IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

OSWIN

Claimant

and

(1) OTILA
(2) ONDRAY

Defendants

ORDER WITH REASONS OF H.E. JUSTICE SIR JEREMY COOKE

UPON the Claimant's ex parte urgent application dated 28 August 2025 for interim measures (the "Injunction Application") in support of a DIFC-seated arbitration under the Joint Venture Agreement dated 12 March 2019 ("JVA"), pursuant to Article 24(3) of the DIFC Arbitration Law No. 1 of 2008, RDC 43.48 and RDC 43.50, to be determined under RDC Part 25

AND UPON hearing counsel for the Claimant at an ex parte Urgent Application Hearing before H.E. Justice Sir Jeremy Cooke on 29 August 2025

AND UPON the Order of H.E. Justice Sir Jeremy Cooke dated 29 August 2025 granting the Injunction Application (the "Injunction")

AND UPON the Defendants' Acknowledgement of Service dated 3 September 2025, recording the Defendants' intention to contest the law governing the dispute

AND UPON the Claimant's Application No. ARB-032-2025/2 dated 4 September 2025, seeking a continuation of the Injunction

AND UPON the Second Defendant's Application No. ARB-032-2025/3 dated 8 September 2025, seeking to set aside the Injunction for lack of jurisdiction

AND UPON hearing counsel for the Claimant and counsel for the Second Defendant at the Return Date before H.E Justice Sir Jeremy Cooke on 8 September 2025 (the "Return Date")

AND UPON the direction of H.E Justice Sir Jeremy Cooke at the Return Date permitting the parties to file post hearing submissions

AND UPON the Second Defendant's further submission dated 9 September 2025

AND UPON the Claimant's further submission dated 10 September 2025

IT IS HEREBY ORDERED THAT:

1. The Injunction be continued until further order or until the matters raised in the Notice of Arbitration dated 15 August 2025 are determined by the duly appointed Tribunal, with its seat in the DIFC, whether in the context of interim measures or finally in an Award issued by the Tribunal.

2. The Second Defendant shall pay the costs of the Claimant's application to continue the Injunction, the costs of the Second Defendant's application to discharge the same and the costs of the hearing on 8 September 2025.

3. The costs payable by the Second Defendant to the Claimant under the provisions of paragraph 2 of this Order are to be the subject of assessment by the Court in the absence of agreement between the parties within 7 days of the date of this order.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 16 September 2025
At: 3pm

SCHEDULE OF REASONS

Introduction

1. On 29 August 2025, I granted the Claimant an ex parte injunction in support of a DIFC seated arbitration to be commenced under the Joint Venture Agreement dated 12 March 2019 (the "JVA") pursuant to Article 24(3) of the DIFC Arbitration Law No. 1 of 2008, RDC 43.48 and RDC 43.50. The relief sought was interim only until the return date of 8 September 2025 and was intended to maintain the status quo until then and if continued until such time as the arbitral tribunal which is still to be appointed, could determine the matters in dispute between the parties. I

was satisfied that the appropriate test for an interim injunction had been met by reference to the evidence adduced in support in the First Witness Statement of Mr Orman and its exhibits.

2. On the return date, 8 September 2025, Mr Ismail appeared, purporting to represent both the First and Second Defendants but objection was immediately taken by Mr Khan, appearing for the Claimant, on the basis that Mr Ismail could not have authority to act for the First Defendant in the absence of appointment by the Directors or Shareholders of that company which is a joint venture company in which the Claimant holds 49% shares and the First Defendant holds 51% of the shares but where board decisions are required to be made on a unanimous basis and shareholder decisions require a 75% majority. In the absence of appropriate resolutions from either the Board or the Shareholders therefore, Mr Ismail could not have authority to represent the First Defendant. The point taken illustrates the nature of the dispute between the Claimant and the Second Defendant where a deadlock has been reached because they are unable to reach agreement on the management and operation of the joint venture company, as appears from Mr Orman's evidence.

3. In those circumstances both the Claimant and the Second Defendant, through their appointed counsel, agreed that the matter would proceed before me as between those parties without the need for the involvement of any representative of the First Defendant.

