IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TECHTERYX LTD.

Claimant

and

(1) ARIA COMMODITIES DMCC
(2) MASHREQ BANK PSC
(3) EMIRATES NBD BANK PJSC
(4) ABU DHABI ISLAMIC BANK PJSC

Defendants

REASONS FOR THE ORDER OF H.E. JUSTICE MICHAEL BLACK KC DATED 16 MAY 2025 AS AMENDED ON 19 MAY 2025

INTRODUCTION

1. These are the reasons for my Order dated 16 May 2025 as amended on 19 May 2025 following the hearing that took place on 12 May 2025.

2. This judgment should be read with my judgments dated 24 March 2025 and 17 April 2025.

3. In brief, the Claimant claims to be the beneficial owner of the sum of USD 456 million representing reserves backing a US-denominated 1:1 stablecoin called "TrueUSD". The reserves were held by two trust companies in succession, Legacy Trust Company Limited and First Digital Trust Limited. It is alleged that those companies purported to invest two tranches of the reserves in a Cayman investment fund, ARIA Commodity Finance Fund. The first tranche was invested between July and December 2020 in the sum of USD 97 million.

4. The second tranche was made by way of 6 payments between June 2021 and March 2022. Instead of paying the monies to ARIA Commodity Finance Fund they were paid to a Dubai entity, ARIA Commodities DMCC (the First Defendant), into accounts with certain Dubai banks, namely the Second, Third and Fourth Defendants.

5. The Managing Director of the First Defendant is Mr Matthew William Brittain. His wife was at all material times its sole shareholder. He is also the CEO and Chief investment Officer of ARIA Commodity Finance Fund and the sole director and sole shareholder in ARIA Capital Management, a Cayman company, the ultimate owner and controller of the Fund, being its investment manager. On the evidence currently before me, it appears that Mr Brittain has *de facto* control over both the First Defendant and the Fund as (save perhaps in respect of one subsidiary - ARIA Commodities Ukraine, where the ultimate beneficial owner is said to be one Oleg Levchenko) no other person involved in the management of either group is mentioned.

6. All of the sums invested had, by March 2025, fallen due for redemption. It is common ground that ARIA Commodity Finance Fund has returned only USD 65.15 million. This leaves an unpaid balance of USD 501.85 million. It is unclear to me whether the redemption sum was paid in respect of the first tranche or second tranche invested.

7. The Claimant has commenced proceedings in the High Court of the Hong Kong Special Administrative Region with Claim No. HCA 161/2023 against (amongst others) the First Defendant and ARIA Commodity Finance Fund on 3 February 2023. In those proceedings the Claimant claimed against the First Defendant the following relief:

> (1) A declaration that the First Defendant holds and at all material times held an aggregate sum of not less than USD 456,000,000 transferred from First Digital Trust Limited together with their traceable proceeds, substitutes or fruits, on constructive trust for the Claimant;
>
> (2) An inquiry as to what assets in the hands of the First Defendant represent the said sums;
>
> (3) An order that the First Defendant do account to the Claimant as constructive trustee the said sums, together with their traceable proceeds, substitutes, income, or fruits and all such assets or part thereof;
>
> (4) An injunction restraining the First Defendant from disposing of, dealing with or otherwise diminishing the value of the said sums, together with their traceable proceeds, substitutes, income or fruits; and
>
> (5) Damages for fraud, fraudulent misrepresentation and/or conspiracy.

8. It was alleged in Claim No. HCA 161/2023 that:

> (1) There were no legitimate reasons for the payment of the second tranche to the First Defendant;
>
> (2) The investment funds were misappropriated by the First Defendant;

(3) No-one had any authority to invest in the First Defendant;

(4) There were no audited financial statements of ARIA Commodity Finance Fund;

(5) ARIA Commodity Finance Fund has not issued any annual returns or audited financial statements to the Cayman Island Monetary Authority (**"CIMA"**);

(6) ARIA Commodity Finance Fund has never issued any share certificates to Legacy Trust Limited or First Digital Trust Limited; and

(7) ARIA Commodity Finance Fund has not kept a share register as required by Cayman Law.

9. The Claimant commenced a second set of proceedings in Hong Kong on 24 November 2023 against ARIA Commodity Finance Fund, amongst others, in respect of the first tranche of investment (Claim No. HCA 1906/2023).

10. Truecoin LLC (from whom the Claimant acquired the TrueUSD business and a party to HCA 1906/2023) commenced SIAC Arbitration proceedings against the Claimant (SIAC Case No. 602/2023). On 18 October 2024, Truecoin LLC served its Statement of Claim and on 24 December 2024, the Claimant filed an application challenging the tribunal's jurisdiction or, alternatively, seeking a stay of the arbitration proceedings pending the conclusion of HCA 161/2023 in Hong Kong. The tribunal was scheduled to hear the application on 15 and 16 May 2025.

11. On 28 February 2028, I granted relief on a without notice application of the Claimant in the following terms:

Proprietary Injunction against the First Defendant

[7.] Until the Return Date or further Order of the Court, the First Defendant must not in any way dispose of, deal with, or diminish the value of the following cash or assets:

(1) the sum of USD 456,000,000 transferred to it from Legacy Trust Company Limited and First Digital Trust Limited, including in particular (without limitation):

(i) any monies in the First Defendant's bank account no. AE600330000019000065359 with the Second Defendant;

(ii) any monies in the First Defendant's bank account no. AE940260000515772100902 with the Third Defendant;

(iii) any monies in the First Defendant's bank account no. AE160500000000019012559 with the Fourth Defendant; and

(2) any traceable proceeds, profits, substitutes, assets, interest or other income received or derived from the monies referred to in sub-paragraph (1).

[8.] The First Defendant must not cause, permit or encourage any third party presently with custody or control of the assets referred to in paragraph 7 to in any way dispose of, deal with or diminish the value of the same.

Freezing order against the First Defendant

[9.] Until the Return Date or further Order of the Court, the First Defendant must not:

(1) remove from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000; or

(2) in any way dispose of, deal with or diminish the value of any of its assets whether they are in or outside Dubai up to the same value.

[10.] Paragraph 9 applies to all the First Defendant's assets whether or not they are in its own name and whether they are solely or jointly owned. For the purpose of this Order, the First Defendant's assets include any asset which it has the power, directly or indirectly, to dispose of or deal with as if it were their own. The First Defendant is to be regarded as having such power if a third party holds or controls the asset in accordance with its direct or indirect instructions.

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Provision of Information

[14.] The First Defendant must within 4 working days of service of this Order and to the best of their ability provide the following information:

(1) The First Defendant must inform the Applicant's legal representatives of all of its assets worldwide exceeding USD 10,000 in value whether in its own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) The First Defendant must inform the Applicant's legal representatives of:

(i) any onward dealings with any of the funds received from Legacy Trust Company and First Digital Trust Limited, including as to who was the ultimate beneficiary of such dealings;

(ii) the current, value, location and details of all of the sums received from Legacy Trust Company and First Digital Trust Limited, including as to who is currently the ultimate beneficiary of such funds; and

(iii) the current value location and details of any traceable proceeds, profits, substitutes, assets, interest or other income received or derived from the funds, including as to who is currently the ultimate beneficiary of such assets.

[15] Within 7 calendar days after being served with this Order, the First Defendant must swear and serve on the Applicant's legal representatives an affidavit setting out the above information.

[16] Further, the First Defendant must produce any documentation recording or relating to the information provided under paragraph 14(2) of this Order together with its affidavit.

Exceptions to the Order

[17] Exceptions:

(1) This Order does not prohibit the First Defendant from dealing with or disposing of any of its assets in the ordinary course of business. However, this exception does not apply to any assets subject to the prohibitions in paragraph 7 of this Order.

(2) This Order does not prohibit the First Defendant from spending a reasonable sum on legal advice and representation. But before spending any money on legal advice and representation the First Defendant must tell the Applicant's legal representatives where the money is to come from

(3) The First Defendant may agree with the Applicant's legal representatives that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing.

12. There were other terms of the Order:

(1) **[5]** This Order is an Enforcement Order, and the Applicant is granted liberty to enforce this Order before the Dubai Courts. The Registrar of the DIFC Court is directed to issue the appropriate letter to the Chief Justice of the Dubai Courts requesting enforcement of this Order after the filing of the necessary application and ratification pursuant thereto. [This was done, and on the Dubai Courts issued letters to the Second to Fourth Defendants on 28 March 2025 and 22 April 2025 in respect of bank accounts held with the Second to Fourth Defendants enforcing the Order by way of precautionary attachments].

(2) **[6]** In this Order, the *"Relevant Proceedings"* shall mean the proceedings before the High Court of the Hong Kong Special Administrative Region under Claim Numbers HCA 161/2023 and HCA 1906/2023 and before the Singapore International Arbitration Centre Case Number 602/2023.

(3) **[Schedule B, paragraph 6]** The Applicant will not without the permission of the Court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in the DIFC or in any other jurisdiction, other than for the Relevant Proceedings.

13. In this judgment, I will adopt the following abbreviations:

	THE PARTIES TO THE PROCEEDINGS
Techteryx	The Claimant
DMCC	The First Defendant
Mashreq	Mashreq Bank PSC, the Second Defendant
ENBD	Emirates NBD Bank PJSC, the Third Defendant
ADIB	Abu Dhabi Islamic Bank PJSC, the Fourth Defendant
	OTHER RELEVANT PARTIES
ACM	ARIA Capital Management (Cayman) which is the holder of the management Shares in the Fund
ARIA East Africa	Aria Industries East Africa Limited (wrongly described as "Aria Bio Industries East Africa" in MWB-A-1 (Tanzania))
ARIA Bio Industries TZ	Aria Bio Industries International Limited, (Tanzania)
ARIA Bio Industries SA	Aria Bio-Industries (Pty) Limited (South African)
ARIA Energy SA	Aria Energy Trading Pty (South Africa)
ARIA Cayman	Aria Commodities (Cayman) Limited
ARIA Commodities TZ	Aria Commodities International Limited (Tanzania)
ARIA AAAX	Aria AAAX Australia Pty Limited, (Australia)
ARIA US	Aria Commodities US LLC (USA)
ARIA Americas	Aria Commodities Americas LLC (USA) a direct subsidiary of ARIA US
ARIA Geneva	Aria Commodities Geneva SA (Switzerland)
ARIA Singapore	Aria Commodities (Singapore) Pte Limited
ARIA Glopet	Glopet Capital Corp (Cayman)
FDT	First Digital Trust Limited
FZE	Aria Bio FZE (Hamriyah Freezone)
GAL	Golden Ayn Limited
Legacy	Legacy Trust Company Limited
MWB	Matthew William Brittain
The Fund	ARIA Commodity Finance Fund

THE PARTIES TO THE PROCEEDINGS

LEGAL REPRESENTATIVES

ATCO	Al Tamimi & Company, Techteryx's legal representatives
QE	Quinn Emanuel Urquhart & Sullivan UK LLP, DMCC's legal representatives

