Claim No: CFI 012/2023

N/A

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ENERGIA TRADING INTERNATIONAL SA

Claimant

and

(1) PERPETUA ENERGY GROUP FZCO

(2) PERPETUA INVESTMENT GROUP LTD

Defendants

Hearing : **23 to 25 September 2026**

Counsel : Kajetan Wandowicz instructed by Morgan, Lewis & Bockius LLP for the Claimant
Martin Khoshdel instructed by Dumon Partners Ltd for the Second Defendant

Judgment : **16 November 2026**

JUDGMENT OF H.E. JUSTICE RENE LE MIERE

UPON the Claimant's Part 7 Claim dated 15 October 2026, as amended on 25 March 2026 and 4 May 2026 (the "Claim")

AND UPON the Claimant's Request for Default Judgment against the First Defendant dated 5 March 2026 (the "Request")

AND UPON the Order with Reasons of H.E. Justice Rene Le Miere dated 18 March 2026 granting the Request

AND UPON the Case Management Order of H.E. Justice Rene Le Miere dated 24 March 2026

AND UPON the Second Defendant's Re-Amended Defence dated 8 May 2026

AND UPON the Claimant's Re-Amended Reply to Defence dated 15 May 2026

AND UPON hearing counsel for the Claimant and counsel for the Second Defendant at the Pre-Trial Review held before H.E. Justice Rene Le Miere on 18 August 2026

AND UPON hearing counsel for the Claimant and counsel for the Second Defendant at the Trial held before H.E. Justice Rene Le Miere on 23 to 25 September 2026 (the "Trial")

IT IS HEREBY ORDERED THAT:

1. There be judgment for the Claimant against the Second Defendant in the sum of **USD 3,079,884.28**.

2. Any amount paid by the First Defendant in satisfaction of the judgment previously entered against it in respect of the outstanding loan balance shall reduce, to the same extent, the amount payable by the Second Defendant under Order 1, and vice versa.

3. The Claimant is entitled to pre-judgment interest on the sum of **USD 3,079,884.28** from 31 December 2023 to the date of judgment at the rate determined in accordance with Article 118(2) of the DIFC Contract Law and Article 17(2) of the Law of Damages and Remedies.

4. The determination of the rate applicable under Order 3 and the amount of pre-judgment interest payable by the Second Defendant is reserved.

5. The parties are to confer and, within 14 days after the issue of this Judgment:

   (a) if they agree the applicable rate and amount of pre-judgment interest, file an agreed minute specifying that rate and amount; or

   (b) if they do not agree, each may file and serve written submissions identifying the rate for which that party contends, the material relied upon to establish that rate, and the resulting calculation of pre-judgment interest.

6. If submissions are filed under Order 5(b), each party may file and serve written submissions in reply within 7 days thereafter.

7. The Court will determine the applicable rate and amount of pre-judgment interest on the papers without a further hearing, unless the Court otherwise orders.

8. The Second Defendant shall pay post-judgment interest on the amounts payable under Orders 1 and 2 at the rate applicable to judgments of this Court from the date of judgment until payment.

9. The Claimant's claims against the Second Defendant in respect of the arbitral awards are dismissed.

10. The Claimant's claim that the Second Defendant's undertaking constituted an indemnity is dismissed.

11. The Claimant's claim for declaratory relief is dismissed.

12. Each party may file and serve written submissions on costs within 14 days after the issue of this Judgment and may file and serve written submissions in reply within 7 days thereafter.

13. The Court will determine the question of costs on the papers without a further hearing, unless the Court otherwise orders.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 16 November 2026
At: 2pm

SCHEDULE OF REASONS

A. Introduction

1. These proceedings arise from an alleged oral agreement by Perpetua Investment Group Ltd (the "Second Defendant") to stand behind the obligations of Perpetua Energy Group FZCO (the "First Defendant") to Energia Trading International SA (the "Claimant"). The remaining dispute is between the Claimant and the Second Defendant.

2. On 15 August 2023, the Claimant and the First Defendant entered into a joint venture agreement under which they were each to provide 50% of the funding required for transactions undertaken by the joint venture. When the First Defendant was unable to provide its share of the funding for the first transaction, the Claimant was asked to provide an additional USD 8 million.

3. On 23 August 2023, a telephone call took place between Athmane Boushabi, the Claimant's Chief Financial Officer, Pascal Siggen, the First Defendant's Chief Executive Officer, and Cl�ment Pacaud, the Second Defendant's Chief Financial Officer. The Claimant contends that during that call, Mr Pacaud, on behalf of the Second Defendant, agreed that the Second Defendant would stand behind the obligations of the First Defendant. The Second Defendant denies that any binding commitment was made.

4. The Claimant subsequently advanced USD 8 million to the First Defendant pursuant to a written loan agreement dated 30 August 2023. After repayments, USD 3,079,884.28 remained outstanding. Judgment has already been entered against the First Defendant.

5. The Court has previously determined that DIFC law does not require a guarantee or indemnity of the kind alleged to be in writing. The principal question at trial is therefore whether the Claimant has established that a binding oral agreement was made on 23 August 2023.

6. If such an agreement was made, further questions arise concerning the scope and legal character of the agreement, and the relief to which the Claimant is entitled.

B. Procedural History

7. The Claimant commenced these proceedings against both Defendants. The Second Defendant applied to strike out the claim against it. On 28 January 2026, the Court dismissed that application, holding that DIFC law does not require a guarantee to be in writing. That decision did not determine whether the alleged agreement had been made.

8. On 18 March 2026, judgment was entered against the First Defendant for the outstanding loan balance, together with interest and costs. The proceedings continued against the Second Defendant.

9. The remaining claims against the Second Defendant proceeded to trial on 23, 24 and 25 September 2026.

C. The Parties and Undisputed Background

10. The Claimant, Energia Trading International SA, is a Swiss oil and gas trading company. The First Defendant, Perpetua Energy Group FZCO, is a Dubai-based commodities trading company. The Second Defendant, Perpetua Investment Group Ltd, is a DIFC-incorporated investment company and an indirect shareholder of the First Defendant.

