of the current regulatory regime without losing sight its legislative intention, which I agree with Sir Richard, is to ensure that those entities that are formally permitted by the DIFC regulatory

authorities to provide financial services to customers in the DIFC, or otherwise (to quote the Courts Law) “*established, licensed, registered, or permitted to operate or to carry on any activity in or through the DIFC pursuant to the DIFC Laws*”, are susceptible to the jurisdiction of the DIFC Courts.

16. There is a helpful uncontroversial statement of the facts on which D3 and D4’s Jurisdiction Challenge is based in Beirne 1. Ms Beirne is a solicitor at K&K. She states that ENBD is a Dubai based bank originally established in 1963. It is a public joint stock company under the UAE Commercial Companies Law (Federal Law No. 8 of 1984) majority owned by Investment Corporation of Dubai (the investment arm of the Dubai Government). It is regulated by the Central Bank of the UAE, the Securities and Commodities Authority (which was renamed the Capital Market Authority effective 1 January 2026 pursuant to Federal Decree-Law No. (32) of 2025 and Federal Decree-Law No. (32) of 2025), and the Dubai Financial Market.
17. NASDAQ Dubai is an international financial exchange, located in the DIFC and regulated by the DFSA. It allows companies to list shares for sale to investors in the Middle East and internationally. To buy or sell shares on NASDAQ Dubai, an investor must open an investor account with a brokerage firm that is a member of NASDAQ Dubai. Investors can be based anywhere in the world and be of any nationality. Similarly, broker firms can be regulated by regulators other than the DFSA, provided that they are regulated in a jurisdiction “*acceptable to the DFSA*” (DFSA Recognition Module (“**REC**”) 2.5.1(a)) and that, “*when using the facilities of an exchange, clearing house or alternative trading system in the DIFC, it does not exceed the scope of the activities it is licensed to carry on by its [home jurisdiction regulator]*” (*ibid.*, 2.5.1(e)).
18. There is a statement on recognition on the DFSA website:

“The DFSA does not consider that a person which meets the requirements to be recognised by the DFSA as a Recognised Body or Recognised Member, and which carries on its activities in accordance with the Rules in the Recognition module, to be conducting Financial Services in or from the DIFC.”
19. The list of member firms is available on the NASDAQ Dubai website. ENBD is a regular member and is also a settlement bank for derivatives and a settlement bank for equities. ENBD is not one of the two market makers. A market maker is a firm that continuously buys and sells specific shares to create liquidity and facilitate trade. ENBD also has another affiliate entity, Emirates NBD Capital PSC, which is listed as a custodian member of NASDAQ Dubai.

D3 & D4's Submissions

20. D3 and D4's ("D3/4") submissions are contained in a Written Outline dated 20 February 2026 and their Skeleton Argument dated 11 March 2026.
21. D3/4 argue that the expansive definition of "*Licensed DIFC Establishment*" in the JAL was deleted, in favour of a tighter definition that requires the entity to be "*...licensed, registered, authorised, or recognised by the Dubai Financial Services Authority (DFSA) to carry on Financial Services or Ancillary Services under Law No. (5) of 2021 and the DIFC Laws.*" (D3/4's emphasis)
22. "*Financial Services*" as defined at Article 2 of Law No. (5) of 2021, *Concerning the Dubai International Financial Centre ("the DIFC Law")*.

*"The financial activities and services which **require regulation by the DFSA** under the DIFC Laws and the DIFC Regulations, including without limitation, accepting deposits; providing, credit-related facilities, arrangements, and consultancy; providing money transfer or exchange services; dealing in investments as principal or agent; managing assets, funds, and collective investment portfolios; advising on financial products; carrying out financial contracts; providing or arranging custody services; carrying out insurance contracts; providing insurance*

intermediation or management services; operating stock exchanges, central clearing houses, or central depository centres; managing investment accounts; operating alternative trading systems; providing trust services; acting as a trustee of trust funds; operating credit rating agencies; operating crowdfunding platforms; operating representative offices; issuing, offering, and listing financial products; promoting or marketing financial services and products; and trading in financial products." [D3/4's emphasis]

23. Reliance is also placed on what was said by H.E. Justice Bathurst in *Dhawan* at [51]:

"51. It is a necessary requirement for a body to be a DIFC Establishment or a Licensed DIFC Establishment that it must be either established, licensed registered or permitted to carry on any activity in the DIFC. In the case of a Licensed DIFC Establishment, the activity must be the provision of Financial or Ancillary Services. The Defendant, although a recognised foreign company in the DIFC, was not established to carry out any such activities or services."

24. They submit that in the case of a Recognised Member the DFSA has given a clear and unequivocal answer: a Recognised Member carrying on activities in accordance with the Rules in the Recognition module is not "*conducting Financial Services in or from the DIFC*" (paragraph 18 above). The Recognition Module itself also makes this clear, noting that a Recognised Member must be one which "*carries on business in a jurisdiction other than the DIFC and has its head and registered offices outside the DIFC*" (REC 2.5.1(a)).

25. They submit that to the extent that the Bank's submission is that its status as "*Recognised Member*" means that it is permitted to carry on "*Financial Services*" in the DIFC, as that term is defined in both the DIFC Law, that is wrong. Unless a body is licensed, registered, authorised or recognised by the DFSA to carry on "*Financial Services*" as that word is defined in the DIFC Law, it does not satisfy the definition of being a "*Licensed DIFC Establishment*" for the purposes of Article 14(A)(1).
26. They suggest that the difference between the JAL and the Courts Law is central to the issue of jurisdiction to be considered in this case. I do not agree for the reasons set out at paragraph 15 above. I do accept that the difference is central to the question of whether *Larmag* can be distinguished from the present case, but it is irrelevant to the task of statutory interpretation.

D1's Submissions

27. D1 points out that the burden of establishing jurisdiction lies on the Claimant on a '*good arguable case*' basis: as long as it is plausible albeit contested (see paragraphs 102 and 103 of *Gulf Petrochem FZC LLC v Petrochina International (Middle East) Company Ltd* [2023] DIFC CFI 048 (23 November 2023)).
28. D1 notes that a "*Recognised Member*" is defined by Article 37(3)(b) of DIFC Law No. 1 of 2012 ("**Markets Law**") as "*a person located in a jurisdiction other than the DIFC which has been admitted to, and appears on, the list of recognised members maintained by the DFSA pursuant to this article*". Otherwise D1's submissions are a repetition of those of D3/4.

D2's Submissions

29. D2's submissions do not add to those of the other Defendants.

The Bank's Submissions

30. The Bank submits that the Court has jurisdiction to hear the claim under Article 14(A)(1) of the Courts Law either because ENBD is a "*DIFC Establishment*" or a "*Licensed DIFC Establishment*".
31. The Bank agrees with the submission of D3/4 that "*Licensed DIFC Establishments*" are merely "*a subset of the definition of 'DIFC Establishment'*" and suggests that a claimant can qualify as both at the same time.
32. The Bank refers to a number of provisions of the Markets Law:

“Article 37(1) - “[t]he DFSA shall, by rules, permit an Authorised Market Institution to admit as a member a recognised member”;

Article 37(4) - “[t]he DFSA shall maintain a list of recognised bodies and recognised members (the ‘list of recognised persons’) for the purposes of this Article”;

Article 37(5) - “[t]he DFSA may only admit a person to its list of recognised persons if it appears to the DFSA that such a person satisfies and will continue to satisfy the recognition criteria”.

Article 37(7) - “[i]f it is necessary or desirable in pursuit of its objectives, the DFSA may remove a person from its list of recognised persons in the circumstances and manner prescribed in the rules made for the purposes of this Article”.

33. The Bank continues that it follows that a person is not permitted to be member of an Authorised Market Institution (“**AMI**”) unless and until it is approved and added to the list of recognised persons under Article 37 of the Markets Law. If a person is refused recognition, they may challenge the DFSA’s decision under the procedure set out in Schedule 3 of the Regulatory Law (DIFC Law No.1 of 2004 (as amended)) (the “**Regulatory Law**”). NASDAQ Dubai is an AMI, and ENBD is a Recognised Member and listed as such by the DFSA. ENBD can only be a member of NASDAQ Dubai whilst it remains on the list of Recognised Members controlled by the DFSA and is liable to removal by the DFSA if the requisite tests are not met.
34. The Bank submits that:
- (1) as a member of the NASDAQ Dubai, ENBD buys and sells securities or otherwise trades in financial products. It is common ground that ENBD is able to act as a broker thereby enabling third parties to participate in the NASDAQ (see paragraphs 17 and 19 above);
 - (2) ENBD is “*permitted*” to undertake that activity only by dint of it being on the list of recognised persons maintained, and to which it was admitted, by the DFSA. Article 37(1) of the Markets Law specifically uses the word “*permit*”;
 - (3) By dint of its membership of the list of recognised persons, ENBD is permitted “*to carry on*” that activity within the meaning of the definition of DIFC Establishment in Article 2 of the Courts Law insofar as it is presently authorised to do so. D3/4’s suggestion in their Written Outline that “*to carry on*” is to be interpreted as “*carrying on*” is an unwarranted gloss on the words of Article 2. Article 2 does not require a claimant to show that it is actively doing or undertaking the licensed, registered or permitted activity;

- (4) NASDAQ Dubai is a stock exchange based and regulated in, and operating from, the DIFC. Accordingly, by using its membership of the NASDAQ Dubai, ENBD is carrying on (or is entitled to carry on) that activity “*in or through the DIFC*”;
 - (5) The permission ENBD has to carry on that activity is conferred by the DFSA through its powers under the Markets Law, which is a DIFC statute and, therefore, it does so “*pursuant to the DIFC Laws*”; and
 - (6) That is sufficient to engage the DIFC Court’s jurisdiction under Article 14(A)(1). A “*DIFC Establishment*” does not need to be carrying on any financial services at all, so long as it is an “*entity or business ... permitted to ... carry on any activity in or through the DIFC pursuant to the DIFC Laws ...*”
35. The Bank goes further and asserts that not only is it a DIFC Establishment, it is also a Licensed DIFC Establishment within the meaning of the Courts Law. It submits that “*Financial Services*” are given an expansive, non-exhaustive, meaning in Article 2 of the DIFC Law. It emphasises the words “*The **financial activities and services** which require regulation by the DFSA under the DIFC Laws and the DIFC Regulations, **including without limitation** ...*”.
36. The Bank suggests that the DFSA’s published view/guidance in relation to the extent to which a Recognised Member of an AMI, (such as ENBD), is (or is not) deemed to carry on financial services is irrelevant because:
- (1) The DFSA’s website refers to “*financial services*” in the context of the prohibition in Article 41(1) of the Regulatory Law: “*Subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC*”;
 - (2) The definition of “*Financial Service*” within that DIFC law is governed by Article 41(2) and Schedule 1, paragraph 3: “*The DFSA shall make Rules prescribing the activities which constitute a Financial Service*”;
 - (3) In the DFSA Rule Book:
 - (a) GEN 2.2.1 provides that “*An activity constitutes a Financial Service under the Regulatory Law and these Rules where: (a) it is an activity specified in GEN Rule 2.2.2; and (b) such activity is carried on by way of business in the manner described in GEN section 2.3*”;

- (b) GEN 2.2.2 sets out an exhaustive list of 27 activities “*specific for the purpose of GEN Rule 2.2.1*” (I count 29);
- (4) The DFSA's published position is not concerned with, nor does it purport to be, a commentary on what constitutes a “*Financial Service*” for the purposes either of Article 2 of the Courts Law or, by extension, Article 2 of the DIFC Law. Indeed, GEN 2.2.1 and 2.2.2 are on their express terms a self-contained set of rules for the specific purpose for which they were drawn up; and
- (5) Further, and in any event, the statement on the DFSA website relied on by D3/41 – in the form of guidance under the heading “*Our Recognition Approach*” – is not drafted with the precision of formal legislation. On a fair reading, it is simply making the following clear: if, but only if, a person satisfies the recognition requirements and carries out its activities in accordance with “*the Rules in the Recognition module*”, that person will not be deemed by the DFSA to require further regulation in the conduct of its financial activities. The corollary, however, is that insofar as a person does not satisfy those requirements but nevertheless carries out its activities in the DIFC, the DFSA will consider such activities to constitute Financial Services in breach of Article 41.
37. The Bank says that the Ruler specifically and deliberately chose to frame the meaning and content of “*Financial Services*” by reference to the DIFC Law and not any DIFC laws or regulations or rules issued by the DFSA. There is no basis for arguing that the DFSA's secondary rule-making function pursuant to Article 41(2) and Schedule 1, paragraph 3 of the Regulatory Law can supersede or even qualify the content of Article 2 of the DIFC Law as a hierarchically superior Dubai law.
38. It is the Bank's case that the question of whether ENBD being a member, or carrying on the activities of a member, of NASDAQ Dubai constitutes a “*Financial Service*” within the meaning of the Courts Law and the DIFC Law must therefore be approached as a matter of first principles and within the four corners of that [*sic*] law:
- (1) First, a “*Financial Service*” within the meaning of the DIFC Law includes “*financial activities and services*”. “*Activities*” is a broader concept than “*services*” and its inclusion plainly reflects the Ruler's intention to cast a wide regulatory net under the DIFC Law. The activities that ENBD carries on, and is permitted to carry on, as a member of the NASDAQ Dubai (such as listing bonds) is self-evidently a “*financial*” activity;

- (2) Secondly, unlike the DFSA Rule Book's definition, Article 2 of the DIFC Law does not provide an exhaustive, closed list of activities that would constitute a financial service. Therefore, insofar as the Court cannot place ENBD's activities as a Recognised Member in one of the listed categories, it is entitled to determine whether functionally its "*activities and services*" qualify as "*financial*" in nature; and
 - (3) Thirdly, ENBD undoubtedly provides a number of the listed "activities and services" in any event, including "*promoting or marketing financial services and products*" and "*trading in financial products*".
39. Thus, contends the Bank, it fulfils the requirement of carrying on "*Financial Services*" and the only remaining issue for the Court is whether ENBD is "*licensed, registered, authorised, or recognised*" to do so, which it answers in the affirmative because:
- (1) The "*Financial Services*" that ENBD carries out in the DIFC are through its membership of NASDAQ Dubai. As set out above, only a person who is a member of the list of recognised persons can be a member of NASDAQ Dubai and a person can only be admitted to that list if approved by the DFSA. The DFSA's powers to admit a person to membership are derived from the Markets Law;
 - (2) A person who is admitted by the DFSA to the aforesaid list becomes a "*recognised member*". Accordingly, when ENBD carries out its "*financial activities and services*" through its membership of NASDAQ Dubai it is doing so because it has been "*recognised*" to carry out such "*Financial Services*" pursuant to the DIFC Laws;
 - (3) The statement in paragraph 15(a) of D3/4's Written Outline that Article 14(A)(1) "*is drafted specifically to carve out the jurisdiction of the DIFC Court over DFSA 'Recognised Members'*" is a bald one with no textual support in either the Courts Law nor the DIFC Law; and
 - (4) D3/4 argue "*for an entity to be considered a Licensed DIFC Establishment pursuant to the Courts Law, it must be conducting 'Financial Services' in a DIFC regulatory sense*" (original emphasis). Even if that is right, it does not assist them: ENBD can only carry out its "*financial activities and services*" within the meaning of Article 2 of the DIFC Law because, and only while, it has been recognised to do so by the DFSA under Article 37 of the Markets Law as the DIFC's financial regulator. By definition, those "*Financial Services*" are being carried out in a "*regulatory sense*".