ORDERS AND APPLICATIONS

WFO	The Order of 28 February 2025 as varied on 18 March and 14 April 2025 - both the proprietary injunction and the freezing order
Variation Order	Order dated 18 March 2025 amending the WFO
Fortification	The sum of USD 2 million directed to be paid as fortification to the cross-undertaking in damages in the WFO by the Variation Order
Securitisation Injunction	njunction made without notice on 14 April 2025 restraining DMCC from taking steps in relation to the Securitisation pursuant to DMCC's Application No. DEC-001-2025/7
Continuation Application	Application No. DEC-001-2025/2 dated 13 March 2025 - Techteryx's for continuation of the WFO until further order
Disclosure Application	Application No. DEC-001-2025/6 dated 17 April 2025 - Techteryx's application for disclosure of documents
SFC Application	Application No. DEC-001-2025/8 dated 24 April 2025 - DMCC's application that Techteryx provide security in respect of DMCC's costs of the proceedings
Attachments Withdrawal Application	Application No. DEC-001-2025/9 dated 25 April 2025 - DMCC's application that Techteryx file a request with the Dubai Courts for the withdrawal of the attachments
The Attachments	The precautionary attachments in respect of bank accounts held by DMCC with the Second to Fourth Defendants issued by the Dubai Courts on 28 March 2025 and 22 April 2025
Discharge Application	Application No. DEC-001-2025/10 dated 28 April 2025 - DMCC's application for discharge of the WFO
Adjournment Application	Application No. DEC-001-2025/11 dated 5 May 2025 - DMCC's application for permission to serve responsive expert evidence, fixing the time for service of rejoinder evidence and adjourning the Discharge Application

EVIDENCE

MWB-A-1	First Affidavit of Matthew William Brittain dated 14 March 2025
MWB-WS-2	Second Witness Statement of Matthew William Brittain dated 16 March 2025
MWB-A-2	Second Affidavit of Matthew William Brittain dated 19 March 2025
MWB-A-3	Third Affidavit of Matthew William Brittain dated 10 April 2025
MWB-WS-4	Fourth Witness Statement of Matthew William Brittain dated 23 April 2025
KO-WS-1	First Witness Statement of Karabeeth Owenden dated 23 April 2025
MWB-WS-05	Fifth Witness Statement of Matthew William Brittain dated 25 April 2025
RJ-WS-03	Third Witness Statement of Ritia Catherine Jaballah dated 30 April 2025
KO-WS-2	Second Witness Statement of Karabeeth Owenden dated 30 April 2025
MWB-WS-6	Sixth Witness Statement of Matthew William Brittain dated 1 May 2025
IA-4	Fourth Affirmation of Li Junmei dated 2 May 2025
RJ-WS-5	Fifth Witness Statement of Ritia Catherine Jaballah dated 9 May 2025

HEARINGS

First Return Date Hearing	17 March 2025
Second Return Date Hearing	12 May 2025
Final Return Date Hearing	21 July 2025

MISCELLANEOUS

Kroll Report	Report dated 1 May 2025 by financial advisory consultants Kroll on the Fund and related entities
Kroll Disclosure Report	Supplemental Report dated 9 May 2025 on documents disclosed per QE's letter of 30 April 2025
Legal Memorandum	Legal memorandum dated 1 May 2025 on Cayman law prepared by Ogier (Cayman) LLP
NAV	Net asset value reports
Securitisation	The securitisation process described in MWB 2 at paragraphs 43-50 of the First Affidavit and paragraphs 110-116 of the Third Affidavit
Target Accounts	The bank accounts held or connected to Fourth Defendants mentioned in the WFO
The Six Remittances	The second tranche of intended investments in the Fund
UBO	Ultimate beneficial owner

CONTEXT & CLARIFICATION

14. Proceedings relating to freezing orders have a tendency to take on a life of their own independent of the judgment, award, claim or proposed claim in respect of which they were issued. It is necessary to bear in mind the grounds justifying the making of the freezing order and the status of the underlying proceedings when considering the nature and extent of any ancillary orders.

15. In the present case it is instructive to look at the Application Notice for the WFO in which the Claimant applied for:

(1) an interim proprietary injunction against the First Respondent prohibiting the disposal of the misappropriated monies and their traceable proceeds pursuant to RDC r 25.1(1), 25.1(3)(a) and 25.1(12);

(2) a worldwide freezing order against the First Respondent pursuant to RDC 25.1(6);

(3) ancillary disclosure orders against the First Respondent in support of its proprietary claims in order to assist the tracing of the misappropriated monies, and for asset disclosure pursuant to RDC 25.1(7) and 25.1(9); and

(4) disclosure orders against each of the Second, Third and Fourth Respondents in respect of documentation and information relating to onward dealings from the bank accounts in which the monies were received, and the current status of those accounts pursuant to RDC r 25.1(10).

16. The grounds for the Order were stated to be that there should be granted:

(1) a proprietary injunction on the basis that there is a serious issue to be tried on the merits, the balance of convenience is in favour of granting an injunction; and it is just and convenient to do so;

(2) a worldwide freezing order on the basis that the applicant has a good arguable case, there is a real risk that any judgment in the proceedings HCA 161/2023 before the Hong Kong High Court will go unsatisfied and/or unless the First Respondent is restrained by injunction, assets are likely to be dealt with in such a way as to make enforcement of any judgment more difficult; and it is just and convenient to issue a worldwide freezing order; and

(3) ancillary disclosure orders on the basis that any information or documentation provided will be used in related proceedings: (i) HCA 161/2023 before the Hong Kong High Court; (ii) HCA 1906/2023 before the Hong Kong High Court; and (iii) SIAC 602/2023 before the Singapore International Arbitration Centre.

17. RDC 25.1(1) is the general power to grant interim injunctions. RDC 25.1(3)(a) confers upon the Court the power to make orders for the detention, custody or preservation of relevant property. RDC 25.1(12) empowers the Court to order a specified fund to be paid into Court or otherwise secured, where there is a dispute over a party's right to the fund. It has not hitherto been disputed that these provisions would allow the Court to grant a proprietary injunction in an appropriate case.

18. RDC 25.1(6) confers on the Court the power to make freezing orders both domestic and worldwide.

19. RDC 25.1(7) provides that the Court may direct a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order and RDC 25.1(9) that such an Order may be made before a claim has been commenced.

20. Finally, RDC 25.1(10) effectively extends the powers set out in the preceding paragraph to Orders against non-parties.

21. Those provisions of the RDC set out the *powers* of the Court, but the *jurisdiction* of the Court is found in Dubai Law, *Law No. (2) of 2025 Concerning Dubai International Financial Centre Courts* at Article 15(4) : *"The DIFC Courts have jurisdiction to hear and determine applications for interim or precautionary measures related to the following . Applications, [and] claims . brought outside the DIFC seeking suitable precautionary measures within the DIFC."* This is a new provision. The previous law was stated by the Court of Appeal in*Carmon Reestrutura-engenharia E Servi*[illegible]*os T*[illegible]*cnios Especiais, (Su) LDA v Antonio Joao Catete Lopes Cuenda* [2024] DIFC CA 003, at [155]:

"In our opinion, Article 24 of the Court Law properly construed confers jurisdiction to entertain proceedings by way of an application for such relief as may be necessary to prevent its pre-emption by a dissipation of the assets of a prospective judgment debtor in proceedings in a foreign court ***whose judgment can be recognised and enforced in the DIFC Courts."*** *[emphasis added]*

22. Based on the emphasised words, Mr Tom Montagu-Smith KC, for DMCC, foreshadows an argument to be made on the Final Return Date of the WFO, that it is only if the foreign judgment is directly enforceable by recognition in the DIFC that relief may be granted.He referred to Broad Idea International Ltd v Convoy Collateral Ltd [2021] UKPC 24 at [92]:

"In applying for a freezing injunction, the relevance of a cause of action, where there is one, is evidential: in showing that there is a sufficient basis for anticipating that a judgment will be obtained to justify the exercise of the court's power to freeze assets against which such a judgment, when obtained, can be enforced. That is the rationale for requiring the applicant to show a good arguable case; but there is no reason why the good arguable case need be that the applicant is entitled to substantive relief from the court which is asked to grant a freezing injunction. ***What in principle matters is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought."*** [emphasis added]

23. Whether Article 15(4) of Law No. (2) of 2025 has altered the position will require mature deliberation. For present purposes it is self-evidently a serious issue to be tried.

24. The grounds justifying the making of the WFO are set out in my judgment of 24 March 2025. Following the without notice hearing on 28 February 2025, I was satisfied that there were serious issues to be tried, there was a risk of dissipation, and the balance of convenience favoured the making of the proprietary and freezing injunctions sought. The issue that played most strongly in my decision was absence of evidence that the Fund had ever issued shares to FDT or Legacy in respect of the Six Remittances.

25. Following the making of the WFO DMCC served MWB-A-1 and MWB-WS-2. I found a number of disturbing anomalies in that evidence which served to reinforce my view that there were serious issues to be tried in particular (as alleged in Hong Kong Case No. 161/2023) whether there were legitimate reasons for the payments to DMCC, whether the Six Remittances were misappropriated by DMCC, whether the Fund ever issued share certificates to Legacy or FDT and whether the Fund kept a Share Register as required by Cayman Law.

26. In summary those anomalies comprised:

(1) Apparently inconsistent Subscriptions Forms in terms of references, amounts, products and dates;

(2) NAV Statements for the Fund which did not appear to be consistent with the known facts;

(3) A lack of information about the Administrator of the Fund;

(4) Apparently inconsistent Subscription Forms for USD 100 million bearing the same reference;

(5) A Subscription Confirmation that did not evidence what MWB said it evidenced;

(6) Documents said to the Fund's Share Register that did not did not comply with Cayman law either in form or substance;

(7) A Distribution Statement that did not appear to be consistent with the known facts;

(8) A lack of clarity as to how the Six Remittances were used;

(9) An admission that no shares had initially been issued to FDT but that this remedied by a so-called "porting" of the Six Remittances and assets from DMCC to the Fund but without disclosing the mechanism whereby this was done;

(10) An admission that Subscription Forms wee backdated;

(11) The proposed Securitization of which no details were given but would mean that assets funded by the Six Remittances would be transferred to unidentified third parties in exchange for notes or bonds;

(12) An admission that 80% of the assts of the Fund derive from the Six Remittances;

(13) The absence of any financial statements for the Fund for the material period;

(14) Confusion as to the ownership of the underlying assets of the Fund, being trading companies.

27. I am asked to clarify the meaning of the WFO especially its effects on MWB personally and the Fund.

28. It follows from the above that the WFO was granted for the purpose of preventing dissipation of assets available for satisfaction of any judgment in the Hong Kong Case No. HC 161/2023 (there being a serious issue as to whether that judgment must be and/or is, enforceable in the DIFC). The First Defendant is restrained from disposing of, dealing with, or diminishing the value the Six Remittances or any traceable proceeds, profits, substitutes, assets, interest or other income received or derived from the Six Remittances.

29. The First Defendant is also restrained from causing, permitting or encouraging any third party presently with custody or control of the assets in any way disposing of, dealing with or diminishing the value of the same. Thus, it may be said that DMCC is restrained from causing, permitting or encouraging the Fund to dispose of, deal with or diminish the value of the assets. It appears that at least 80% of the assets are directly derived from the Six Remittances. I do note that there have been some redemptions, but it is also the case that those redemption may have been paid out of the funds constituting the first tranche of investment.