11. On 15 August 2023, the Claimant and the First Defendant entered into an unincorporated joint venture agreement under which they were to contribute equally to the financing of gasoil cargoes and to share profits equally. Shortly afterwards, the First Defendant informed the Claimant that it could not provide its share of the funding for the first transaction and asked the Claimant to advance an additional USD 8 million.

12. On 23 August 2023, a telephone call was held between Athmane Boushabi, Pascal Siggen, and Cl�ment Pacaud. It is common ground that the possibility of the Second Defendant providing a guarantee was discussed. Later that day, Mr Pacaud sent Mr Boushabi a template corporate guarantee. No written guarantee was subsequently executed.

13. On 30 August 2023, the Claimant and the First Defendant entered into the Loan Agreement, under which the Claimant advanced USD 8 million. The First Defendant subsequently repaid USD 4,920,115.72, leaving USD 3,079,884.28 outstanding.

D. Issues for Determination

14. The principal issue is whether, during the telephone call on 23 August 2023, Mr Pacaud, on behalf of the Second Defendant, made a binding promise to stand behind the obligations of the First Defendant.

15. If he did, the further issues are:

(i) whether the promise was contractually binding;

(ii) the scope of the promise, including whether it extended beyond repayment of the USD 8 million loan to other obligations of the First Defendant;

(iii) whether the promise constituted a guarantee, an indemnity, or both; and

(iv) the relief to which the Claimant is entitled.

16. Determination of the principal issue requires the Court first to determine what was said during the 23 August call and then whether, viewed objectively and in its commercial context, what was said amounted to an immediately binding agreement or formed part of negotiations contemplating a subsequent written agreement.

E. Principles Governing the Assessment of the Evidence

E1. Assessment of witness evidence

17. The principal factual dispute concerns conversations which took place more than three years before the Trial. Human memory is fallible and may be affected by the passage of time, subsequent events and the process of reconstructing events for the purposes of litigation. The Court should therefore approach recollections of particular words and conversations with appropriate caution.

18. The reliability of the witnesses' recollections must be tested against contemporaneous documents, objectively established facts, relevant subsequent conduct, and the inherent probabilities. Contemporary documents will ordinarily provide a more reliable guide than a witness's later reconstruction from memory. As Leggatt J observed in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15]-[22], the process of civil fact-finding should place particular importance on contemporaneous documents and known or probable facts when assessing the reliability of recollection.

19. That is an evaluative principle, not an inflexible rule of evidential priority. In *NatWest Markets plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 at [49]-[51], the Court of Appeal cautioned against treating *Gestmin* as laying down a general principle that oral testimony should be regarded as inherently unreliable or that contemporary documents must always be preferred. Documents may themselves be incomplete, ambiguous or require explanation. Their significance depends upon their authorship, purpose, completeness and context. Where the documentary record does not resolve the issue, oral testimony may remain important or decisive.

20. The task is therefore to assess the oral and documentary evidence together. A document created before or after a disputed conversation may provide an important means of testing a witness's recollection, but it does not necessarily establish what was said. Conversely, reliable oral evidence is not to be rejected merely because a contemporaneous document does not record the matter in question. Where apparently cogent documentary evidence points against a proposed factual finding, however, the Court must confront that evidence and explain why the evidence as a whole nevertheless supports the finding.

21. The Court's task is not simply to decide which witness it prefers, but to determine, having regard to the evidence as a whole, what probably occurred. A witness may be honest but mistaken. Reliability may differ between different parts of a witness's evidence. In assessing each witness's evidence, I have considered its internal consistency, any material inconsistency with an earlier account, the witness's involvement in the relevant discussions and the basis of the asserted recollection, the passage of time, consistency with contemporaneous documents and objective facts, corroborating or contradictory evidence, and the inherent probability of the account. I have also distinguished, where necessary, between a witness's recollection of what was said and the witness's subsequent understanding of its meaning or legal effect. No single consideration is determinative.

22. Whether the parties reached a binding oral agreement is determined objectively. The question is what their words and conduct, considered in their commercial context, would reasonably have conveyed, rather than their unexpressed subjective intentions or understandings.

E2. Failure to call a material witness

23. A party is not obliged to call every person who may possess relevant information. However, an unexplained or inadequately explained failure to call a witness whom that party might reasonably have been expected to call may bear upon the assessment of the evidence: *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at P340. Its significance depends upon the circumstances, including the witness's practical availability, relationship to the parties, knowledge of the disputed matters, the other evidence on those matters, and any explanation for the absence. As Lord Leggatt explained in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33 at [41]- [43], the question is one of ordinary rational inference, not the application of an inflexible set of legal rules.

24. The inference ordinarily available is that the witness's evidence would not have assisted the party who might reasonably have called the witness. The absence may also permit an inference otherwise supported by the evidence to be drawn more confidently: *Jones v Dunkel* (1959) 101 CLR 298 at 308, 312 and 320-321. It does not establish what the witness would have said, supply a missing evidential foundation, or relieve the opposing party of the burden of proving its case. In particular, the failure cannot fill gaps in the evidence, as distinct from enabling an inference otherwise available to be drawn more confidently: *Kuhl v Zurich Financial Services Australia Ltd* (2011) 243 CLR 361 at [63]-[64].

F. The Witnesses

25. In assessing the evidence of each witness, I have considered its internal consistency, any material inconsistency with an earlier account or statement, the witness's opportunity and capacity to observe and remember the relevant events, consistency with contemporaneous documents and objective facts, corroborating or contradictory evidence, and the inherent probability of the account given. I have not treated any one of those considerations as determinative. Where the reliability of a witness's evidence depends on resolving a particular factual dispute, I address that question when considering the relevant events.

F1. Mr Boushabi

26. Mr Boushabi, the Claimant's Chief Financial Officer, was the only participant in the 23 August call who gave evidence at the Trial. He accepted that he could not recall every word used, but said he had a clear recollection of the substance of the discussion, in particular that Mr Pacaud said the Second Defendant would cover the Claimant "100%" in the event of any shortfall. I consider whether that account should be accepted below when I address the 23 August call.

