THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT APPEAL

N/A

BETWEEN

AL BUHAIRA NATIONAL INSURANCE COMPANY

Appellant

and

ARAB WAR RISKS INSURANCE SYNDICATE

Respondent

ORDER WITH REASONS OF THE COURT OF APPEAL

UPON the Judgment of H.E. Justice Michael Black dated 9 September 2025 (the "Judgment")

AND UPON the Claimants Appeal Notice dated 26 September 2025 seeking permission to appeal the Judgment (the "Claimant's PTA Application")

AND UPON the Defendant's Appeal Notice dated 30 September 2025 seeking permission to appeal the Judgment (the "Defendant's PTA Application")

AND UPON the Defendant's Application No. CFI-013-2024/5 dated 30 September 2025 seeking for a stay of enforcement and security of costs (the "Security for Costs and Stay Application")

AND UPON the Claimant's Appeal Notice dated 21 October 2025 seeking permission to appeal on an additional ground should the Defendant be granted permission to appeal (the "Claimant's Cross-Appeal PTA Application")

AND UPON the Claimant's Application No. CFI-013-2024/6 dated 18 December 2025 seeking permission to adduce additional evidence (the "Permission to Adduce Evidence Application")

AND UPON the Claimant's renewed Appeal Notice dated 18 December 2025 seeking permission to appeal the Judgment (the "Claimant's Renewed PTA Application")

AND UPON the Defendant's renewed Appeal Notice dated 18 December 2025 seeking to appeal the Judgment (the "Defendant's Renewed PTA Application")

AND UPON the Claimant's Cross Appeal dated 8 January 2026 seeking permission to appeal on an additional ground should the Defendant be granted renewed permission to appeal (the "Claimant's Supplementary Appeal Application")

AND UPON the Judgment of the Court of Appeal dated 10 August 2026

AND UPON the Consent Order dated 22 September 2026

AND UPON the Defendant's Costs Submissions (and Statement of Costs) dated 24 September 2026

AND UPON the Claimant's Application No. CA-003-2026/1 dated 24 September 2026 seeking a retrospective extension of time to file its costs submissions (the "Extension of Time Application")

AND UPON the Claimant's Costs Submissions dated 25 September 2026

AND UPON the Defendant's Reply Costs Submissions dated 8 October 2026

AND UPON the Claimant's Reply Costs Submissions dated 8 October 2026

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The order made by the Judge with respect to the costs of the proceedings at first instance is amended to provide that the Defendant is obliged to pay the Claimant's costs in the amount of AED 2,281,525.87.

2. As the Defendant has already paid the Claimant double that amount, the Claimant is ordered to repay to the Defendant the amount of AED 2,281,525.87 plus interest at 9% per annum calculated with effect from 5 December 2025.

3. There is no order with respect to the costs of the applications for permission to appeal.

4. The Defendant is ordered to pay the Claimant's costs of the Permission to Adduce Evidence Application, and of the Defendant's Security for Costs and Stay Application, to be assessed by the Registrar on the standard basis by a process of immediate assessment unless agreed within 28

days of the date of this Order.

5. The Claimant is ordered to pay 75% of the Defendant's costs of the appeal to be assessed by the Registrar on the standard basis by a process of detailed assessment unless agreed within 28 days of the date of this Order.

6. There is no order with respect to the costs of the submissions with respect to costs.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 28 October 2026
Time: 11am

SCHEDULE OF REASONS

Summary

1. On 10 August 2026, the Court delivered judgment on the appeal and cross-appeal in these proceedings. As the Court observed in its reasons, each party had a measure of success (and failure). In those circumstances, the Court made directions for the exchange of submissions with respect to the orders which should be made by the Court with respect to:

(a) The costs of the proceedings at first instance;

(b) The costs of the initial applications for permission to appeal;

(c) The costs of the renewed applications for permission to appeal;

(d) The costs of ABNIC's application to adduce additional evidence;

(e) The costs of AWRIS's application for security for the costs of the appeal and for a stay on enforcement of the orders for costs in respect of the proceedings at first instance; and

(f) The costs of the appeal.

but not extending to the assessment of the quantum of such costs.

