Claim No. ARB 053/2025
Claim No. ARB 054/2025

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

Claim No. ARB-053-2025

OLAN

Claimant/Applicant

and

OBELIX

Defendant/Respondent

Claim No. ARB-054-2025

OBELIX

Claimant

and

OLAN

Defendant

AMENDED ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON the Defendant's Arbitration Claim No. ARB-053-2025 issued on 29 December 2025 (the "053 Claim") pursuant to Article 41 of the DIFC Arbitration Law and Part 43 of the Rules of the DIFC Courts ("RDC") seeking an order setting aside the arbitration award dated 26 September 2025 issued by the Dubai International Arbitration Centre ("DIAC") in arbitration proceedings between the Claimant and Defendant ("Arbitral Proceedings"), as corrected by the supplemental award dated 6 November 2025 (the "Final Award")

AND UPON the Claimant's Claim No. ARB-054-2025 dated 30 December 2025 (the "054 Claim") seeking an order recognising and enforcing the Final Award

AND UPON the Order of H.E. Justice Shamlan Al Sawalehi dated 16 January 2026, issued in the 054 Claim, by which it was ordered that the Final Award be recognised and enforced as binding within the DIFC pursuant to Article 42(1) and Article 43(1) of the DIFC Law Arbitration Law (the "E&R Order")

AND UPON the Order with Reasons of H.E. Justice Mark Pelling dated 31 March 2026 (i) consolidating the 053 and 054 Claims (the "Consolidation Order") and (ii) staying the E&R Order until after final determination of the 053 Claim (the "Stay Order")

AND UPON the Claimant/Applicant's application for orders (i) setting aside the E&R Order pursuant to either RDC 4.7 or 4.13; and (ii) refusing recognition and enforcement of the Final Award under Articles 42-44 of the Arbitration Law (the "Set Aside Application")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at a hearing held before H.E. Justice Mark Pelling on 6 May 2026 (the "Hearing")

IT IS HEREBY ORDERED THAT:

1. The 053 Claim is dismissed.

2. The Set Aside Application is dismissed.

3. The Stay Order is discharged.

4. The 053 and 054 Claims and Set Aside Applications are to be listed for the hearing of all costs and other consequential applications on the first available date 7 days after the issue of this Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 8 June 2026
Date of Re-Issue: 18 June 2026
At: 2pm

SCHEDULE OF REASONS

Introduction

1. This is the hearing of an Arbitration Claim by the Claimant and Applicant ("Olan ") against the Defendant and Respondent ("Obelix ") by which Olan seeks an Order pursuant to Article 41(2) and (3) of DIFC Law No. 1 of 2008 (the "Arbitration Law") setting aside a final award dated 26 September 2025 and a supplemental award dated 6 November 2025 (together referred to hereafter as the "Final Award") in a Dubai International Arbitration Centre ("DIAC") arbitration (the "Arbitration"). Obelix's case is that Olan has failed to establish any of the grounds on which it relies and that they are, and each of them is, nothing more than an impermissible attempt to appeal from the tribunal's resolution of the substantive issues between the parties.

2. There are currently two claims and two applications between the parties being:

(a) Olan 's claim with the case number ARB-053-2025 dated 29 December 2025 for orders setting aside the Final Award (the "053 Claim");

(b) Obelix 's claim with the case number ARB-054-2025 for an order recognising and enforcing the Final Award (the "054 Claim");

(c) Obelix 's without notice application made in the 054 Claim on 30 December 2025, for an Order pursuant to rule 43.17(2) of the Rules of the DIFC Courts ("RDC"), seeking recognition and enforcement of the Final Award (the "E&R Application") on which, on 16 January 2026, H.E. Justice Shamlan Al Sawalehi ordered that the Final Award be recognised and enforced pursuant to Articles 42(1) and 43(1) of the Arbitration Law (the "E&R Order"); and

(d) Olan 's Set Aside Application, made in the 054 Claim (the "Set Aside Application"), for Orders:

(i) setting aside the E&R Order pursuant to either RDC 4.7 or 4.13; and

(ii) refusing recognition and enforcement of the Final Award under Articles 42-44 of the Arbitration Law (the "Set Aside Application")

The procedural dispute

3. By an Order made by me on 31 March 2026, I ordered that the 053 Claim and the 054 Claim be consolidated, listed and considered together and that the E&R Order be stayed until after final determination of the 053 Claim (the "Consolidation Order"). When H.E. Justice Shamlan Al Sawalehi made the E&R Order, he had not been aware that the 053 Claim had been issued, and I made the Consolidation Order because there was no useful purpose to be achieved in permitting enforcement of an award that may be set aside subsequently. When making that Order, I considered that whether the Set Aside Application should be dismissed (or the E&R Order discharged) would be determined by the outcome of the 053 Claim.

4. Consistently with that approach, Obelix seeks an order at this Hearing dismissing the Set Aside Application as well as the 053 Claim. It submits that this Order ought to follow because (a) the Set Aside Application does not comply with RDC 43.72(2) and (4) because it (i) fails to identify any grounds under Article 44(1) of the Arbitration Law on which Olan relies as entitling it to an order setting aside the E&R Order; and/or (ii) was not accompanied by written evidence in support; and/or (b) the application is academic given that Olan has issued the 053 Claim and the legal principles governing that claim and the Set Aside Application are similar with each depending upon Olan establishing its entitlement to rely on one or more of the grounds set out in Articles 41(2) and 44(1) of the Arbitration Law.

5. Olan submits that the only matter that has been listed is its 053 Claim. That is wrong. By paragraph 1 of the Consolidation Order, it was directed that both the 053 Claim and the 054 Claim be consolidated and thereafter listed and considered together. Both Claims are to be determined today, no application for an adjournment of either having been made by either party.

6. Whilst it is correct to say that the Set Aside Application is not expressly mentioned in the Consolidation Order, it does not have to be. It stands or falls with the 054 Claim because it is an application made in the 054 Claim for the purpose of setting aside the E&R Order that had been made without notice in that Claim and which if upheld gives Obelix substantially all the relief sought in the 054 Claim. Given that the legal principles governing that 053 Claim and the Set Aside Application are similar and Olan's case in each is the same, it would make no sense for this Court not to dispose of the Set Aside Application at this Hearing. Whether the 053 Claim succeeds or fails, there would be an issue estoppel between the parties in respect of the issues decided in the 053 Claim so that those could not be argued over again in the Set Aside Application.