27. During his evidence, Mr Boushabi disclosed a handwritten note he said he had written at the time of the call. He said he had forgotten about the note, prepared his witness statement without reference to it, and found it in his office on the morning he gave evidence. He had not informed his lawyers of its existence before referring to it in cross-examination.

28. The late production of a potentially important contemporaneous document was unsatisfactory and warrants caution in assessing the weight to be given to it. It does not, however, necessarily establish that the note is unreliable. I consider its circumstances, contents, consistency with Mr Boushabi's earlier evidence, and the other evidence when addressing the 23 August call.

F2. Mr Oriyanerass

29. Mr Oriyanerass, the Claimant's Chief Executive Officer, did not participate in the 23 August call. His evidence is primarily relevant to the events leading up to the call, including his discussions with Mr El Jazouli about the First Defendant's inability to provide its share of the funding, the support he says he required from the Second Defendant, and his subsequent decision to authorise the additional funding.

30. Mr Oriyanerass also gave evidence about two brief telephone calls with Mr El Jazouli on 24 August 2023. He accepted that the calls occurred but disputed Mr El Jazouli's account of what was said. In assessing that conflict, it is necessary to consider not only the witnesses' respective recollections but also their earlier accounts, the duration and context of the calls, the contemporaneous documents, and the inherent probability of the competing accounts. I do so below.

F3. Mr El Jazouli

31. Mr El Jazouli, the Second Defendant's Chief Executive Officer, also did not participate in the 23 August call. His evidence is relevant primarily to the discussions preceding the call, Mr Pacaud's authority, and his telephone conversations with Mr Oriyanerass on 24 August.

32. Mr El Jazouli's evidence was that he authorised Mr Pacaud only to explore possible solutions, not to enter into a binding guarantee. He also gave an account of the two calls on 24 August, which Mr Oriyanerass disputes. In assessing that evidence, I have regard to its consistency with his earlier accounts and the pleaded case, the objective circumstances, the contemporaneous documents, the duration of the calls, and the inherent probability of the account given. Those matters are considered in their factual context below.

F4. Mr Pacaud and Mr Siggen

33. Neither Mr Pacaud nor Mr Siggen gave evidence. Both participated in the 23 August call. Mr Pacaud was alleged to have made the promise on behalf of the Second Defendant and authored the subsequent email. Mr Siggen could have given evidence of what he heard during the call.

34. Mr El Jazouli said that both had ceased to be part of the business. He also considered that their evidence would add nothing to the email and attached document, which he regarded as recording what had occurred. Cessation of employment is relevant to practical availability, but does not of itself establish that a former employee cannot give evidence. Equally, their former positions do not justify assuming that they remained available or under the Second Defendant's control.

35. The explanation based upon the documents must be assessed against the nature of the dispute. The email and template are not an agreed record of the conversation. Their significance, and whether they show that no binding commitment had been made, are themselves disputed. First-hand evidence concerning the conversation and the circumstances of the email would therefore have been material, rather than merely cumulative. I address the significance of its absence in my findings on the call.

G. The Events Leading to the 23 August Call

36. On 15 August 2023, the Claimant and the First Defendant entered into the JV Agreement. Under the JV Agreement, the parties were to contribute equally to financing and share profits equally.

37. Shortly afterwards, it became apparent that the First Defendant could not provide its share of the funding for the first transaction. The Claimant was instead asked to provide the full USD 8 million required for that transaction.

38. Mr Oriyanerass and Mr El Jazouli later discussed the additional funding and the Second Defendant's provision of support. Their accounts differ as to the precise nature and extent of those discussions. Mr Oriyanerass' evidence was that the Claimant required the Second Defendant to stand behind the First Defendant before the Claimant would provide the additional funding. Mr El Jazouli's evidence was that he agreed only that the possibility of providing support should be explored.

39. Those discussions led to the involvement of the parties' financial officers. On 23 August 2023, Mr Pacaud contacted Mr Boushabi and

proposed a call with Mr Siggen to explain the transaction and show him the guarantees the Second Defendant could provide. Mr Boushabi agreed, and the call was arranged for later that afternoon.

40. I am satisfied that, by the time of the call, the Second Defendant's provision of support had been raised between the parties in response to the Claimant being asked to provide the First Defendant's share of the funding. However, I am not satisfied that the evidence establishes that a binding commitment had already been reached between Mr Oriyanerass and Mr El Jazouli. The better view is that the question of support had been raised at CEO level and the matter was then taken forward to the 23 August call. Whether that call resulted in a binding commitment is the critical question to which I now turn.

H. The 23 August 2023 Call

H1. The competing accounts

41. The principal factual dispute concerns what occurred during the telephone call on 23 August 2023 between Mr Boushabi, Mr Pacaud and Mr Siggen. Mr Boushabi was the only participant who gave evidence at the Trial.

42. The Claimant's case is that Mr Pacaud assured Mr Boushabi that the Second Defendant would stand behind the First Defendant and cover the Claimant "100%" if the First Defendant failed to meet its obligations. The Claimant says this was a present commitment, not conditional on negotiating or executing a written guarantee.

43. The Second Defendant accepts that the provision of a corporate guarantee was discussed but says the discussion was exploratory. It contends that no final agreement was reached and that the subsequent email attaching a guarantee template and inviting mark-ups shows that the terms of any guarantee remained to be agreed.

H2. Mr Boushabi's evidence

44. Mr Boushabi's evidence requires some care because his recollection of what Mr Pacaud said is not always readily distinguishable from his understanding of the substance and legal effect of what was said. He accepted that he could not recall every word.

45. His evidence was, nevertheless, clear on the central point. He said that Mr Pacaud stated that the Second Defendant would cover the Claimant "100%" in the event of any shortfall. He maintained in cross-examination that, if the First Defendant failed to pay, the Second Defendant would cover the Claimant, and that the term "corporate guarantee" had been discussed.

46. Mr Boushabi's evidence was also that the agreement was complete during the call. He did not say that an oral agreement was reached which the parties then agreed or intended to reduce to writing. His evidence was that he had not requested a guarantee document, was not waiting to receive one, and regarded the matter as having been agreed during the call.