Conclusion on Jurisdiction

40. I find an air of complete unreality in the Defendants' submissions. It is inconceivable that the legislative purpose of the Courts Law was to exclude transactions undertaken on an international financial exchange, located in the DIFC, by brokerage firms that are Recognised Members of the exchange within the meaning of the DFSA's Rule Book Modules, from the jurisdiction of the DIFC Courts.
41. ENBD is an active member of the exchange. On 14 October 2025, ENBD listed a CNY 1 Billion Bond under its USD 20 Billion Euro Medium Term Note Programme. ENBD's press release stated:

"Issued under the bank's USD 20 billion Euro Medium Term Note (EMTN) Programme, the 2.40% Notes are due in 2028 and mark Emirates NBD's return to the Dim Sum market, which enables global investors to access renminbi-denominated bonds outside mainland China. This issuance further diversifies the bank's funding base and reflects investor appetite for high-quality issuances from UAE financial institutions.

Following this admission, Emirates NBD now has USD 5.4 billion in debt instruments currently listed on Nasdaq Dubai across nine issuances, reinforcing its position as one of the UAE's most active financial institutions on the exchange. The transaction also highlights Dubai's growing links with Asian markets through renminbi-denominated bonds, which are playing a larger role in international capital markets."

On 18 December 2025, ENBD listed a USD 500 million Sustainability Linked Loan Financing Bond.

42. The Defendants have also signally failed in their written submissions to address the Bank's case that it is a DIFC Establishment even if it is not a Licensed DIFC Establishment for the purpose of the Courts Law.
43. In my judgment, it is unarguable that ENBD is not a DIFC Establishment within the meaning of the Courts Law. The criteria are deliberately broadly framed and may be broken down as follows:
- (1) any entity or business;
 - (2) established, licensed, registered, or permitted ... pursuant to the DIFC Laws and the DIFC Regulations;
 - (3) to operate or to carry on any activity;
 - (4) in or through the DIFC.
44. ENBD is obviously a business.

45. The Recognition Module of the DFSA Rulebook provides that:
- (1) It applies to every Recognised Person (REC 1.1.1). A Recognised Person is defined by Article 37(3)(c) of the Markets Law as including a Recognised Member. A Recognised Member is defined by Article 37(3)(b) as a person located in a jurisdiction other than the DIFC which has been admitted to, and appears on, the list of Recognised Members maintained by the DFSA pursuant to this article;
 - (2) For the purposes of Article 37(6) of the Markets Law the Recognition Criteria for a Recognised Member are that: (a) it is licensed or otherwise authorised to trade on or use the facilities of an exchange, clearing house or alternative trading system in a jurisdiction acceptable to the DFSA; (c) the law and practice under which the Recognised Member is licensed or otherwise authorised is broadly equivalent to the DFSA's regulatory regime as it applies to a DIFC Member; (f) it carries on business in a jurisdiction other than the DIFC and has its head and registered offices outside of the DIFC; and (g) when dealing on an Exchange in the DIFC, it does so only for: (i) non-DIFC customers; or DIFC customers for whom it deals as a result of an unsolicited request for execution-only services. The restriction in (g) does not apply to a Recognised Member which is licensed and supervised by a Financial Services Regulator in the UAE (REC 2.5.1, 2.5.3).
46. It follows that as a bank regulated by the Central Bank of the UAE, the Securities and Commodities Authority and the Dubai Financial Market, which is a Recognised Member of NASDAQ Dubai, ENBD is not prohibited from dealing (or permitted to deal) with any customers in the DIFC (as well as elsewhere) who wish to buy or sell shares on the exchange.
47. Acting as a brokerage on the exchange is obviously an activity. It is carried on in the DIFC, certainly for DIFC customers. Even if it is not carried on in the DIFC, it must be carried on through the DIFC, i.e. via the instrumentality of an AMI based in the DIFC.
48. ENBD would not be able to undertake the activity unless it were admitted to the list of Recognised Persons under Part 3 of the Markets Law and it is admitted as a member of NASDAQ Dubai under Article 37(1) of the Markets Law in accordance with the DFSA's Rules. For the sake of completeness, I note that the AMI Module of the DFSA Rulebook lays down criteria for the admission of Members including that a Person is admitted to the list of Recognised Persons pursuant to Article 37 of the Markets Law 2012 (AMI 5.7.2(1)(b)). ENBD is therefore only permitted to carry on its activities on NASDAQ Dubai

pursuant to the DIFC Laws and the DIFC Regulations. I would regard any suggestion to the contrary as absurd.

49. There can be no doubt that ENBD is a DIFC Establishment within the meaning of the Courts Law. It therefore follows that the DIFC Courts have exclusive jurisdiction to hear and determine commercial claims by or against ENBD and those to which ENBD is a party pursuant to Article 14(A)(1) of the Courts Law.
50. That is enough to dispose of the Jurisdiction Challenge, but I would go further and hold that not only is ENBD a DIFC Establishment, it is also a Licensed DIFC Establishment within the meaning of the Courts Law.
51. In claiming that the Bank is not a Licensed DIFC Establishment, the Defendants have placed more weight on the statement by the DFSA on its website that a Recognised Member which carries on its activities in accordance with the Rules in the Recognition module is not to be regarded as conducting Financial Services in or from the DIFC than it can properly bear.
52. In *Larmag* Sir Richard Field stated at [38]:

“38. I do not think that the view expressed by the DFSA in its guidance document on Recognised Members that a person who meets the requirements to be recognised by the DFSA as a Recognised Body or Recognised Member and carries on its activities in accordance with REC would not be conducting financial services in or from the DIFC stands prevents me from reaching the conclusion I have come to on the construction of Article 5(A)(1)(a). First, by reason of their status of Recognised Members, the Respondents are entitled to undertake financial services by making use of DIFC regulated AMIs in order to trade with DIFC customers and that is enough for the purposes of the definition of Licensed DIFC Establishments. Second, to the extent it might be relevant whether the Respondents are conducting financial services in or from the DIFC, this is a question to be decided by the Court and I take the view that the exercise of the entitlement to trade on the NASDAQ Dubai with DIFC customers free of the restrictions contained in REC Rule 2.5.1 (g) plainly constitutes the conduct of financial services in or from the DIFC.”

53. I agree with Sir Richard that whether a party is conducting financial services in or from the DIFC is a question to be decided by the Court. It is however necessary to understand what is being said by the DFSA in context. The statement set out at paragraph 18 above is prefaced by the words, “Article 41(1) of the Regulatory Law 2004 prohibits a person from carrying on Financial Services in or from the DIFC unless such person is authorised or otherwise permitted to do so.” This is “*The Financial Services Prohibition*” and it states as follows:

“Subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.”

Article 42(3) provides:

“A person may carry on one or more Financial Services in or from the DIFC if such person is:

(a) an Authorised Firm whose Licence authorises it to carry on the relevant Financial Services;

(b) an External Fund Manager as defined in Article 20(5) of the Collective Investment Law 2010, in so far as its activities relate to a particular Domestic Fund that falls within Article 41(9); or

(c) an Authorised Market Institution whose Licence authorises it to carry on the relevant Financial Services.”

54. The DFSA’s statement has precisely the opposite effect to that contended for by the Defendants. Rather than saying that a Recognised Person is not carrying on Financial Services at all, it is saying that a person that meets the requirements to be recognised by the DFSA as a Recognised Member, and that carries on its activities in accordance with the Rules in the Recognition Module does not thereby breach the Financial Services Prohibition. This makes complete sense, *ex hypothesi*, in order to be a Recognised Member it must carry on business in a jurisdiction other than the DIFC and have its head and registered offices outside of the DIFC (REC 2.5.1(f)). What the DFSA is saying is that an entity from outside the DIFC which satisfies the DFSA’s criteria for equivalence of regulatory oversight (REC 2.5.1(c)) shall not be prohibited from carrying out business on an AMI because it is not one of the persons identified in Article 42(3) of the Regulatory Law.
55. Thus, from the DFSA’s regulatory perspective, a Recognised Member exercising its rights as a member of an AMI may as a matter of fact may be carrying on a Financial Service in or from the DIFC but the DFSA will not consider it to be doing so for the purposes of the Financial Services Prohibition. To hold otherwise would have the absurd result that on the one hand the Recognised Member was permitted, for example, to take an order for the purchase of shares on NASDAQ Dubai from a DIFC asset manager, but on the other was prohibited from doing so because it was not an Authorised Firm, External Fund Manager acting for a Domestic Fund or the AMI itself.
56. Properly understood the DFSA’s statement is irrelevant to the question of whether or not ENBD may carry on Financial Services in or from the DIFC. In fact, the question of whether or not ENBD may carry on Financial Services in or from the DIFC is irrelevant

to the definition of Licenced DIFC Establishment under the Courts Law: the criterion of “*in or from*” forms no part of the definition.

57. The definition of Licenced DIFC Establishment includes entities recognised by the DFSA to carry on Financial Services. ENBD is recognised by the DFSA to be entitled to act as a broker to buy and sell shares on NASDAQ Dubai. The Defendants contend that to do so is not a “*Financial Service*” within the meaning of the DIFC Law.
58. The definition of “*Financial Services*” at Article 2 the DIFC Law speaks of financial activities and services which require regulation by the DFSA under the DIFC Laws and the DIFC Regulations. It includes within a non-exhaustive list: dealing in investments as principal or agent; carrying out financial contracts; providing or arranging custody services; promoting or marketing financial services and products; and trading in financial products. On the evidence before me this list captures the activities of ENBD on NASDAQ Dubai.
59. In the circumstances, I am satisfied that ENBD carries out Financial Services as defined in Article 2 the DIFC Law. It does so pursuant to its recognition by the DFSA as a Recognised Member, which is a status regulated by the DFSA under the DIFC Laws and the DIFC Regulations. ENBD is undoubtedly a Licensed DIFC Establishment.

Forum Non Conveniens

60. D3/4 argue that if the Court were of the view that the Article 14(A)(1) gateway does extend to entities such as C (i.e. those with no presence, business or regulation in the DIFC), that would be a conclusion which would lead to a gateway of potentially exceptional breadth. It would, for instance, result in a scenario by which any tortious claim by or against the Claimant (and any other Recognised Member of NASDAQ Dubai) would fall within the exclusive jurisdiction of the DIFC Court – regardless of where that tortious conduct took place and notwithstanding there may be no other link to the DIFC.
61. Pausing there, the predicate of the submission is internally inconsistent and misconceived. If (as is the case) the Court finds that the Article 14(A)(1) gateway does extend to C, it is on the basis that it **does** have presence, business or regulation in the DIFC.
62. D3/4 submit that there should be some mechanism by which its most excessive reaches can be controlled. That role is usually served in common law jurisdictions by the doctrine of *forum non conveniens* (“**FNC**”). D3/4 invite the Court in this case to refuse to exercise

any jurisdiction it might have on the basis that the Dubai Courts are both an available forum, and are clearly and distinctly the more appropriate forum to hear the Claimant's claim. They say that is so because:

- (1) All parties are located in Dubai outside the DIFC;
- (2) The events alleged all took place in Dubai outside the DIFC;
- (3) The claim is said to be governed by UAE law;
- (4) The evidence and documents in the case are most likely to be largely in Arabic;
and
- (5) The subject of the claim is the alleged evasion of enforcement of a judgment of the Dubai Court. Policing the effectiveness of and compliance with that judgment is most appropriately done by the Dubai Court.

63. D3/4 recognise that their submissions cut across previous judicial statements (including at Court of Appeal level: *see Investment Group Private Ltd v Standard Chartered Bank* [2015] DIFC CA 004 (19 November 2015) ("**IGPL**")) that the DIFC Court will not take into account questions of *forum non conveniens* when the alternative jurisdiction is another court of the UAE. They say that the enactment of the Courts Law allows this Court to consider matters afresh:

- (1) Justice Steel in the CFI in *IGPL* gave two reasons for the unavailability of the doctrine, but only one of which was accepted by the Chief Justice; that the DIFC Court taking a decision on forum in intra-UAE disputes would trespass on the constitutional role of the Union Supreme Court ("**USC**");
- (2) As to this sole justification, which was accepted by the Chief Justice on appeal, that is of no application to the present case because the USC's role is limited to circumstances where there is an actual conflict between courts of the UAE (i.e. where there are two extant cases in two different courts of the Emirates), not merely where there is a potential, conflict. Of course, the position now is that a dispute between the DIFC Court and the Dubai Courts would not go to the USC, but rather to the Conflict of Jurisdiction Tribunal ("**CJT**"). The Chief Justice's suggestion in *IGPL* that even without an actual conflict of jurisdiction the DIFC Courts would be trespassing on role of the USC must now be viewed in light of the CJT (and its predecessor the Joint Judicial Committee ("**JJC**")) jurisprudence which confirms

that no conflict engaging either tribunal arises unless there are actual competing cases constituted to address cases of actual conflict;

- (3) What is more, the DIFC Court has, since *IGPL*, confirmed the existence of its powers to order anti-suit relief in intra-UAE court disputes. Such injunctive relief is, (like FNC) a discretionary measure used to control questions of jurisdiction in intra-UAE disputes. The confirmed existence of such a power by the DIFC Court undercuts (and brings into question) the foundational assumption relied upon in *IGPL*.
64. D1 submits that it is open to the Court to decline to exercise jurisdiction pursuant to RDC 12.1(2) under FNC principles enunciated in *The Spiliada* [1987] AC 460 which require:
- (1) A defendant to establish that there is another forum that is “*clearly or distinctly more appropriate than the [DIFC] forum*”; and
 - (2) If stage 1 is satisfied, a claimant to demonstrate that “*there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this [jurisdiction]*”.
65. D1 notes the same points are raised by D3/4 at paragraph 62 above and additionally that:
- (1) the guarantee agreements between ENBD and D1 were executed and performed outside the DIFC which underlay the merits action leading to the Dubai Courts’ judgments which are the subject of the present action;
 - (2) the alleged divestments did not take place in the DIFC, with all taking place outside of the DIFC; and more generally,
 - (3) if ENBD is considered to be a Licensed DIFC Establishment, in light of the changes made to the legislation, then it would mean that all entities listed as NASDAQ Dubai Members and Market Makers are all Licensed DIFC Establishments;
 - (4) it would also mean that *prima facie* the DIFC Courts have exclusive jurisdiction to hear a UAE Federal Labour Law dispute between ENBD and a former or current employee, if the employment contract did not contain an exclusive jurisdiction clause in favour of the Dubai Courts. Another example could be a claim in tort made by any individual, whether resident or tourist, against ENBD in the DIFC Courts. Applying the *dictum* of Larmag CFI (paragraph [34]) and *Corinth Pipeworks SA v*

Barclays Bank PLC [2011] DIFC CA 002 per Hwang CJ at paragraph [84], the jurisdiction over a DIFC Licensed Establishment would exist *ad hominem*. It would therefore mean that there is no room for refusing jurisdiction.