4. On the morning of the return date, the Second Defendant issued an Application Notice and produced a Draft Order. No evidence was adduced by the Second Defendant nor any skeleton argument filed or served by Mr Ismail, but the Application Notice contained two full pages explaining the nature of the application made and its essential grounds. The Second Defendant, by Mr Ismail, said that it wished to proceed on the basis of the material before the court alone. The Claimant did not object to the Court determining the matters raised, despite the absence of any prior notice. The Application sought the discharge of the proceedings for want of jurisdiction, the discharge of the injunction on the same basis and a declaration of the absence of such jurisdiction because, it was said, that the Courts of Abu Dhabi had exclusive jurisdiction to determine "disputes arising from the agreements between the parties.. in accordance with the express contractual provisions" and that "as per the public order rules, parties are not permitted to agree in a contracting agreement on any jurisdiction other than Abu Dhabi Courts".

5. In making this submission Mr Ismail relied upon the terms of the JVA itself, on the terms of the Memorandum of Association of the joint venture company, on the Operations and Management Agreement (the "O & M Agreement") and on an Inter Corporate Loan Agreement. Each of these contained clauses relating to governing Law and jurisdiction in different terms from that of the JVA. I could not see the relevance of these other contracts if the dispute under the JVA fell within the arbitration clause in that agreement. It may very well be the case that a dispute falls within the ambit of a number of jurisdiction or arbitration clauses in different agreements but the sole question with which this Court is concerned is whether or not the dispute which is to be referred to arbitration under the JVA by the Claimant does fall within the ambit of the arbitration clause in that agreement.

6. Although Mr Ismail sought to argue that in some way the O & M Agreement superseded the JVA, he did not develop the point to say that the arbitration agreement in the latter had disappeared and had been replaced by the jurisdiction provisions in the former. Such an argument is untenable in the light not only of the entire agreement clause in the JVA but because the JVA is, self-evidently, the overarching primary agreement upon which the others are based. In those circumstances, it is impossible to say that a dispute falling within the terms of the JVA arbitration clause must nonetheless be referred to another forum and determined in accordance with the provisions of any of the jurisdiction or arbitration clauses in any of the other agreements.

The Injunction granted

7. The terms of the ex parte injunction referred expressly to the arbitration agreement in clause 21.3 of the JVA. The Second Defendant was enjoined from purporting to act on behalf of the First Defendant in relation to the management or operation of the medical and hazardous waste facility referred to in paragraph 5(a) of the Order (the "Plant") until a unanimous resolution of the Board of Directors of the First Defendant had been passed, as required by clause 9.3 of the JVA or a shareholders resolution was passed that satisfied the thresholds prescribed by clause 10.3 of the JVA. The Defendants were further enjoined from implementing any decision or instructing any third parties or public authorities in relation to the management or operation of the Plant until a decision had been approved in accordance with the requirements for decisions by the Board or Shareholders under the JVA. The Order then proceeded to particularise matters which could only be dealt with by such means, as alleged by the Claimant, including:

(a) the changing of bank mandates or signatories or the giving of instructions to a bank which would change control over operational payments or divert receipts;

(b) the solicitation or procurement of transfer of employment or Visa sponsorship of the Claimant's employees, consultants or contractors working at the Plant;

(c) undertaking any action expressly reserved to the Claimant under Annexure C of the JVA.

8. The effect of this, as recorded in the prohibition in paragraph 7 of the Order necessarily meant that until the Return Date and/or further order of the Court, the Claimant should continue to act as operator of the Plant in accordance with the O & M Agreement and the Environmental Permit issued by the Environment Agency of Abu Dhabi until such time as resolutions were passed which complied with the requirements set out above, notwithstanding the fact that the O & M Agreement had expired on 21 August 2025. The status quo was thus to be preserved in circumstances where damages for breach of the JVA would be an inadequate remedy and there was significant risk to the public if the Claimant was not to continue to operate and manage the Plant, in the absence of any substitute appointment of an entity with appropriately qualified personnel, which the evidence showed had not happened and could not happen because of the deadlock between the joint venturers.

The Arbitration Agreement and the Notice of Dispute

9. As already indicated, the Second Defendant made no point on the merits of the Claimant's application, taking only a point as to the jurisdiction of this Court to grant the injunctions in support of the future arbitration which the Claimant had undertaken to commence when it could.