30. This is the proprietary injunction. In addition to the proprietary injunction, there is the Freezing Order. The Freezing Order is not limited to assets derived from the Six Remittances but extends to all of DMCC's assets up to the value of USD 456 million. DMCC's assets include assets whether or not they are in its own name and whether they are solely or jointly owned. DMCC's assets include any asset which it has the power, directly or indirectly, to dispose of or deal with as if it were its own. DMCC is to be regarded as having such power if a third party holds or controls the assets in accordance with its direct or indirect instructions. Given the obscurity of the evidence concerning the ownership and control of the various trading entities, it is possible that DMCC does have the power to control the assets.

31. The only clear exception to this is that it does appear to be accepted by the Claimant that the trading entities are at liberty to follow the normal course of their businesses hence the deletion of the disapplication of the usual "ordinary course of business" exception in relation to the sums paid by way of the Six Remittances over which a trust is claimed. There remain issues as to what might be said to be the ordinary course of business of DMCC.

32. Those issues apply in particular to the Securitisation, hence the grant of the Securitisation Injunction on 14 April 2025. DMCC is now prohibited from taking any steps in relation to the Securitisation until after the Return Date, or further order of the Court. In MWB-WS-4, MWB gave the following undertakings:

(1) Paragraph 17:

> *As the Director and Chief Investment Officer of Aria DMCC, I confirm that Aria DMCC will not take any further steps in relation to the Securitisation prior to the 12 May 2025 hearing in accordance with the Second Ex Parte Order. While the Fund is not a party to these proceedings or subject to the Second Ex Parte Order, I further confirm and undertake in my capacity as the Director and Chief Investment Officer of Aria DMCC that I will use my best endeavours to ensure that the Fund will not take any further steps in relation to the Securitisation either, prior to the 12 May 2025 hearing as explained in paragraph 32*

below.

(2) Paragraphs 32(g)-(i)

> *(g) Given the current dispute in relation to whether the Securitisation should proceed prior to the 12 May 2025 hearing, I confirm that Aria DMCC will not take any further steps in relation to the Securitisation prior to the 12 May 2025 hearing in accordance with the Second Ex Parte Order (including paying any fees in relation to the same to the Securitisation Agent, corresponding with the Securitisation Agent or taking any other step pursuant to the Securitisation Engagement Letter). I further confirm (as requested in Al Tamimi & Co's letter dated 22 April 2025) that Aria DMCC will instruct the Securitisation Agent that no further steps should be taken by the Securitisation Agent in relation to the Securitisation until further notice.*
>
> *(h) While the Fund is not a party to these proceedings or subject to the Second Ex Parte Order, I further confirm and undertake in my capacity as the Director and Chief Investment Officer of Aria DMCC that Aria DMCC will use its best endeavours to ensure that the Fund will not take any further steps in relation to the Securitisation either, prior to the 12 May 2025 hearing. For the avoidance of doubt, I provide this undertaking for and on behalf of Aria DMCC, and not in my capacity as investment manager to the Fund, which is not a party to these proceedings as stated.*
>
> *(i) For the avoidance of doubt, it was only intended that once the current Securitisation is complete, assets currently held indirectly by Aria DMCC (such as the Hamriyah Production Plant) would then also be securitised, by way of repayment of loans made by the Fund (see paragraph 46(b)(i) of my First Affidavit). None of the assets held directly or indirectly by Aria DMCC are the subject matter of the current Securitisation. Accordingly, no steps have yet been taken in this regard and nor will they be prior to the hearing on 12 May 2025.*

33. The Final Return Date is now 21 July 2025 and so the Securitisation Injunction prohibits DMCC from taking any steps in relation to the Securitisation before that date. I note the limited terms of MWB's undertakings, namely that DMCC will use its best endeavours to ensure that the Fund will not take any further steps in relation to the Securitisation either, prior to the 12 May 2025 hearing. I also note that QE have now clarified that the undertakings will expire upon the handing down of this Judgment. They are therefore now for all intents and purposes of no effect, and I disregard them.

34. It is arguable that the undertakings did no more than state DMCC's obligations under the WFO and Securitisation Injunction in that DMCC is restrained from causing, permitting or encouraging any third party presently with custody or control of the assets in any way disposing of, dealing with or diminishing the value of the same, but the undertaking provides helpful clarification.

35. MWB is careful to point out that he gave the undertakings for and on behalf of DMCC, and not in his capacity as investment manager to the Fund, which is not a party to these proceedings. It is true that the Fund is not a party to the proceedings - whether the Fund holds or controls the assets in accordance with the direct or indirect instructions of DMCC is a matter to be addressed on the Final Return Date.

36. It is also unclear as to whether the Securitisation relates to assets owned by DMCC or the Fund. In MWB-WS-4, MWB produced documents relating to the Securitisation. I have not (yet) heard submissions on their intended effect, but a simple perusal shows that there is no mention of the Fund. DMCC is described as the "Initiator" in the documents. I will address the evidence in more detail below.

37. It may also be academic in any event. In MWB-WS-4, MWB suggest that the assets are owned by the Fund but as yet no evidence has been produced as to the application of the Six Remittances or the transfer of any assets from DMCC to the Fund. It may therefore be the case that none of assets sought to be securitised belong to the Fund.

38. This brings me to the position of MWB himself. In MWB-WS-2, MWB stated (somewhat ambiguously) that there are three separate corporate structures "relevant to" the use of monies received as subscriptions:

(1) The first structure relates to the Fund, of which ACM is the holder of management shares;

(2) The second structure is a group of companies of which DMCC is the parent and holding company comprising FZE, ARIA East Africa ARIA Bio Industries TZ, ARIA Bio Industries SA and ARIA Energy SA; and

(3) The third structure is a group of companies of which ARIA Cayman is the holding company comprising ARIA Bio Industries TZ, ARIA Bio Industries SA, ARIA Energy SA, ARIA Cayman, ARIA Commodities TZ, ARIA AAAX, ARIA US, ARIA Americas, ARIA Geneva, ARIA Singapore and ARIA Glopet.

39. MWB also produced organisation charts of the three groups which showed other companies in both the DMCC and ARIA Cayman Groups. The important point for present purposes is that the organization charts show that MWB is the UBO of both groups. In the asset disclosure list attached to MWB-A-2, MWB is shown as the UBO of ACM and therefore of the management shares in the Fund.

40. The organisation charts are not entirely consistent with the narrative set out in MWB-A3 where MWB describes various assets - he describes ACM acquiring a Cypriot company that is not listed, he describes the Fund as owning a Singaporean company through a nominee that is not listed, he describes ARIA Glopet and Keirstone Shipping as being owned by the Fund but the organization chart shows them as owned by ARIA Cayman and he describes an Indonesian mining company as owned by DMCC but it is not shown on the organization chart.

41. In *Jetivia SA and another v Bilta (UK) Limited (in liquidation) and others* [2015] UKSC 23 Lord Sumption famously said, *"A company is autonomous in law but not in fact. Its decisions are determined by its human agents ."*. The evidence currently before me is that MWB is the Director and Chief Investment Officer of DMCC, Investment Manager to the Fund and the UBO of DMCC, ARIA Cayman and the management shares in the Fund. On the evidence currently before me there no indication of any other persons being involved in the overall management of all these entities (I do note that the Fund has professional directors who may or may not be involved in the day-to-day management of the Fund). It seems to me that it is seriously arguable that MWB may be the "directing mind and will" of all the entities within the three structures.

If so, he may not be able to rely upon their separate corporate personalities (even if there is no finding of agency) in any proceeding in which it is alleged that any Order of the Court has been breached.

DEVELOPMENTS FOLLOWING THE SECURITISATION ORDER

42. On 17 April 2025, Techteryx filed the Disclosure Application in which it sought an Order that DMCC shall, within 3 calendar days of the service of the Order, provide the Techteryx's solicitors with:

(1) copies of DMCC's bank statements in respect of its accounts with the Second to Fourth Defendants, and which show the onward dealings with monies transferred to it;

(2) any documentation which evidences the steps taken by DMCC in relation to the proposed securitisation as set out in paragraphs 46 - 50 of MWB-A-1 and paragraphs 106 - 110 of MWB-A-3 including any correspondence with the Securitisation Agent; and

(3) electronic copies of (i) certain of the documents produced in Exhibits MWB2, MWB4 and MWB6, and (ii) securitisation related documentation provided under paragraph 3 of this Order in their native format in a manner which preserves metadata

43. On 24 April 2025, DMCC filed the SFC Application in which it sought an Order that Techteryx provide security in respect of DMCC's costs of the proceedings (Claim No. DEC-001-2025) in relation to the amount of the costs estimate exhibited to KO-WS-1 by paying the sum of USD 1.3 million into Court within 5 days of service of the Order granting such security.

44. The draft Order attached to the Application Notice went further than the relief set out in the Notice and requested that unless security is given as ordered:

(1) The claims made by Techteryx in the Proceedings (the "Claims") are struck out without further order.

(2) Techteryx shall pay DMCC's costs of the Claims, such costs to be the subject of detailed assessment if not agreed.

(3) There shall be an inquiry pursuant to the Damages Cross-Undertaking into whether the grant of the 28 February Order (as varied by the 18 March Order and the 14 April Order) has caused loss to DMCC and the quantum of that loss, with such inquiry to be the subject of further directions fixed at a case management conference on the first available date after the Claims are struck out (if such directions are not agreed between the parties).

45. On 25 April 2025 DMCC filed the Attachments Withdrawal Application in which it sought an Order that Techteryx:

(1) file a request (the "Withdrawal Request") with the Dubai Courts within 3 days of service of the Order to withdraw the Attachments, and using its best endeavours to take such other steps within its control to ensure that the Attachments are immediately withdrawn;

(2) notify the Second to Fourth Defendants of this Order and provide them with a copy of the Withdrawal Request within 3 days of service of the Order

(3) Update the Court and DMCC immediately upon the completion of the steps in paragraphs (1) and (2) above;
And an Order that:

(4) Unless Techteryx takes the steps at paragraphs (1) and (2) above, the Part 8 claim issued by the Techteryx on 25 February 2025 (the "Part 8 Claim") in support of the injunctive relief ordered against DMCC pursuant to the Order made by the DIFC Courts dated 28 February 2025 (the "28 February Order") shall be struck out as an abuse of process;

(5) In the event that the Part 8 Claim is struck out pursuant to paragraph (2) above, an inquiry shall be ordered into the loss and damage caused to DMCC by the grant of the 28 February Order pursuant to Techteryx's cross-undertaking in damages.

46. On 28 April 2025, DMCC filed the Discharge Application in which it sought an Order that:

(1) The Order dated 28 February 2025 (as varied by further Orders dated 18 March 2025 and 14 April 2025) (the "Order") is discharged so that (in particular) the DMCC is no longer prohibited:

(a) By proprietary injunction, from disposing of, dealing with, or diminishing cash or assets to the value of the sum of USD 456,000,000 transferred to DMCC (the "USD 456m Sum") or the traceable proceeds thereof; and

(b) By worldwide freezing injunction, from removing from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000 or in any way disposing of, dealing with or diminishing the value of any of its assets whether in or outside Dubai up to the same value.

(2) There shall be an inquiry pursuant to the cross-undertaking in damages given by Techteryx as to whether the grant of the Order has caused loss to DMCC and the quantum of that loss (such inquiry to be the subject of further directions to be fixed at case management conference if not agreed).