66. The answer to the general problems identified above suggested by D1 is that the wording of the Courts Law in expanding its reach over all civil, commercial and employment claims requires the matter to be revisited such that either jurisdiction under Article 14(A)(1) does not exist *ad hominem* or that FNC is the safeguard to ensuring appropriate cases made by or against Licensed DIFC Establishments are caught by the DIFC Courts' jurisdiction.
67. D1 submits that the applicability of FNC was left open for consideration where the competing courts were the local non-DIFC Courts and the DIFC Courts (see paragraph [69] of *Corinth*. H.E. Al Madhani DCJ commented that no conflict issues arise between the DIFC Court and Dubai Courts because of the existence of the JAL (see paragraph [57] of *Allianz v Al Ain Company PSJC* [2012] DIFC CFI 012 (30 April 2013)). The DIFC CoA decided that FNC does not apply as between the wider UAE courts because the Union Supreme Court is the appropriate arbiter of forum under Article 99 of the UAE Constitution and Article 33 of the Supreme Court Establishment Law No. 10 of 1973 (see generally paragraphs [181] to [191] of *IGPL* per Hwang CJ).
68. D1 continues, as to *IGPL*, it was further stated at paragraph [176] that FNC may apply in finding in favour of a competing civil law jurisdiction. In *Union Insurance PJSC v International Precious Metals Refiners LLC* [2022] DIFC CFI 064 (15 September 2023) Martin CJ held that *lis alibi pendens* was part of FNC and therefore inapplicable to legal proceedings in different courts in the UAE (see paragraphs [65] and [66]). However, unlike the *Union Insurance* case, parallel proceedings are not on foot in the local Dubai Courts in respect of the remedies sought in the DIFC Courts and this authority is of little to no assistance.
69. D1 (like D3/4) invites the DIFC Court to consider the position again. This is a case where only one set of court proceedings are afoot, i.e. the DIFC proceedings. ENBD has not brought a claim for the same relief in the local Dubai Courts. Therefore, jurisdictional conflicts have not arisen requiring determination by the Conflict of Jurisdiction Tribunal.
70. D2 adds that the DIFC Courts have granted anti-suit injunctive reliefs against proceedings in other UAE courts, including in purely intra-Dubai disputes, see *Emirates NBD v KBBO* [2020] DIFC CFI 045 (16 Aug 2021). At [77], the Court recognised its

power to grant anti-suit relief directed towards onshore proceedings, which is itself a discretionary mechanism for controlling the jurisdictional overlap between courts within the UAE. Once it is accepted that the DIFC Courts may, in appropriate cases, restrain parties from pursuing or continuing proceedings in another UAE court by way of an anti-suit injunction, the same Court should exercise a similar discretionary power in the form of FNC.

71. The Bank submits that it was well-established under the JAL that once a jurisdictional gateway under Article 5(A)(1) had been satisfied, there was no further need to show a connection between the parties or the subject-matter of the claim to the DIFC. Repeated attempts by Defendants to challenge that construction of the JAL on the basis that it gave rise an '*exorbitant*' jurisdiction were all rejected. As is conceded by each of D2, D3 and D4, the doctrine of FNC has no application on an intra-UAE basis.
72. The Bank says that the invitation to the Court to revisit that jurisprudence should be firmly rejected:
 - (1) The wording of Article 14(A)(1) is clear that the DIFC Courts have "*exclusive jurisdiction*" to hear "[c]ivil or commercial...claims...by or against the DIFC Bodies or DIFC Establishments and those to which DIFC Bodies or DIFC Establishments are party". Materially identical wording was found in Article 5(A)(1)(a) of the JAL. Neither law contains any additional element required to engage the DIFC Courts' jurisdiction. To '*read in*' such a restriction would be an impermissible attempt at judicial legislation, and would be directly contrary to the terms and spirit of the law. It can be no more "*exorbitant*" for the DIFC Courts to exercise its jurisdiction by the plain meaning of Article 14(A)(1) of the Courts Law as it was when applying Article 5(A)(1)(e) of the JAL;
 - (2) D3/4's argument is misconceived insofar as, if they are wrong as to the proper construction that Article 14(A)(1), the Court's jurisdiction is no wider than it ever was before. If the Court did not consider Article 5(A)(1)(a) of the JAL to involve the exercise of an "*exorbitant*" jurisdiction, there is no reason for revisiting that conclusion under Article 14(A)(1);
 - (3) Contrary to D3/4's submission, the existence of both the mechanism under the UAE Constitution to refer inter-Emirate conflicts of jurisdiction to the USC and the mechanism to refer intra-Dubai conflicts of jurisdiction to the JJC point firmly against the use and application of a discretionary common law power to decline

jurisdiction where there is an alternative forum in another UAE jurisdiction. Rather, the provision for referrals to the USC and the Dubai mechanism via the JJC are specific constitutional and statutory procedures for resolving such disputes. For the DIFC Courts to deploy FNC principles where such mechanisms are available would be to usurp the decisions of, respectively, the UAE Federal Government and the Ruler;

- (4) The availability of anti-suit relief on an intra-UAE basis does not assist the Defendants. Where the DIFC Court has exclusive jurisdiction over a claim – which it does when any of the Article 14(A) gateways are fulfilled – it is entirely unsurprising that it will grant anti-suit relief to prevent a party from initiating proceedings in another UAE jurisdiction. That is a simple consequence of the decision of the UAE Federal Government to create FFZs (financial free zones) which are exempt from Federal civil law, the Ruler’s decision to create the DIFC and the Courts Law’s (and previously the JAL’s) conferral of jurisdiction cover matters to the exclusion of other courts;
 - (5) Fatal to the case on FNC is that it would require the Court to act directly contrary to the legislative intent of the Ruler when enacting Article 14(A)(1). The Ruler’s use of the word “*exclusive*” in Article 14(A)(1) is a deliberate one and replicates His Highness’s previous drafting in Article 5(A)(1) of the JAL. The conferral of “*exclusive*” jurisdiction on the DIFC Courts when an Article 14(A) gateway is fulfilled can mean only that: it excludes the jurisdiction of any other Dubai court. To introduce a principle – by setting aside long-established authority – permitting the DIFC Court to ‘*decline*’ jurisdiction in such circumstances would be act directly contrary to the plain meaning and words of the statute.
73. In my judgment it is necessary to consider this issue in two stages: first, does the Courts Law admit of the application of the FNC doctrine at all? And if so, secondly, should the doctrine be applied on the facts of the present case so that Court will decline to exercise its jurisdiction under the Courts Law?
74. Turning to the first stage, I agree with the Bank that for present purposes there is no material difference between the wording of Article 5 of the JAL and Article 14 of the Courts Law. Both confer exclusive jurisdiction on the DIFC Courts to hear and determine civil and commercial claims to which a DIFC Establishment or a Licensed DIFC Establishment is a party. The decisions of the CFI on the meaning of the JAL are therefore persuasive authority and the decisions of the CoA are binding on me under the

established principle of the common law that where a phrase has received a clear judicial interpretation, the subsequent legislation which incorporates the same phrase in a similar context must be construed so that the word is interpreted according to the meaning that has previously been ascribed to it.

75. In *Corinth* the CoA addressed a situation significantly similar to the present in one material respect in particular. The Respondent was an English bank with an unincorporated branch office registered in the DIFC as a Recognised Company. The CoA held at [66]

“Once it is established that an unincorporated DIFC branch of a foreign bank cannot be regarded as an independent entity for purposes of qualifying as a “Centre Establishment”, it follows that this term can only be interpreted to mean the Respondent and its various branches, wherever located. Accordingly, the DIFC Courts do have jurisdiction over the conduct of the Respondent’s Dubai branch, as it would have over any other branch of the Respondent, wherever located.”

76. In the same way once it is established that a bank trading on NASDAQ Dubai is a DIFC Establishment the DIFC Courts will “*exclusive jurisdiction*” to hear and determine claims over any branch of that bank wherever located. Article 14(A)(1) of the Courts Law expressly includes employment claims. As D1 points out that would mean that the DIFC Courts have exclusive jurisdiction to hear UAE Federal Labour Law disputes between ENBD and its former or current employees employed in any of its branches in Dubai outside the DIFC unless the relevant employment contracts contained exclusive jurisdiction clauses in favour of the Dubai Courts. I accept that is unlikely to have been intended by the Dubai legislator. D1 suggests the way to ameliorate that surprising result is by the application of the FNC doctrine.
77. It may be that the fear underlying this submission is more apparent than real. I was not addressed on the point in detail as a matter of UAE law, but from subsequent information provided by the Bank, I note that before an employment claim can be litigated it must first be referred to the Ministry of Human Resources & Emiratization for conciliation and then the Ministry will refer the dispute to the “*competent court*” (Federal Decree by Law No. (33) of 2021, *Regulating Labor Relations*, Article 54). I am told that as an “*Employer*” employing “*Workers*”, ENBD is mandated to enter into an Employment Contract in accordance with set “*contract forms*” for each Worker. Those “*contract forms*” mandate that the provisions of the Labour Law apply. Therefore, it is said by the Bank, the DIFC Courts would decline jurisdiction under Article 14(C)(1) of the Courts Law which provides that the DIFC Courts may decline jurisdiction to hear claims falling within the jurisdiction

of the DIFC Courts but where the parties have agreed in writing to the jurisdiction of another court.

78. Ultimately even if D1 were right, the point is not dispositive. It might go to the exercise of the discretion under the FNC doctrine, but not its application. The Defendants argue that it is judge-made law whereby the FNC doctrine may be applied where the competing jurisdiction is outside the UAE but not where it is within. I disagree - whether or not there is room for the application of FNC in intra-UAE, and in particular intra-Dubai, disputes will be determined by the interpretation of the Courts Law in its proper legislative context and giving effect to the legislative intention.
79. As to intra-Dubai disputes, the legislative intention is expressly set out in the DIFC Law at Article 4 as was recognised by the CoA in *Carmon Reestrutura-engenharia E Serviços Técnicos Especiais, (Su) LDA v Antonio Joao Catete Lopes Cuenda* [2024] DIFC CA 003 (26 November 2024), [148]:

“The DIFC aims to achieve the following objectives:

- 1. to promote the Emirate as a leading international financial centre based on the principles of efficiency, transparency, and integrity;*
- 2. to participate in achievement of the sustainable economic growth vision of the Emirate;*
- 3. to develop and diversify the Emirate's economy through effective contribution to Financial Services and related activities;*
- 4. to increase the contribution of the Financial Services sector and related activities in the gross domestic product (GDP) of the Emirate;*
- 5. to attract and promote investments into the Emirate and to encourage local, regional, and international financial institutions and companies to conduct their business and develop their investments through the DIFC; and*
- 6. to promote the Emirate as an international centre for dispute resolution and settlement.”*

80. The sixth objective is of particular relevance when considering the jurisdiction of the DIFC Courts. Read in combination with fifth objective it may confidently be said that the Dubai legislature wishes to encourage local, regional, and business through the DIFC subject to dispute resolution and settlement in the DIFC which will of course include both arbitration and ADR, but ultimately will be subject to jurisdiction of the Courts.
81. The CoA in *Corinth* seemed to contemplate that the FNC could be applied:

“This is not an exercise of exorbitant jurisdiction by the DIFC Courts over banks outside the DIFC because that universal jurisdiction over foreign banks with an unincorporated branch in the DIFC would be subject to the doctrine of forum non conveniens.” [67]

“I leave open the question of the applicability of forum non conveniens in a case which is prima facie within the jurisdiction of both the Dubai Civil Courts as well as the DIFC Courts by virtue of Article 5(A)(1) as neither party has, before this Court, addressed us as to whether that doctrine should apply to the facts and circumstances of the present case.” [69]

“I must also emphasise that the decision in this case does not necessarily imply that a "Recognised Company" in the DIFC can sue any party outside the DIFC in respect of any matter which has no connection with the DIFC. That question will have to be separately analysed when the occasion arises, and may also be a question that will have to be considered when the appropriate authorities review the implications of this decision in the light of Law No. 12 as it now stands.” [71]

82. The next decision in time was *Allianz v Al Ain Company PSJC* [2012] DIFC CFI 012 (30 April 2013). In that case, H.E. Justice Ali Al Madhani after considering the development of the FNC doctrine in the international context held that as between the DIFC Courts and the other courts of the UAE the doctrine has no part to play because the allocation of cases between courts is addressed under the UAE Constitution and laws [60-64]:

“60. Having said that, there are in the UAE federal constitutional and statutory provisions preventing the widespread application of the doctrine of FNC in both Emirate and federal courts. In my view, that is enough to argue that trial courts should have no discretion to refuse to hear cases under the FNC as it has been dealt with through the general policy which is reflected in the jurisdictional provisions in the aforementioned laws.

61 . The DIFC Courts are a common law court. However, since they are subject to the Constitutional and Federal laws which are of a regulatory nature that does not set them apart from the rest of the UAE Courts. Therefore, the only way to apply the FNC doctrine is in circumstances in which the competent forum is outside the jurisdiction of the USC.

62. Another difficulty arises if one is to assume that the DIFC Courts apply the FNC doctrine and relinquish jurisdiction In favour of another UAE Court, such as a Dubai Court or an Abu Dhabi Court. The rest of the UAE Courts do not recognise by definition or apply the FNC doctrine, which means that the local court in its usual application might still decline to deal with the said case just because there is a jurisdictional link with the other court, which might even be the court which just relinquished the exercise over its jurisdiction.

63. For the above-cited reasons, this Court decides to seize jurisdiction and need not discuss the possibility of the Abu Dhabi Courts being available and competent and discuss therefore the factors that make it more appropriate than the DIFC Courts, as that shall be the task of the use, as It has been required to do by the parties.

64. In conclusion, in my opinion, the doctrine of FNC was introduced to give Judges the discretion to stay proceedings in favour of another foreign competent court to enhance justice at the international level. It is not applicable at a national level (inside one country) where the parameters of jurisdiction between the local courts are clearly defined and, more importantly, where there is a higher authority responsible to decide over jurisdictional conflicts. If the FNC doctrine is said to be applicable at national level, there would need to be clarity (through clear policy) and authority to determine the most appropriate court.”

83. The CoA endorsed the decision of H.E. Justice Ali Al Madhani at [181] in *IGPL*:

“It is SCB’s third objection which satisfies us of the correctness of H. E. Justice Ali Al Madhani’s decision in Allianz and Justice Sir David Steel’s decision not to apply the FNC doctrine when the alternative forum is a court of the UAE. SCB’s third objection is premised on the fact that the power to decide which of several UAE courts is most appropriate to hear a dispute resides with the USC, by operation of Article 99 of the UAE Constitution. SCB argues that applying the FNC doctrine in the present context would be manifestly incompatible with the constitutional allocation to the USC of the power to resolve jurisdictional conflicts between different courts of the UAE.”