10. The relevant clause in the JVA is as follows:

> *"21 GOVERNING LAW AND DISPUTE RESOLUTION*
>
> *21.1. This JVA and any dispute or claim arising out of or in connection with it or its subject matter or formation of JV Co. shall be governed and construed in accordance with the laws of the United Arab Emirates.*
>
> *21.2. In the event of any dispute between the Parties arising out of or relating to this JVA, representatives of the Parties shall, within 15 working days of a written notice from one party to the other ("Dispute Notice"), hold a meeting between the Parties ("Dispute Meeting") to resolve the dispute amicably. Each Party's representative shall have the authority to settle the dispute.*
>
> *21.3. Any dispute which is not resolved within thirty (30) days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place of arbitration shall be DIFC. The language to be used in the arbitration shall be English.*
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> *21.4. Subject to Clause 21.2 and clause 21.3, the Courts of Emirate of Abu Dhabi shall have exclusive jurisdiction."*

11. It is trite law that a clause containing an arbitration agreement in a contract takes effect as an independent agreement with separate existence from the contract in which it is found. Here, in my judgement, the arbitration agreement contained in clause 21.2 and 21.3 is governed by the law of the DIFC and not by the law of the UAE. The agreement to arbitrate contained in clause 21.3 provided for reference to the DIFC/LCIA under its Rules, which necessarily implied English Law. Whereas there was previous debate about the law which governs an arbitration agreement where the governing law of the contract differs from that of the seat of the arbitration, in my judgement it is now clear, both as a matter of common law as well as English statute, that it is the law of the seat which constitutes both the lex curiae (lex arbitri) and the law of the arbitration agreement, absent clear indicia to the contrary. Furthermore, what matters here is whether the DIFC Court does have supervisory jurisdiction and there can be no doubt that the DIFC Court is to have supervisory jurisdiction where "the seat or legal place of arbitration is specified as the DIFC" because that is the import of the concept of the juridical seat, as recognised in standard text books such as Mustill &Boyd at paragraphs 4-15-4.26. DIFC authority is to that effect as is clear from the decision of H.E. Michael Black in Narciso v Nash [2024] ARB 009 at [37].

12. This means that the terms of clauses 21.2 and 21.3 provide for *"any dispute between the Parties arising out of or in relation to this JVA"* to be referred to arbitration following the service of a written Dispute Notice if there has been no resolution of the dispute within 30 days. Such a written Dispute Notice was served on 15 August 2025 and the 30 day period therefore expired between the date of the hearing and the issue of this judgment (which has been delayed because of the Second Defendant's desire to make further submissions in support of an argument raised orally at the hearing). The terms of the Dispute Notice make it clear that the dispute in question arises out of and in relation to the JVA. The written notice itself states that it is to serve as a Dispute Notice under clause 21.2 of the JVA, "reporting a series of material corporate governance breaches and unauthorised unilateral acts" as well as a notice of an Event of Default under clause 4(1)(I) of the Inter-Corporate Loan Agreement. The written Notice then goes on to identify corporate governance provisions of the JVA (and Article 10 of the Memorandum of Association of the JV Company which adopted these provisions to protect shareholders against any unauthorised unilateral actions.) It complains that:

> (a) The Second Defendant is purporting to make decisions of strategic importance on behalf of the First Defendant, including, by way of example, instructions affecting the renewal or non-renewal of the O & M Agreement and the engagement of external counsel or a law firm to issue adversarial notices of Board-level matters which, absent unanimity are outwith that authority of the First Defendant.
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> (b) There is a threat or fear that the Second Defendant will seek to conduct activity for the First Defendant, such as opening/closing bank accounts, delegating signing authorities, distributing profits, making material changes to the business, borrowings and the granting of security, or effecting acquisition/disposals or other exceptional transactions, all of which are matters reserved to the General Meeting, which, absent 75% shareholder approval, are unauthorised.
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> (c) The Second Defendant has purported to act for the First Defendant in circumstances where clause 26.2 of the JVA specifically provides that no shareholder can act as agent for the Joint Venture company save as authorised by the board in accordance with the terms and conditions of the JVA.