(3) Techteryx pay DMCC's costs of this application on the indemnity basis.

[Alternatively, if the Order is continued:

(1) Techteryx do provide further security in fortification of its undertaking at paragraph 1 of Schedule B to the Order in the additional sum of USD 5 million by way of payment into Court or other means approved by the Court within 7 days in default of which the Order shall lapse.

(2) The costs of this application are reserved until the determination of Techteryx's claims against DMCC in proceedings before the High Court of the Hong Kong Special Administrative Region under Claim Number HCA 161/2023.]

47. DMCC requested that the SFC, Attachments Withdrawal and Discharge Applications be heard urgently. On 29 April, the parties informed the Registry of their mutual availability for a hearing on Tuesday, 6 May 2025, to determine those applications. On the same day, I directed that I would also hear the Disclosure Application on 6 May 2025.

48. On 30 April, DMCC indicated that it intended to have Discharge Application heard on 12 May 2025.

49. Techteryx's position was that all three applications should be adjourned to the Second Return Date Hearing on 12 May 2025. DMCC's position was that the Disclosure Application was not urgent and could be adjourned until 12 May, the SFC and Attachments Withdrawal Applications should be heard on 6 May 2025.

50. As of 1 May 2025, the situation was that Techteryx was due to serve its evidence in reply in support of the Continuation Application on 2 May 2025 and there was to be a full consideration of the merits and final determination of the injunction application on 12-14 May 2025. As a matter of case management and procedural fairness, I was not persuaded that the delay of three working days between 6 and 12 May outweighed the significant advantage to be enjoyed by the Court in considering the SFC and Attachments Withdrawal Applications in the context of the entirety of the parties' evidence and arguments at the Second Return Date Hearing scheduled for 12 May 2025. Accordingly on 2 May 2025 I ordered that all outstanding applications should be heard on 12 May 2025 and the hearing listed for 6 May 2025 would be vacated.

51. The same day Techteryx served Li-A-4 exhibited to which were the Kroll Report and Ogier Memorandum. Ms Li stated that a further report would be prepared by Kroll.

52. This promoted DMCC on 5 May 2025 to file the Adjournment Application in which it sought an Order that:

(1) DMCC has permission to serve expert evidence (in relation to (a) forensic accountancy; and (b) market practices relating to Cayman funds) in response to the Kroll Report;

(2) DMCC has permission, if so advised, to serve expert evidence of Cayman law in response to Ogier Memorandum;

(3) The responsive expert evidence referred to in paragraphs 1 and 2 above (the "Responsive Expert Evidence") shall be served by DMCC by 20 June 2025 (alternatively on a date to be determined at the hearing on 12 May);

(4) The procedural order made by email dated 2 May 2025 (the "2 May Procedural Order") is varied so that:

(a) the Discharge Application shall be adjourned to a further return date hearing to be fixed with a time estimate of 4 days (the "Further Return Date");

(b) The time for DMCC to file and serve rejoinder evidence in relation to the Discharge Application (including the Responsive Expert Evidence) (the "D1 Rejoinder Evidence") shall be extended from 23.59pm on Tuesday 6 May 2025 to 20 June 2025 (alternatively, to a date to be fixed at the hearing on 12 May).

(5) The hearing on 12 May (the "12 May Hearing") shall be used to determine:

(a) The date of service of the D1 Rejoinder Evidence (including the Responsive Expert Evidence).

(b) Save for the Discharge Application, the applications referred to in the 2 May Procedural Order: namely (1) the Disclosure Application; (2) the SFC Application; and (3) the Attachment Withdrawal Application ("the Other Applications").

(c) The date of the Further Return Date.

(d) Such further directions as are necessary in relation to the continuation of the Injunctions pending the hearing of the Discharge Application at the Further Return Date.

53. After having considered the parties' written submissions on 7 and 8 May, on 9 May 2025 I substantially allowed the Adjournment Application and directed that (amongst other things):

(1) DMCC has permission to serve expert evidence in response to (1) the Kroll Report;

(2) the Kroll Supplemental Report; and (3) the Ogier Memo, if so advised, in the following disciplines (together, the "Responsive Expert Evidence"):

(a) forensic accountancy; and

(b) Cayman law relating to mutual funds and companies.

(2) The 2 May Order is varied so that:

(a) The Discharge Application shall not be heard at the 12 May Hearing and shall be adjourned to be heard at a further return date hearing on the first open date after 30 June 2025 with a time estimate of 4 days (the "Further Return Date");

(b) The time for the First Defendant to file and serve rejoinder evidence in relation to the Discharge Application (including the

Responsive Expert Evidence) (the "D1 Rejoinder Evidence") shall be extended to a date to be fixed at the 12 May Hearing;

(c) The 12 May Hearing shall be used to determine:

(i) The date of service of the D1 Rejoinder Evidence;

(ii) The Other Applications;

(iii) The date of the Further Return Date; and

(iv) Further directions;

(d) The hearings on 13 and 14 May 2025 are vacated.

54. On the same day, Techteryx filed RJ-WS-5 which exhibits the Kroll Disclosure Report.

55. The hearing took place remotely on 12 May 2025. On 16 May 2025 I ordered:

Disclosure Application

(1) The First Defendant shall, within 7 calendar days of the service of the Order, provide the Claimant's solicitors with:

(a) Unredacted copies of the First Defendant's bank statements in respect of its all of its accounts with the Second to Fourth Defendants which show the onward dealings with the monies paid to it by First Digital Trust Limited and Legacy Trust Limited;

(b) Electronic copies of the documents produced in Exhibits MWB2, MWB4 and MWB6 to the Third Affidavit of Matthew William Brittain dated 10 April 2025 listed in Schedule 1 to the Order in their native format preserving the original metadata.

SFC Application

(2) The Claimant shall provide security for the First Defendant's costs of the Proceedings until 12 May 2025 in the sum of USD 650,000 by payment into the Court within 14 days of service of this Order.

(3) In default of the provision of security as ordered pursuant to paragraph 2 above, the First Defendant shall have permission to apply to the Court on 48 hours' notice for an Order that:

(a) The claims made by the Claimant in the Proceedings (the "Claims") are struck out;

(b) The Claimant shall pay the First Defendant's costs of the Claims, such costs to be the subject of detailed assessment if not agreed;

(c) There shall be an inquiry pursuant to the Cross-Undertaking in Damages into whether the grant of the 28 February Order (as varied by the 18 March Order and the 14 April Order) has caused loss to the First Defendant and the quantum of that loss, with such inquiry to be the subject of further directions fixed at a case management conference on the first available date after the Claims are struck out (if such directions are not agreed between the Parties).

Attachment Withdrawal Application

(4) The First Defendant's application is dismissed.

56. I also gave consequential directions leading to a 4-day Final Return Date Hearing commencing on 21 July 2025 and that the WFO should continue until that date.

57. The reasons for those Orders follow.

58. I should say at the outset that to the extent that Techteryx has sought to rely on either of the Kroll Reports I have had no regard to any opinions expressed by Kroll and will not do so until such time as DMCC has had a proper opportunity to file its own opinion evidence in response.

DISCLOSURE APPLICATION

59. The Disclosure Application sought three classes of document:

(1) copies of DMCC's bank statements in respect of its accounts with the Second to Fourth Defendants, and which show the onward dealings with monies transferred to it ("Bank Statement Disclosure");

(2) any documentation which evidences the steps taken by DMCC in relation to the proposed securitisation as set out in paragraphs 46 - 50 of MWB-A-1 and paragraphs 106 - 110 of MWB-A-3 including any correspondence with the Securitisation Agent ("Securitization Disclosure"); and

(3) electronic copies of (i) certain of the documents produced in Exhibits MWB2, MWB4 and MWB6, and (ii) securitisation related documentation provided under paragraph 3 of this Order in their native format in a manner which preserves metadata ("Native Format Disclosure").

60. In response to the application DMCC served MWB-WS-4. Techteryx served RJ-WS-2 in reply. On 30 April 2025 served further documentation under cover of a letter from QE.

Bank Statement Disclosure

61. In MWB-WS-4 MWB said that in MWB-A-2 he gave an account of the onward dealings with the Six Remittances as required by paragraph 14(2)(i) of the WFO. At paragraph 25 of MWB-A-2 MWB described a number of transactions that he said were *"the deployment and use of"* the Six Remittances.

62. I regret that I do not consider that MWB-A-2 does comply with paragraph 14(2)(i) of the WFO which required DMCC to inform ATCO of *"any onward dealings with any of the funds received from Legacy Trust Company and First Digital Trust Limited, including as to who was the ultimate beneficiary of such dealings"*. Having considered that it would be inappropriate for me to rely on the Kroll reports at this stage I was obliged to trawl through the 1445-page exhibit ("MWB4") to MWB-A-2. I located the following bank statements/documents:

Dates	Bank	MWB4 Pages	Comments
10-12/10/2022	ADIB	500	Redacted in part
28/07/2022	ADIB	501	Redacted in part
28/02/2025	ADIB	923	Redacted in part
28/02/2025	ADIB	924	Redacted in part
12/03/2025	ADIB	925	Redacted in part
28/02/2025	ADIB	926	Redacted in part
13/02/2024	ENBD	927	Redacted
13/02/2024	ENBD	928	Redacted
13/02/2024	ENBD	929	Redacted
13/02/2024	ENBD	930	Redacted in part
28/02/2025	Habib Bank AG Zurich	931	Redacted in part
28/02/2025	Habib Bank AG Zurich	932	Redacted in part
28/02/2025	Habib Bank AG Zurich	933	Redacted in part
28/02/2025	Habib Bank AG Zurich	934	Redacted in part
28/02/2025	Mashreq	935	Redacted in part
28/02/2025	Mashreq	936	Redacted in part
29/02/2024	MTB	937	Currency not stated
05/08/2022	Mashreq	1138	Credit Advice
05/08/2021	Mashreq	1140	Credit Advice
05/08/2021	Mashreq	1142	Credit Advice
06/07/2021	Mashreq	1143	Credit Advice
07/12/2022	Mashreq	1145	Swift Message
08/07/2021	Mashreq	1147	Swift Message
06/07/2021	Mashreq	1149	Swift Message
10/11/2021	Mashreq	1150	Credit Advice
13/04/2022	Mashreq	1153	Credit Advice
14/07/2021	Mashreq	1154	Credit Advice
15/07/2021	Mashreq	1156	Credit Advice
14/07/2021	Mashreq	1158	Credit Advice
21/09/2021	Mashreq	1162	Swift Message
21/09/2021	Mashreq	1163	Swift Message
25/08/2021	Mashreq	1165	Swift Message
29/04/2022	Mashreq	1166	Credit Advice
29/04/2022	Mashreq	1170	Credit Advice
29/04/2022	Mashreq	1172	Credit Advice
23/08/2024	National Bank if Fujairah	1258	
19/01/2022	Unidentified (ENBD)	1260	Largely redacted
19/01/2022	ENBD	1261	Largely redacted
19/01/2022	Mashreq	1263	Credit Advice
19/01/2022	ENBD	1264	Largely redacted

Dates	Bank	MWB4 Pages	Comments
29/04/2021	Mashreq	1265	Credit Advice
04/11/2021	Mashreq	1267	Credit Advice
03/03/2025	Unidentified	1304	Account Statement
Undisclosed	Various banks	1408-1411	Cash and Current Assets: Bank balances, short-term deposits and marketable securities.