84. At [197] the CoA held in terms:

*“In conclusion, the DIFC Courts cannot apply the FNC doctrine if the alternative forum is another court of the UAE. In the circumstances, the question of what result would be reached by the application of the FNC doctrine is moot, and we see no utility in taking our inquiry beyond this. For these reasons, *IGPL’s* application to stay these proceedings on the ground of FNC must fail in limine.”*

85. The correctness of that decision has not been questioned in the subsequent decade. Indeed it has been followed on more than one occasion: e.g. *Tavira Securities Limited v (1) Re Point Ventures Fzco (2) Jai Narain Gupta (3) Mayank Kumar (4) Saroj Gupta* [2017] CFI 026 (17 December 2017) [33], [41] *per* Justice Sir Richard Field; *Union Insurance PJSC v International Precious Metals Refiners LLC* [2022] DIFC CFI 064 (15 September 2023) [66] *per* Justice Martin (as he then was). Indeed, in that case, admittedly before the passing of the Courts Law, Justice Martin held that he was bound by the *IGPL* decision. I consider that I too am bound by the decision even after the passing of the Courts Law as it remains the fact that, as D3/4 concede, that while a jurisdiction dispute between the DIFC Court and the Dubai Courts would not go to the USC, it would now go to the CJT.

86. The same logic therefore continues to obtain, namely that, certainly so far as competition exists between the DIFC and Dubai Courts, the ground is occupied by a statutory mechanism for resolving the issue that leaves no room for the exercise of a discretionary power on the part of the DIFC Courts to stay proceedings or, *a fortiori*, refuse to exercise its jurisdiction, on FNC grounds. The Defendants argue that the jurisdiction of the CJT is only invoked when an actual conflict arises and until then the Court is free to apply FNC principles. That is to miss the point. It is the existence of the machinery should a conflict arise that is inconsistent with the exercise of an FNC discretion.

87. I am equally unimpressed with the argument that the grant by the DIFC Courts of anti-suit relief in relation to claims brought before the DIFC Courts undermines the absence of an FNC discretion. On the contrary, if the DIFC Court does have exclusive jurisdiction under Dubai law (i.e. the Courts Law), it is entirely consistent that the Court should seek to ensure compliance in particular by a party in Dubai. I fail to see the relevance of one to the other.
88. In all the circumstances I am satisfied that insofar as there is a potential conflict of jurisdiction between the DIFC Courts and the Dubai Courts outside the DIFC, if a party to the proceedings is a DIFC Establishment or Licenced DIFC Establishment, the DIFC Courts have no discretion to decline jurisdiction on FNC grounds.
89. Nothing I say should be taken as having any application where the potential conflict of jurisdiction is between the DIFC Courts and another court of the UAE outside the Emirate of Dubai as it is not relevant to the present case and I am aware that there have been changes to the powers of the USC since some of the earlier DIFC cases were decided which may or may not be relevant.

D2 EOT Application, D1/3/4 acceptance of jurisdiction and necessary or proper parties

90. In light of my findings that ENBD, as a DIFC Establishment and Licensed DIFC Establishment, brings these proceedings as of right in the DIFC Courts and that it is not open to the Court to decline to exercise jurisdiction pursuant to RDC 12.1(2) on FNC grounds, it is unnecessary for me to decide whether Ds 1, 3 and 4 are to be treated as having accepted that the Court has jurisdiction to try the claim or that Ds 2, 3 and 4 should be joined as necessary or proper parties.
91. During the course of the submissions on behalf of D2, counsel appeared to be making an application to set aside service of the claim form. The grounds were not wholly clear to me as D2 had in fact acknowledged service albeit belatedly and was seeking a retrospective extension of time for so doing and relief from sanctions. I am not willing to entertain such an application made without notice during the course of proceedings without a proper application served in accordance with the RDC.
92. Another “*spontaneous*” application or submission came from C. It was argued that the late service of their acknowledgements service precluded the Defendants from arguing that the Court should not exercise such jurisdiction as it may find it possesses on FNC grounds. This prompted a debate on the statutory nature of the DIFC Courts’ jurisdiction and competence as opposed English procedure where jurisdiction is established by

service and also an impromptu application for relief from sanctions by Ds 1, 3 and 4. Interesting though the debate was, it was ultimately sterile as I have permitted the Defendants to argue the FNC points (whether *de bene esse* or not) and have found that I am bound by *IGPL* and so the FNC doctrine is inapplicable on the facts of this case.

93. For the sake of good order, I will however grant the D2 EOT Application.

THE FO APPLICATION

The Applicable Legal Principles

94. The applicable legal principles are well-established and largely agreed. In *Ithmar Capital v 8 investment FZE* [2008] DIFC CA 001 (18 March 2008) Chief Justice Sir Anthony Evans confirmed at [25] that an applicant must produce satisfactory evidence that:

- “(1) It has a “good arguable case”;*
- (2) that the Defendant has or may have assets which will be available to satisfy the judgment against him, if judgment is given in the Claimant’s favour;*
- (3) that there is a real risk that the judgment will not be satisfied by reason of an “unjustifiable” disposal of those assets; and*
- (4) that in all the circumstances it is “just and convenient” to make the Order sought.”*

95. *Techteryx Ltd v. Aria Commodities DMCC and Ors* [2025] DIFC DEC 001 (17 October 2025), confirmed (at [42]) the applicability of the test set out by the English Court of Appeal in *Dos Santos v. Unitel SA* [2024] EWCA Civ 1109:

“Dos Santos [96] confirmed that the correct test as to what constitutes a good arguable case for the purposes of the merits threshold for the grant of a freezing injunction is that formulated by Mustill J in The Niedersachsen [1984] 1 All ER 398, namely “a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success.””

96. In *Dos Santos* the English Court of Appeal also held that ““good arguable case” and “serious issue to be tried” should be equated” (see *Techteryx* at [42]).

97. In *Globe Investment Holdings Ltd v. Commercial Bank of Dubai* [2023] DIFC CFI 028 (4 July 2023) at [83]-[84] the Court found that it is possible for both parties to have a good arguable case:

“83. Given that a good arguable case is one that a judge need not necessarily regard as having a better than 50% chance of success, it

appears to me that there is no logical contradiction in finding that both parties have good arguable cases. This may well be the case where parties make substantial allegations against each other requiring prolonged examination of evidence, in particular in the light of the admonition against attempting to try the issues.

84. This was the situation in which Justice Cooke found himself in Coffee Planet:

"29. Moreover, the voluminous evidence adduced by the Parties gave rise to a considerable range of disputed issues of fact relating

to the ownership of the various pieces of property which have been frozen by the freezing injunction and which could be the subject of

provisional attachment in on-shore Dubai. Each individual party points to inconsistencies in the evidence given by the other, in one

jurisdiction or the other, or in both, and the unlikely and implausible explanations which are provided ...

30 Large volumes of evidence were adduced on fact issues which cannot be determined ... I concluded that all that could be said was that each party had a good arguable case ... "

98. It may perhaps be easier for someone not immersed in the jurisprudence of freezing injunctions to understand that both parties may raise serious issues to be tried rather than both having cases described as "good" albeit qualifying "arguable".
99. The English courts have emphasized that "[n]o findings of the facts are required and the court should be astute to avoid resolving issues of fact which will fall to be determined at a full hearing later in the litigation": see *Magomedov and Ors v TPG Group Holdings (SBS) LP and Ors* [2024] 1 WLR 2205 at [30].
100. As to the requirement that the Defendant has or may have assets which will be available to satisfy the judgment, the English Court of Appeal held in *Ras al Khaimah Investment Authority v. Bestfort Development LLP* [2018] 1 WLR 1099 [39]:

"... it is not enough for a claimant to assert that a defendant is an apparently wealthy person who must have assets somewhere. Although Parker LJ said that a claimant must "satisfy" the court of the existence of assets he was not purporting to set out what the standard of proof should be. A test of "likelihood" on its own is inappropriate; the right test must be either a "good arguable case" or "grounds for belief". There is, no doubt, not much difference between the two but I prefer "grounds for belief" which is how Robert Goff J expressed it in A v C [1981] QB 956. Since a claimant cannot invariably be expected to know of the existence of assets of a defendant, it should be sufficient that he can satisfy a court that there are grounds for so believing. That is not an excessive burden but, if an order is sought against numerous companies or llps and those companies and llps can show that there is no money in their accounts and the claimant cannot show that the account has been recently active, it may well be right to refuse relief."

101. The Court endorsed the judgment of Floyd J (as he then was) in *Revenue and Customs Comrs v. Cozens* [2012] STC 420 where he held that (at [41]):

“The evidence of the existence of assets need not be specific: indeed it may in some cases be unreasonable to expect a party seeking such an injunction to have evidence of precisely what assets his adversary in litigation has. But there must be some material from which it is reasonable to infer or deduce that there are assets on which the injunction will bite. Otherwise the court will run the risk of acting in vain.”

102. The risk of dissipation must be supported by “solid evidence” (*Techteryx* at [48]; *Tugushev v. Orlov* [2019] EWHC 2031 (Comm), *per Carr J* (as she then was) at [49(ii)]). *Gee on Injunctions* (7th Edn., paragraph 12-042) noted:

“Where a judgment or award has not been satisfied but the judgment debtor has assets to satisfy it, an injunction may be granted when needed as ancillary to enforcement and execution of the judgment in a particular way. In a case where the justification for the injunction is that the judgment debtor may dissipate his assets, it must be shown that there is a risk of dissipation. Depending on the circumstances the fact that judgment has not been satisfied when the defendant has sufficient assets to do so may be relevant to assessing the risk of dissipation. A course of conduct making it more difficult to enforce a future judgment and that a judgment is unsatisfied, may be sufficient to establish the risk of dissipation. Where a defendant has been found to be dishonest in a judgment on the merits at a trial, these factual findings will be taken to be well founded in a post-judgment application for an injunction.”

103. D3/4 emphasize that the risk of dissipation must be established separately against each respondent (*Fundo Soberano de Angola v Santos* [2018] EWHC 2199 (Comm), [86] *per Popplewell J* (as he then was)).

104. The test of “just and expedient” was addressed very briefly by the Bank. The question is whether, in all the circumstances, the Court is satisfied that it is appropriate to make a freezing order in the terms sought (or at all) (*Bocimar International NV v Emirates Trading Agency LLC*, [2015] CFI 008 (31 January 2016), [7]). The relevant factors in relation to injunctions in aid of foreign proceedings are:

- (1) whether the making of the order will interfere with the management of the case in the primary court, e.g. where the order is inconsistent with an order in the primary court or overlaps with it;
- (2) whether it is the policy in the primary jurisdiction not itself to make worldwide freezing/disclosure orders;
- (3) whether there is a danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other

jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located;

- (4) whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and expedient to make a worldwide order;
- (5) whether in a case where jurisdiction is resisted and disobedience is to be expected the court will be making an order it cannot enforce

(*Larmag* at [25]; *Globe* at [40]; [40]; *ArcelorMittal USA LLC v Mr Ravi Ruia* [2020] EWHC 740(Comm)).

105. D1 adds the point that a freezing injunction is not meant to improve the chances of the court being able to do justice after a determination of the merits at the trial and that *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, means that if damages will be an adequate remedy for the claimant, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction (*Techteryx* at [404]). In *Techteryx* the parties accepted that the balance of convenience test applied in freezing injunctions ([43] and [403]-[405]). I do however note that in its consideration of costs the English Court of Appeal outlined a number of differences between freezing and *American Cyanamid* injunctions in *Isabel Dos Santos v Unitel S.A.* [2023] EWHC 3231 (Comm) [118]-[119]. I would suggest that there is a further difference where the freezing order is directed to assisting the enforcement of a judgment or award as there is not the element of uncertainty as to success. In the present case it is of course only D1 who is a judgment debtor.

106. In contrast, delay on part of the Bank in seeking the Order is very much a live issue in these proceedings. The Bank accepts that there has been a significant delay between its knowledge of at least certain significant transactions involving the Defendants and the filing of its application for a freezing injunction.

107. In *Civil Fraud: Practice and Procedure* it is stated at paragraphs 28:032 to 28:035:

“Delay on Part of Applicant. *Where there has been delay on the part of the applicant in seeking a freezing injunction, then, without more, that ought not generally be taken by the court to mean that there is no risk of dissipation. Courts recognise that in a complex case significant time may well be required to investigate the claim. Even if the delay might properly be interpreted as reflecting the applicant's own assessment of the degree of risk, then it is still only a factor to be weighed in the balance in deciding whether or not to grant the injunction.*

However, if a significant period of time has elapsed between a dispute emerging and the application, without any evidence of dissipation (in the sense identified above), that might provide evidence negating the apprehended risk. Hence in Holyoake v Candy it was held by the Court of Appeal that the applicant's delay was

"a powerful factor militating against any conclusion of a real risk of dissipation. If there had been a real risk of the appellants unjustifiably dissipating their assets, it would have materialised by the time of the application."

Where the delay has given the defendant the opportunity to dissipate substantial assets prior to the application, that should of course not inhibit the court from acting to try to protect that which remains. As it was vividly put by Cooke J in Antonio Gramsci Shipping Corp v Recoletos Ltd:

"In my judgment it is no answer for a defendant to come to the court to say that his horse may have bolted before the gate is shut and then to put that forward as a reason for not shutting the gate. That would be to pray in aid his own efforts to make himself judgment proof - if that, indeed, is what has occurred - and to avoid the effect of any court order which the court might make. If he can show that there is no risk of dissipation on other grounds, that is one thing. If he can show that the claimants do not consider that there is such a risk by virtue of the delay in seeking the order, that again is a relevant factor. However, if the court is satisfied about those matters in favour of the claimant, there is no reason why the court should not shut the gate, however late the application, in the hope, if not the expectation, that some horses may still be in the field or, at the worst, a miniature pony."

Further, even if the feared secretion has occurred, that does not render a freezing order otiose, given the disclosure orders which will almost invariably be made at the same time.

In and of itself, therefore, delay in the making of the application ought not as a matter of principle to preclude the grant of a freezing injunction, and some recent decisions suggest that the Courts are more willing than previously thought to grant freezing injunctions notwithstanding substantial delay before the commencement of proceedings; it is instead just one factor that bears on the court's evaluation of the risk of dissipation, and the exercise of its discretion more generally."

108. The Bank notes that in Fiona Trust v. Privalov [2007] EWHC 1217 (Comm) at [69(b)] Steel J said: "the applicant is entitled to take up time in making reasonable enquiries prior to launching an application, the more so where the nature of his case is based on fraudulent or dishonest activity (see Grupo Torras v Al-Sabah, C/A, 16 February 1994): the fact that thereafter the application is made inter partes is scarcely prejudicial to the respondent". He went on:

"70. Furthermore it has to be borne in mind that the rationale for a freezing order is not so much the risk of dissipation as such, but the risk that a judgment in favour of Claimants would remain unsatisfied either because of dissipation or secretion or dispersal: see Mercedes Benz AG v. Leiduck [1996] AC 284 . I accept that delay is potentially a significant discretionary consideration but much depends on the individual facts of each case.

71. Furthermore it strikes me that the Claimants are quite properly focusing on the requirements in the draft orders for disclosure by Mr

Skarga and Mr Nikitin of their assets. In practical terms, the world-wide freezing order is ancillary to the disclosure order: see Grupo Torras v Al — Sabah, ante .”

109. The Bank points to *Great Station Properties S.A. v UMS Holding Ltd* [2017] EWHC 3330 (Comm) in which Teare J granted a freezing order where there had been a delay of 18 months. On the other hand, D2 draws the Court’s attention to *Holyoake v Candy* [2017] EWCA Civ 92 at [62] per Gloster LJ followed by H.E. Justice Stewart in *Omanand v Ondrej* [2025] ARB 050 (22 January 2026) at [28(d)]: if a significant period of time has elapsed between a dispute and the application, without any evidence of dissipation, that can provide evidence negating the apprehended risk.