13. Whilst reference is made both to the Memorandum of Association and to the Inter-Corporate Loan Agreement, there is no doubt that the essential complaints set out in the written Notice of Dispute focus on the unilateral actions taken by the Second Defendant in relation to those other agreements, in breach of the terms of the JVA. The JVA is, self-evidently, the overarching document which gave rise to the Memorandum of Association, the O & M Agreement and the Internet Corporate Loan Agreement. Clause 26.3 of the JVA is an "entire agreement" clause and unless subsequent agreements specifically vary its terms, the JVA provides for dispute resolution in clause 21 and cannot be affected by dispute resolution clauses in the other agreements. Of course, it may very well be that a dispute which arises under one agreement may also constitute a dispute which arises under one of the other agreements for the purposes of the arbitration or jurisdiction clauses therein. However, the only civil proceedings begun thus far, leaving aside the criminal proceedings instituted by the Second Defendant, are the proceedings in the DIFC Court in support of the arbitration which the Claimant has undertaken to commence on expiry of the 30 day period following the giving of the Notice of Dispute.

<u>The Issue of Jurisdiction under Clause 24 of the JVA</u>

14. The essential point taken by the Second Defendant involves an issue of construction of clause 21, the terms of which are set out above. The Second Defendant contends that the governing law of the JVA is that of the UAE which is beyond dispute. In that context, and relying upon that, the Second Defendant says that clause 21.3 provides for Arbitration of all matters falling with the terms of clause 21.2, but for every other matter, whether relating to interim measures in support of arbitration or otherwise, to be determined by the Court of the Emirate of Abu Dhabi. It is accepted that arbitration under the DIFC-LCIA Rules, by decree, now means arbitration under the Rules of the DIAC and that the seat of the arbitration is in the DIFC, but it is said that this cannot give the DIFC Court jurisdiction when the parties have agreed otherwise. It is the Second

Defendant's contention that the effect of clause 21.4 is to give exclusive jurisdiction to the Courts of Abu Dhabi to grant interim measures in relation to any arbitration commenced in accordance with clause 21.3. When asked whether the Abu Dhabi Court, as opposed to the DIFC Court, could effectively exercise supervisory powers over an arbitration taking place in the DIFC, Mr Ismail could provide no clear answer.

15. As a matter of construction of clause 21, the Second Defendant's contention cannot, in my judgment, be right. It is clause 21.2 and clause 21.3 which provide for arbitration in the DIFC. When clause 21.4 states that *"the Courts of Emirate of Abu Dhabi shall have exclusive jurisdiction"*, that is expressly "subject to clause 21.2 and clause 21.3" which therefore are agreed to be effective regardless of clause 21.4. That subclause cannot derogate from the earlier two subclauses. The Parties' agreement to DIFC arbitration, with DIFC law as the law of the agreement to arbitrate, carries with it the powers of the DIFC Court in relation to such arbitration. The arbitration agreement itself is governed by the law of the DIFC which is clear in its application to arbitrations taking place within the DIFC.

16. Under DIFC Law No. 2 of 2025 Concerning Dubai International Financial Centre Courts, there is express provision for the jurisdiction of courts in relation to arbitration. Article 14 provides that the DIFC Courts have exclusive jurisdiction to hear and determine:

> *"14.6 Claims and applications arising from or related to any arbitration procedures where:*
>
> *(a) the seat or legal place of arbitration is the DIFC;*
>
> *(b) arbitral proceedings take place within the DIFC, and the parties have not agreed on the seat or legal place of arbitration; or*
>
> *(c) the parties agreed to the DIFC Courts' jurisdiction for disputes arising out of arbitration proceedings.*
>
> *14.7 Claims and applications over which the DIFC Courts have jurisdiction under the DIFC Laws, DIFC Regulations and the legislation in force in the Emirate."*

17. Article 15 of the same law provides that the DIFC Courts have jurisdiction to hear and determine applications for interim or precautionary measures relating to claims and applications that fall within the jurisdiction of the DIFC Courts and even such applications under Article 15.4 relating to: *"applications, claims or current or future arbitral proceedings brought outside the DIFC seeking suitable precautionary measures within the DIFC"*.

18. Under the Arbitration Law, Article 27 provides that the parties are free to agree upon the Seat of the Arbitration whilst Article 24(3) provides: *"The DIFC Court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the DIFC, as it has in relation to proceedings in courts. The DIFC Court shall exercise such power in accordance with its own procedures"*. Whilst there is some debate as to whether the word "place" in this context means "seat" and there is some conflict of authority on the point, it is clear that where the seat is in the DIFC, the Court has the same power to order interim measures as the Tribunal under the terms of Article 24(b)(i), (ii) and (iii), which enables the Tribunal to make an order to a party to *"maintain or restore the status quo pending determination of the dispute", "provide a means of preserving assets" and "take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to any party or to the arbitral process itself"*.