2. The parties have exchanged submissions in accordance with those directions. These reasons are concerned with the allocation of responsibility for the costs of the various steps in the proceedings specified above.

3. These reasons should be read in the context of the decisions at first instance and on appeal in which the issues which arose in the proceedings were set out. On that basis, it is unnecessary to explain the nature of those issues or the respective positions of the parties in relation to them in these reasons. Further, the nomenclature used in the previous decisions of the court will be adopted in these reasons.

The parties' submissions in chief

ABNIC

4. ABNIC submits that it should be regarded as the successful party in the proceedings and should be awarded a substantial percentage or proportion of its costs subject to a modest deduction to reflect the decision of the Court of Appeal refusing to uphold the grant of the Defence Costs Declaration made by the Judge. ABNIC further contends that it should receive its costs of its appeal on grounds 1 and 2, which were abandoned on the second day of the hearing of the appeal.

5. ABNIC further contends that it should receive its costs of both of its applications for permission to appeal and in respect of those grounds of AWRIS's applications for permission to appeal in respect of which permission was refused, and its costs of its successful application to adduce further evidence and its successful opposition to AWRIS's applications for a stay of enforcement and security for costs.

6. ABNIC notes that the Judge concluded that ABNIC was the successful party in the proceedings at first instance and awarded it costs assessed in the amount of AED 4,563,051.74, which AWRIS has paid. ABNIC contends that the order made by the Judge remains the starting point for the consideration of costs, and should only be amended in respect of outcomes that were changed by reason of the appeal. It accepts that AWRIS's success in relation to the Defence Costs Declaration constitutes such a change but contends that it warrants only a modest proportionate reduction in the costs awarded in respect of the proceedings at first instance.

7. ABNIC contends that another change in outcome by reason of the appeal was its success in relation to the contractual significance of the Placement Document. It contends that its success on this point was of considerable commercial significance, as it went to the question of AWRIS's obligation to indemnify ABNIC in the event of not only the claim relating to the M/T BETA, but any other claim which might be made under the Policy at any time in the future. ABNIC contends, in this context, that the issue with respect to Defence Costs was, in monetary terms, orders of magnitude less significant than the issues relating to indemnity for loss of an insured vessel.

8. In the alternative, ABNIC seeks orders with respect to costs based upon the issues on which it succeeded.

9. ABNIC supports its claim for its costs in respect of the grounds of appeal which it abandoned on the basis that the decision to abandon the grounds was justified by the final termination of the Sharjah proceedings in the period leading up to the hearing of the appeal.

10. ABNIC further contends that AWRIS's conduct throughout the appeal process was unreasonable and drove up costs. It is unnecessary to develop the grounds for that submission.

AWRIS

11. AWRIS submits that it should receive its costs of the proceedings at first instance, the applications for permission to appeal and the appeal, and ABNIC should be ordered to repay the amount of AED 4,563,051.74 which AWRIS paid in respect of the costs of the proceedings at first instance together with interest at the rate of 9% per annum calculated from 5 December 2025, which is the date upon which that amount was paid by AWRIS. AWRIS further seeks its costs of the submissions relating to costs. It contends that the Court of Appeal should assess those costs by the process of immediate assessment. AWRIS submits in the alternative that if the Court considers that a detailed assessment should be undertaken, ABNIC should be ordered to pay at least 50% of the amounts claimed by AWRIS in respect of costs pending the process of detailed assessment.

12. AWRIS submits that its appeal was substantially successful, and ABNIC's appeal was substantially unsuccessful, and the aspects of ABNIC's claims that were allowed at first instance and which sustained the costs order made by the Judge with respect to those proceedings were set aside on appeal. AWRIS further contends that the small number of sub issues that were resolved in ABNIC's favour in the Court of Appeal were academic and irrelevant to the dismissal of ABNIC's substantive claims and of no legal, commercial or financial consequence.

13. AWRIS further submits that ABNIC has pursued its appeal and contested AWRIS's appeal unreasonably because ABNIC failed to improve upon the terms of without prejudice offers of settlement made by AWRIS and that ABNIC had no potential or contingent liability in respect of the loss of the M/T BETA given the judgment of the DIFC Court in its favour. AWRIS further submits that ABNIC's pursuit of the proceedings was unreasonable in that ABNIC should have agreed to a stay of proceedings until the proceedings in Sharjah were finally determined. AWRIS contends that ABNIC's unreasonable conduct justifies the award of indemnity costs in favour of AWRIS.