110. In *Ras Al Khaima* the English Court of Appeal stated at [55]:

“Delay on the part of a party applying for a freezing injunction gives rise to rather more elusive considerations. It can be said that any serious delay means that an applicant does not genuinely believe there is any risk of dissipation or conversely (and more cynically) that, if a defendant is prone to dissipate his assets, such dissipation will have already occurred by the time a court is asked to intervene. This latter argument assumes that a defendant is already of dubious probity and it is a curious principle that would allow such a defendant to rely on his own dubious probity to avoid an order being made against him. The former argument is also open to the objection that it is the fact of the risk rather than a claimant’s apprehension of it that should govern the court’s decision.”

111. The relevance of delay was considered in *FM Capital Partners Ltd v. Marino* [2018] EWHC 2612 (Comm) (at [48]):

“I do not see how, at least in most cases, if there has been delay on the part of the applicant in obtaining relief, that should affect the existence of the risk of dissipation of assets on the part of the respondent, no matter how the applicant assessed the risk. While I can see that delay might be relevant to the exercise of the Court’s discretion in granting or refusing a freezing order, I have difficulty in understanding its relevance to assessing the risk of dissipation in most cases”.

112. In *Arcelormittal USA LLC v Ravi Ruia and Others* [2020] EWHC 740 (Comm), Henshaw J said at [265]:

“The relevant question must be whether there has been delay from the time at which the claimant appreciated or, arguably, should have appreciated that there were grounds on which a freezing order could be sought here and would be useful.”

113. In enforcement proceedings in England against D1 and D2 (as to which see paragraph 148 below) the issue of delay by the Bank was also raised and Waksman J said at [2021] EWHC 3051, [2] (the “**English Proceedings**”)

“Analytically the reason why delay might be relevant is because, first, it may show that the claimant actually never really believed there was a real risk of dissipation. That does not seem to be the case here, and it is somewhat unclear as to how that impacts upon whether there is in fact a risk of dissipation. Secondly, the delay might mean that any assets sought to be restrained have already moved. That does not really arise here. Certainly for present purposes, that is not fatal to this application, and I understand the need for a coordinated move in New York and England in relation to what I might refer to as the western assets, which have not previously been the subject of any challenge; there was always the danger of tipping off the defendants to move assets in one jurisdiction when it discovered that there was a move in another jurisdiction, and I follow the logic of that argument. It does not mean the defendants might not take a point on delay, but it is not fatal at this stage.”

114. I should add for the sake of completeness that D2 also made reference to *Orabelle v Orzenia* [2026] ARB 007 (30 January 2026) which appears to be a decision very much on its own facts and being a decision on an *ex parte* application is brief and contains no reference to the authorities, and to CJT Application No. 002/2025 which also appears to be confined to its facts. I found neither to be of assistance.

The Facts

115. There can be no doubt that D1 is unrepentant and dishonest (as found by the English Courts) judgment debtor who has taken every step available to him to delay, disrupt and evade enforcement of his obligations. The real factual issue before me is whether there is a serious issue to be tried as to whether the Children have become embroiled in his machinations so as to entitle the Bank to the relief summarised at paragraph 2. It is also correct that D2’s involvement appears to be different from that of D3/4.

116. As long ago as 7 July 2019, ENBD obtained a judgment from the Cassation Judgment, after D1 had exhausted all avenues of appeal, in a sum that now stands at approximately USD 90 million after making due allowance for recoveries made to date. D1’s liability to the Bank arose under a personal guarantee executed by D1 of various borrowing facilities extended to a company, System Construct LLC (“**System Construct**”) of which D1 was originally the sole beneficial owner. System Construct defaulted on the facilities and, in September 2014, went into liquidation.

117. D1 has made no attempt to discharge the judgment debt; as will be seen, quite the contrary. The evidence indicates that he would have been able to discharge the judgment debt (but for denuding himself of his assets), but any recoveries have only come about through the enforcement by courts in a number of jurisdictions.

118. The Bank was not D1's only creditor. In proceedings brought by other creditors, there were applications to unwind transfers of real estate in Dubai to the Children. Those applications failed because H.H. The Ruler of Dubai was the original donor and gave permission for the transfers. Whether or not His Highness was informed of the claims against D1 at the time of giving his consent does not appear from the evidence before me. ENBD does not challenge the transfers but does rely upon them as evidence of a pattern of behaviour by D1. The transfers of real estate outside Dubai were however successfully impugned.
119. I exclude from the narrative that follows certain transactions I regard as likely to have been normal living expenses.
120. United Makgroup Technologies LLC (formerly, Rashed Al Makhawi Enterprises LLC) ("**United Makgroup**"), was registered in Dubai on 28 May 1989. Until (at least) 19 February 2019, United Makgroup's commercial licence recorded that RAM and Abdulaziz held 95% and 5% respectively of the issued share capital.
121. On 28 December 2006, D1 had established a trust in Jersey through the Global Wealth Management division of UBS Switzerland AG ("**UBS**") called the Yellow Flower Trust (the "**YFT**"). UBS Trustees (Jersey) Ltd was appointed to act as the sole trustee throughout the YFT's lifetime (the "**YFT Trustee**") and was granted broad powers of administration in respect of the application and distribution of the trust capital and income. Those powers were subject to reserved settlor powers which provided that for so long as RAM was living and not suffering from any incapacity, the YFT Trustees would not have any investment or asset management functions, responsibilities, powers or duties relating to the YFT and that such powers would vest solely in RAM.
122. The underlying trust company of the YFT was a Bahamian registered company called Yellow Flower Plant Ltd ("**Yellow Flower**"), which held an investment account with UBS. The beneficiaries of the YFT were (i) RAM, (ii) RAM's spouse or widow, (iii) RAM's children or remoter issue, (iv) Mohammed Almakhawi (RAM's brother who died on 21 November 2014) and (v) Tourkia Almakhawi (RAM's sister) and her issue.
123. In January 2007, D1 had purchased a leasehold interest in a flat in London ("**193 Warren House**") for GBP 1.69 million.
124. On 17 November 2008, D1 purchased an apartment in New York City for the sum of USD 2,209,602 (the "**New York Apartment**").

125. Within 6 months of System Construct's liquidation in September 2014 and after a number of claims had been made against him, D1 transferred some USD 50 million in cash and securities into the YFT. After ENBD had issued a final demand notice to D1 in June 2015 he transferred a further c.USD 21.3 million into the YFT.
126. On 30 October 2015, D1 had received c.USD 21 million from his late brother's estate. He placed the money in a trust, the Violet Trust in Jersey.
127. In October 2017, there was an amendment to the Violet Trust whereby, subject to the consent of the trustees, the trust was revocable at RAM's option and was also capable of variation or amendment by him. The only discretionary lifetime beneficiary of the Violet Trust was RAM, and he was entitled under clause 8 to direct the trustees to pay over to him the whole of the income of the trust fund. The trustees were also permitted to pay over the whole or part of the trust fund itself to RAM during his lifetime.
128. The underlying trust company of the Violet Trust was Vojin Investments Limited ("**Vojin**"), a Jersey incorporated company. The shares in Vojin were held by HSBC TCI and HSBC Private Banking Nominee 3 (Jersey) Ltd ("**HSBC 3**") as nominees for HSBC TCI as trustee of the Violet Trust. On 21 December 2017, RAM gave instructions for USD 20,911,312.82 to be transferred from his account at HSBC PB in Luxembourg to Vojin Investments' account with HSBC Private Bank in Geneva, to be added to the trust's nominal initial assets of AED 100. The transfer was effected on 28 December 2017.
129. On 7 March 2018, during the course of the Dubai proceedings to preserve the defendants' assets pending a final and executable judgment, ENBD obtained a precautionary attachment from the Urgent Matters Court in Dubai against RAM, System Construct and other directors in the amount of AED 142,303,347.42. Within 7 days, on 14 March 2018, RAM faxed a handwritten note to the YFT Trustee requesting a distribution of USD 3 million to his account and then to his son's account. The YFT Trustees approved the transfer which was paid to D2's account with UBS and an equivalent amount was transferred to his ADIB account.
130. Between November 2018 and February 2019 D1 gifted 6 properties to the Children worth approximately USD 54.5 million. He claimed that this was to avoid any inheritance disputes after he was dead.
131. Four of the properties were transferred at a time by which all creditors had issued proceedings against RAM in Dubai and a number of them had obtained judgment. The

fifth property was transferred one day after the Dubai Court of Appeal rendered judgment in favour of ENBD. The sixth property was transferred to D2 on 26 December 2018.

132. The gifts took place within eight months of the Urgent Matters Court issuing a precautionary attachment in favour of ENBD against RAM and four months of the Dubai CFI dismissing RAM's grievance against the precautionary attachment. In addition, the plots were gifted just over two weeks before the Dubai Court of Appeal would reject RAM's grievance.
133. On 18 December 2018, D1 waived his share of his late brother's estate to D2.
134. On 23 December 2018, United Makgroup sold a labour camp for the sum of AED 16.5 million (c.USD 4.5 million). At the time, D1 owned 95% of the shares in United Makgroup. The proceeds of sale were transferred to D2.
135. On 27 February 2019, the Dubai Court of Appeal dismissed D1's appeal against C's judgment against him. He filed an appeal to the Court of Cassation and a few days thereafter on 2 April 2019, RAM issued a request to the YFT Trustee for a distribution of USD 6 million from the YFT directly to his UBS account for the purpose of making a "[d]onation during my lifetime to my 3 children".
136. On 7 March 2019, eight days after the Dubai Court of Appeal's judgment, RAM disposed of his 95% shareholding in United Makgroup by transferring 45% to Abdulaziz and 25% to each of Hessa and Shamma. Given that Abdulaziz already held a 5% shareholding, his ownership interest increased to 50% in total. Within less than three weeks, on 25 March 2019, Abdulaziz, Hessa and Shamma transferred their shares in United Makgroup to others.
137. On 14 May 2019, ENBD opened an execution file with the Dubai Execution Court against System Construct and RAM to execute the judgment of the Dubai Court of Appeal.
138. The Cassation Judgment was given on 7 July 2019. On the next day D1 transferred title to 193 Warren House to D2 for nil consideration.
139. On 16 August 2019 transferred GBP 200,000 to D2's account with HSBC UK Bank Plc ("**HSBC UK**"). On 18 October 2019 he transferred a further GBP 2.226 million.
140. On 19 September 2019, RAM transferred his ownership of the New York Apartment to a Jersey company called Redington Holdings Ltd ("**Redington Holdings**") for nil consideration. On 9 October 2019, a settlement was executed between RAM (as Settlor)

and HSBC TCI (as original trustee) creating the Redington Trust. As with the Violet Trust, the Redington Trust was revocable by RAM, and he was the sole discretionary lifetime beneficiary. Redington Holdings was identified to be the underlying trust company to the Redington Trust. Its shares were held by HSBC TCI and HSBC 3 as nominees for HSBC TCI as trustee of the Redington Trust.

141. On 28 May 2020, RAM requested a distribution from the Violet Trust of USD 1,000,002 and requested that HSBC TCI (in its capacity as trustee of the Redington Trust) accept USD 1,000,000 from these funds as a contribution to the Redington Trust fund. By an instrument of gift dated 1 July 2021, RAM transferred his beneficial interest in the shares of Redington Holdings to HSBC TCI as the trustee of the Redington Trust.
142. Between August and October 2019, RAM made two payments, totalling GBP 2,536,873.28, from his account with HSBC UK Bank Plc ("**HSBC UK**") to Abdulaziz's account with the same bank (the "**HSBC UK Sums**").
143. On 31 August 2020, RAM made a request to the YFT Trustee for a distribution of USD 2.5 million to his UBS account for the stated purpose of "*Buying a property*". Bank documentation indicates that the money was to be transferred to D2.
144. On or around 12 January 2021, RAM requested that the YFT Trustee distribute USD 2 million from the YFT to his personal account with UBS Switzerland. This was transferred to D2 ending up in his ADIB account.
145. On or around 20 January 2021, D1 began discussing the closure of the YFT. On 22 February 2021, he requested a distribution of the whole of the Trust Fund and the income for the purpose of making a distribution of funds to his children. Save for a very small amount the entirety of the funds (USD 77,888,071) were transferred into D1's personal account with UBS Zurich.
146. On 10 September 2021, the Bank commenced proceedings in New York (the "**New York Proceedings**").
147. On 30 September 2021, ENBD commenced proceedings in Jersey (the "**Jersey Proceedings**").
148. On 28 October 2021, the Bank commenced the English Proceedings to enforce the Cassation Judgment against RAM and to reverse the transfer of 193 Warren House from RAM to Abdulaziz.

149. On 24 November 2021, in the Jersey Proceedings, ENBD commenced a substantive claim against RAM, the HSBC Shareholders, Vojin and Redington Holdings seeking recognition and enforcement of the Cassation Judgment as against RAM as well as a *Pauline* claim (equivalent an English claim under section 423 of the Insolvency Act 1986) to set aside transfers of (i) the USD 20,911,312.82 to Vojin and (ii) RAM's beneficial interest in the shares of Redington Holdings, the registered owner of the New York Apartment, on the basis that both transfers constituted a fraud on RAM's creditors.
150. On 25 November 2021, in anticipation of commencing an action against RAM for recognition and enforcement of the Cassation Judgment in Switzerland, ENBD sought by an *ex parte* application for (and obtained) attachments over any accounts in RAM's name with HSBC PB in Geneva, UBS in Zurich and Credit Suisse (Schweiz) AG ("**Credit Suisse**") in Zurich (the "**First Swiss Attachment**").
151. On 28 December 2021 and 11 January 2022, RAM made two payments of USD 3 million to Abdulaziz (the "**Indosuez Sums**"). The Indosuez Sums were transferred from RAM's account with CA Indosuez (Switzerland) SA (part of the Crédit Agricole Group) ("**Indosuez**") to Abdulaziz's account with Abu Dhabi Islamic Bank PJSC ("**ADIB**"). The descriptions used for the payments were "*donation*" and "*family support*". Details of these transfers were obtained through court-ordered banking discovery in the US.
152. On 19 April 2022, ENBD applied to the Swiss courts for, and was granted, a further attachment, this time with any accounts RAM held with CA Indosuez (the "**Second Swiss Attachment**").
153. Between October and December 2022 (a 6 week period) USD 26,178,053.20 was paid from the Children's accounts with UBS Zurich to two Dubai-based jewellers. The Bank suggests that it is reasonable to assume given the value of the sums paid to the two jewellers and certain of the payment references describing a gold purity (995) that Abdulaziz, Hessa and Shamma purchased a large quantity of gold and/or other precious metals. On the basis of the rate of gold in the UAE as at 11 December 2025 (AED 497 per gram for 24 karat (995 purity)), USD 26,178,053.20 would buy approximately 193 1kg bars of gold.
154. D2 makes no attempt to explain why he made a payment of USD 6.9 million to a jeweller on 1 November 2022, but instead makes the palpably false (emphasized) statement that:

"The Claimant introduces a serious allegation that substantial sums were repatriated to the UAE and converted into gold by 'someone', allegedly to conceal assets outside the banking system [Fox Affidavit ,176.3]. This

allegation is vague and unsupported by particularised facts identifying the transactions, dates, mechanisms, or evidence linking me to any such conduct. *The late emergence of allegations of this seriousness further shoes why the Default Judgment should not stand and why I have a real prospect of defending the claim.*" (Abdulaziz 1, paragraph 145) [emphasis added]

155. Hessa says:

"I have been shown details of eleven transactions, five of which appear to show transfers to two UAE jewellers from UBS accounts in Zurich held in my name (the "UBS Transactions"). ENBD suggests that the UBS Transactions relate to purchases of gold or other precious metals. Until receiving the Application, I was not aware of the UBS Transactions, and I do not know the source of the funds of those transactions or their ultimate purpose. I have not received anything from these transactions (gold, or anything else).