47. I accept Mr Boushabi's evidence as to the substance of what Mr Pacaud said. His recollection that Mr Pacaud said the Second Defendant would cover the Claimant "100%" was maintained on cross-examination and is consistent with the commercial purpose of the call. The First Defendant could not provide its share of the funding, the Claimant was being asked to assume that additional exposure, and the question of support from the Second Defendant prompted the call.

48. I place less weight on Mr Boushabi's evidence to the extent that it reflects his interpretation of the precise legal scope and effect of what was said. His understanding that the promise extended to every obligation of the First Defendant, or that it constituted both a guarantee and an indemnity, does not establish that those were the objective terms of the agreement. Those questions must be determined by what was said, considered in its context.

H3. The contemporaneous note

49. During his evidence, Mr Boushabi produced a handwritten note he said he had written during the 23 August call. He explained that he had forgotten about the note and found it among papers in his office on the morning he was due to give evidence. It had not been previously identified or disclosed.

50. The note records the call on 23 August and refers to Mr Pacaud and Mr Siggen. Its material words, as read by Mr Boushabi in evidence, are "to cover Energia 100% by Corporate Guarantee, in case of failure to recover in full". It is a brief record, not a minute or transcript. Those words support his recollection of an assurance of complete protection against a failure to recover, but do not identify every obligation covered or resolve whether the assurance was conditional upon further agreement.

51. The circumstances of its production are unusual and unsatisfactory. A contemporaneous note of the critical conversation should have been disclosed. Its late production also deprived the Second Defendant of the opportunity, which would ordinarily have existed, to investigate it before trial.

52. Those circumstances require caution but do not establish that the note was created subsequently or that its contents are false. The authenticity and timing of the note were challenged in cross-examination. In closing, counsel for the Second Defendant did not press an allegation of fabrication, acknowledging that he had no evidence to support it, but maintained his criticisms of the circumstances of production. I have considered those criticisms. My acceptance of the note as contemporaneous rests upon the evidence concerning its creation and discovery, the sequence in which its existence emerged, and its relationship with Mr Boushabi's earlier account, rather than merely upon the absence of evidence of fabrication. Having considered his explanation, the circumstances in which the note emerged, its contents and its relationship with his earlier account, I accept on the balance of probabilities that it was made contemporaneously with the call.

53. I do not, however, treat the note as an independent or complete record of the conversation. It is a brief note made by the witness whose recollection is in issue and is not a transcript. Its significance is that it provides some contemporaneous support for Mr Boushabi's account. I give it

weight on that basis, but my finding as to what occurred on the call does not depend upon the note alone.

H4. Mr Pacaud's email

54. Shortly after the call, Mr Pacaud emailed Mr Boushabi documents which included a corporate guarantee template and invited the Claimant to provide any mark-ups. No mark-ups were provided and no written guarantee was executed.

55. The email provides significant support for the Second Defendant's case. Providing a template guarantee and inviting mark-ups may indicate that the call did not result in a concluded agreement and that the terms of a guarantee remained to be agreed.

56. That interpretation must, however, be considered in light of Mr Boushabi's evidence. His evidence was not that the parties had reached an agreement they intended to document later. Rather, it was that the guarantee had been agreed during the call, without any requirement for further documentation. He said that he had not requested a guarantee document, was not expecting to receive one, and did not regard the template subsequently sent to him as relevant to the agreement already reached.

57. The email therefore raises an important issue in assessing whether the parties had reached a concluded agreement. If the parties had already concluded an unconditional oral guarantee, Mr Pacaud's sending of a template guarantee shortly afterwards, with an invitation for mark-ups, calls for explanation. Conversely, the email does not state that no agreement had been reached on the call, that the discussion was subject to contract, or that the Second Defendant would be bound only upon execution of a written guarantee. Its significance must therefore be assessed in light of the evidence of what was said on the call and the surrounding circumstances.

H5. The draft guarantee

58. The draft guarantee must be considered for what it is. It was a template sent after the relevant conversation. It was not executed and is not itself the contract upon which the Claimant sues.

59. Its terms are nevertheless relevant to the subject matter of the call and to whether the discussions resulted in a concluded agreement. The significance of its transmission shortly after the call must be assessed in the context of the other evidence.

60. The document can, to a degree, support either party. Its existence and the invitation to provide mark-ups support the Second Defendant's contention that the terms of a guarantee remained to be settled. On the other hand, its transmission after a call in which a guarantee was admittedly discussed does not necessarily establish that no agreement had already been reached. The Claimant's case is that the agreement was concluded during the call and was not conditional upon subsequent documentation. I do not regard the draft, considered alone, as resolving that question.

H6. Findings concerning the call

61. Standing back from the individual pieces of evidence, I am satisfied on the balance of probabilities that Mr Pacaud stated in substance during the 23 August call that the Second Defendant would cover the Claimant if the First Defendant failed to meet the obligation for which the Claimant was being asked to provide the additional funding, and that he expressed that protection in terms of covering the Claimant "100%".

62. I reach that conclusion from Mr Boushabi's direct evidence, assessed together with the commercial circumstances, his contemporaneous note, the subsequent email and template, and the parties' subsequent conduct. His account of the essential assurance is consistent with the purpose of the call and is supported by the contemporaneous note. I have not accepted it merely because he was the only participant who gave evidence.

63. The email and template are substantial considerations pointing the other way. Their transmission, the invitation for mark-ups and the absence of a response are consistent with negotiations remaining incomplete. They do not, however, expressly record that the assurance given during the call was provisional or conditional upon execution of a written instrument. The template is not an agreed minute of the conversation. Having weighed those matters against the direct evidence, the note and the circumstances which prompted the call, I am satisfied that Mr Pacaud expressed a commitment to cover the Claimant, rather than merely a willingness to consider providing protection. Whether that commitment, objectively assessed in all the circumstances, was immediately binding is considered below.

64. I do not, however, accept that Mr Boushabi's recollection of the expression "100%" establishes, without more, the full scope the Claimant now attributes to the promise. Whether the commitment extended beyond the particular funding exposure that occasioned the call to all present and future obligations of the First Defendant is a separate question.