14. AWRIS contends that ABNIC has failed to achieve the main objective of the litigation which it commenced, namely a declaration to the effect that AWRIS is liable to indemnify it under the relevant policies and in respect of its Defence Costs. AWRIS contends that it should therefore be regarded as the successful party overall and should receive its costs of the proceedings on that basis.

15. AWRIS contends that ABNIC's success in relation to the incorporation of the Placement Document into the insurance policies was irrelevant and inconsequential because there has never been any settlement between ABNIC and Horizon, and there never will be.

16. AWRIS further submits that ABNIC's pursuit of grounds 1 and 2 of its appeal until the second day of the hearing was unreasonable given that the proceedings in Sharjah were finalised some time earlier.

The parties' submissions in reply

ABNIC

17. In relation to the proceedings at first instance, ABNIC submits that AWRIS failed in its contentions that it was entitled to avoid the reinsurance contract on grounds of misrepresentation or failure to disclose or that any claim under the reinsurance contract was time barred. Further, AWRIS ultimately failed on the question of whether the settlements clause was a part of the reinsurance contract. ABNIC contends that it should be regarded as the successful party in relation to the proceedings at first instance, notwithstanding the reversal of the Judge's findings with respect to Defence Costs on appeal.

18. ABNIC contends that it reasonably refused the offers of settlement made by AWRIS, because none of the offers contained any offer with respect to acceptance of liability to indemnify ABNIC if ABNC was found liable to indemnify Horizon by the Sharjah Courts - a potential liability of USD 70m. After the Sharjah Court of Appeal held that the judgment of Justice French did not render the matter res judicata and remitted the case to the Sharjah CFI to consider the merits of the claim, ABNIC was at risk.

19. ABNIC contends that AWRIS has not come close to establishing a sound basis for its claim for indemnity costs.

20. In relation to the costs of the appeal, ABNIC refers to the declarations that were made by the Court with respect to AWRIS's allegations of breach of duty by ABNIC and its reliance upon a time bar. It further reiterates its submission that its success on the issue relating to the Placement Document was of major commercial significance.

AWRIS

21. AWRIS disputes ABNIC's contention that the Judge's order in respect of the costs at first instance remains the starting point in relation to the costs of those proceedings on the basis that there has been a material change in the disposition of the case since then, including ABNIC's failure on the issue of Defence Costs. AWRIS contends that ABNIC's success on the issue of Defence Costs at first instance was the major reason why the Judge ordered costs in ABNIC's favour.[1]

22. AWRIS reiterates its previous submission to the effect that viewed as a matter of "real life" it should be regarded as the successful party by reference to the litigation as a whole, ABNIC having failed to obtain declarations to the effect that AWRIS was obliged to indemnify it in relation to any liability to Horizon or in respect of its Defence Costs.

23. AWRIS submits that the declarations made by the Court of Appeal with respect to matters determined by the Judge were issues of form rather than substance and added nothing to ABNIC's position in relation to those issues.

24. AWRIS contends that its success in relation to Defence Costs was a substantial victory, both legally and economically.

25. AWRIS further submits that having abandoned grounds 1 and 2 of its appeal, it follows that ABNIC must bear the costs of those grounds.

26. AWRIS submits that on 2 June 2026 ABNIC obtained a certificate from the Sharjah Court confirming that Horizon had not appealed from the decision dismissing its claim within the time permitted and should have withdrawn grounds 1 and 2 by that date at the latest. AWRIS further submits that its costs incurred pursuing ground 3, which responded to grounds 1 and 2 of ABNIC's appeal, were wasted by reason of ABNIC's dilatory withdrawal of those grounds.

27. AWRIS submits in the alternative that if its primary contention, to the effect that it should receive all its costs is rejected, it should receive a percentage of those costs rather than an issues based costs order.

General principles - costs

28. The general principles governing the exercise of the Court's discretion with respect to costs are well known and have been set out by the parties in their written submissions. It is unnecessary to repeat them in these reasons.