...

I authorised Abdulaziz as a representative empowered to deal with those accounts by way of a bank authorisation form filed with UBS on 9 December 2021. I do not have (and have never had) access to statements or other documents relating to my UBS account, nor did I ever have a card, log ins, or smart phone application to access it. We were allocated a relationship manager who I recall being involved around the time of the authorization form being issued but I have not had any contact with that relationship manager since then."

(Hessa 1, paragraphs 26, 28)

156. Shamma repeats her sister's witness statement *verbatim*. She continues:

"Since becoming aware of the UBS Transactions, I have attempted to contact our UBS relationship manager via phone seeking more information. As at the date of this statement, I have received no response. I have not otherwise had contact with the relationship manager since December 2021, when he assisted us with the authorization process in respect of Abdulaziz." (Shamma 1, paragraph 24)

157. I find the absence of any explanation for the payment of over USD 26 million to the jewellers to be remarkable.

158. On 13 May 2023, the English High Court gave judgment against RAM and Abdulaziz ([2023] EWHC 1113 (Comm)) finding that (i) the Cassation Judgment is enforceable in England and Wales and monetary judgment be entered against RAM in the same terms as the Cassation Judgment and (ii) the transfers of 193 Warren House and the HSBC UK Sums to Abdulaziz (for nil consideration) amounted to transactions at an undervalue under section 423 of the Insolvency Act 1986. RAM and Abdulaziz were ordered to pay the Bank's costs of the English Proceedings, assessed in the full amount claimed of GBP 1,144,319.45 following their failure to engage with a detailed assessment. Abdulaziz was

additionally ordered to pay the Bank's costs of an application in the sum of GBP 6,562.18 which became necessary due to his failure to comply with a provision of the English Court's order giving effect to its judgment (namely to return the remaining HSBC UK Sums to his father's account with HSBC UK).

159. In giving judgment, the English Court found that [195]:

"There were two specific occasions where [RAM's] evidence was thoroughly unimpressive...the second occasion concerned [RAM's] disposal of his interest in Makgroup where the evidence given in his witness statement, which he largely stuck to in his oral evidence, was flatly contrary to the documents that I was shown. The disparity was such that it is difficult to regard his evidence on this matter as anything but a straightforward untruth"

160. D1 was contending that before 2015 he was planning to transfer his assets to the Children for inheritance planning purposes. He produced a document referred to by the Judge as *"the December 2015 Letter"* to his then lawyers said to evidence his intentions to transfer all his property to his children. The Judge was not satisfied that the December 2015 Letter was genuine. He held at [223-4]:

"Far more likely, in my judgment, is that the December 2015 Letter is a construct: it is a document created recently (precisely when and by whom is unclear) with a view to demonstrating that Mr Almkhawi Sr was engaged in estate planning and took steps to transfer his assets to his children in late 2015, before he was found liable in the Dubai Proceedings, far earlier than he in fact did.

...

Whether the December 2015 Letter is genuine or not, I was shown nothing to indicate that any concrete steps were taken by Mr Almkhawi Sr to dispose of or to transfer assets to his children at any time prior to 16 January 2017, when judgment was given against him by the Dubai Court of First Instance."

and

"Mr Almkhawi Sr's evidence was unsatisfactory in a number of respects, and I simply do not accept his evidence that the transfers had nothing to do with the Dubai Proceedings or with a desire to protect his assets from creditors; on the contrary, in my judgment the matters explored during the course of his evidence are consistent with the opposite being the case." [314]

"Finally, there is also Mr Almkhawi Sr's evidence about the disposal of his 95% shareholding in Makgroup. So far as that is concerned, his suggestion that he had sold 45% of that shareholding in 2010 was flatly contradicted by the documents I was shown and in my judgment was a lie. Mr Almkhawi Sr was, I am sure, well aware that, if he had parted with his shareholding only in 2019 or later, that would be damaging to his case." [319]

161. The court also held in relation to D2's evidence concerning the HSBC UK Sums (paragraph 142 above):

"it made no sense to leave a sum of over £2.5 million untouched in a non-interest bearing account for a period of over two years. The facts are, in my judgment, much more consistent with a desire that the money should remain hidden." [291]

162. So far, the Bank has realised GBP 2,464,682.73 in the English Proceedings by virtue of:

- (1) a final third party debt order made in respect of RAM's account with HSBC UK, by which GBP2,446,191.28 was paid out to the Bank on 8 September 2023; and
- (2) a final third party debt order made in respect of Abdulaziz's account with HSBC UK, by which GBP 18,491.45 was paid to the Bank on 12 March 2024.

163. The Bank has also obtained a charging order in respect of RAM's interest in 193 Warren House and is currently enforcing that charging order by an order for sale. 193 Warren House has not yet been sold but the Bank is currently exploring a third party's offer to purchase the property for GBP1.6 million.

164. On 16 October 2023, the New York Court granted a motion by the Bank for default judgment against RAM in respect of the claim to enforce the Cassation Judgment. On 13 September 2024, following a writ of execution, the Bank separately recovered USD 1,199,196.97 from the New York State Comptroller's office. Apparently, the State Comptroller maintains a register of unclaimed property and that following a period of inactivity, the property is legally considered as abandoned property such that it can be claimed by the owner or, as in this case, by a judgment creditor executing against the property to satisfy its judgment. A search of the State Comptroller's register revealed that RAM had unclaimed funds in the sum of USD 1,199,196.97 and ENBD applied, pursuant to the order of attachment obtained earlier in the New York proceedings, for the funds to be paid out to it. The funds have been received by ENBD and applied towards the New York judgment.

165. On 4 December 2024, after periods of delay caused by D1 and D2, the Jersey Court delivered its judgment declaring the transfer to Vojin and the gift of RAM's beneficial interest in Redington Holdings to be void and ordered that it be set aside and that the HSBC Shareholders take steps to give effect to the declaration. The Jersey Court held that D1 had acted to place assets out of the reach of his creditors, including the Bank:

“97. In our judgment, the balance of probabilities is that in making the Vojin transfer and the Redington gift, RAM was seeking to protect his cash and assets for himself and his family. He was, in our judgment, seeking to put them beyond the reach of his creditors.

98. We infer that the timing of the various transfers set against RAM’s knowledge of the claims against him and his insolvency caused him to make the transfers that are impugned in these proceedings.”

166. ENBD has since received USD 20,799,530, representing the net proceeds of Vojin’s investment portfolio following liquidation, in partial satisfaction of the Cassation Judgment. The Bank expects to receive a further amount towards the Cassation Judgment, being the residual balance of the USD 1 million in cash held in the Redington Trust after a sale of the New York Apartment is completed.

167. Again, after periods of delay caused by D1 and D2, on 11 March 2025, the Bank and Redington Holdings entered into a settlement agreement for the purposes of resolving the Bank’s fraudulent conveyance claim in respect of the New York Apartment (the “**Settlement Agreement**”). The New York court approved the Settlement Agreement and the steps and transactions contemplated therein on 12 March 2025. The Bank has received a power of attorney from Redington Holdings and is currently in the process of arranging for execution of the same. As of today, the New York Apartment has not been sold and accordingly no recoveries have yet been made in respect of it.

168. Between the date of the Second Swiss Attachment and June 2025 there was considerable activity in Switzerland. On 14 November 2022, ENBD filed proceedings to recognise and enforce the Cassation Judgment in Switzerland. RAM contested the proceedings all the way up to the Swiss Federal Supreme Court (unsuccessfully). There was a further Third Swiss Attachment which found its way to Geneva Court of Appeal. Enforcement steps were taken through the Debt Enforcement Office and on 30 June 2025, the proceeds of RAM’s CA Indosuez account in the sum of CHF 1,622,718.61 million were released to ENBD in partial satisfaction of the judgment debt.

169. These proceedings were issued in this action on 10 April 2025, but service was not acknowledged by Ds 1, 3 and 4 until 7 October 2025 and by D2 until 14 January 2026.

170. On 23 December 2025, the Bank made the FO Application.

Good Arguable Case

171. The claim is pleaded as follows:

“The Claimant has obtained final judgments and orders against the First Defendant as follows:

- 1. A judgment of the Dubai Court of Cassation dated 7 July 2019 in the sum of AED 211,299,043.31 plus interest.*
- 2. A judgment of the English High Court dated 12 May 2023 recognising the Dubai Court of Cassation’s judgment and ordering the First Defendant to pay AED 375,261,306.58 inclusive of interest accrued on the Dubai judgment.*
- 3. A default costs certificate issued by the English High Court dated 20 October 2023 against both the First and Second Defendants ordering them to pay the Claimant’s costs of the English proceedings in the sum of GBP 1,144,319.45 (AED 5,291,104).*

The Second to Fourth Defendants are the children of the First Defendant. In the present proceedings, the Claimant claims against the Defendants on the basis that each and all of them have taken steps to frustrate the execution of the above judgments by participating in arrangements for the assets of the First Defendant to be transferred to one or more of the Second to Fourth Defendants. It is the Claimant’s case that but for these transfers, the First Defendant would have been possessed of sufficient assets to meet the judgment debts, and that the Defendants’ actions have therefore caused the Claimant to suffer substantial loss and damage for which the Defendants are liable.

The Claimant’s claims are for:

- 1. damages for acts causing harm pursuant to Article 283 of the UAE Civil Code; and/or*
- 2. orders unwinding transfers of assets made to or by the Defendants to the detriment of the First Defendant’s creditors, pursuant to Article 391 of the UAE Civil Code; and/or*
- 3. orders declaring transactions entered into between the Defendants to be sham transactions, pursuant to Articles 394 and 395 of the UAE Civil Code.”*

172. The Particulars of Claim plead the causes of action more fully:

- (1) The Children are deemed to and/or did in fact receive such assets as agents and/or bailees of RAM pursuant to Articles 924 and 962 of the UAE Civil Code [86.1] and seek declarations that various assets are held to RAM’s order and/or as his agent/bailee;
- (2) the arrangements constituted a hidden or sham agreement pursuant to Article 394 of the UAE Civil Code. Insofar as transfers of assets were described as gifts and/or made by way of purported gifts, it was understood and intended by RAM and the Children that such transfers were not intended to be gifts. Further, and in the alternative, the true understanding and intention of RAM and the Children was that RAM would continue to have de facto control and/or ownership of the assets transferred to the Children [88];

- (3) Pursuant to Article 391 of the UAE Civil Code, all of RAM's worldwide property was to be held as security for the purpose of reimbursing his creditors from the moment he became a judgment debtor in respect of those creditors [90]. ENBD sought a declaration that various transfers were void pursuant to Article 623 of the UAE Civil Code and/or made in breach of Article 391 of the UAE Civil Code [93]; and
- (4) Under the heading "*ENBD's Claim in Tort under Articles 282 – 292 of the UAE Civil Code*" - the transfers formed part of a deliberate and/or wrongful coordinated scheme by RAM and the Children in an attempt to put assets beyond the reach of RAM's creditors including ENBD and/or to frustrate or impede the ability of such creditors to enforce against RAM's assets [95]. The transfer of RAM's assets was wrongful in circumstances where such assets were held as security pursuant to Article 391 of the UAE Civil Code [98]. The transfers have caused direct harm to ENBD for which each of RAM and the Children are directly responsible [99].

173. The material Articles of the UAE Civil Code provide (insofar as appear relevant):

- (1) Article 282:

"Any harm done to another shall render the doer thereof ... liable to make good the harm."

- (2) Article 283:

"(1) Harm may be direct or by causation.

(2) If the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongdoing or a deliberate act or the act must have led to the harm."

- (3) Article 284:

"If [the same harm is caused by] a direct actor and an indirect actor, judgment shall be against the direct actor."

- (4) Article 285:

"If a person deceives another he shall be liable to make good the harm resulting from that deception."

- (5) Article 289(1):

"(1) The act shall be regarded as being that of the actor and not of the person who ordered him to do it unless the actor is so compelled, provided

that for compulsion to be a material factor in respect of a physical act it must amount to forcible duress and no less."

(6) Article 291:

"If a number of persons are responsible for a harmful act, each of them shall be responsible in proportion to his share in it, .and the judge may make an order against them in equal shares or by way of joint or several liability as between them."

(7) Article 292

"In all cases the indemnity shall be assessed according to the amount of harm suffered by the victim, together with loss of profit, provided that that is a natural result of the harmful act."

(8) Article 391:

"(1) All of the property of the obligor stands as security for the performance of his obligations.

(2) All creditors are equal in respect of such security, without prejudice to any provisions of the law to the contrary."

(9) Article 394:

"(1) If a sham contract is made, the obligees of the contracting parties, and special successors, may, if they are acting in good faith, rely on the sham contract and also rely on the hidden contract, and prove by all means the sham nature of the contract by which they are prejudiced.

(2) If there is a conflict of interest between the parties concerned and some of them rely on the apparent contract and others on the hidden contract, the former shall take precedence."

(10) Article 395:

"If the contracting parties conceal a true contract with an apparent contract, the true contract will be the effective one as between the contracting parties and a special successor."

(11) Article 397

"If obligees make a claim against an obligor whose assets do not exceed the obligations due to them, he may not make any voluntary disposition over his property or dispose of it by way of commutative contract notwithstanding the absence of preference, and the obligees may apply for an order declaring that the disposition is ineffective as against them, and may also apply for an order for the sale of his property and that they share in the proceeds thereof in accordance with the provisions of the law."

(12) Article 623

“A gift shall be void if there is a debt exceeding the assets of the donor prior to the donee coming into possession of the property given, notwithstanding that the debt arises after the gift is made.”

(13) Article 924

“Agency is a contract whereby the principal puts another person in place of himself in an ascertained permitted dealing.”

(14) Article 962

“(1) Bailment is a Contract whereby the bailor authorises another person to take care of his property and whereby that other person is obliged to take care of the property and to return the thing itself.

(2) The subject of the bailment is the property deposited with a trustee for safekeeping.”

174. It is the Bank’s case that the Children received assets from RAM as his agent and/or bailee on the understanding that they would hold the assets to his order (consistent with a scheme to frustrate RAM’s creditors). As a consequence, the Children continue to hold such assets (or their proceeds) for RAM and such assets are therefore available for enforcement. Further, and alternatively, the Bank contends that such transfers were sham transactions pursuant to Article 394 of the Civil Code on the basis that, insofar as they were purportedly made as gifts, the parties’ true intention was that RAM continue to have *de facto* control and/or ownership.