65. I have also considered the absence of evidence from Mr Pacaud and Mr Siggen. In particular, Mr Pacaud could have addressed both the words attributed to him and the circumstances in which he sent the subsequent email. The contention that the documents rendered his evidence unnecessary is unpersuasive because the inference to be drawn from those documents is itself central to the dispute. I take account of the fact that both witnesses had left the business, but the explanation given does not establish that their evidence could not reasonably have been obtained.

66. In those circumstances, I draw the inference that their evidence would not have assisted the Second Defendant's account of the call. I do not infer that they would have confirmed every part of Mr Boushabi's account or the wider scope which the Claimant attributes to the promise. Their absence strengthens my acceptance of the essential assurance, which the evidence already considered independently supports; it does not supply the assurance or its terms.

67. I therefore find that, in substance, Mr Pacaud said the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation. I do not find that he merely said the Second Defendant would consider providing such protection. Whether, objectively considered in the circumstances as a whole, what he said amounted to an immediately binding contractual promise is a separate question, which I address below.

I. Events Following the Call

I1. The calls on 24 August

68. On 24 August 2023, Mr Oriyanerass and Mr El Jazouli spoke by telephone twice. The calls lasted 33 and 35 seconds, respectively. Their accounts of what was said differ materially.

69. Mr El Jazouli's evidence was that Mr Oriyanerass said Mr Boushabi had merely been carrying out his responsibilities by seeking reassurance; that the draft corporate guarantee was poorly drafted and "worth nothing"; that he was "a man of his word"; and that no corporate guarantee or other reassurance was required for the Claimant to proceed. Mr Oriyanerass denied saying that a guarantee was no longer required.

70. The brevity of the calls does not make Mr El Jazouli's account impossible. The essential proposition he attributes to Mr Oriyanerass could have been conveyed briefly, and there were two calls. Their duration is, however, relevant to the weight to be given to his comparatively detailed recollection of what was said more than three years later.

71. I do not accept Mr El Jazouli's account. That conclusion does not rest solely on the duration of the calls. His account that Mr Oriyanerass withdrew the requirement for a guarantee was not recorded contemporaneously and did not appear in the Defence, even though it would have been an important fact in explaining why the proposed written guarantee went no further.

72. More generally, Mr El Jazouli's evidence revealed significant difficulty in accurately placing conversations and events within the chronology. That does not establish that his account of the 24 August calls was transposed from another identified conversation. It does, however, reduce my confidence in his detailed recollection of what was said during those very brief calls.

73. I also take into account the circumstances in which the calls occurred. The requirement for protection arose because the commercial position contemplated by the JV Agreement had materially changed: the First Defendant could not provide the funding expected of it, and the Claimant was being asked to assume additional exposure. Against that background, the proposition that Mr Oriyanerass abandoned the protection he had sought immediately after the matter had been discussed between the CFOs requires reasonably cogent evidence.

74. Having regard to those matters, together with Mr Oriyanerass's denial, I am not satisfied that Mr Oriyanerass told Mr El Jazouli on 24 August that a guarantee was no longer required.

I2. The absence of a response to the draft guarantee

75. A separate consideration is the Claimant's response to the draft. The Claimant did not provide the mark-ups invited by Mr Pacaud, seek execution of the document, or otherwise pursue a written guarantee. That subsequent conduct is relevant to whether the parties had reached a concluded agreement on 23 August.

76. The Second Defendant submits that, if the Claimant regarded the guarantee as important, the Claimant's failure to respond to a template sent for comment is difficult to reconcile with the existence of a concluded agreement. That submission has force. In a substantial commercial transaction, the failure to pursue a document sent for comment is a matter properly taken into account.

77. It is not, however, determinative. Mr Boushabi's evidence was that he regarded the agreement as already having been made during the call and did not consider further documentation necessary. The failure to provide mark-ups is therefore explicable on his account, although the probability of that explanation must be assessed in the context of the evidence as a whole.

78. I regard the Claimant's failure to pursue the draft as evidence favouring the Second Defendant's contention that no final agreement had been reached. However, I do not regard it as requiring me to alter my finding about what Mr Pacaud said during the call. Its significance for the separate question of whether his words gave rise to a binding contract is considered below.

I3. The Loan Agreement

79. On 30 August 2023, seven days after the disputed call, the Claimant and the First Defendant entered into the written Loan Agreement, under which the Claimant advanced USD 8 million. The Loan Agreement made no reference to any guarantee or other obligation undertaken by the Second Defendant, who was not a party to it.

80. The absence of any reference to the alleged guarantee is relevant. The Loan Agreement was entered into shortly after the conversation on which the Claimant relies and concerned the funding that occasioned that conversation. On the other hand, the Loan Agreement regulated the relationship between the Claimant as lender and the First Defendant as borrower. The Second Defendant was not a party to it and the alleged promise was a separate undertaking by the Second Defendant. The omission therefore weighs against the Claimant's case to some degree, but does not of itself establish that the alleged undertaking did not exist.

81. The Loan Agreement also contained an entire-agreement provision. I address its legal effect on the alleged oral agreement separately below. For present purposes, its existence, together with the absence of any reference to the Second Defendant's alleged undertaking, forms part of the objective evidence bearing on whether a binding oral agreement had been made.

82. Taken together, the Claimant's failure to pursue the draft guarantee and the terms of the subsequent Loan Agreement provide material support for the Second Defendant's case that the discussions of 23 August did not result in a concluded agreement. I give those matters substantial weight. They do not cause me to alter my finding as to what Mr Pacaud said during the call. They are, however, relevant to the separate question of whether, viewed objectively in all the circumstances, what was said gave rise to an immediately binding contract.

J. Was a Binding Contract Made?

83. I have found that, during the call on 23 August 2023, Mr Pacaud, in substance, said that the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation. It does not necessarily follow that those words gave rise to an immediately binding

contract. That question must be determined objectively, having regard to what was said and the circumstances in which it was said.

J1. Offer and acceptance

84. The discussion did not take the form of a conventional exchange in which one party articulated detailed terms and the other expressly accepted them. However, it occurred in a clear commercial context. The First Defendant could not provide its share of the funding, the Claimant was being asked to provide an additional USD 8 million, and the question of protection from the Second Defendant prompted the call.