Some general issues

29. There are cases in which it will be appropriate to exercise the discretion with respect to costs by taking an overall view of the litigation as a whole. However, the Court considers that the particular circumstances of this case militate against that approach and in favour of an assessment of costs by reference to the particular steps in the proceedings in respect of which costs orders are to be made. Accordingly, the Court will consider and make determinations with respect to the costs of:

(a) The proceedings at first instance;

(b) The applications for permission to appeal;

(c) The application to adduce further evidence;

(d) The application for security for costs of the appeal and a stay on the costs order at first instance; and

(e) The appeal.

30. However, before undertaking that analysis, there are some general issues which can be disposed of.

Issues based orders or a percentage of all costs

31. There are some cases in which orders for costs by reference to particular issues will be appropriate, and other cases in which it is more appropriate to adjust for relative success by reducing the costs of the predominantly successful party by a percentage which reflects the failure of that party on discrete issues. Generally speaking, the latter approach will often be more appropriate because of the difficulty of identifying costs specifically referrable to a particular issue. That difficulty inevitably complicates and protracts the assessment process. In this case, the Court considers that it is more appropriate to adjust for relative success and failure with respect to the relevant stage of the litigation process by awarding a percentage of the predominantly successful party's costs rather than awarding costs by reference to particular issues.

The settlement offers

32. The Court does not attribute any significance to ABNIC's refusal of the settlement offers made by AWRIS. Each of those offers was made in full and final settlement of all of ABNIC's claims, including its claim for indemnity under the reinsurance policy. None of the offers contained any acknowledgement by AWRIS of any liability to indemnify ABNIC under that policy, and, if accepted, would have absolved AWRIS of any liability to indemnify. Accordingly, ABNIC's rejection of those offers was justified.

Did ABNIC unreasonably refuse to agree to a stay of the proceedings?

33. As noted, AWRIS contends that ABNIC should have agreed to a stay of these proceedings until the Sharjah proceedings had been finally determined, with the consequence that both parties unnecessarily incurred costs in the prosecution and defence of these proceedings.

34. That proposition gains considerable force with the benefit of hindsight, given that the Sharjah proceedings were ultimately determined adversely to the primary insured, Horizon. However, the reasonableness or otherwise of ABNIC's conduct must be assessed in the circumstances in which the conduct took place, without the benefit of hindsight.

35. Relevantly those circumstances included the facts that;

(a) AWRIS was refusing to accept liability to indemnify ABNIC in the event that ABNIC was found liable under the primary level policy; and

(b) the insured under that policy refused to accept the decision of the DIFC Court to the effect that the policy had been validly avoided and was pursuing a claim to entitlement under the policy in the Sharjah Courts; and

(c) the Sharjah Court of Appeal had held that the DIFC decision was not res judicata and the matter had been remitted to the Sharjah Court of First Instance for determination.

36. In these circumstances, there was a prospect that judgment could be entered against ABNIC in the amount of USD 70m while AWRIS was denying liability to indemnify ABNIC. In these circumstances, it was not unreasonable for ABNIC to continue the pursuit of the proceedings in this Court with a view to obtaining a determination that AWRIS was liable to indemnify ABNIC under the reinsurance policy in order to avoid a circumstance in which there was significant delay between ABNIC being found liable to pay a very substantial sum by the Sharjah Courts and the time at which it established its entitlement to indemnity by proceedings in this Court, during which time any judgment in the Sharjah Courts could be enforced against ABNIC.

Did either side conduct the proceedings unreasonably?

37. Each party asserts that the other party acted unreasonably in respect of its conduct of certain aspects of these proceedings. It is unnecessary to go into the detail of those assertions and sufficient for present purposes to record that the Court is not satisfied that either party conducted the proceedings in a way which would justify the imposition of indemnity costs against that party.

Is either party entitled to indemnity costs?

38. It follows from the conclusions of the Court in relation to the various matters referred to above that the Court does not consider that the conduct of any party was so unreasonable as to justify the imposition of indemnity costs. Accordingly, the Court directs that all costs are to be assessed on the standard basis.