19. It is therefore, to my mind, clear that in agreeing to the DIFC as the seat of the arbitration, the parties have agreed to the supervisory jurisdiction of the DIFC Court. The provisions of clause 21.4 of the JVA therefore only apply in respect of disputes which are, for one reason or another, not arbitrable under clause 21.2 and 21.3. The disputes as framed in the written Notice of Dispute are, on their face, arbitrable under those provisions and in consequence, this Court has jurisdiction to issue injunctions as interim and precautionary measures in support of the prospective arbitration which the Claimant has undertaken to commence on expiry of 30 days following the Notice of Dispute.

The Provisions of Federal Law and the validity of the Arbitration Agreement

20. It appeared initially, during the course of argument, that the Second Defendant accepted the validity of the arbitration agreement itself but not the DIFC Court's powers in relation thereto. Reference to the terms of the Application Notice and questions relating to the exercise of supervisory powers of the respective courts of DIFC and Abu Dhabi over a DIFC-seated arbitration revealed that the Second Defendant was also submitting that the exclusive jurisdiction for any dispute at all which arose under the terms of the JVA, as well as under the terms of the other agreements upon which it relied, such as the Memorandum of Association, the O & M Agreement and the Inter-Corporate Loan Agreement (which did refer to the jurisdiction of Abu Dhabi or the arbitration rules of that jurisdiction) lay with the Courts of Abu Dhabi and that the arbitration agreement in clause 21.3 and 21.4 was contrary to *ordre publique*.

21. To make this point good, Mr Ismail sought to refer to provisions of UAE federal law which were not before the Court. Having said that he was prepared to rely solely on the evidence and materials put before the Court by the Claimant, he then wished to refer to UAE Federal Decree-Law No. 30 of 2020, amending Law No. 5 of 1985, and Articles 817, 873 (1) and (2) thereof and to Article 38 of Federal Civil Procedures Law No. 42 of 2022 which was said to require "contracting agreements" to be determined solely in the defendant's domicile court or the courts of the district where the agreement was concluded or executed. This was said to be supported by Commercial Cassation Appeal No. 21 of 2018 and Article 104 of the UAE Provisional Constitution. Notwithstanding the failures of the Second Defendant to put before the court relevant materials on its own application, I granted it the indulgence of submitting to the court those materials together with written submissions within 24 hours, with an opportunity to the Claimant to respond within a further period of 24 hours.

22. The relevance of this is not apparent if the arbitration agreement in the JVA is governed by the Law of the DIFC since federal law can have no application, but Mr Ismail then submitted over seven pages of further written submissions covering a range of different points, many of which had already been argued. The first point taken in those submissions was that a decision of the Dubai Court of Cassation had the effect that jurisdiction was vested in the national courts whenever the contract "combined" that jurisdiction of the local judiciary with that of an arbitration body, but that is not the effect of clause 21 of the JVA for the reasons already given. clauses 21.2 and 21.3 are clear in their effect. There is no conflict between those provisions and clause 21.4.

23. The Second Defendant then put forward an argument based on Federal law and a Dubai Cassation Case which did not assist it because that decision was based on the absence of a binding agreement to arbitrate because of lack of clarity in the arbitration clause. By contrast, the wording of clause 21 is clear and there is no ordre publique point which can be taken in the face of the parties' express agreement to arbitrate disputes under the JVA. No issue therefore arises in relation to the local Emirate authorities exercising jurisdiction over matters not entrusted to the federal judiciary in the face of an express arbitration agreement. Article 31(3) of the Civil Procedures Law which provides that jurisdiction in commercial matters lies with the court within whose circuit the agreement was concluded or executed in whole or in part, of the court within whose circuit the agreement is to be executed is nothing to the point.

24. It follows that, with these written submissions adding nothing to the debate, the Second Defendant's applications must be refused, the injunction must continue until the appointed Tribunal can determine the matters in dispute and the Second Defendant must pay the Claimant's costs of the hearing and its applications. The costs of the Claimant's original application are reserved but would be likely to follow the resolution of the dispute in arbitration and be payable by the losing party in reference.