7. Whilst it is true to say there are some procedural arguments relied on by Obelix in relation to the Set Aside Application that do not arise in relation to the 053 Claim, that is immaterial. The procedural points would only be material if, hypothetically, the 053 Claim could fail but the Set Aside Application succeed or if the Set Aside Application was being considered ahead of determination of the 053 Claim. There is no prospect of the former because the governing principles and issues that arise in respect of each are identical and it is not suggested that any substantive issues arise in the Set Aside Application that do not arise in the 053 Claim, and the second does not arise.

8. For those reasons, I conclude that I should dispose of both claims and the Set Aside Application at this hearing. If the 053 Claim succeeds, then the E&R Order will have to be discharged. If the 053 Claim fails, then Set Aside Application will have to be dismissed and the stay on the E&R Order lifted.

The dispute the subject of the Arbitration

9. On 7 September 2017, Olan and Obelix entered into a contract for the development of the Olan Mal in Dubai (respectively the "Contract" and the "Project"). The governing law was expressly agreed to be the laws of the Emirate of Dubai and the laws of the United Arab Emirates - see clause 1.4 and Appendix A of the Contract. The Contract was in the FIDIC Form with some variations. Clause 20.6 of the Contract contained an arbitration agreement by which the parties agreed to resolve any disputes between them in respect of the Project by arbitration under the DIAC Rules with any such arbitration being seated in the DIFC.

10. The Arbitration leading to the Final Award was commenced on 1 September 2022 and was conducted in accordance with the DIAC Arbitration Rules 2022 by a tribunal of three arbitrators consisting of Ms. Odessa (nominated by Obelix), Mr. Omari (nominated by Olan) and Mr. Othmar (Chairman) (together the "Tribunal"). The Claimant in the Arbitration was Obelix and Olan was the Respondent. The Final Award was arrived at by a majority with a dissenting opinion being provided by Mr Omari. In the result, as corrected by the supplemental award, the Tribunal (by a majority) ordered Olan to pay to Obelix the sum of AED 144,256,287.49, being what Obelix had alleged was the balance due to Obelix from Olan in respect of the Project.

11. The Arbitration was made subject to Terms of Reference dated 16 December 2023. Rather than setting out the dispute between the parties, Paragraph 12 of the Terms of Reference set out a list of *"Issues to be Determined by the Arbitral Tribunal"* which included the following:

> "The following issues shall be determined by the Arbitral Tribunal:
>
> (a) Does the Tribunal lack jurisdiction to determine some or all of the disputes in this proceeding or, alternatively, was the commencement of these arbitration proceedings premature?
>
> (b) Is [Obelix] entitled to an Extension of the Time for Completion as requested?
>
> (c) Is [Obelix] entitled to additional payments and/or other additional costs, as requested?
>
> (d) Is [Obelix] entitled to prolongation costs as requested?
>
> (e) Is [Obelix] entitled to disruption costs as requested?
>
> (f) Is [Obelix] entitled to recovery of allegedly improperly deducted sums, as requested?
>
> (g) Is [Olan] liable to pay [Obelix] the claimed amounts?
>
> (h) Is it proper for the Arbitral Tribunal to order any other relief, declaratory or otherwise?
>
> (i) Is a party or parties liable to pay interest and, if so, for what time period and at what rate?
>
> j) Should a party or parties be liable for the costs of this arbitration and/or for the costs of another party or parties and, if so, in what proportion or amount?
>
> (k) Further issues may arise to be determined during the course of this proceeding."

Of these, issues (b), (d) and (e) are relevant to Ground 1. Issues (c), (f), (g) and (h) were very generally expressed issues to be resolved in the course of the Arbitration and Issue (k) contemplated that further issues might arise that would be resolved in the course of the Arbitration. It contemplated that the Tribunal would resolve whether the Tribunal had jurisdiction to determine some or all of the disputes that the parties had referred to arbitration and/or whether the commencement of the Arbitration was premature - see Issue (a).

12. As is apparent from the Terms of Reference, the Arbitration had included originally a disputed claim by Obelix for an extension of time (Issue (b)) and for prolongation costs (Issue (d)) and disruption costs (Issue (e)). Olan originally included a counterclaim for losses said to have been caused by the failure of Obelix to complete the project by the agreed date - see Paragraph 24 of Olan's Answer to Amended Request dated 12 January 2024, where, under the heading *"Counterclaims"*, Olan had advanced its delay claim in summary in these terms:

> "24. Due to the delays and breaches of contract by the Claimant, the Respondent is entitled to claim and/or set-off the following costs which are particularised below:
>
> a. Liquidated damages under the Contract.
>
> b. The Respondents deductions under the Contract.
>
> c. Prolongation costs under the Contract.
>
> d. Interest on items (a) to (c)"

13. By an email to the Tribunal (copied to Obelix's solicitors) dated 13 March 2024, Olan's legal consultants informed the Tribunal that it was abandoning its Counterclaim in these terms:

> "After careful consideration, we have decided not to pursue the Counter Claim in these proceedings. Instead, we will pursue it separately once the extent and severity of damages are clearer. This approach aims to eliminate any doubts about the alleged claim that the respondent counter claims solely aims to delay the current proceedings.
>
> The Respondent is confident that the Claimant's claim Lacks merit.

This revised position also supports the proceedings by avoiding the need to revise the advance on costs.

It's important to clarify that the Respondent's position above does not prejudice our rights to pursue our claims through different proceedings or any other means available by law."

There was no reservation of the right to claim either set off or (if available) abatement by reference to the liquidated damages provisions within the contract between the parties and as I have said set-off was not pleaded by Olan other than as part of its Counterclaims, which were abandoned by the email set out above.

14. The 13 March email was acknowledged by the Chairman on behalf of the Tribunal by an email in which he stated that *"We confirm that the Respondent is not going forward with its counterclaim in this proceeding."* Obelix's solicitors also acknowledged Olan's email stating that they had noted *".the Respondent's revised position with regard to its counterclaims which it is no longer pursuing."* Obelix decided not to pursue its extension of time claim or its claim for prolongation or disruption loss and expense.

15. Thereafter, Olan attempted to resile in part at least from the withdrawal of its counterclaims. Obelix's case was that Olan was not entitled to do so for the reasons set out in its Statement of Reply - these reasons included:

"3.7 Based on the withdrawal of the Respondent's counterclaims, the Tribunal confirmed it would proceed with its consideration of the Claimant's application in respect of the advance on costs.

3.8 The withdrawal of the Respondent's counterclaims was also relied upon by DIAC which had repeatedly sought details of the quantification of the counterclaim from the Respondent, but to no avail. Once the counterclaims were withdrawn, no separate advance was fixed.

3.9 Further, the withdrawal of the counterclaims was also relied upon by the parties and the Tribunal when considering and agreeing the amended directions following the extension of time granted to the Respondent for submission of its SOD.