63. This is unsatisfactory. It appears to be a random selection of documents, unexplained and in no apparent order giving the impression of a "document dump". What it certainly does not disclose is the accounts into the Six Remittances were paid nor any audit trail to the ultimate beneficiaries.

64. I have not had access to the documents disclosed under QE's letter of 30 April 2025. It does appear that the disclosure covers the relevant period when the Six Remittances were received in the Target Accounts, but they contain redactions. In QE's letter of 30 April 2025, it was said,

> *"Bank statements for our client's bank accounts have been redacted to protect (1) commercially sensitive information (on the grounds of confidentiality) and/or (2) transactions not relating to the "onward dealings" of the DMCC Payments (on the grounds of irrelevance). The use of the DMCC Payments as explained in the first affidavit of Matthew William Brittain dated 14 March 2025 is reflected in the unredacted transactions."*

65. No further justification for the redactions is given. Techteryx submits that DMCC's objections are mere assertion. Techteryx says it is to be inferred that MWB has redacted these transactions because he does not wish to disclose the beneficiaries (or transferors), which are shown on the statements or dealings which are inconsistent with his accounts about the use of the Aria DMCC payments. Techteryx says it is entitled to see the details of all the transactions to ensure that it has a full and accurate picture of the dealings with the Six Remittances. MWB cannot be the arbiter of what is relevant in the context of these proceedings.

66. In its skeleton argument, Techteryx sought to expand its application beyond the terms of the application notice. I do not find this acceptable and agree with DMCC that Techteryx is not entitled to roving discovery. It is only entitled to targeted disclosure in order to identify the assets caught by the WFO. In practice that means DMCC's accounts with the Second to Fourth Defendants that show the fate of the Six Remittances.

67. DMCC submits that if Techteryx wishes to raise any issue in relation to redactions, that should be by separate application and the Court is not in a position to determine any challenge to the redactions made at the hearing on 12 May 2025. Mr Holloway for Techteryx (accurately in my view) described this as *"an attempt to kick the application into the long grass"*.

68. At the hearing Mr Montagu-Smith offered on behalf of DMCC:

(1) A schedule of the payments received by way of the Six Remittances linked to bank account entries;

(2) If it appears that monies were paid into other DMCC accounts disclosure of those payments would be provided.

69. He submitted that it would not be fair to produce all of DMCC's statements. DMCC should be allowed more time to respond and therefore this part of the application should be adjourned.

70. Mr Montagu-Smith's submissions would have had more force had they been made back in March. I can no legitimate or even stated reason why the documents disclosed under cover of the QE letter of 30 April 2025 were not disclosed sooner. Instead, it appears that in MWB4 MWB adopted an uncooperative stance by disclosing a selection of documents that failed to comply with the Court's Order.

71. This lends colour to the submission of Techteryx that it is to be inferred that MWB has redacted various transactions from the 30 April documents because he does not wish to disclose the beneficiaries (or transferors) who are shown on the statements or dealings which are inconsistent with his accounts about the use of the Six Remittances. The submission is further reinforced by the fact that the explanation for the redactions in the 30 April letter is a mere statement without any supporting details or evidence. If DMCC's legal team had been supplied with any legitimate justification for the redactions by MWB they would no doubt have provided it.

72. I agree with Techteryx that MWB cannot be the arbiter of what is relevant in the context of these proceedings and that Techteryx is entitled to see the details of all the transactions to ensure that it has a full and accurate picture of the dealings with the Six Remittances. I therefore ordered that DMCC should, within 7 calendar days of the service of the Order, provide the Claimant's legal representatives with unredacted copies of DMCC's bank statements in respect of its all of its accounts with the Second to Fourth Defendants which show the onward dealings with the monies paid to it by FDT and Legacy.

Securitisation Disclosure

73. Mr Holloway argues that further disclosure in relation to the Securitisation is relevant to onward dealings and the risk of dissipation as DMCC is indicating that it still wishes to proceed. He noted that in MWB-A-1 the purpose of the Securitisation was stated to allow FDT to redeem - not in cash but for some form of bond. Techteryx says that in response to its application DMCC has produced 2 documents a *"Securitisation Engagement Letter"* and *"Securitization Sheets"*.

74. Those documents:

(1) Describe DMCC as *"the Initiator";*

(2) Are signed by MWB;

(3) Describe products that appear to be preference or ordinary shares relating to DMCC's business or debenture bonds - it is far from clear;

(4) Describe both MWB and his wife as UBOs of DMCC. Techteryx points out that MWB has said in MWB-A-3 that his wife had ceased to be UBO of DMCC by around 24 July 2024; and

(5) Make no mention of the Fund.

75. DMCC says that it has disclosed other relevant documents, namely Board resolutions authorising the issue of preference shares in favour of the Fund in respect of the two Tanzanian mines and documentation showing the Fund's ownership of the wind and solar assets in Queensland.

76. The former appears to be a resolution of KIBO Mining (Cyprus) Ltd to issue 65 million Ordinary (not preference) non-voting, redeemable, 75% revenue-linked, participating shares of EUR 0.001 per share to the Fund. There is no indication that the Fund was to pay the consideration of EUR 65,000. I can see no explanation as to how this document is linked to the Securitisation.

77. The latter also appears to have no link with the Securitisation. In the absence of any explanation, I cannot see how the documents demonstrate the Fund's ownership of the wind and solar assets in Queensland. While the Deed of Transfer, Settlement and Release dated 23 May 2024 has been redacted it appears to show that DMCC and the Fund have lent money to a Singapore Company, Carbon Resilience Pte Ltd and that the shareholders in that company transferred its ownership to FA AR Real Asset Income Limited, a Liechtenstein company. MWB signed on behalf of FA AR Real Asset Income Limited. There is also a Nominee Agreement made between the Fund and FA AR Real Asset Income Limited dated 23 May 2024 whereby the Liechtenstein company agreed to act as the nominee for the Fund in its ownership of Carbon Resilience Pte Ltd by reason of undisclosed *"regulatory and licensing considerations"*. The Nominee Agreement states that the Fund ***had*** effected the purchase of the Carbon Resilience Pte Ltd renewable assets and project platform through the Deed of Transfer, Settlement and Release dated 23 May 2024. That does not appear to be accurate, FA AR Real Asset Income Limited received the shares in Carbon Resilience Pte Ltd and possibly may have done so on a bare trust for the Fund but the Nominee Agreement seems to have been executed after the Deed of Transfer, Settlement and Release and so it could not have done so as the Fund's nominee under the Nominee Agreement.

78. I agree with Mr Holloway that there is still confusion over who owns the assets purchased with the Six Remittances. In my judgment of 17 April 2025, I found that it appeared that MWB had chosen to withhold evidence of the Securitisation that had already taken place giving rise to the possible inference is that he does not wish to disclose the ownership of the assets alleged to have been purchased with the funds alleged to be the Claimant's (or that of the coin holders held by the Claimant on their behalf). I found that the situation was perhaps exacerbated by the revelation in MWB-A-3 that FDT and Legacy are the only investors in the Fund which fed into my concern that the hurry to complete the Securitisation before the Return Date may be regarded as evidence of a risk of dissipation in that it had no apparent commercial purpose nor affected any third party. I was concerned about the complete lack of evidence about the ownership structures of the various assets purchased with monies remitted by FDT and Legacy. I was concerned about the lack of any detail of the Securitisation and the ambiguity of such evidence as had been adduced. I was concerned by the timing. There was no evidence as to why the Securitisation needed to be completed before the Return Date and no third-party interests were involved

79. Following the Securitisation Order QE wrote to ATCO on 21 April 2025:

"4. We confirmed in our email of 16 April 2025, that we understand that the First Respondent has complied and will continue to comply with the Securitisation Amendment. However, as you are aware, the Fund is not a party to these proceedings and the First Respondent has no role in the management of the Fund.

5. In the circumstances, we consider that the Fund can proceed with the securitisation of assets currently held by it in the normal course of portfolio management. For the avoidance of doubt, this is on the basis that prior to the Return Date:

(a) The First Respondent will not take any steps in relation to the securitisation of assets currently held by the First Respondent (which in any event are not the subject matter of the Securitisation); and

(b) The First Respondent is not and will not be involved in any steps taken by the Fund in relation to the securitisation of assets currently held by the Fund that are the subject matter of the Securitisation (namely, the assets identified at items 450, 451 and 452 of the asset disclosure schedule)."

80. The position is reiterated in DMCC's skeleton argument for the 12 May hearing at paragraph 160:

". The Fund is not a party to these proceedings. The assets to be securitised are owned by the Fund, not DMCC. Mr Brittain provides investment advice to the Fund, but in a role which he dispenses as an officer of ACM FZE, the investment manager to the Fund. Given these matters, the effect of the 14 April Order cannot be to restrain either the Fund or Mr Brittain (in his capacity as investment adviser) from taking steps in relation to the Securitisation."

81. I disagree. Based on the facts set out above at paragraphs 27 to 41 above, while reaching no conclusion on the point at this time, it may be said that that it would be artificial to create any distinction between the Fund and MWB on the one hand, and DMCC on other, as MWB appears to be the directing mind and will, signatory and ultimate beneficiary of every transaction undertaken by the Fund and DMCC. Further, as I indicated in my Judgment of 24 April 2025, while I declined to decide on an ex parte basis whether or not the Securitisation is in DMCC's ordinary course of business, I did consider the Securitisation to be an unusual transaction. Thus, there remains a serious issue as to whether the Securitization would fall within the "ordinary course of business" exception.

82. My current (and necessarily provisional) view is that MWB would be well-advised to consider that to proceed with the Securitisation before the Final Return Date could well expose the Fund and himself personally to accessory liability for breach of the WFO and the Securitisation Order. As I have not been given any legitimate reason why the Securitisation cannot wait until the Final Return Date, I will (at this stage) assume in his favour that MWB will act in a responsible manner and is not trying to place the assets derived from the Six Remittances beyond the reach of the courts who will ultimately decide the ownership of those assets nor that of any other court which may be called upon to enforce their judgments.

83. It is for that reason, and that reason alone, that I do not consider that it is necessary (at this stage) to order further disclosure of Securitisation documentation.

Native Format Disclosure

84. DMCC says that it has produced the documentation on 30 April 2025 and no further Order is required. Techteryx notes that in QE's letter of 30 April 2025 it was stated:

> *"Metadata. In the time available, it was not reasonable nor proportionate to forensically collect the requested documents. Therefore, the Production has been prepared by reference to the electronic documents that correspond to the various exhibit references provided by your client. As such, certain of the documents indicate that they have been modified on the date on which they were received by our firm or saved to our system. Please also note that, in the course of preparing the exhibits, some of the file names have been amended for ease of reference and compilation. As a result, names of the files in the Production may differ from the file names of those documents as originally received from our client. Finally, certain of the documents are scans of hardcopy documents, which means that the relevant metadata corresponds to such scan. Save in these respects, it is our understanding that the relevant metadata remains intact and demonstrates the provenance of the documents."*

85. Techteryx submits that this was an unsatisfactory approach as it meant that where files have been re-saved the files have not been provided in a format which preserves their metadata, and this defeats the purpose of the request. Techteryx says that it had understood from MWB-WS-4 that DMCC would be producing documents in their native format in a manner which preserves metadata.