175. The Bank contends that Article 397 provides an alternative means of impugning transfers of assets which fall within the scope of Article 391. The relationship between those provisions has been explained by the Dubai Court of Cassation in Case No. 510/2024 dated 16 January 2025:

“The debtor’s assets serves as a general guarantee for the creditors and this guarantee enables the creditor to monitor the debtor’s assets, including what enters and exists within his ownership, this allows the creditor to protect their guarantee from being diminished by the debtor’s fraudulent actions or negligence, and among the means to safeguard this guarantee is the unwinding claim”.

176. The Bank relies in the alternative on the Defendants having inflicted “*direct harm*” and “*indirect harm*”. No fault on the part of the Defendants need be demonstrated for the former. As for the latter, the Bank contends that each of the Defendants understood and

intended that the transfers would have the effect of frustrating and/or impeding enforcement by the Bank in respect of the Cassation Judgment.

177. As to the facts underlying these claims in RAM 1, D1 somewhat bizarrely speaks of himself in the third person ([20], [22]). This betrays the fact that his witness statement is not evidence at all. It is submission disguised as evidence. It is inadmissible and I disregard it. I would observe that the fact that D1 gives no evidence in response to the factual allegations only serves to underline the serious issues to be tried concerning his efforts to put his assets beyond the reach of his creditors. With commendable realism his counsel did not attempt to argue otherwise. The focus of D1's submissions under the rubric of "*Good Arguable Case*" is twofold – first, that ENBD has brought enforcement proceedings in Dubai, England and Wales, Jersey, New York and Switzerland. It is said that there is a risk of double recovery and that given that ENBD is seeking to enforce a Dubai judgment the most appropriate recourse is to return to the Dubai Courts. The second point is that there are limitation issues in relation to the claims brought under Article 298 of the UAE Civil Code. I will address the latter below as it is point raised by all the Defendants.
178. As to the former, the suggestion that the Bank should return to the DIFC Courts is just another way of putting the FNC point which I have rejected. It does however serve to underline the answer to the double recovery point and forestall any question that there is, or could be, a conflict of jurisdiction with the DIFC Courts that would merit a reference to the CJT. The proceedings before the Dubai Courts relate to D1's guarantee liability to the Bank whereas the claims in these proceedings are discrete causes of actions that do not relate to the Bank's claim in the original Dubai proceedings and involve Ds 2-4 who were not parties to the original proceedings. Further, if the Bank were to make any recovery in relation to the Cassation Judgment it would reduce the "*harm*" suffered by the Bank in respect of its financial claims in these proceedings and so there could be no double recovery.
179. D2 submits that the question whether C has established a good arguable case therefore falls to be assessed by reference to UAE law. That clearly is the case as the causes of action pleaded against all Defendants are under UAE law. D2 *does* seek to challenge the factual basis of the claim against him. He contends that the transfers to him were elements of family and succession planning. In my judgment, the narrative set out above speaks for itself and it cannot seriously be suggested that there are not serious issues to be tried as to whether the transfers were part of scheme to divest his father of his assets in order to defeat his creditors.

180. D2 singles out the transaction with the Dubai jewellers. D2 submits that C's reliance on the October to December 2022 gold purchases is unsustainable since no explanation is given as to why they are said to constitute recent dissipation. In addition, the purchase of gold represents no more than a change in asset class. Payment to an established jeweller via an auditable bank transfer is not indicative of concealment or dissipation. If anything, such transactions generate commercial records that are readily traceable through ordinary banking. At a time when many investors around the world have been turning to gold, this allegation is entirely speculative. Converting funds into a tangible store of value does not place assets beyond reach. At most, it reflects a change in the form in which the asset is held.
181. These submissions might have had some credibility if D2 had actually given any evidence on the topic in either of his witness statements. It is of some significance that his second witness statement post-dates his skeleton argument. The inference is that he felt unable to support what was said by counsel on his behalf. I consider that if he had had a legitimate explanation for the gold transaction he would have provided it.
182. D2 raises in his written submissions the possibility that aspects of C's case are barred by *res judicata* or issue estoppel. It is said that C has previously litigated issues concerning whether assets held in D2's name were beneficially owned by D1. C now advances a series of closely related allegations framed under different legal labels, including alleged agency, hidden or sham agreements, acts causing harm and unwinding claims. It is said that in substance, those allegations appear to revisit the same underlying proposition namely that assets standing in D2's name were assets belonging to D1. To the extent that those issues have already been determined in earlier proceedings, C may be precluded from re-litigating them in the present proceedings. The point was not elaborated in oral submissions and given the conditional way in which it is expressed in written submissions only serves to emphasize that it is an issue that must be considered at trial.
183. D2's oral submissions did descend to the detail of the evidence relied on by the Bank to implicate D2 in his father's schemes: why his father's name appears on the electricity bills for the property he claims is his sole residence, their shared legal representation in Switzerland, their shared use of a PO Box, his claims to know nothing of certain assets in his name (Swiss bank accounts, labour camp proceeds, shares in United Makgroup, assignment of his father's interest in his late brother's estate). All of this simply confirmed that there are serious issues to be tried.

184. I should also add that having been invited to consider D2's evidence, I find it unsatisfactory in a highly material respect that casts doubt on his overall truthfulness. In support of his application for an extension to time for service of his acknowledgement of service and relief from sanctions he claimed that he resides at 214/21 C Street DM.36, near M.I. School, Villa-07, Premise Number 214005941 and *not* at the family home at 15, Street 4, Community 133, Al Waheda, Dubai ("**Villa 15**"). He says that he moved out while he was at university, around 2013, to a property near Dubai airport in Al Garhoud and have generally lived there since (Abdulaziz 2 [9]). He also claims that he had not spoken to his father for approximately three years (Abdulaziz 1, [51]) and that communication with his family completely stopped around 3 years ago (Abdulaziz 2, [10]).

185. This evidence sits uneasily with:

- (1) His witness statement in the English Proceedings dated 19 December 2022 in which he gives his address as Villa 15 and states at paragraph 14, "*I have two sisters, Hessa and Shamma. My sisters and I all live together in our family home as none of us are married*";
- (2) In the English Proceedings he was cross-examined on the suggestion that 193 Warren House was not transferred to him for nil consideration but in discharge of debts owed to him by his father. He gave the following evidence (1 March 2023, Transcript pages 66-67):

*"Q. It has what we call recitals under "Whereas", so it
16 recites the fact that you are the son of your father and
17 it recites the fact that the property has been
18 transferred to you, that has already happened and the
19 donor, that's your father, has transferred the property
20 to you.*

*21 Then the third, recital C, your father wishes to
22 confirm the property has been irrevocably gifted and
23 then you wish to accept the gift of the property?*

24 A. Okay.

25 Q. Do you see paragraph 1:

*1 "The donor hereby confirms the beneficial title of
2 the property has been irrevocably transferred from the
3 donor to the donee by way of gift."*

4 A. Okay.

5 Q. *If this was not a gift, and was in fact in discharge of
6 debts your father owed you, you couldn't have signed
7 a formal document saying it was a gift, could you?*

**8 A. No, I will sign. Because my relation with my father is
9 much stronger than this. So it doesn't matter if it is
10 a gift or not a gift. I trust my father and my father
11 trusts me. When there is a relation between a father
12 and son, this document does not matter for me.**

13 Q. *Do you see, this is a formal document prepared as
14 evidence of what had happened. That is correct, isn't
15 it?*

16 A. *No, but the intention is not like this.*

17 Q. *So -- right.*

18 *So you can sign a formal document recording what
19 your intentions were that doesn't reflect the reality;
20 is that what you are suggesting?*

**21 A. No, but I don't need to make everything documented when
22 it is something related between a father and son --
23 especially that my father was very grateful with me, all
24 my life, so for a document between a father and a son is
25 not necessarily 100 per cent should be accurate."**

[emphasis added]

- (3) In a filing dated 14 February 2024 in the Swiss Proceedings, he gave his address as Villa 15; and
- (4) The Bank obtained an order of the English Court permitting it to serve documents by alternative means including by email to Abdulaziz's personal email address. Over the last 24 months, the Bank has served numerous documents on RAM by way of email to Abdulaziz's email address. The body of the emails were specifically addressed to RAM and yet at no point did Abdulaziz query this or alert the Bank that he was not speaking with his father (Fox 2, [21.5]).

186. On the other hand, counsel for Hessa and Shamma (correctly) recognised that "*These interim applications are neither the time nor the place to engage in granular factual disputes*". They suggest that by use of the collective term "*Children*" the Bank elides D2 with D3/4 particularly in relation to the sums paid out of the YFT. It is correct that such documents as the Bank has been able to obtain only show transfers to D2 using D1 and D2's UBS accounts but the trail appears to run dry with the smaller transfer to D2 and

the transfer of around USD 78 million to D1. D3 and D4 also had accounts with UBS and those accounts were used in gold transaction to the approximate sums of USD 10 million each.

187. I find their protestations of ignorance at paragraphs 155 and 156 above hollow and unconvincing. There is no explanation why they relinquished control over their accounts. Their purported attempts to contact UBS appear to have been desultory. The evidence shows that far from being naïve, meek and compliant both are highly educated and experienced business-persons running their own investment company. There is no explanation where the USD 20 million came from. There must, at least, be a serious issue to be tried that it came from the YFT. The whereabouts of the USD 26 millions' worth of gold remain a mystery.
188. The transfer of 50% of the shares in United Makgroup is not disputed. D3/4 deny any knowledge of the transfers in identical terms which C submits demonstrates the “*manufactured*” nature of their evidence. In particular both say, “*I have never had any involvement in the operations of Makgroup*”. As the Claimant observes, this is “*curious*” as a company of which they each own 50% has the email address “*proffive@makgroup.com*” on its trade licence. Their evidence, at least, raises serious issues to be tried as to their knowledge of the transfers. I have no sense of the value of the shares in United Makgroup, but it is asserted that any claim for damages arising out of the Share Transfer is in any event statute-barred.
189. I am satisfied that, subject to the issue of limitation, there are good arguable cases that each Defendant has acted in concert with the others to attempt to place D1’s assets beyond the reach of the Bank, that those attempts arguably give rise to the causes of action pleaded in the Particulars of Claim, and that the Bank has suffered harm in that had it been able to enforce against those assets the Cassation Judgment against D1 would have been satisfied.
190. D2 submits that C seeks to unwind transactions said to have occurred several years ago and relies on a mixture of alleged tortious wrongdoing and statutory avoidance provisions. The limitation provisions concerning unwinding transactions, under Article 298 of the UAE Civil Code say:

“1-An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible.

...

3- An action for damages is prescribed in any case after fifteen years from the date on which the prejudicial act was committed.”

191. D2 continues that the three year limitation under 298(1) applies (and not the 15-year period under 298(3), which is merely a longstop) from the time C has learned about the alleged wrongdoing, and knows who perpetrated it. This is substantiated in the Dubai Court of Cassation Judgment No. 744 of 2025 dated 05/03/2026, which held:

“It is established—in the jurisprudence of this Court—that the legislator has introduced, within the scope of liability for unlawful acts, a short statute of limitations, stipulating that a claim for compensation arising from a harmful act is barred after three years. This period begins to run from the day the injured party becomes aware of the damage suffered and identifies the person who caused it. The knowledge intended in this provision refers to actual knowledge that fully encompasses both the occurrence of the damage and the person responsible for it....”

192. D3/4 submit that any damages claim in respect of the United Makgroup Share Transfer is time-barred. They point to *Nest Investments Holding Lebanon S.A.L. & Ors v Deloitte & Touche (M.E.) & Anor* [2020] DIFC TCD 003 (upheld on appeal) at [152] and [153] *per* Justice Sir Richard Field:

“152. The first question to be decided is what conflicts of rule is applicable in deciding which law, the lex fori or the lex causa, determines the limitation period to which the Claimants’ claims are subject. On balance, I think that the conflicts of rule is subsumed in Article 8 of the Law on the Application of Civil and Commercial Laws in the DIFC (DIFC Law No. 3 of 2004) and on applying that Article, I find that the law that determines the applicable limitation period is Lebanese law, this being the law that is most closely related to the facts and the persons in the matter.

153. In case I might be erroneous to apply Article 8 of DIFC Law No. 3, in the alternative I find that that old English choice of law rule is applicable which depended on whether the postulated foreign limitation rule was substantive or procedural in nature. If substantive, the foreign limitation law applied; if procedural, English law as the lex fori applied.”

193. D3/4 say that UAE law applies as it is most closely related to the facts and the persons in this matter. I am not willing finally to decide on an application for a freezing injunction in the absence full argument whether Sir Richard was right to apply Article 8. During the course of the submissions even before I had seen the passage in *Nest*, I asked the parties whether limitation under UAE law was substantive or procedural and whether it barred the remedy or extinguished the cause of action. None of counsel was able to assist me.

194. This is not a fanciful point, if the DIFC limitation period were to apply it would be 6 years not 3 (Courts Law Article 28). There are also competing translations of Article 298(1).

D2's appears at paragraph 190 above. Its provenance is not disclosed. It does however use the language of prescription which might indicate that the cause of action is extinguished. On the other hand, within the Joint Authorities Bundle is the widely-accepted Whelan translation in the following terms:

"No claim for indemnity arising out of a harmful act shall be heard after the expiration of three years from the day on which the victim became aware of the occurrence of the harm and of the identity of the person responsible for it."

195. The expression "*shall be heard*" might indicate that it is the remedy that is barred (i.e. it is procedural). It seems to me that this is a difficult issue that must be argued fully at trial and that the Court will probably require the assistance of expert evidence. I cannot today hold that ENBD's claims or any part of them are unarguably statute-barred.

Existence of Assets

196. None of the Defendants contends that there would not be assets available to satisfy any judgment. It is suggested that there are no assets in the DIFC but that is irrelevant (see (1) *Trafigura PTE LTD (2) Trafigura India PTV LTD v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta* [2025] DIFC CA 001 (22 September 2025) citing *Carmon Reestruturacao Engenharia e Servicos Tecnicos Especiais, (SU) LOA v Antonio Jao Catete Lopes Cuenda* [2024] DIFC CA 003(26 November 2024) at [130]).

Dissipation of Assets

197. This case is all about the dissipation of assets. If I find (as I do) that there is a good arguable case that the Defendants have acted in concert to attempt to place D1's assets beyond the reach of the Bank, it must follow that there is a good arguable case for a risk of dissipation at least against D1 and D2.

198. Again, sensibly, D1 confines his challenge to the basis that the Bank has delayed so long in bringing these proceedings that it must be inferred that it no longer considers that there is an imminent risk that assets will be dissipated. D2 takes the same position.

199. D3/4 emphasises that a claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient and must be established separately against each respondent (*Fundo Soberano de Angola v Santos* [2018] EWHC 2199 (Comm), [86]).

200. It is submitted that the only matters relied on as against Hessa and Shamma are:

- (1) That a jurisdiction challenge has been made;
- (2) That purchases have been made from a jeweller using funds from bank accounts in Hessa's and Shamma's names; and
- (3) A bare statement that ENBD "*believes there is every reason to believe that*" there will be dissipation because "*prior to the commencement of the present action, [Hessa and Shamma] were not facing any prospect of legal proceedings against them personally...[but] the Bank considers they [now] have every incentive to make further transfers of assets*" (Fox 1 at [176.7]).