3.10 The Respondent further confirmed the withdrawal of its counterclaims in its representative's email of 13 April 2024. In that email, the Respondent's legal representative even gave a reason "why the Respondent opted not to pursue a Counterclaim". As of 13 April 2024, the position was clear to the parties, the Tribunal and DIAC: no counterclaims were being advanced in this arbitration, they would instead be pursued in separate proceedings"

16. In light of Olan's attempt to resile from what Obelix considered to be its unequivocal withdrawal of its counterclaims, Obelix set out its case in relation to these events in these terms:

"3.12 The Respondent clearly and unambiguously withdrew its counterclaims, with no caveats or exemptions, in its email of 13 March 2024. This issue was settled. Both the Tribunal and the Claimant have relied upon the Respondent's position, and the Respondent has since reaffirmed its position, and it should not now be allowed to resile from that position.

3.13 The Respondent has not given any explanation for its change of position and has not sought permission from the Tribunal to revert from the settled position and reintroduce counterclaims .

3.16 The Claimant accepts that the Respondent has every right, having withdrawn its counterclaims in these proceedings, to pursue some or all of those claims in separate proceedings. It has, however, waived its right to pursue those claims in these proceedings.

3.17 Article 70 of the Federal Civil Transactions Law No. 5 of 1985 (the Civil Code) provides that:

"If a person seeks to set aside what he has conclusively performed, his attempt shall be rejected."

3.18 The Respondent has, of its own volition, decided to omit its counterclaims from these proceedings, as stated expressly and conclusively in its email to the Tribunal dated 13 March 2024.

3.19 The Respondent cannot now revoke what it had agreed. Such contradictory behaviour should be barred in accordance with the principles of estoppel and good faith, and the provisions of Article 70 set out above. Consequently, the Respondent should not be entitled to bring its counterclaims in these proceedings."

17. Aside from the procedural points so far mentioned, Obelix pleaded by way of defence to any claim for or claim to set off Liquidated Damages or delay damages that the Tribunal might permit Olan to argue, that the entitlement to liquidated or delay damages was governed by clause 8.7 of the contract between the parties and that this was expressly made subject to clause 2.5 of the contract, which it was pleaded provided that:

"If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract. the Employer or Engineer shall give notice and particulars to the Contractor.

The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount. to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor.

.The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with the Sub- Clause."

Obelix alleged that this provision *". sets conditions precedent which must be complied with by the Respondent if it intends to bring a claim against the Claimant. The UAE Courts have consistently held that conditions precedent, such as these, must be complied with."* Obelix then pleaded a previous decision of the Privy Council on the FIDIC Form (the form that had been used by the parties as the basis for their

contract) to the effect that a failure to give notice to a contractor precluded the employer from claiming or setting off or counterclaiming for liquidated or delay damages. This culminated at Paragraph 3.36 of the Statement of Reply with Obelix asserting that because Olan had not complied with the requirements of clause 2.5 it followed that Olan was *". not therefore entitled to escalate any claims in these proceedings against the Contractor and the Contractor is not obliged to respond to any such claims." In the absence of the required notices ". no Dispute has arisen between the parties." and that therefore ". even if the Respondent had not expressly and categorically withdrawn its counterclaims from these proceedings, they would not be admissible in these proceedings in any event."*

18. The Tribunal summarised the parties' submissions on this issue at Paragraphs 353-357 of the Final Award. At Paragraph 353, the Tribunal summarised Obelix's position that it had not pursued its claim for an extension of time or any prolongation costs (in construction contracts the usual result of an extension of time is that the contractor is entitled to recover costs referrable to the extension of time for completion of the project on the basis that the contractor is entitled to an extension of time by reference to events for which the parties have attributed risk to the employer). The Tribunal recorded at Paragraph 354 of the Final Award Obelix's submission that *"NO EOT has been brough(t) in these proceedings but that does not mean that no EOT is due (or that it cannot be advanced in separate proceedings)."* The Tribunal set out its determination of these issues at Paragraph 570 and following in the Final Award in these terms:

> "570. [Obelix] is not pursuing an extension of time claim in these proceedings.
>
> 571. Notwithstanding the discussions regarding [Olan's] withdrawal of all counterclaims, including the claim for liquidated damages, the Tribunal considers [Olan's] request for the Tribunal to declare its entitlement to apply liquidated damages is beyond the Tribunal's jurisdiction at this stage.
>
> 572. Subclause 8.7 provides that the application of liquidated damages is subject to claim notification in accordance with Subclause 2.5. [Olan] has not submitted evidence demonstrating that this condition precedent has been satisfied.
>
> 573. The tribunal does not deal with any extension of time issues and does not deal with any liquidated damages claims as the same are not before the Tribunal in this proceeding."

In the result, the Arbitration proceeded as a Final Account claim by Obelix for the balance of the sums it claimed were due from Olan. It recovered essentially what it had claimed was due on that basis.

19. I have set out what happened in relation to Obelix's extension of time, prolongation and disruption costs claims and Olan's Liquidated damages or delay counterclaim at some length because it lies at the heart of what is Ground 1 of Olan's case that the Final Award ought to be set aside because (it alleges) the Tribunal failed either adequately or at all to address Olan's case that any sum otherwise due to Obelix should be reduced by the Liquidated Damages that Olan maintained it was entitled to as a result of no extension of time being sought by or granted to Obelix by the Tribunal.

20. Other than as so far set out, I refer to the Final Award below only to the extent that it is necessary to do so when considering each of the grounds on which Olan relies as entitling it to an order setting aside the Final award.

The Framework Principles

21. The Arbitration Law provides for challenges to arbitral awards in Chapter 7, Article 41(1) of which provides that a challenge ". may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article." It follows that an application to set aside an award to which DIFC law applies can only succeed where:

> (a) the claimant is able to bring its challenge within one of the grounds set out in Article 41 (2) or (3) - see the judgment of the DIFC Courts Court of Appeal in Lachesis v Lacrosse [2021] DIFC CA 005 (29 December 2021) at [25]; and
>
> (b) persuades the court that it ought to exercise of its discretion by ordering the challenged award to be set aside - see Lachesis v Lacrosse (ibid.) at [26].

This second requirement arises because Article 41(2) is framed in the language of discretion, not obligation, so that if one of the grounds set out in Article 41(2) is made out, it is a question of discretion whether an order should be made setting aside the challenged award. I return to how that discretion should be exercised below.