85. In that context, Mr Pacaud's statement that the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation was sufficiently definite to constitute an offer. Mr Boushabi accepted that offer during the call by indicating that the Claimant would proceed with the additional funding on that basis.

86. In any event, the Claimant's subsequent entry into the Loan Agreement and provision of the USD 8 million objectively indicated assent to the promise and constituted acceptance by conduct within Article 19 of the Contract Law. I am therefore satisfied that there was offer and acceptance.

J2. Intention to create legal relations

87. The circumstances were commercial. The discussion concerned the Claimant's provision of substantial funding and the protection sought against the resulting exposure. There is no suggestion that the assurance was social, informal or merely gratuitous.

88. The more substantial question is whether, despite the commercial setting, the parties intended the Second Defendant to be legally bound immediately or only upon the subsequent agreement and the execution of written documentation. I address that question below.

J3. Certainty

89. The Second Defendant contends that the alleged agreement was insufficiently certain. No detailed terms were agreed during the call on matters such as duration, demand, enforcement or the form of the guarantee.

90. A contract must be sufficiently certain for the Court to identify the obligation undertaken. That does not require every matter that might have appeared in a formal written guarantee to have been expressly agreed.

91. I have found that Mr Pacaud said, in substance, that the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation for which the Claimant was being asked to provide additional funding. That identifies the promisor, the person to whom the promise was made, the circumstances in which the obligation would arise, and the relevant underlying exposure. In my view, the promise was not incapable of contractual effect on the ground of uncertainty.

92. The precise extent of the obligation is a separate question. In particular, whether it extended beyond the USD 8 million funding exposure to other liabilities of the First Defendant concerns the scope of the agreement, rather than whether any sufficiently certain agreement existed at all.

J4. Agreement subject to written documentation

93. The Second Defendant's strongest argument against contractual formation rests on Mr Pacaud's conduct immediately after the call. He sent Mr Boushabi a corporate guarantee template and invited mark-ups. The Claimant did not provide mark-ups, seek execution of the template, or otherwise pursue a written guarantee.

94. Those circumstances are capable of indicating that the parties had not yet reached a concluded agreement and expected their legal relationship to arise only when they had settled the terms of a written guarantee. I have given that evidence substantial weight.

95. The competing consideration is that neither the email nor the draft states that the discussions were subject to contract, that the assurance given during the call was provisional, or that the Second Defendant would be bound only upon execution of a written guarantee. Nor have I accepted Mr El Jazouli's evidence that, the following day, Mr Oriyanerass said that a guarantee was no longer required.

96. Article 26 of the DIFC Contract Law provides that, where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form.

97. I am not satisfied that either party insisted on this. The transmission of the template and invitation for mark-ups are significant evidence that further documentation was contemplated and that terms may have remained open. But they occurred after the conversation in which I have found that Mr Pacaud made the substantive promise. Nothing in the evidence establishes that, during that conversation, he stated that the Second Defendant would not be bound unless and until the terms of a written guarantee were agreed and the document executed.

98. I have also taken into account Mr Boushabi's evidence that he did not consider further documentation necessary because the matter had already been agreed. His subjective understanding cannot determine whether a contract existed, but it explains the Claimant's failure to engage with the template.

99. Viewed objectively and in the commercial context in which the call occurred, I do not consider the subsequent transmission of the template sufficient to convert what was otherwise expressed as a present promise into a mere proposal for future negotiation. I find that the parties did not make their agreement conditional upon the subsequent execution of a written guarantee.

J5. Consideration

100. The Second Defendant also contends that the alleged agreement fails for want of consideration. That contention rests on a requirement that is

not part of DIFC contract law. Article 14 of the Contract Law provides that a contract is concluded by the acceptance of an offer, and Article 35 provides that a contract is concluded by the mere agreement of the parties, without any further requirements. Consideration is therefore not an additional requirement for the formation or validity of a contract under DIFC law.

101. The fact that Mr Pacaud's promise was made in circumstances where the Claimant was being asked to provide funding that the First Defendant was unable to provide, and that the Claimant subsequently advanced the USD 8 million, remains relevant to the commercial context in which the parties' words and conduct are to be understood. It is not necessary, however, to characterise the provision of that funding as consideration for the agreement to be binding.

J6. Effect of the Loan Agreement and JV Agreement

102. The Second Defendant also relies on the written agreements. In particular, the Loan Agreement, entered into seven days after the call, does not refer to the alleged guarantee and contains an entire-agreement provision. These matters form part of the objective context and, as I have found, provide some support for the Second Defendant's case that no binding oral agreement was concluded.

103. They do not, however, have that effect as a matter of contract. The Loan Agreement was between the Claimant and the First Defendant. The Second Defendant was not a party to it. The agreement alleged in these proceedings is a separate agreement between the Claimant and the Second Defendant.

104. The entire-agreement provision in the Loan Agreement must be construed in that contractual setting. It governs the agreement between its parties. In the absence of language having that effect, it does not extinguish or preclude a separate contractual obligation undertaken by a non-party to the Loan Agreement.

105. Nor does the JV Agreement preclude the separate agreement alleged by the Claimant. The later problem arose because the First Defendant was unable to provide the funding contemplated under the parties' existing arrangements. The alleged agreement with the Second Defendant arose in response to that problem.

J7. Authority

106. The Second Defendant did not plead that Mr Pacaud lacked authority to bind it, nor did it pursue lack of authority as a separate defence at trial. Mr El Jazouli's evidence that he authorised Mr Pacaud only to explore the possibility of a corporate guarantee is relevant to the factual question of whether Mr Pacaud in fact agreed to provide one. I have taken that evidence into account in making my findings concerning the 23 August call. Lack of authority is not otherwise an issue which is open for determination.

J8. Conclusion on formation

107. I have considered cumulatively the matters which favour the Second Defendant's case: the absence of detailed terms during the call, Mr Pacaud's transmission of the guarantee template immediately afterwards, the invitation for mark-ups, the Claimant's failure to pursue or execute that document, and the absence of any reference to the alleged guarantee in the subsequent Loan Agreement.