86. Techteryx points out that I had in my Judgment of 24 March 2025 expressed confusion as to the ownership of the trading entities and noted a number of discrepancies in the documents by DMCC, notably the subscription forms and Share Register. In my judgment, the metadata of a document is as much part of the document as the words used. If a party is given the right to inspect a document that includes the metadata.

87. I do not accept that in the two months that elapsed between the WFO and 30 April 2025 *"it was not reasonable nor proportionate to forensically collect the requested documents"*. On the contrary, I consider that more than adequate time has elapsed to collect the original documents in their native format. MWB will have access to the originals and should have transmitted them to QE. Those documents should therefore already be in QE's possession. If the original metadate has been overwritten or modified in the production process that is easily remedied by recourse to the originals. Insofar as MWB did not transmit originals to QE, he will have access to them and can do so now. The same is true of hard copy documents - MWB can either produce the original soft copy or confirm on affidavit that he has never been in possession of a soft copy. I say "he" because he has access to and has produced documents belonging both to DMCC and the Fund and so I refer to his access to the documents of both as manager and UBO.

88. The list in Schedule 1 to the Order of 16 May 2025 does not contain a large number of documents in the context of heavy commercial litigation and I do not consider it to be an onerous task for experienced solicitors to compile them.

SFC APPLICATION

The Law

89. The conditions for the making of an order for security for costs are set out at RDC 25.102:

> (1) the claimant is resident out of the UAE;
>
> (2) the claimant is a company or other body (whether incorporated inside or outside the DIFC) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
>
> (3) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
>
> (4) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
>
> (5) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 20, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so; and
>
> (6) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

90. DMCC submits that conditions (1) are (2) are relevant in the present case. Mere residence out of the jurisdiction is not in my judgment enough to justify an Order, as that would be to undermine the status of the DIFC Courts as international courts. The English Courts have come to the same conclusion albeit by a slightly different route: an order for security may not legitimately be based on the bare fact of residence abroad, which would amount in most cases to discrimination on grounds of national origin, but requires an established difficulty of enforcement there (*Nasser v United Bank of Kuwait* [2001] EWCA Civ 556 , [61]). Further, a claimant might (as here) be incorporated in a jurisdiction with similar rules governing the provision of security for costs. Techteryx is incorporated in the British Virgin Islands. I am in no doubt that the Courts of the BVI would extend the same deference to any order or judgment of this Court as this Court would extend to those made by the Courts of BVI.

91. In *Al Khorafi v Bank Sarasin-Alpen (ME) Ltd* [2010] CA 001 (23 January 2011) [48], the Court of Appeal said,

> *". Orders may be made against a claimant who is resident abroad and who has no assets within the jurisdiction against which a Costs Order can be executed. In those circumstances the Order for security is intended to remove the risk of irrecoverability of costs under a future order because of the difficulty of enforcing such an order in the foreign jurisdiction. Such difficulty may arise because of the unwillingness or inability of the foreign court to enforce a Costs Order; or because the claimant's assets are or have been made unavailable for execution or for some other reason."*

92. There must therefore in addition to the residence abroad some *"difficulty"*. The position may be different if a claimant were incorporated in an "uncooperative" jurisdiction or one that did not make adverse costs orders. It would then be reasonable to suppose that recovery of an adverse costs order might encounter some difficulty. While the conditions under 25.102 are not cumulative and each of conditions (2) to (6) may alone justify the making of an Order, they may also supply (with other factors) the additional "difficulty" necessary for an Order under condition (1).

The Facts

93. In the present case, DMCC says that is supplied because there is reason to believe that Techteryx will be unable to pay its costs if ordered to do so. It notes that in my Order of 18 March 2025, I directed that Techteryx provide security in fortification of its undertaking at paragraph 1 of Schedule B to the WFO in the sum of USD 2 million by way of payment into Court or other means approved by the Court but Techteryx did not itself provide the security. Instead, it was provided by an entity called Golden Ayn Limited ("GAL"). No details were provided about GAL, save that it was a *"wholly owned subsidiary of Techteryx"*

94. On 31 March 2025, QE raised specific questions about the financial means of Techteryx and GAL. This included requesting (1) audited accounts; (2) details of assets held within the UAE; and (3) the identity of the ultimate beneficial owner(s). None of that information was publicly available.

95. On 2 April 20205, ATCO stated it was in *"the process of taking.instructions"* and would revert. On 3 April 2025, QE chased for a response to the Information Request. On 4 April 2025, ATCO replied that the information was not *"straightforward"* but did not explain why. QE chased again. On 7 April 2025, ATCO repeated it was seeking instructions. On 8 April 2025, QE Emanuel sought a response by 11 April. None was provided.

96. This chronology is not disputed by Techteryx. I am satisfied that, without more, it provides reason to believe that Techteryx (unaided) would be unable to pay DMCC's costs if ordered to do so.

97. Techteryx resists the application on other grounds:

(1) It has already provided sufficient security;

(2) It would be unjust to make an order for security for cost; and

(3) The Security for Costs Application has been made late.

Fortification

98. Mr Holloway submitted that fortification and security for costs do the same job. He relied on a passage in Gee on *Commercial Injunctions* (7th ed.) at 11-055 to the effect that where (as in the present case) the cross-undertaking refers to "loss" it wide enough to encompass legal costs in reliance on *Dario Ovidio Schettini v Nicola Silvestri, Nidis Capital Fund, Cleofour1 Limited, Pierangelo Del Buono* [2019] EWCA Civ 349, [29]-[32]. The observations of the English Court of Appeal were strictly obiter, but they did seem to accept that the wording of the undertaking could be wide enough to subsume costs.

99. He went on to suggest that the Court should make an *"intelligent estimate"* of the likely amount of any loss which may be suffered by the applicant for fortification by reason of the making of an interim order *(Energy Venture Partners Limited v Malabu Oil and Gas Limited* [2014] EWCA Civ 1295 [53]) and what DMCC was seeking was a top up of the Fortification. The intelligent estimate must be based on a sufficient level of risk of loss: there must be a solid credible evidential foundation that the claimed loss has been or will be suffered. In relation to the requirement that the loss is caused by the grant of the injunction: it is only loss which is caused or would have been caused by the preventative or coercive effect of the injunction that is recoverable under the cross-undertaking. In relation to the requirement that there should be sufficient evidence to allow an intelligent estimate of the quantum of losses: there must again be solid, credible evidence of future losses, and this ought ordinarily to be supported by some underlying material and ought not to be speculative (see paragraph *(Omni Bridgeway (Fund 5) Cayman Invt. Limited v Bugsby Property Llc (a company incorporated under the laws of Delaware), Candey Limited Therium Capital Management Limited v Bugsby Property Llc, Candey Limited* [2023] EWHC 2755 (Comm), [6]). *Gee* summarises the position at 11-029 - in deciding to order fortification the Court should take into account:

(1) an intelligent estimate, being informed and realistic although not necessarily entirely scientific, of the likely amount of any loss which might be suffered by the applicant for fortification by reason of making the interim order;

(2) that the applicant has shown a sufficient level of risk of loss to require fortification, which involves showing a good arguable case to that effect; and

(3) that the making of the interim order is or was a cause without which the relevant loss would not be or would not have been suffered.

100. Mr Holloway went back to the evidence provided by DMCC when I made the Fortification Order. The thrust of his submission was that the evidence did not provide material which evidenced likely loss either at the time the Order was made or subsequently. He also pointed to a passage in Gee (21-055) saying that in the case of a proprietary injunction the Court will only allow those funds to be used if it is shown by *"proper evidence"* that there are no other assets that can be used for this purpose. He referred to *Fitzgerald v Williams* [1996] QB 657, 669 F-G per Sir Thomas Bingham (as he then was) who said that a defendant should not be entitled to draw on a fund which may belong to a plaintiff until he shows that there is no fund o his own on which he can draw.

101. I do not understand Mr Holloway to be seeking to appeal or to be asking me to review my Fortification Order or my Order allowing recourse to the assets in the ordinary course of business. Instead, he is saying that the Fortification Order adequately secures DMCC against any costs it may ultimately recover. I deal with that broad issue in the next section of this Judgment but there is a threshold question, namely whether the Fortification Order was intended to secure DMCC against its costs at all

102. It is necessary to look back at the evidence available to the Court when I made the Order of 18 March 2025. It was in MWB-A-1. It is important not to use hindsight at this point in the analysis. At that stage, I noted that there were issues troubling me about MWB's evidence but stated:

> *"given that Aria DMCC may be able to clarify the issues troubling me and succeed in discharging the WFO on the legal or factual merits I am of the view that Techteryx should fortify its cross-undertaking in damages. Techteryx is a BVI company with no assets in this jurisdiction. Aria DMCC seeks a relatively moderate fortification in the context of the sums at stake in these proceedings and appears to me to have genuinely sought to place a figure on the cost of disruption to its business (on its case) between the date of this Order and the Return Date. I therefore accept that fortification in the sum of USD 2 million should be provided."*

103. This was eminently an exercise of discretion on the available evidence. It cannot be said there was no evidence on which to exercise the discretion. There was at the time no discussion of the losses in respect of which security is now pursued. The decision was therefore based on an estimate of business losses that might possibly be sustained before the Return Date.

104. If I understand Mr Holloway's submission correctly the relevance of recourse to the enjoined assets in the ordinary course of business is to reinforce the suggestion that DMCC has not demonstrated that it requires the security in order to meet its costs. I do not however consider that it needs to do so.

105. I accept that fortification ***can*** in principle extend to legal costs, but fortification is generally intended to address losses consequent on the disruption to the respondent's business caused by an injunction that should not have been granted. If the "intelligent estimate" of potential losses is made without consideration of legal costs, they cannot form part of the losses to be addressed by the fortification. Security for costs is specifically to provide a fund to which recourse may be had in order to satisfy an adverse costs order. The respondent may have ample funds from which to pay its own lawyers but if it is beneficiary of an order to recoup some or all of those costs security is intended to assist in their recovery.

106. If it is held that an injunction should not have been granted, a respondent may suffer both disruption to its business and also be entitled to its legal costs. Both fortification and security will respond - fortification to the former, security to the latter. So it is in the present case. The Order for Fortification was made without regard to an any possible cost order to be made against Techteryx. It is therefore no answer to an application for security for costs that the Fortification Order was made.

Injustice

107. Techteryx says that under RDC 25.101 the Court will only make an Order for security if it is satisfied that that it is just to make such an Order. It submits that it would be unjust in the circumstances of the present case because:

(1) Its evidence shows that DMCC has perpetrated a very substantial fraud against it;

(2) Where an application or claim appears highly likely to succeed, it would not be just to make an order for security for costs (*Al-Koronky v Time Life Entertainment Group Ltd* [2006] EWCA Civ 1123, [24]);

(3) In the context of proprietary injunctions, the relevant principles include that no one has the right to use someone else's money to pay for their defence. Where the Court is minded to allow the defendant to pay legal costs out of what may be the claimant's money, the Court should consider whether it can impose safeguards for the claimant so that if his proprietary claim is well founded, he may have some protection. These principles are also apposite to the consideration of DMCC's security for costs application;

(4) DMCC has been using Techteryx's money to pay for its defence. This should not be compounded by ordering it to provide security as well; and

(5) DMCC continues to fail to comply with the WFO. It has still has not provided disclosures of the onward dealings with the Six Remittances which identify the ultimate beneficiaries of those transfers.