22. Turning first to the Article 41 grounds or gateways, they are set out in Article 41(2) which in so far as is material is in these terms:

> "(2) .An arbitral award may be set aside by the DIFC Court only if:
>
> (a).. the party making the application furnishes proof that.
>
> (i) .;
>
> (ii) the party making the application was . unable to present his case;
>
> (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to Arbitration, or contains decisions on matters beyond the scope of the submission to Arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to Arbitration may be set aside; or
>
> (iv) the . arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, in the absence of such agreement, was not in accordance with this Law; or

(b) the DIFC Court finds that:

(i) .

(ii) .

(iii) the award is in conflict with the public policy of the UAE."

In considering a challenge under Article 41(2), it is important to remember that *". (n)either errors of law nor errors of fact on the part of the Tribunal, if any there were, disclose a ground upon which the Award could be set aside; the Arbitration Law is based on the Model Law which does not permit such challenges ."* - see *Lachesis v Lacrosse* (ibid.) at [45]. In consequence, it is necessary to *". guard against arguments on the merits being dressed up as legitimate complaints of unfairness demonstrating a failure of natural justice."*.

23. It is also necessary to bear in mind that where the public policy ground referred to in Article 41(2)(b)(iii) is relied on particular caution is required - see *Lachesis v Lacrosse* (ibid.) at [37 (iii)], where the Court of Appeal impliedly approved the observation by H.E. Deputy Chief Justice Omar Al Mheiri in Case No. ARB-009-2019, at [24], that *".this commercial and civil Court will rarely be in a position to make findings related to the public policy of the UAE without the assistance of expert evidence.."* and added:

> ".No evidence whatsoever has been adduced by the Appellant; on one view therefore, the Appellant has failed at the first hurdle to make good its case that the Award is in conflict with the public policy of the UAE for the purposes of Art. 41(2)(b)(ii) of the Arbitration Law."

As the Court of Appeal added at [37 (iv)] *".. the public policy exception is reserved for exceptional circumstances and the standard of proof required for it to be established is very high. Refusals under this exception are accordingly rare. I am unaware of an occasion when this Court refused to recognise or enforce an arbitral award for public policy reasons.."* The Court of Appeal does not suggest that there is any different legal standard of proof that would apply in such a case and none is identified in the Arbitration Law or Law No. 2 of 2025 (the "Courts Law"). Rather, the point being made by the Court of Appeal in this section of its judgment is that very strong evidence is required to discharge the applicable standard of proof where an award is being challenged on public policy grounds - see by analogy the reasoning in *Re H (Minors)* [1996] AC 563 per Lord Nicholls at 586, where he observed that *". the more serious the allegation . the stronger should be the evidence before a court concludes that the allegation is established on the balance of probabilities."* As I explain later in this judgment, not all challenges based on public policy require evidence but those that do not are likely to be very much the exception and are likely to arise only in very extreme situations.

24. The Arbitration Law is silent as to how a court should approach the exercise of discretion. Lachesis v Lacrosse (ibid.) decides that the Court has a discretion but does not explain how the exercise of the discretion under Article 41 should be approached. The Judge who decided the case at first instance had concluded that *". courts will generally inquire into the materiality of the procedural requirements not complied with and will not set aside an award if only formalities or technical provisions were not met." and that ". an arbitral award will not be set aside if only formal or technical objections to the award are made."*. In my judgment, this formulation is capable of being misunderstood. In principle, there is no distinction to be drawn between formal or technical requirements on the one hand and other requirements on the other, nor is it clear how in practice such a distinction could be objectively formulated and applied.

25. In my judgment, the distinction of principle that ought to be drawn is between (a) errors and omissions (whether formal, technical or otherwise) made by tribunals that come within the scope of one or more of the grounds set out in Article 41(2) but cannot be shown to have had at least a possible material effect on the terms of the challenged award on the one hand and (b) such errors and omissions which either had or may have had such an effect on the other. In my judgment, cases falling within (a) should generally result in a court refusing to exercise its discretion to set aside the award, whereas in cases falling within (b) it is likely a court will set aside the award subject to the qualifications I set out below. This is a principled approach because it will preclude a party from relying on an error or omission by the tribunal which had no material effect on the outcome simply because it is dissatisfied with the outcome whilst protecting a party from an adverse outcome resulting from an error or omission by the tribunal that comes within the scope of one or more of the Article 41(2) grounds.

26. It is important to bear in mind however that in this jurisdiction, the court does not have the power to substitute its own findings for that of an arbitral tribunal so it is neither necessary nor appropriate for a party to have to satisfy a court that the error relied on had resulted in an adverse outcome. In most cases, that would be an excessively high hurdle to impose in any event. In my judgment, the correct approach is to ask first whether there has been an error or omission that comes within one of the grounds identified in Article 41(2) and then to ask whether the claimant has demonstrated that but for the error or omission relied on (whatever it may be be), the tribunal might well have come to a different view and produced a significantly different outcome. If the answer to the second question is no, then in almost all cases the appropriate discretionary response will be to refuse to set aside the award. Where the answer is yes, then setting aside the award (or if and to the extent it is permissible, the relevant part of the award) is likely to be the appropriate response as the only available means available of remedying what would otherwise be a substantial injustice caused by the breach relied on. To decide otherwise would be to fail to provide an effective remedy for such injustice notwithstanding the terms of Article 41(2) and thereby undermine the confidence that parties to arbitration agreements seated in the DIFC can place in the DIFC Courts as an effective supervisory court.

Olan's Challenges

27. Olan relied at the Hearing on 5 bases on which it claims to be entitled to an order setting aside the Final Award. As explained already, it is necessary to consider in relation to each (a) whether it is able to bring its challenge within one of the grounds set out in Article 41 (2) and (b) if it can whether the court ought to exercise its discretion to set aside the Final Award by reference to that ground, which involves Olan demonstrating that but for the relevant error or omission, the Tribunal might well have reached a different view and produced a significantly different outcome.

Ground 1 - The Extension of Time Issue

28. Olan maintains that the Tribunal failed to consider an issue that it had been agreed between the parties should be determined because it was an

issue identified in the Terms of Reference applicable to the Arbitration.

29. Under the terms of the contact between the parties, the project the subject of their contract was required to be completed by a fixed future date with Obelix being obliged to pay liquidated damages ("LDs") for any overrun unless an Extension of Time ("EOT") was agreed. The parties agreed a revised completion date by a Memorandum of Understanding ("MoU") which provided for completion by 8 May 2021. Thereafter, Obelix sought four further extensions of time (referred to in these proceedings as "EoT Nos.2- 5"), which Olan rejected. On 1 September 2022, Obelix filed its Request for Arbitration and included within it its claim for an extension of time and for prolongation and disruption costs. On 16 December 2023, the Terms of Reference were signed which, as recorded earlier, included as one of the issues to be determined whether Obelix was entitled to an extension of time. As will be apparent from the chronology set out at the start of this judgment, this was all before Olan chose to abandon its counterclaims. Once that had occurred, there was no longer any need for Obelix to seek extensions of time in order to counter the LDs or delay damages claims as long as it chose not to maintain its claims for disruption and prolongation costs. Thus, the point relied on by Olan whilst material in December 2023 had ceased to be on 13 March 2024, when Olan abandoned its counterclaims. Whilst it is true to say that Olan had second thoughts about that, it was always Obelix's case that it was not entitled to for the reasons set out in its Reply which I set out earlier.