108. Those are substantial considerations. The question, however, is whether they establish that the words which I have found Mr Pacaud used were merely part of negotiations, or were conditional upon a formal written guarantee being agreed and executed. I am not satisfied that they do.

109. The assurance was given in a commercial discussion convened in response to an identified funding problem and the Claimant's request for protection. I have found that Mr Pacaud did not merely offer to explore whether the Second Defendant might provide protection. He said in substance that the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation. Nothing said on the call, so far as the evidence establishes, made that promise conditional on subsequent documentation.

110. I therefore find that a binding agreement was concluded between the Claimant and the Second Defendant on 23 August 2023. It remains necessary to determine the scope and legal character of the obligation undertaken.

K. Scope of the Agreement

111. The remaining question is the scope of the Second Defendant's obligation. The Claimant contends that the promise covered all liabilities of the First Defendant to the Claimant, including amounts payable under the arbitral awards. The Second Defendant contends that any promise was confined to the USD 8 million loan.

112. The starting point is the promise, which I have found was made. Mr Pacaud said in substance that the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation, and expressed that protection as covering the Claimant "100%". The expression "100%" must be understood in the context in which it was used. It does not, without more, identify the range of obligations to which the promise applied.

113. The immediate commercial problem that prompted the call was that the First Defendant could not provide its share of the funding for the first transaction, and the Claimant was being asked to provide the additional USD 8 million. The Claimant sought protection from the Second Defendant against that additional exposure. In that context, the 23 August call was arranged and the promise was made.

114. I do not consider that the expression "100%" objectively communicated that the Second Defendant was assuming responsibility for every existing or future liability of the First Defendant to the Claimant arising from their wider commercial relationship. Such an undertaking would be substantially broader than the particular funding problem that occasioned the discussion. A promise of that breadth required sufficiently clear words. I am not satisfied that such words were used.

115. I have also considered the evidence that Mr Pacaud said the Second Defendant would ensure the First Defendant honoured its obligations.

Those words must likewise be understood in the context of the particular obligation that occasioned the call. In my view, they referred to the First Defendant's obligation in respect of the additional funding the Claimant was being asked to provide. They did not objectively communicate that the Second Defendant was assuming responsibility for every obligation of the First Defendant arising from the JV Agreement or the parties' wider commercial relationship.

116. Nor does Mr Boushabi's understanding of the scope of the protection establish its objective scope. As I have already found, his evidence is important in determining what Mr Pacaud said, but his understanding of the legal consequences or the extent of those words cannot enlarge the promise made.

117. I therefore construe the agreement as requiring the Second Defendant to cover the Claimant in respect of the USD 8 million advanced because the First Defendant was unable to provide the funding expected of it. The reference to "100%" meant that the protection in respect of that exposure was complete, not that the Second Defendant assumed responsibility for all liabilities the First Defendant might incur to the Claimant.

118. The liabilities determined by the arbitral awards arise from the broader commercial relationship between the Claimant and the First Defendant. The Claimant has not established that those liabilities fall within the promise made by Mr Pacaud on 23 August 2023. Accordingly, the Second Defendant is not liable under the agreement for the amounts payable by the First Defendant pursuant to those awards.

119. The Second Defendant's obligation is accordingly confined to the First Defendant's liability in respect of the USD 8 million loan. The Second Defendant's liability in respect of the unpaid balance of that loan, and the legal character of that liability, are considered below.

L. Guarantee or Indemnity?

120. The Claimant contends that the Second Defendant's undertaking constituted both a guarantee and an indemnity. The distinction is material. A guarantee is an undertaking to answer for another's obligation and is therefore secondary to the principal debtor's liability. An indemnity ordinarily imposes a primary obligation on the promisor to protect the promisee against the stipulated loss.

121. The characterisation of the agreement depends on the substance of the promise made, rather than the labels the parties subsequently attached to it. I have found that, in substance, Mr Pacaud said the Second Defendant would cover the Claimant if the First Defendant failed to meet the relevant obligation.

122. In my view, that promise is properly characterised as a guarantee. The obligation of the Second Defendant was expressed by reference to a failure by the First Defendant to meet its obligation. The Second Defendant was therefore undertaking to answer for the First Defendant's liability if the First Defendant failed to discharge it.

123. I am not satisfied that the Second Defendant also assumed a separate primary obligation to indemnify the Claimant against loss. There was no evidence that an indemnity was separately discussed during the call, and no words have been identified that objectively communicated an undertaking by the Second Defendant to make good the Claimant's loss independently of the First Defendant's liability.

124. The expression that the Second Defendant would cover the Claimant "100%" does not alter that conclusion. In its context, "100%" described the extent of the protection the Second Defendant was promising in respect of the relevant exposure. It did not convert an undertaking contingent upon the First Defendant's failure to perform into an independent primary obligation.

125. That conclusion is also consistent with the contemporaneous documentation. The document Mr Pacaud sent immediately after the call was described as a corporate guarantee template. Although the template was not the parties' agreement and its terms were not shown to have been agreed, its character provides some contemporaneous support for the conclusion that the obligation discussed was a guarantee rather than an indemnity.

126. I therefore find that the Second Defendant undertook a guarantee of the First Defendant's relevant obligation. The Claimant has not established that the Second Defendant also undertook an indemnity.

M. Relief

M1. Outstanding loan

127. It is common ground that the amount remaining unpaid under the Loan Agreement is USD 3,079,884.28. I have found that the Second Defendant guaranteed the First Defendant's obligation under the USD 8 million loan. The First Defendant failed to discharge that obligation and judgment has already been entered against it for the outstanding balance.

128. The Claimant is therefore entitled to judgment against the Second Defendant for **USD 3,079,884.28**.

M2. The arbitral awards

129. The Claimant also seeks recovery from the Second Defendant of amounts payable by the First Defendant pursuant to the arbitral awards.

130. That claim fails as a consequence of my conclusion about the scope of the guarantee. The Second Defendant did not guarantee all obligations the First Defendant might incur to the Claimant under their wider commercial relationship. Its undertaking was confined to the USD 8 million funding exposure that occasioned the 23 August call.

131. The liabilities imposed upon the First Defendant by the arbitral awards therefore fall outside the scope of the guarantee. It is unnecessary to determine the Second Defendant's alternative submission that those liabilities are too remote.