201. As to these D3/4 say:

- (1) It is suggested that the challenge to the jurisdiction was "*advanced without proper basis*". To the contrary, for the reasons set out in Hessa's and Shamma's jurisdiction submissions, the basis on which the DIFC Courts are said by the Bank to have jurisdiction is obscure. Certainly there can be no suggestion that the challenge was a mere tactical device or one made with no real conviction. No inference of a risk of dissipation can be drawn from it;
- (2) As to the alleged purchases from jewellers, as Hessa and Shamma have explained in their evidence, they were entirely unaware of those transactions and have received no benefit from them. There is no reason to doubt Hessa's and Shamma's evidence on this point, which is supported by positive evidence of a potential explanation for why they may have been unaware of any purchases which were made – namely that these alleged payments were made from accounts over which Abdulaziz had a power of attorney;
- (3) As to the final "*reason*"– to allege simply that because proceedings have been brought against a party that party has an incentive to avoid a judgment seeks to circumvent the entire need for proving a risk of dissipation at all. What is more, if it were a point of any merit, it would apply to every claim ever brought.

202. In relation to the first point, I have found that the jurisdiction challenge fails, but I cannot say that it was hopeless. It was certainly counterintuitive but it did demand a detailed analysis of the relevant legislation. That it was a tactical device is clear but that does not equate to an intention to dissipate assets. Whether or not the challenge was made with

conviction is irrelevant if (as I find) it was arguable. I therefore disregard the first point. I also disregard the third point for the reasons stated by D3/4.

203. I do however find that gold transaction coupled with an absence of any explanation is suspicious. There is a serious issue to be tried whether the conversion of such large sums of money into gold was merely a change of asset class or an attempt to forestall tracing the money through the banking system. It does therefore support a good arguable case against D3/4 on a risk of dissipation.

204. Turning to delay, the Defendants point to the chronology:

- (1) Dubai CFI judgment: 16 January 2017;
- (2) 14 January 2019: ENBD started execution proceedings in Dubai;
- (3) 7 July 2019: Cassation Judgment;
- (4) October 2020: the transfer of the shares in United Makgroup shares was discovered;
- (5) 10 September 2021: New York Proceedings;
- (6) 30 September 2021: Jersey Proceedings;
- (7) 29 October 2021: England Proceedings;
- (8) 16 December 2021: Swiss Proceedings;
- (9) 6 April 2022: the Indosuez Sums were discovered;
- (10) 21 January 2023: the assignment of RAM's share of Mohamed's estate was discovered;
- (11) 16 November 2023: the YFT Proceeds Payments were discovered;
- (12) 23 January 2025: the Labour Camp Proceeds were discovered;
- (13) 10 April 2025: Claim Form;
- (14) 19 September 2025: Particulars of Claim;
- (15) 23 December 2025: FO Application;

205. D1 submits that this delay is inexcusable and fatal. The injunction should be refused. These points will also be relevant when the Court considers whether to grant an injunction as part of the '*just and convenient*' consideration and its overall discretion.
206. D2 submits that the chronology reveals that C did not act promptly in bringing the freezing injunction, which is fatal to its application. If C genuinely believed that assets were at risk of being dissipated beyond enforcement, it would have sought urgent relief long before December 2025. C's own chronology demonstrates prolonged and unexplained delay between discovery of the alleged transactions and the application for relief. A claimant who genuinely apprehends a real risk of dissipation acts promptly. C did not, strongly undermining any suggestion that assets were at risk, and the freezing order should therefore be refused.
207. D2 states that in *ArcelorMittal*, the Court refused to grant a freezing injunction and held that delay might show that there was no real risk of dissipation. If there was, the claimant would have brought the application earlier. The court held that '*the relevant question must be whether there has been delay from the time at which the claimant appreciated or arguably should have appreciated that there was grounds on which a freezing order could be sought here and would be useful*'.
208. D3/4 note that this application has been brought on notice. That is an unusual course for a freezing injunction precisely because it suggests that there is no real risk of unjustified dissipation. That is particularly so here where, not only is this application pursued on notice, but there has been very considerable delay on the part of the Bank in pursuing this application. They point out that the Bank waited 4½ years from when it first learned of the United Makgroup Share Transfer before issuing proceedings, it waited over 8 months from issuing its claim to issuing an application for a freezing injunction, and will have waited over 11 months from the date this claim was issued to listing a hearing of the freezing injunction. By the time of the freezing injunction hearing, Hessa and Shamma will have had notice of the claim against them for over 7 months.
209. D3/4 suggest that if ENBD genuinely had concerns that Hessa and Shamma were likely to dissipate assets or render themselves judgment proof, they would have acted far quicker. Likewise, if Hessa and Shamma had wanted to dissipate their assets or otherwise render themselves judgment proof, they would have had ample opportunity to do so. There is no evidence at all that they have taken any such steps.

210. In reply, the Bank accepts (as it must) that there has been a significant delay between its knowledge of at least certain significant transactions involving the Defendants and the filing of its application for a freezing injunction. However, it submits that the delay does not detract from the strength of the application and should not deter the Court from making an order.
211. The Bank says that it has been required to obtain and analyse a huge volume of material in respect of the Defendants' assets and transfers which has been the product of wide-ranging enquiries in several different jurisdictions in circumstances where the Bank had already explored and pursued enforcement proceedings (Fox 1, [214]). The Bank had also hoped and expected that further sums would have been identified in bank accounts in Switzerland, which might have enabled (and might still enable) enforcement against those accounts (Fox 1, [215]). In the event, however, there have been substantial delays in the resolution to this issue (beyond the Bank's control) as a result of an error by UBS to attach certain assets. The Swiss Proceedings are still ongoing.
212. The Bank refers to the materials set out at paragraph 107 to 114 above. Drawing together some principles from the cases cited:
- (1) The starting point is that the Court is considering whether delay on the part of the applicant for a freezing order undermines the case that there is real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets;
 - (2) The issue of delay will only become relevant if, but for the delay, there is solid evidence of a risk of an unjustified dissipation of assets. If that evidence did not exist it would be irrelevant whether the applicant had delayed in the application or not;
 - (3) Delay may militate against a conclusion of a real risk of dissipation on the basis that if there had been a real risk of the respondent unjustifiably dissipating its assets, it would have materialised by the time of the application (*Holyoake v Candy* [2017] EWCA Civ 92; *Arcelormittal USA LLC v Ravi Ruia and Others* [2020] EWHC 740 (Comm));
 - (4) There are problems with that as a general proposition that have been identified in a number of cases:

- (a) It is difficult to understand how delay on the part of the applicant in obtaining relief should affect the *existence* of the risk of dissipation of assets on the part of the respondent, no matter how the applicant assessed the risk. Delay might however be relevant to the exercise of the Court's discretion in granting or refusing a freezing order (*FM Capital Partners Ltd v. Marino* [2018] EWHC 2612 (Comm));
- (b) Delay is potentially a significant discretionary consideration but much depends on the individual facts of each case (*Fiona Trust v. Privalov* [2007] EWHC 1217 (Comm));
- (c) An applicant is entitled to take time in making reasonable enquiries prior to launching an application, the more so where the nature of his case is based on fraudulent or dishonest activity (*ibid.*);
- (d) The material consideration is the risk that a judgment in favour of Claimants would remain unsatisfied either because of dissipation or secretion or dispersal (*Mercedes Benz AG v. Leiduck* [1996] AC 284). The relevance of delay before the institution of proceedings is therefore unclear. The law allows a party the limitation period within which to commence proceedings. It is only if proceedings are about to commence or have commenced that there can be a risk that any judgment might go unsatisfied. Before then there is no judgment in prospect;
- (e) There is no reason why an order should not be made if the criteria for a freezing order are satisfied in the hope if not the expectation that some assets may be preserved (*Antonio Gramsci Shipping Corp v Reoletos Ltd* [2011] EWHC 2242 (QB));
- (f) Whether or not delay indicates that an applicant does not genuinely believe there is any risk of dissipation is irrelevant if the court is of the view that there is a risk (*Ras al Khaimah Investment Authority v. Bestfort Development LLP* [2018] 1 WLR 1099);
- (g) If it is said that, if a respondent is prone to dissipate its assets, such dissipation will have already occurred by the time a court is asked to intervene, it is a curious principle that would allow such a defendant to rely on its own dubious probity to avoid an order being made (*ibid.*)

213. The principles seem to indicate that the Court should first consider whether there is a risk of an unjustified dissipation of assets directed to thwarting enforcement of any judgment. If the Court is satisfied that there exists such a risk it should then go on to consider whether there has been inexcusable delay sufficient to persuade it, in its discretion, not to grant relief. It seems to me that if the Court is satisfied that its processes may be frustrated by a dissipation of assets something more than mere delay would be required to counterbalance that risk, the delay would certainly have to be both inordinate and inexcusable.
214. In the present case, the relevant delay since the commencement of proceedings has been 8 months. I do note that prior to the commencement of the proceedings the causes of action pleaded had not been raised. I note that it would have taken some time to prepare the application, albeit not 8 months. I am satisfied that there is a good arguable case that there is a risk of dissipation against all Defendants. I cannot see that a delay of something less than 8 months should weight so heavily in my discretion as to displace the recognition and need to address that risk of dissipation. I do not consider the delay to be inordinate or inexcusable.
215. I do accept that the good arguable case that there is a risk of dissipation might mean that, even though the causes of action in these proceedings have not been raised before, the fact that the application is brought on notice could have enabled the Defendants to take further steps to hide their assets. Against that the Defendant protest that they are *not* involved in attempts to thwart any judgment issued by the Court. The Court has not prejudged the question but merely accepted that there is a serious issue to be tried. The Defendants still have the benefit of the doubt. The Defendants may therefore dutifully comply with the disclosure order ancillary to the freezing injunction and (for example) reveal the whereabouts of the precious metals.
216. I am also reinforced in my view because the Defendants cannot point to any prejudice caused by the delay.

Just and Convenient/Expedient

217. D1 contends in support of the contention that it would not be just and expedient to grant a freezing injunction that:
- (1) there is a serious question as to the enforceability of any future DIFC Courts judgment on the merits in circumstances where the local Dubai Courts' judgment has not been fully satisfied;

- (2) there are not any assets in the DIFC;
- (3) the provision of a freezing injunction by the DIFC Courts could create disharmony or confusion and/or risk the creation of conflicting, inconsistent or overlapping orders in other jurisdictions;
- (4) D1 has argued that the correct forum is the local Dubai Courts where the money judgment was obtained as well as the precautionary attachment order.

218. He continues that the overall balance of convenience lies in favour of D1. ENBD is already in possession of a money judgment, has sought and obtained precautionary attachments and freezing orders, and yet wishes to raise a complaint with the DIFC Courts for D1's divestment of assets instead of bringing that complaint to the very court that granted the money judgment. A correction is necessary – I do not believe that the Dubai Courts have granted, or indeed have the jurisdiction to grant, freezing orders as understood by common law courts.

219. D2 complains that the proposed order is worldwide and highly intrusive. In circumstances where C has already made recoveries, and is likely to obtain further recoveries through foreign proceedings, it is neither necessary nor just and convenient to impose a freezing order against D2.

220. D3/4 submit that the balance of convenience weighs against any freezing injunction relief being granted. This is particularly so where:

- (1) The case against Hessa and Shamma is weak;
- (2) There have been considerable delays on the part of the Bank;
- (3) The Bank's change in approach so as to focus on Hessa and Shamma (and in particular to make veiled threats against matters of great importance to them, such as identifying Hessa's beloved horses as "assets"), appears to be a tactical ploy to exert pressure on RAM; and
- (4) The impact on Hessa and Shamma and their day-to-day life were they to be subject to a freezing order would be significant. To the contrary, the Bank appears to have in place orders and actions already in respect of its enforcement of the RAM Judgment (by way of orders and injunctions in Jersey and England and an execution file in onshore Dubai).

221. I do not accept that it would be unjust, inconvenient or in expedient to grant the freezing order. D1's objections might have had some credibility had he made any attempt to honour the Cassation Judgment. I do not understand D2's objection. *Ex hypothesi* the order is worldwide and intrusive, both incidents of the order are justified by D2's conduct. If the Bank makes further recoveries through foreign proceedings that will serve reduce the claim in these proceedings. I do not accept the attempt to paint D3/4 as innocent bystanders. I consider that there is sufficient evidence to raise serious issues to be tried as to their involvement in their father's schemes to frustrate enforcement by the Bank of its judgments.

The Order

222. In the circumstances, I consider that it is appropriate to make the order sought albeit with some amendments.

223. I have excluded reference to those properties that appear not to be amenable to enforcement (see paragraph 118 above).

224. The Defendants objected to the exception to the order allowing each of them to spend USD 2,500 per week on ordinary living expenses. Each claimed that they need USD 10,000. They produced no evidence to support the figure and I note that D3/4 say that their normal living expenses are discharged by their mother (Hessa 1, [12]; Shamma 1, [10]). If any Defendant wishes the figure of USD 2,500 to be increased, they may apply for a variation supported by evidence.

COSTS

225. The Bank says that if it is successful, it should have its costs.

226. The Defendants submit that costs should be reserved.

227. The Bank has been successful and I am of the view that the Claimant's costs should not be reserved but paid by Defendants to be assessed on the standard basis if not agreed following the logic appearing at paragraphs [116] to [119] in the judgment of Sir Julian Flaux, Chancellor in *Isabel Dos Santos v Unitel S.A.* [2024] EWCA Civ 1109.

228. The hearing of this matter was listed for one day. By RDC 38.30, the general rule is that the Court should make an immediate assessment of the costs at the conclusion of any hearing, which has lasted no more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. By RDC 38.33, it is

the duty of the parties and their legal representatives to assist the Judge in making an immediate assessment of costs in any case to which RDC 38.30 applies, in accordance with RDC 38.34 to RDC 38.36. RDC 38.34 provides that each party who intends to claim costs must prepare a written statement of the costs he intends to claim filed at Court less than 24 hours before the date fixed for the hearing in accordance with RDC 38.36.

229. I cannot find any schedule of costs filed by the Claimant in compliance with the RDC. I shall therefore direct that the costs order shall be in any event.

PERMISSION TO APPEAL

230. The Defendants indicated that should I find (as I do) that the Bank is a DIFC Establishment or Licensed DIFC Establishment, they would wish to seek permission to appeal. By RDC 44.19, permission to appeal may only be given where the lower Court considers that (1) the appeal would have a real prospect of success; or (2) there is some other compelling reason why the appeal should be heard.

231. I do not consider that an appeal would have a real prospect of success as I am of the view that once the legislation is properly understood, there is no room for doubt that ENBD is a Licensed DIFC Establishment. I also consider that the result accords with reality and common sense so that there is no other compelling reason why the appeal should be heard.

DISPOSITION

232. The D1, 3, 4 Jurisdiction Challenge and the D2 Jurisdiction Challenge are dismissed. I declare that the Court has jurisdiction over the Claimant's Claims in these proceedings.

233. The FO Application is granted and a Freezing Order in the terms communicated to the parties shall be granted.

234. The D2 EOT Application is granted.

235. The Defendants shall pay the costs of the Claimant of all of the Applications to be assessed on the standard basis if not agreed in any event.

236. The Defendants are refused permission to appeal the finding of the Court that the Claimant is a DIFC Establishment and Licensed DIFC Establishment.