30. Olan's case before the Tribunal was that the Tribunal was obliged to determine the EOT issue in order to determine the Claimant's entitlement to deduct LDs and its case there and in these proceedings is that once an issue is included in the signed ToR, it cannot be unilaterally withdrawn by one party without the consent of the other. Its case in its closing submissions was that the Tribunal was required to determine whether the Defendant failed to complete the works within the stipulated time for the purpose of enabling Olan to set off what it claimed to be entitled to by way of LDs of AED 65,500,000. It's complaint in these proceedings is that the Tribunal failed to resolve any extension of time issues and failed to address its claimed entitlement to set off liquidated damages. It maintains that the Tribunal was at fault in allowing Obelix to withdraw its EOT claim even though resolving the extension of time claims was a prerequisite to deciding what LDs it was entitled to set off against sums otherwise due to Obelix. Olan go so far as to allege that in adopting this course:

> "It is apparent that as if the Tribunal was favouring the issues which were financially beneficial for the Defendant by unanimously handpicking the Defendant's favourable issues whether included or not included in the ToR ... In contract, the Tribunal rejected to determine the issue of LDs amounting to AED 65,000,000 simply by specifying that the matter does not fall before the Tribunal in the Arbitral Proceedings".

31. In my judgment, this is all misconceived in its own terms but on any view is not capable of coming within the scope of any of the grounds identified in Article 41(2) of the Arbitration Law. My reasons for reaching that conclusion are as follows.

32. As I have explained, by the time of the final hearing before the Tribunal, Obelix was seeking to recover sums it alleged to be due by way of final account from Olan. The final account sum claimed is set out in Paragraph 197-8 of the Final Award and was what Obelix alleged to be a final contract price (less sums paid already) of AED 135,239,377.68, net of interest. Olan's submission was that the claim should fail in its entirety for various reasons I need not consider for present purposes but in the alternative the sum claimed should be reduced for various reasons identified at Paragraph 203 of the Final Award including that:

> "[Olan] is entitled to apply the full liquidated damages, amounting to 10% of the Accepted Contract Amount, pursuant to clauses 2.5 and 8.7 in the Conditions of the Contract, to [Obelix's] account. The entitlement arises due to the absence of any claim within [Obelix's] Statement of Claim . requesting relief for failure to achieve the time of completion".

33. As noted already, the Tribunal addressed the parties' submissions on this issue at Paragraphs 353-357 of the Final Award and determined the issue at Paragraph 570 and following in the Final Award in these terms:

> "570. [Obelix] is not pursuing an extension of time claim in these proceedings.
>
> 571. Notwithstanding the discussions regarding [Olan's] withdrawal of all counterclaims, including the claim for liquidated damages, the Tribunal considers [Olan's] request for the Tribunal to declare its entitlement to apply liquidated damages is beyond the Tribunal's jurisdiction at this stage.
>
> 572. Subclause 8.7 provides that the application of liquidated damages is subject to claim notification in accordance with Subclause 2.5. [Olan has not submitted evidence demonstrating that this condition precedent has been satisfied.
>
> 573. The tribunal does not deal with any extension of time issues and does not deal with any liquidated damages claims as the same are not before the Tribunal in this proceeding".

34. Olan's case in relation to this issue as pleaded in the Particulars of Claim in the 053 Claim is that it is entitled to an order setting aside the Award because of a failure by the Tribunal *".to determine a mandatory issue expressly included in the Terms of Reference, namely the Extension of Time ("EOT") entitlement."* This is incoherent because it ignores the withdrawal by Obelix of its extension of time, disruption and prolongation costs claims. Absent an extension of time, in principle Olan would have been entitled to recover LDs for the period between the date when contractually the Project should have been completed and the date when in fact it was completed. However, that is subject to the points pleaded by Obelix as to why that was not permissible - that is that (a) the Liquidated Damages and delay claims had been abandoned by Olan; but in any event (b) Olan had failed to comply with the conditions precedent to making such a claim. It was those issues that were adjudicated upon by the Tribunal in Paragraphs 570-573 of the Final Award set out above. It did so by reference to issues that were live on the pleadings (the relevant parts of which I have set out above) and in circumstances where Olan had every opportunity to address the points being made. For that reason, this challenge is no more than an impermissible attempt to appeal from factual and legal findings made by the Tribunal.

35. In my judgment, the assertion that the Tribunal was bound to adjudicate on the extension of time claim because of what appeared in the Term of Reference must be rejected for the following reasons. Firstly, the only party entitled to advance an extension of time claim was Obelix and Obelix had chosen to withdraw that claim (and its associated prolongation and disruption costs claims). A tribunal is concerned with the resolution of disputes and if Obelix had resolved not to continue its claim for an extension of time whether or not associated with a claim for prolongation costs was a matter exclusively for it. In those circumstances, Olan should have pleaded and then argued for either an abatement or set off of the

sums to which it was allegedly entitled by way of liquidated damages by reason of the project being completed on a date later than the last agreed date for completion. That is what apparently it had argued for. However, it lost on that issue for the reasons that it identified in Paragraph 572 of the Award. The issues on which the Tribunal decided that issue were all manifestly pleaded issues as I have explained and Olan had a more than adequate opportunity to address them. Furthermore, there is a real difficulty in a party seeking to assert either a set off or an abatement when the issue has not been pleaded. It appears that abatement was never pleaded and set off was pleaded only in the Counterclaim and that had been abandoned without any reservations. It is difficult to see how Olan could have advanced a set off defence in those circumstances. However, the Tribunal chose not to rely on that point for its conclusion - see Paragraph 571 of the Final award. It concluded that it had no jurisdiction to entertain such a claim or any such claim was inadmissible because Olan had not complied with the relevant conditions precedent - see paragraph 572 - 573 of the Final Award. Whether that conclusion was right or wrong is immaterial because errors of law or fact are not grounds for setting aside an award under Article 41(2) of the Arbitration Law.