108. RDC 25.110 provides that investigation of the merits of the case on an application for security is strongly discouraged. Only in those cases where it can be shown without detailed investigation of evidence or law that the claim is certain or almost certain to succeed or fail will the merits be taken into consideration. I do not regard this to be any different from the use of the phrase *"highly likely to succeed"* in *Al-Koronky*.

109. It may be in the present case that there are numerous respects to which Techteryx may be able to point in which DMCC's compliance with the Orders of this Court is unsatisfactory. Techteryx may also be able to argue that DMCC's conduct gives rise to an inference that it is implicated in a fraud perpetrated on Techteryx by Legacy and FDT. However, in my judgment that can do no more than give rise to serious issues to be tried. On the material currently before me it is not possible to say that Techteryx is certain or almost certain to succeed in establishing that DMCC is a constructive trustee of Six Remittances or that this Court has jurisdiction to maintain the WFO and Securitisation Order (see paragraphs 21 to 23 above). Accordingly, it is not appropriate to consider the overall merits when looking at the question or whether to order security for costs. I cannot therefore find that it would be unjust to make the Order on that basis.

110. Of course, if DMCC is in breach of the Court's Orders that can be addressed in other ways.

Lateness

111. Techteryx says that DMCC only made the Security for Costs Application on 24 April 2025, over 5 weeks after the First Return Date Hearing. It should have been made sooner. Techteryx cites DIFC Courts Practice (2nd ed), 25.101.2.10:

> *"The Court expects applications for security for costs to be made in good time. In Basin Supply Corporation v. Rouge LLC [2018] DIFC CFI 057 (6 September 2020) declined to consider an application for security filed only weeks before the claim had originally been listed for trial and not heard until the ultimate trial. Justice Al Madhani duly dismissed the application with costs on the ground*

that it would have been impossible to comply with any order made before the conclusion of the trial [27]."

112. Techteryx also suggests that the Court may refuse to order security if the delay has deprived the claimant of time to collect the security, and the Court may give security for future costs only. In Hniazdzilau v Vajgel (Re Bennet Invest Ltd) [2015] EWHC 1582 (Ch), [28] it was said:

"Delay in making the application is one of the circumstances to which the court will have regard when exercising its discretion to order security. The court may refuse to order security where delay has deprived the claimant of the time to collect the security, or led the claimant to act to his detriment or may cause hardship in the future costs of the action. The court may deprive a tardy applicant of security for some or all of his past costs or restrict the security to future costs (see CPR 25.12.6). The question of delay must be assessed at moment when the application is made, although of course the court must take into account the impact of an order at the time it is made. That is because, as the Court of Appeal said in Prince Radu of Hohernzollern v Houston [2006] EWCA Civ 1575 (cited at White Book p 823-4), the order for security for costs comes with a sanction which gives a claimant a choice whether to put up security and go on or to withdraw his claim; that choice is meant to be a proper choice, and the claimant is to have a generous time with which to comply with it. As Waller LJ pointed out (at [18]), the making of an order for security for costs is not intended to be a weapon whereby a defendant can obtain a speedy summary judgment without a trial."

113. Mr Montagu-Smith emphasised that there must be delay and a link between that delay and detriment to the respondent to the application before the Court to take any delay into account.

114. Techteryx notes that the application was made on the eve of the Second Return Date Hearing, but it does not point to any detriment. Further as things have turned out, the Final Return Date Hearing, which as a 4-day hearing is likely to account for the majority of the costs, will not take place until 21 July 2021 - now some 9 weeks away. I do not consider that the timing of the application is a factor I should take into account.

Quantum

115. DMCC estimates its costs as follows:

Type	QE (USD)	Counsel (USD)	Total (USD)
Incurred to 31 March	484,764	181,538	666,302
Estimated post-31 March	600,000	500,000	1,100,000
?	**?**	**?**	1,766,302

116. It also suggested that the Kroll Reports will necessitate the expenditure of approximately USD 500,000 in preparing and filing responsive evidence.

117. RDC 25.110 discourages a detailed investigation of the merits. In cases where the claim is certain or almost certain to succeed or fail the merits may be taken into consideration. In many, if not the majority of cases, the Court will be unable to reach any clear conclusion on the merits without a detailed investigation. It cannot be right that that means that the Court must treat every claim, save where it is certain or almost certain the claim will fail, as if it is certain or almost certain the claim will succeed. DMCC accepts that the Court would usually discount the costs claimed in order to reflect the uncertainties of assessment. DMCC submits that the appropriate discount should be no more than 25%.

118. One also needs to approach the assessment of the quantum of any order for security for costs bearing in mind the wry observation of Sir Nicolas Browne-Wilkinson in the case of *Chandless v Whittome* (unreported), 10 December 1986, cited by the English Court of Appeal in *Cheffick Limited v JDM Associates* 43 B.L.R. 52, that one should have regard to *"the exaggerations which in all good faith everybody is inclined to make in estimating the expenses which they can recoup from somebody else"*.

119. An additional factor in the present case is that the hourly rates in the schedule attached to KO-WS-2 are in excess of those in *Registrar's Direction No. 1 Of 2023 - Indicative Hourly Legal Charges:*

Fee Earner	RD 1/2023 (USD)	QE (USD)	Difference
Partner	1020	1810	77%
Senior Associate	898	1580	76%
Associate	809	1050/1170	30%/45%
Trainee	651	635	-3%
Paralegal	415	555/530	33%/28%

120. While the indicative hourly charges are only indicative, and rates may be increased in the light of the weight and complexity of the litigation, without in any way seeking to bind any eventual assessment of the costs of these proceedings, I do accept that if DMCC is ultimately successful it may encounter a discount on any costs it may recover.

121. In *SBM Bank (Mauritius) Ltd v (1) Renish Petrochem FZE (2) Mr Hiteshkumar Chinubhai Mehta* [2022] DIFC CA 011 (22 December 2022), the Court considered the approach to the assessment of the amount of security for costs

"12. There are several authorities under English Law which I consider to be relevant in determining quantum of security in the present case. The relevant legal test is contained in the case of Pisante v Logothetis [2020] EWHC 3332 (Comm) at [88], which sets out guidance on how to approach the issue of quantum:

(i) "The appropriate quantum is a matter for the court's discretion, the overall question being what is just in all the circumstances of the case. In approaching the exercise, the court will not attempt to conduct an exercise similar to a detailed

assessment, but will instead approach the evidence as to the amount of costs which will be incurred on a robust basis and applying a broad brush.

(ii) In some cases, the court may apply an overall percentage discount to a schedule of costs having regard to (a) the uncertainties of litigation, including the possibility of early settlement and (b) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment between litigants. There is no hard and fast rule as to the percentage discount to apply. Each case has to be decided upon its own circumstances and it is not always appropriate to make any discount.

(iii) In deciding the amount of security to award, the court may take into account the 'balance of prejudice' as it is sometimes called: a comparison between the harm the applicant would suffer if too little security is given and the harm the claimant would suffer if the amount secured is too high. The balance usually favours the applicant: an under-secured applicant will be unable to recover the balance of the costs which is unsecured whereas, if the applicant is not subsequently awarded costs, or if too much security is given, the claimant may suffer only the cost of having to put up security, or the excess amount of security, as the case may be
.

(v) In determining the amount of security, the court must take into account the amount that the respondent is likely to be able to raise.

The court should not normally make continuation of their claim dependent upon a condition which it is impossible for them to fulfil. [sic]."

13. I am guided by the principles in the Pisante case and in particular that I am not to undertake a detailed assessment but instead approach the issue in a robust and broad-brush manner. In addition, that a Court can apply an overall percentage discount and that there is no hard and fast rule as to the percentage discount to apply and that each case must be decided upon its own circumstances. In deciding the amount of security to award, the Court may consider the balance of prejudice, which in this case requires a comparison between the harm the Respondent would suffer if too little security were given and the harm the Appellants would suffer if the amount secured were too high. I note that the relevant principles governing how to determine quantum for security for costs are summarised in note 25.12. 7 in the English Civil Procedure Rules."

122. Adopting a robust basis and applying a broad brush, taking all of the foregoing into account I consider that it is appropriate to make an Order that Techteryx shall provide security for DMCC's costs in the sum of USD 650,000.

Order

123. Mr Holloway indicated that if Techteryx were ordered to give security it would require 14 days within which to comply.

124. DMCC sought an order that that unless security is given as ordered the claims made by Techteryx in the proceedings will be struck out without further order and that (1) Techteryx would be liable for DMCC's costs of the claims, such costs to be the subject of detailed assessment if not agreed and (2) there would be an inquiry under the damages cross-undertaking into whether the grant of the WFO has caused loss to DMCC and the quantum of that loss.

125. DMCC argued that the timing militates against the usual Order that the proceedings are stayed pending the provision of security. Indeed, a stay would benefit Techteryx if the WFO and Securitisation Order were to remain in place thereby allowing it to profit from its own breach.

126. I saw some force in DMCC's argument but considered that an immediate automatic strike out was too draconian a remedy. I therefore directed that DMCC would have the opportunity to apply on short notice that the WFO be struck out, that its costs be paid and the cross-undertaking in damages be enforced. This would enable the Court to take a view on the appropriate course of action at the time in the event of default.

ATTACHMENTS WITHDRAWAL APPLICATION

127. In accordance with paragraph 5 of the WFO, Techteryx enforced the Order before the Dubai Courts. On 12 March 2025, the Dubai Court granted Techteryx's application for the Central Bank of UAE to issue precautionary attachments in respect of DMCC's bank accounts in support of these proceedings. At this stage, the effect of the WFO was to prevent payments out in the ordinary course of business.

128. On 18 March 2025 this Court varied the proprietary injunction, so that the "ordinary course of business" exception applied to the assets described at paragraph 7 of the WFO.

129. On Friday, 28 March 2025, the Dubai Execution Court issued letters to the Second to Fourth Defendants requiring attachments to be executed in the total sum of AED 1,674,744,935.50 (USD 456 million). The stated effect was *"the prohibition of [the bank's] employees to fulfil [sic] or hand over the balances [the bank has] to the distrainee - the limits of the amount of the attachment"*.

130. It appears from a letter dated Wednesday, 2 April 2025 (31 March and 1 April having been public holidays in the UAE) from QE to ATCO that DMCC was notified that day of the Attachments. QE advised ATCO that the Attachments were inconsistent with the ordinary business use exception and requested their withdrawal.

131. On 3 April 2025, ATCO wrote to QE:

"Our client has today filed a request with the Dubai Courts enclosing a copy of the Order of H.E. Justice Michael Black KC dated 18 March 2025 (the "Variation Order"). The filing notifies the Dubai Courts that the Order of 28 February 2025 (the "Order") has

been varied to extend the business use exemption to the proprietary injunction set out at paragraph 7 of the Order, thereby permitting Aria DMCC to deal with or dispose of those assets in the ordinary course of business. The request invites the Dubai Courts to amend the precautionary attachment orders accordingly."