M3. Interest

132. The Claimant claims interest on the outstanding principal from 31 December 2023, the Second Maturity Date under the Loan Agreement. The Loan Agreement was interest-free until repayment fell due. The Claimant therefore does not claim interest for the period during which the First Defendant was contractually entitled to retain the money without payment of interest.

133. Article 118(1) and (2) of the DIFC Contract Law, materially reproduced in Article 17(1) and (2) of the Law of Damages and Remedies, provide that where a party does not pay a sum of money when it falls due, the aggrieved party is entitled to interest from the time payment is due until payment. In the absence of an agreed rate, the applicable rate is the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment.

134. The fact that the Loan Agreement was interest-free before maturity does not exclude that statutory entitlement once the relevant monetary obligation became due and remained unpaid. The question is therefore when the Second Defendant's obligation under the guarantee became due.

135. I have found that the Second Defendant undertook to cover the Claimant if the First Defendant failed to meet its obligation under the USD 8 million loan. On the terms of the oral guarantee as I have found them, the Second Defendant's liability was triggered by the First Defendant's failure to pay the guaranteed debt when due. The parties did not agree that a separate demand upon the Second Defendant was a condition precedent to liability.

136. The outstanding loan balance was due by 31 December 2023 and was not paid. The Second Defendant's obligation under the guarantee therefore arose upon that default. The subsequent commencement of these proceedings constituted notice to the Second Defendant of the Claimant's demand for payment but did not create or postpone a liability which had already arisen under the guarantee.

137. The Claimant is accordingly entitled to pre-judgment interest on USD 3,079,884.28 from 31 December 2023 at the rate prescribed by Article 118(2) of the Contract Law and Article 17(2) of the Law of Damages and Remedies.

138. The Claimant is entitled in principle to pre-judgment interest on the outstanding principal from 31 December 2023. The applicable statutory measure is the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment.

139. The Claimant's reliance upon an approximately 15% return on investment does not establish that statutory rate. Nor has it established an agreed contractual rate applicable to the Second Defendant's obligation. The alternative claim for 9% does not, without an evidential or other proper basis, establish that 9% corresponds to the statutory measure.

140. The applicable rate and the resulting amount of pre-judgment interest remain to be determined. I will give directions for their determination after the parties have had an opportunity to agree the calculation or make focused submissions identifying the relevant rate and the material supporting it. Post-judgment interest is a separate matter.

141. Post-judgment interest is payable at the rate applicable to judgments of this Court from the date of judgment until payment.

M4. Declaratory relief

142. The Claimant seeks a declaration concerning the scope of the Second Defendant's continuing obligations under the alleged guarantee. The Court has power to grant declaratory relief, but the remedy is discretionary. The Claimant submitted that a declaration would be useful because of the dispute concerning whether the guarantee extended to all of the First Defendant's obligations and the possibility of further arbitral awards. The Second Defendant opposed any such declaration.

143. My conclusions resolve that dispute. The guarantee does not extend generally to all obligations of the First Defendant to the Claimant. It is confined to the USD 8 million loan, in respect of which monetary relief is granted in this judgment. In those circumstances, a broader declaration of the kind sought by the Claimant would be inconsistent with the scope of the agreement as I have found it.

144. Nor do I consider that a separate declaration confined to the guaranteed loan would serve any useful purpose beyond the judgment for the outstanding amount. The monetary judgment gives effect to the Second Defendant's liability under the guarantee. I therefore decline to grant declaratory relief.

M5. Conclusion on relief

145. The Claimant is entitled to judgment against the Second Defendant for USD 3,079,884.28, together with pre-judgment interest from 31 December 2023 at the applicable statutory rate and post-judgment interest at the rate applicable to judgments of this Court. The claims in respect of the arbitral awards, indemnity and declaratory relief are dismissed.

N. Costs

146. I will not determine costs at this stage. The parties should have an opportunity to consider these reasons and the consequences of these reasons for costs.

147. I will invite the parties to make submissions as to the appropriate costs orders, including any consequential directions required for the determination or assessment of costs.

O. Orders

148. For these reasons, the Court orders:

(a) There be judgment for the Claimant against the Second Defendant in the sum of **USD 3,079,884.28**.

(b) Any amount paid by the First Defendant in satisfaction of the judgment previously entered against it in respect of the outstanding loan

balance shall reduce, to the same extent, the amount payable by the Second Defendant under paragraph 148(a), and vice versa.

(c) The Claimant is entitled to pre-judgment interest on the sum of **USD 3,079,884.28** from 31 December 2023 to the date of judgment at the rate determined in accordance with Article 118(2) of the DIFC Contract Law and Article 17(2) of the Law of Damages and Remedies.

(d) The determination of the rate applicable under paragraph 148(c) and the amount of pre-judgment interest payable by the Second Defendant is reserved.

(e) The parties are to confer and, within 14 days after the issue of this Judgment:

(i) if they agree the applicable rate and amount of pre-judgment interest, file an agreed minute specifying that rate and amount; or

(ii) if they do not agree, each may file and serve written submissions identifying the rate for which that party contends, the material relied upon to establish that rate, and the resulting calculation of pre-judgment interest.

(f) If submissions are filed under paragraph 148(e), each party may file and serve written submissions in reply within 7 days thereafter.

(g) The Court will determine the applicable rate and amount of pre-judgment interest on the papers without a further hearing, unless the Court otherwise orders.

(h) The Second Defendant shall pay post-judgment interest on the amounts payable under paragraphs 148(a) and (b) at the rate applicable to judgments of this Court from the date of judgment until payment.

(i) The Claimant's claims against the Second Defendant in respect of the arbitral awards are dismissed.

(j) The Claimant's claim that the Second Defendant's undertaking constituted an indemnity is dismissed.

(k) The Claimant's claim for declaratory relief is dismissed.

(l) Each party may file and serve written submissions on costs within 14 days after the issue of this Judgment and may file and serve written submissions in reply within 7 days thereafter.

(m) The Court will determine the question of costs on the papers without a further hearing, unless the Court otherwise orders.