36. In those circumstances, Olan has failed to prove in relation to this ground either that it was unable to present its case (within the meaning of Article 41(2)(a)(ii)) or that the Final Award deals with a dispute not contemplated by or not falling within the terms of the submission to Arbitration, or contains decisions on matters beyond the scope of the submission to Arbitration (within the meaning of Article 41(2)(a)(iii)). In that regard, I would respectfully endorse and adopt what Lord Mance said in *ksaystroy-2020 LLP v Metallinvestatyrau LLP* AIFC-C/CFI/2022/0012 concerning the provision within the AIFC Arbitration regulations that is identical to Article 41(2)(a)(iii) of the Arbitration Law namely:

> ". The question .. is not, therefore, whether a party complaining agrees or disagrees with the award or views it as "wrong". It is equally not whether the Court itself agrees or disagrees with the award or regards it as "right" or "wrong". It is one of the basic features of most commercial arbitration that arbitration awards are generally final and non-appealable (or "non-reviewable") on their factual or legal merits. This is a feature often viewed by commercial parties - at least until they lose - as an advantage of arbitration. Parties who agree to arbitration need to be aware of this principle of finality or non- reviewability. They need to be clear before agreeing to any arbitration agreement that this is what they want - and also that this is what they will have to accept if they lose for reasons with which they do not agree. Court proceedings are different, because court procedures generally enable at least one appeal on factual or legal issues, subject to any requirement for permission to ensure some minimal prospect of success."

37. Olan complains that the Tribunal have not dealt with its submissions or all of its submissions as to why it was entitled to claim set off set out in its closing submissions in particular at paragraphs 3.2.17, 3.2.19, 3.2.26 and 3.2.32. This is a submission that I should treat silence as amounting to a failure to consider or address those submissions. I do not accept that is the correct analysis. The Tribunal has considered the issue and come to a conclusion on it. It cannot be said therefore that the Tribunal has failed to address the issue. It could be said that the Tribunal has failed to consider every argument that was put to it on behalf of Olan. However, that is not a failure to consider the issue that arises. Whether a tribunal gives more, less or no weight to an argument or a particular piece of evidence is not an issue in this sense. A tribunal is not required to set out each step by which is reaches a conclusion on a particular issue that is put to it.

38. The distinction between issues on the one hand and arguments or points made to a tribunal on the other is one that has been drawn consistently by the English courts in the context of challenges under s.68 of the Arbitration Act 1996 and there is no distinction of principle on the issue I am now considering between the approach to be adopted in such cases and that to be adopted when considering a challenge under Article 41(2) of the Arbitration Law. The most recent authoritative review is set out in the judgment of the privy Council in RAV Bahamas Ltd v Therapy Beach Club Inc. [2021] AC 907, a decision concerning section 90 of the Bahamas Arbitration Act 2009 (a provision that is materially the same as s.68 of the English Arbitration Act 1996). In that context, it was observed that:

> "while the arbitrators must deal with an issue, it does not matter for these purposes that they have dealt with the issue badly; and that a court must be very careful not to be hypercritical in determining whether the issue has been dealt with by the arbitrators".

The issue that is relevant in this case is whether Olan was entitled to set off the sums it claimed were due to it as liquidated damages. The Tribunal dealt with the issue albeit in a manner that Olan describes in Paragraph 28.2 of its written submissions as an *". exceptionally cursory disposal of the issue."* That is not an available ground of challenge under the Arbitration Law any more than it would be under the Arbitration Act or under the Model Law. Whilst many judges and arbitrators would have addressed the issue in fuller terms than the Tribunal that is immaterial. The Tribunal identified the issue and reached a conclusion on it by reference to what Obelix had pleaded was a complete answer to it. That is sufficient.

39. I do not accept that the procedure adopted by the Tribunal was not in accordance with the agreement of the parties within the meaning of Article 41(2)(a)(iv) either. It is unarguable that the effect of Terms of Reference can be to force a party to advance a claim it chooses subsequently not to advance. Arbitrators are appointed to resolve disputes. In this context, if Obelix chooses not to seek a declaration that it is entitled to an extension of time, then there is no dispute to resolve. The only issue that remained was whether Olan was entitled to set off LDs it claimed to be entitled to by reason of the delay that occurred and which had not been regularised by the grant of extensions of time. However, that failed for reasons that had been pleaded by Obelix and accepted by the Tribunal at paragraph 572 - 573 of the Final Award. That decision is not amenable to challenge on its merits.

40. If and to the extent that there has been a breach of the procedure set out in Article 24.5 of the DIAC Rules because there has been no order or award permitting Obelix to withdraw its extension of time claim and if and to the extent that was a breach of Article 41(2)(a)(iv) I consider that to be classically the sort of error (if error it be) that would result in a court refusing to exercise its discretion to set aside the Final Award applying the principles referred to earlier. The error is not one that could have made any difference to the outcome because had attention been drawn to it at the time, the necessary procedural steps could have been taken and the substantive outcome thereafter would have been the same.

Ground 2: The Alleged Denial of Olan's Right to Authenticate Critical Documents

41. This challenge is based on an assertion that a document referred to in the Arbitration as *"Notice of Variation 073"* or *"NOV 073"* was a forgery because although dated 9 September 2020, it was apparently signed by Mr Osie who had ceased to be involved with the Project a little over a year earlier on 27 June 2019. Olan requested production of the original but that was refused by Obelix and the Tribunal declined to direct production of the original. Later the Tribunal rejected a submission by Olan that it should declare the (allegedly) forged document inadmissible.

42. Obelix submits that this challenge should be rejected because the issue was raised and determined by the Tribunal - see Paragraphs 141-161, 215-232 and 457-466 of the Final Award. Its submits that Olan had an ample opportunity to address the Tribunal on this issue; the Tribunal considered the issue as required by Article 25.2 of the DIAC Rules and Article 48(3) of the UAE Civil Procedure Code and that in consequence there has been neither a breach of Article 41(2)(a)(ii) or (iv) of the Arbitration Law.

43. Olan relies on Paragraph 7 of Procedural Order No.1 which in so far as is material provided that:

> "All documents submitted to the Arbitral Tribunal are deemed authentic and complete, including those submitted in copy, unless another Party disputes their authenticity and/or completeness."

44. The Tribunal dismissed the application to suspend the proceedings pending resolution of a criminal complaint about forgery. The Tribunal was entitled to reach that conclusion. Its decision is incapable of review under any of the provisions of Article 41 of the Arbitration Law.