132. On the same day, the Dubai Courts asked for the request to be resubmitted via the Weyak system, with a letter of authority from the DIFC Courts and a copy of the 18 March Order endorsed with the execution formula. Techteryx duly complied on 4 April 2025 asking the Dubai Courts *"`address the banks.to allow [DMCC] to withdraw the amounts necessary only to cover the expenses associated with the conduct of their business"*.

133. On 6 April 2025, the Dubai Courts affirmed a decision to *"make a balance between maintaining the effectiveness of the freezing order and allowing the Execution Debtor to continue its legitimate business activities as authorized by the court, [and] to allow the Execution Debtor to withdraw the amounts necessary only to cover the expenses associated with the conduct of their business, as stipulated in the amended decision issued by the court."*

134. On Thursday 10 April 2025, Techteryx filed a further request with the Dubai Courts, but the Dubai Courts decided that there was no execution formula included. ATCO informed QE:

"3. On the morning of 4 April 2025, the Dubai Courts issued a decision on the request that the Variation Order be endorsed with the enforcement formula and that a judicial deputation letter from the DIFC Courts addressed to the Dubai Courts be obtained. The judge further directed that the application be resubmitted via the "Weyak" system once these documents had been secured.

4. On the same day, 4 April 2025, the Claimant filed a P45 application before the DIFC Courts seeking the enforcement seal and the judicial deputation letter. The application was issued on the same day. The Claimant also wrote to the DIFC Courts' Enforcement team and the Assistant Registrar, stressing the urgency of the matter and formally requesting that the deputation letter be issued on a priority basis.

5. In parallel, the Claimant submitted a further request to the Dubai Courts on 4 April 2025 in which it was noted that the Variation Order permitted the First Defendant to transact in the ordinary course of business. Accordingly, the Claimant requested that the Court instruct the Second, Third and Fourth Respondents to continue to comply with the Order, while also permitting the Defendant to withdraw funds for business purposes, in accordance with the Variation Order.

6. On 6 April 2025, the Dubai Courts issued a short decision confirming its earlier ruling, which reiterated the requirement to obtain the enforcement seal and deputation letter before the application could proceed.

7. On 7 April 2025, the DIFC Courts' Enforcement Department issued an invoice in the amount of USD 100 for the deputation letter, which was paid by the Claimant on the same day. On the afternoon of 8 April 2025, the DIFC Courts issued the sealed Variation Order together with the judicial deputation letter addressed to the Dubai Courts.

8. On 8 April 2025, the Claimant filed a further application to the Dubai Courts, including both the sealed Variation Order and the deputation letter. This application again requested that the Second, Third and Fourth Respondents, be instructed to continue to comply the Order, whilst permitting the Defendant to withdraw funds for business purposes, in accordance with the Variation Order. We anticipate that the Dubai Courts will deal with this further application promptly either today or very shortly thereafter."

135. On Monday, 14 April 2025 Techteryx filed a further request with the Dubai Courts and the Dubai Courts permitted Techteryx's request for a copy of the 18 March 2025 Order to be submitted for review.

136. ATCO wrote to QE on 17 April 2025:

"On 14 April 2025, the execution judge approved the Claimant's request to communicate with the banks to instruct them to permit the First Respondent to withdraw funds for business purposes in line with the Variation Order, and authorized the archiving of the Variation Order on the system. On 16 April 2025, representatives of our firm met with the head of the execution court to ensure the letters be issued to the banks as soon as possible. We are currently awaiting the judge to authorize the issue of new letters to the banks, and we anticipate that these should be issued tomorrow.
....

In the premises, please confirm how the attachments have "imperiled [your] client's ability (and those of other companies in the group) to use its assets in the ordinary course of business" and are "causing damage" to your client."

137. On 22 April 2025, the Dubai Execution Court issued letters of variation to the Bank Defendants instructing them to *"continue applying the freezing order on [DMCC's] accounts in accordance with the original judicial order with implementation of the amended order issued on 18/03/2025"*.

138. In MWB-WS-5, MWB stated that the affected accounts are those of DMCC with ADIB and Mashreq and FZE with Mashreq. He said that the DMCC ADIB Accounts were (1) some of the primary bank accounts used by DMCC to pay expenses in the ordinary course of business; and (2) the bank accounts with the largest sums. He said that DMCC is now unable to use the DMCC ADIB Accounts in the ordinary course of business due to the Attachments as the AED equivalent of USD 456 million has been debited from each account. ADIB and Mashreq have also ceased to process any inward remittances into the DMCC ADIB Accounts and DMCC Mashreq Accounts.

139. MWB said that the effect of the Attachments on the FZE Accounts is that FZE has been prevented from remitting payments from the FZE Mashreq Accounts, notwithstanding that FZE is a separate entity from DMCC and its operations are not affected by the WFO.

140. Mashreq also ceased (temporarily) to process any inward remittances into the FZE Accounts.

141. MWB says that as a result of the Attachments, DMCC and FZE have been unable to use their assets in the ordinary course of business despite the further order of the Dubai Courts on 22 April 2025. DMCC and FZE have had to procure, where possible, that other entities in the ARIA Group make or receive payments on their behalf. However, it is not practicable for this arrangement to be put into place for every payment.

142. There is an *"Account Summary"* generated by MWB on 25 April 2025 in respect of the 5 relevant DMCC ADIB Accounts which it is said shows their status after the debit of the USD 456 million. It is possible to calculate the balances prior to the debit of the USD 456 million - (1) AED nil, (2) AED 177,474; (3) USD 6,113,119; (4) 10,734 and (5) EUR 13,464,604. The DMCC Mashreq Accounts apparently have minimal balances.

143. Mr Holloway disputed the ADIB pre-debit balances by reference to the Kroll Report which indicated, adopting the same numbering as in paragraph 142 above: (3) USD 120,518.97; (4) AED 135,568.40; (5) 1,824.08. As I have stated, I am not willing to make any findings on the basis of the Kroll Report until DMCC has had an opportunity to serve evidence in reply. I can and do however note the dispute.

144. Mr Montagu-Smith submitted it was not good enough for Techteryx to say that they have done everything they can, and it is DMCC's problem or that there was not much in the accounts anyway. The second point may be addressed immediately in that there may have been substantial amounts in some of the accounts. As to those with small balances, Mr Montagu-Smith saud that was a point against Techteryx because it meant that the prejudice to Techteryx in DMCC using those balances was minimal.

145. It was incumbent, he said, upon a party in Techteryx's position to move as quickly as possible, but even if it had done everything possible the variation seems to have had no effect on the Attachments. The result is that the variation ordered by this Court has not been implemented irrespective of whether it is the fault of Techteryx.

146. DMCC relies on the case of *Skatteforvaltningen (the Danish Customs and Tax Administration) v (1) Elysium Global (Dubai) Limited (2) Elysium Properties Limited* [2018] CFI 048 to indicate the practice in a situation where the process of civil law attachment in the Dubai Courts does not give effect to a freezing order made in these Courts. At [3] H.E. Justice Sir Jeremy Cooke noted:

> *"Because the relevant accounts are in onshore Dubai, the Order was the subject of recognition by the onshore Dubai courts in the form of a Recognition Order which took effect as an Attachment Order dated 10 September 2018. The nature of such an order does not allow for an exception of the kind which appears in paragraph 10 (2) of this Court's Order which means that those accounts are absolutely frozen. If the money is in them is to be used for the payment of "ordinary business expenses", the Attachment Order made in the onshore courts must be discharged, at least pro tanto, in order to make the payments."*

He went on at [12]-[13]

> *"12. In the circumstances, it seems to me that the terms of the Order which allow for ordinary business expenditure, without the need to establish that there are other assets available to make such payment which are not caught by the Order, must be put into effect and the Order varied to permit payment of the sums in the relevant accounts to Hertz and to Mr Shah. Priority should be given to Hertz who is said to threaten criminal proceedings, although on what basis is unclear. However suspicious the Claimant may be and the doubts which I entertain, on the evidence I consider that the Defendants should be allowed access to the relevant accounts in order to make the business payments referred to.*
>
> *13. In order to ensure that the funds in those accounts are used for this purpose, it will be a term of the order which releases each of the relevant accounts from the Worldwide Freezing Order that the sums be paid to the order of the Defendants' solicitors Meaby & Co Solicitors LLP for disbursement, first to Hertz and the balance for the benefit of Mr Shah. The order should also provide for a joint application to be made to the onshore Dubai Courts for the discharge of the Attachment Order in relation to the relevant accounts and for payment to Meaby & Co. The parties' lawyers should be able to agree the form of order for approval by the Court."*

147. Of course I agree with Sir Jeremy that the terms of an Order which allow for ordinary business expenditure, without the need to establish that there are other assets available to make such payment which are not caught by the Order, must be put into effect.

148. Pointing to the correspondence, Mr Holloway submitted that Techteryx took every conceivable step to ensure that my order as varied was enforced. He said that Techteryx had asked for details of DMCC's inability to use its assts in the ordinary course of business but when one looks at the evidence there is none. The mere production of invoices by MWB he said proves nothing, the alleged damage is pure assertion. He pointed to a report dated 23 April 2025 on the Mashreq Accounts the provenance of which is unclear, but it did seem to indicate that there is no attachment on FZE's accounts. He said that there is no real evidence that FZE has been affected by the Attachment at all.

149. In reply, Mr Montagu-Smith pointed out emails chasing payment of certain of the invoices. I do however observe that the non-payment may not be linked to the Attachment. Shell was chasing USD 343,000 which was said to be a debt of FZE but there was a free balance of USD 363,003.59 on 23 April 2025 in one of the FZE Mashreq Accounts.

150. I am not persuaded that I should make any order directing Techteryx to seek withdrawal of the Attachments. I do not feel that I have a sufficiently full picture of the bank accounts involved or the effect on the business of either DMCC or FZE. It seems to me that the issue (if any) lies with the Bank Defendants. Techteryx has secured from the Dubai Courts an exception to the Attachments for payment in the ordinary course of business and the Dubai Courts have communicated that to the Banks.

151. I am surprised not to have been shown any correspondence with the Banks concerning their failure to comply with the Dubai Courts' Orders or relating to any specific payments that have been blocked

152. Consequently, I do not consider that I have the evidential basis on which to make an Order. Even if I did, I would retain a discretion whether to make an Order or not. DMCC's asset disclosure has hitherto been incomplete and opaque, I would therefore be wary of (as Mr Holloway put it) handing DMCC a *"a get out of jail free card"* without a fuller understanding of the ramifications.

153. In any event, I would regard total discharge of the Attachment as disproportionate. The SKAT case may be distinguished from the present in that not only was Sir Jeremy not dealing with a proprietary injunction, it appears that the attachment in that case did not make allowance for the payment of ordinary business expenses whereas it does in the present. The appropriate remedy in the present case would therefore be to take steps to make the Banks aware of their obligations either before the Dubai Courts or this Court.

154. Accordingly, I dismissed the Attachments Withdrawal Application.

OTHER DIRECTIONS

155. The other directions I gave on 16 May 2025 were canvassed at the hearing on 16 May 2025 and it is unnecessary to prolong this Judgment with further discussion of them.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 21 May 2025
At: 2pm