45. Similarly, in relation to the request for originals, the Tribunal addressed that at Paragraph 462-466 of the Final Award. It did so incorporating earlier rulings on this issue that it had set out in email directions with reasons. It did so in terms that included the observation set out by the Tribunal in an email of 27 February 2025 that under Article 25.2 of the DIAC Rules, the Tribunal had the power to determine the admissibility or weight of any evidence proffered to it and the conclusion that *". if a party provides solid evidence that a copy of a document is not what it is proffered to be, then the Tribunal can exclude the same from the evidence."* but that Olan *". has not provided the Tribunal with any cogent evidence that these copies of unreliable."* The Tribunal added:

> "The Tribunal has examined the documents in question. We find the variation orders . bear the signatures of the relevant people, with apparent authority to sign those documents. Absent evidence of fraud or forgery the Tribunal finds these documents to be reliable. . The tribunal will proceed to rely on these copies . unless [Olan] provides evidence that the person whose signatures appear on these documents did not actually sign them or that the documents are a fraud, that is not real documents made in the normal course of the business of the project or are a product of forgery."

By an email of 14 April 2025, the Tribunal ruled that NOV 73 would be admitted and at Paragraph 465, the Tribunal indicated that it would not reverse that decision.

46. Olan maintains that the Final Award should be set aside on the basis that *"Article 26(1) of the Arbitration Law confers on the parties the power to set down the procedure to be followed by the Tribunal"*, that the parties did so in the terms set out in Procedural Order No.1 and that the Tribunal have chosen to proceed other than by reference to what had been agreed between the parties as set out in Procedural Order No.1.

47. Article 26 of the Arbitration Law provides:

> "(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings.
>
> (2) In the absence of such agreement, the Arbitral Tribunal may, subject to the provisions of this Law, conduct the Arbitration in such manner as it considers appropriate. The power conferred upon the Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

Olan submits that Procedural Order No. 1 is clear that a document will no longer be deemed authentic once its authenticity is challenged by either party. As far as it goes, I agree with this submission. However, Olan goes on to submit that there is *". no evidential threshold, whether of "cogent" or "solid" evidence or any other standard, that the challenging party must pass to put the authenticity of a document into question."* Whilst that is so, it is because the Procedural Order is entirely silent as to how the Tribunal should determine authenticity where authenticity is disputed. This is unsurprising given the terms of the final sentence of Article 26(2) of the Arbitration Law. That being so, the absence of an evidential threshold specified in Procedural Order No.1 is immaterial other than to the extent that it demonstrates that Procedural Order No.1 is irrelevant to the admissibility issue. It is concerned only the position regarding authenticity where authenticity has not been challenged by one of the parties.

48. Whilst it is arguable that it should be for a party proffering a challenged document to prove authenticity once authenticity is challenged, the Tribunal did not adopt that approach and Olan is severely critical that it did not do so - see paragraph 39.2 of its written submissions. If and to the extent Olan objects to that, it is an impermissible challenge to the legal and/or factual findings of the Tribunal. In any event, given that there was no agreement as to how authenticity was to be addressed it was for the Tribunal *". to determine the admissibility, relevance, materiality and weight of any evidence."* - see Article 26(2) of the Arbitration Law. In my judgment, it is unarguable that by proceeding as it did, the Tribunal purported to override the procedure set down in Procedural Order No.1. To argue that the document was not evidence is equally unarguable - the document was being tendered as evidence and the Tribunal was entitled to accept it, reject it or give such weight as it judged appropriate and it did so. Exactly similar considerations apply to Olan's criticism of the Tribunal's reliance on Article 25(2) of the DIAC Rules which are in materially similar terms to Article 26(2) of the Arbitration Law. In light of these conclusions, I reject the submission that the Tribunal's approach to this issue constituted a breach of Article 41(2)(A)(iv) of the Arbitration Law.

49. Olan's submission that by declining to direct release of the original the Tribunal thereby impeded Olan's ability to present its case contrary to Article 41(2)(a)(ii) is one that I must also reject. Olan presented its case but is dissatisfied with the outcome. Evidence was presented by Olan on the forgery issue including from a handwriting expert. The Tribunal chose to reject that evidence. There is no evidence (as opposed to assertion or submission) that the material presented by Olan to the Tribunal would have been any different or more cogent if its chosen handwriting expert has access to the original as opposed to a copy.

Ground 3: The Refusal to Appoint a Tribunal-appointed Expert

50. It is common ground that the Tribunal had a discretion to appoint its own expert both by operation of Paragraph 15.3 of the Terms of

Reference and also Article 33(1)(a) of the Arbitration Law. Olan's submission to the Tribunal had been that Obelix was not willing to appoint a delay expert (because, as I explained, it had withdrawn its extension of time and prolongation and disruption expenses claims and Olan had withdrawn its counterclaim) whereas Olan apparently considered that the issue of delay was a live issue between the parties.

51. Obelix was fully entitled to take the position it took for the reasons that I have explained at length above. Olan chose to adduce evidence from a delay expert. That does not even arguably lead to the conclusion that the Tribunal should have, or that Obelix needed to or was obliged to do so. The notion that by failing to appoint its own expert, the Tribunal either (a) impeded Olan's ability to present its case on the extension of time or LDs set off issues; or (b) failed to treat the Parties equally contrary to Article 41(2)(a)(ii) of the Arbitration Law or (c) failed to comply with the parties' agreement as to procedure contrary to Article 41(2)(a)(iv) of the Arbitration Law is entirely unarguable. If and to the extent that Olan had a case for submitting to the Tribunal that Obelix's expert was not sufficiently objective or neutral, there was nothing to prevent Olan from so submitting, at which point it was for the Tribunal to assess his evidence in the usual way. If and to the extent Olan do not accept the Tribunal's assessment that is a decision which is not reviewable under the Arbitration Law.

Ground 4 - Excess of Authority and Prematurity

52. Olan alleges that in breach of Article 41(2)(a)(iii), the Final Award dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitration by adjudicating premature retention claims, adjudicated a Final Account that had not yet crystallised, and awarded a balance due based on post-completion documents, while at the same time refusing to adjudicate liquidated damages arising from the same post-completion period. It is difficult to understand the nature of this challenge not least because Olan's Claim Form fails to identify which parts of the Award are under challenge under this heading. The attempt to incorporate by reference the two witness statements that Olan relies on does not assist either both because adopting that practice is flatly contradictory to RDC 43.7 and because they do not provide much further particularisation that assists in identifying what elements of the claim it is being alleged the Tribunal should have refused jurisdiction over or which are said to be premature.

53. What was referred to arbitration is apparent from the Notices of Dispute served by Obelix. Those documents are both lengthy and detailed. It is entirely clear from the terms of those documents that Obelix considered the Project to be substantially complete and that it was seeking payment of its Final Account including ". amongst others, the original Contract Price, variations and provisional sums". The Notices exhibited a final account document *". which identifies the elements of our account that have not been agreed, together with our respective valuations."* and in respect of which Obelix reserved *". the right to update it to reflect any further information that becomes available."* The document then descends into a substantial amount of detail about the various claims. A second Notice was issued on 26 January 2022, because after *". we issued the Earlier Notice, some progress was made in settling the disputed items set out in the Earlier Notice."* and warned that *". we will be entitled to commence arbitration pursuant to Clause 20 if and to the extent that the disputed items identified in this Notice are not agreed."* The second Notice focussed on an *". updated final account. which identifies the elements of our account that have not been agreed, together with our respective valuations."* The focus of attention was plainly therefore on the elements making up the Final Account rather than specific sums being claimed for each such element. It was in that context that Obelix again expressly reserved the right to update the Notice to reflect any further information that became available. It then followed the pattern of the earlier Notice. Although Olan alleges in its skeleton that in each Notice *". Obelix stated what it argued was the "Final Account, as of the date of the [relevant] Notice"*. That is not what the Notices say.

54. It is plainly the case that the contents of the Notices and in particular the second Notice provide the context against which the very succinctly and generally expressed issues identified in the Terms of Reference (set out in full earlier) are to be read. It is not surprising, given the terms of the Notices of Dispute noted above, that Paragraph (k) within the Terms of Reference issues contemplates that *"Further issues may arise to be determined during the course of this proceeding"*. The parties thereby agreed that the Tribunal would have jurisdiction to determine such further issues. In the context of what appears in the Notices of Dispute, Paragraph (k) is referring to Obelix's reserved right to update the final account document attached to the Notices of Reference to reflect any further information that becomes available. As is to be expected of rational businesspeople in a dispute concerning a final account, what the parties had agreed was to be determined were the sums due in respect of each element identified in the Notices of Dispute as coming within the scope of the Final Account as the detail developed in the course of the reference.

55. Whilst I accept that adjudicating on heads of claim or elements within the claimed Final Account that do not appear in the Notices of Dispute might arguably justify a submission of the sort I am now considering, that is not so where the debate concerns the values to be attributed to the heads of claim or elements of the Final Account referred to in the Notices of Dispute. It is wrong in principle to suggest that such an alteration would require the commencement of a yet further arbitration, particularly where the original Notices of Dispute were served in respect of a disputed Final Account claim (where by definition the dispute concerns or includes the final sum due in respect of each element of the Final Account where the sums due in respect of each head would be capable of altering as the evidence developed.

56. The Tribunal concluded at paragraph 481 of the Final Award that there had been no alteration in the heads of claim since the Notices of Dispute had been served. Olan has not demonstrated otherwise. The Tribunal was fully entitled to find, as it did in paragraph 481, that the value of heads of claim are likely to change during the course of an arbitration. The Tribunal concluded in paragraph 482 that Obelix was not bringing new heads of claim late in the process and had not changed its claims from those identified in the Notices of Dispute. It is not suggested otherwise.

57. What appears to be suggested is that by altering the sums being claimed as the evidence developed, the claims became ones that the Tribunal lacked jurisdiction to determine. I reject that submission as simply wrong. Article 41(2)(a)(iii) is not engaged in the circumstances relied on by Olan. It is concerned with awards that deal with issues beyond the scope of a submission to arbitration. It is not concerned with the valuation of heads of claim that have been submitted to arbitration. That is entirely consistent with what Lord Mance said in CKH v CKG [2022] SGCA(I) 4 in particular at [16] where he commented that whether *". a matter falls or has become within the scope of the agreed reference depends ultimately upon what the parties, viewing the whole position and the course of events objectively and fairly, may be taken to have accepted between themselves and before the Tribunal.[T]he question of what matters are within the scope of the parties' submission to arbitration is answerable by reference to five sources: the parties' pleadings, the agreed list of issues, opening statements, evidence adduced, and closing submissions at the arbitration"* Looked at in this way, the Tribunal were entitled to arrive at the conclusion it arrived at on this issue. The matters in dispute never altered (other than to the extent that Olan abandoned its Liquidated damages and delay claims and

Obelix abandoned its extension of time, prolongation and disruption claims), only the value to be attributed to them.

58. I am unable to accept Olan's submission that it was in some way prevented from advancing a proper defence to Obelix's claims - the claims were ones that as the Tribunal held were well known to Olan throughout the course of the proceedings - see Paragraph 487 of the Final Award. In reality, this element of Olan's challenge is focussed on what it maintains was an asymmetry of approach because the Claimant's corresponding claims for liquidated damages, which arose from the same contractual framework and time period, were excluded on jurisdictional grounds. However, this is misconceived for the reasons I explained at length in relation to Ground 1. That claim failed because the Tribunal concluded that under the terms of the parties' contract, Olan was required to but had failed to serve the notices necessary for it to maintain a Liquidated damages claim. That conclusion is not open to challenge in these proceedings for the reasons already explained.

Ground 5 - Conflict With UAE Public Policy

59. If a challenge is based on public policy, then a claimant must either adduce evidence in support of that case applying the principles identified earlier or must demonstrate that the award *"fundamentally offends the most basic and explicit principles of justice and fairness"* or establish *"intolerable ignorance or corruption on the part of the arbitral tribunal"* - see Lucineth v Lutina Telecom Group Ltd [2019] DIFC ARB 005 (08 Aug 2019 per H.E. Justice Sir Jeremy Cooke) at [13] followed in *Muzama v Mihanti* [2022] DIFC ARB 004 (08 February 2023). No evidence was adduced relevant to this issue so Olan must be able to point to a circumstances or combination of circumstances that would satisfy H.E. Justice Sir Jeremy Cooke's formulation.

60. Its allegation advanced at the Hearing was that this test was satisfied in the circumstances because the Tribunal placed specific reliance on NOV 073 in circumstances where it had been provided with evidence that it was the product of forgery and so posed a substantial risk of the Award being tainted by fraud. It was alleged that to allow such an Award to stand would be contrary to the public policy of the UAE because it would undermine the ongoing investigations of the Dubai police. I reject that submission. It amounts to no more than another way of putting the point already considered - that Olan does not accept the Tribunal's evidential assessment in relation to that issue notwithstanding that the parties had agreed that the Tribunal would have the power to determine the admissibility and weight of any evidence adduced before it. The conclusion of the Tribunal has no impact whatsoever on the investigation by the Dubai Police. It will conduct its enquiries entirely independently of the conclusion of the Tribunal.

Conclusions

61. In light of these conclusions:

(a) I dismiss the 053 Claim and the Set Aside Application; and

(b) I direct that the stay on the E&R Order be lifted with immediate effect.

62. I will determine all consequential matters including the incidence of costs at a hearing to be convened on the first available date seven days after service of this Order and schedule on the parties.