The proceedings at first instance

39. The Judge segregated the matters which required determination into eight separate issues which he addressed in his reasons.

40. In relation to the governing law of the reinsurance contract, the Judge accepted AWRIS's contention that the reinsurance contract should be governed and construed in accordance with English law. That conclusion has not been disturbed on appeal. On the subject of insurable interest, the Judge rejected AWRIS's submission that ABNIC had no insurable interest in the reinsurance policy, essentially because he found ABNIC was entitled to indemnity in respect of costs incurred defending proceedings brought by the insured. Although that aspect of the Judge's determinations was set aside on appeal, AWRIS's contention that ABNIC lacked an insurable interest in the Policy was rejected on appeal for other reasons. Accordingly, this aspect of the Judge's decision was not altered on appeal.

41. Under the heading "contingent liability" the Judge found in favour of AWRIS's contention that the Placement Document did not form part of the reinsurance contract. That determination was set aside on appeal. However, the Judge's conclusion that ABNIC had not established an existing dispute in respect of which declaratory relief to the effect that it was entitled to indemnity under the reinsurance contract was appropriately granted was not disturbed on appeal, because ABNIC abandoned the grounds of appeal relating to that finding on the second day of the hearing.

42. On the subject of Defence Costs, the Judge accepted ABNIC's contention that it was entitled to indemnity in respect of costs incurred in defending claims under the primary level policy, although that determination was set aside on appeal.

43. The Judge rejected AWRIS's contention that it was entitled to avoid the reinsurance policy on the ground of misrepresentation or non-disclosure. Leave to appeal from that determination was refused.

44. The Judge also rejected AWRIS's contention that a claim under the Policy was precluded by a time bar or as a consequence of late notification. Leave to appeal from that determination was also refused.

45. Under the heading "proof of loss" the Judge observed that because he had decided not to grant declaratory relief with respect to AWRIS's liability under the reinsurance policy, it was unnecessary for him to determine whether ABNIC had established the occurrence of an insured event under the primary policy. Because ABNIC abandoned its grounds of appeal with respect to the lack of a declaration pertaining to AWRIS's liability under the reinsurance policy, ground 3 of the cross-appeal, which raised the issue of proof of the occurrence of an insured event, became moot and was not determined. Accordingly, there was no change in relation to this issue by reason of the appeal.

46. The final issue addressed by the Judge concerned the relief which flowed consequentially from the determinations which he had made. In that respect, the only relief granted by the Judge was the declaration relating to the liability of AWRIS to indemnify ABNIC in respect of expenses properly incurred defending claims brought under the primary insurance policy. That relief was set aside on appeal, although the Appeal Court also made declarations with respect to some of the matters decided by the Judge, being in particular the Judge's determination that AWRIS was not entitled to either avoid the reinsurance policy under misrepresentation/non-disclosure or resist a claim under the reinsurance policy on the ground of time bar or late notification. However, that grant of relief simply gave effect to decisions made at first instance and is irrelevant to the costs of the appeal.

47. There will be cases in which the outcome of the proceedings is so different, as a consequence of the decision on appeal, that it is appropriate for the Court of Appeal to exercise the discretion with respect to the costs of the proceedings at first instance afresh. However, this is not such a case. The above analysis shows that the only material changes in the outcome of the proceedings at first instance as a consequence of the appeal were:

(a) The Judge's finding that the Placement Document did not form part of the reinsurance policy was set aside; and

(b) The Judge's finding that AWRIS was obliged to indemnify ABNIC in respect of Defence Costs was set aside.

48. Given the limited nature of the changes in outcome as a consequence of the appeal, the Court accepts ABNIC's submission that this is a case in which the Judge's exercise of the discretion with respect to the costs of the proceedings at first instance should be the starting point, and should only be modified to the extent justified by reason of the changes in outcome following the appeal. At all events, practical justice is achieved by the route adopted here.

49. Although the Judge acknowledged that ABNIC had failed to achieve its objective of obtaining a declaration to the effect that AWRIS was obliged to indemnify it under the reinsurance policy in respect of any liability to the primary insured, he considered that ABNIC had "essentially achieved what it was seeking, namely an indemnity against the costs incurred in defending the claim by Horizon".[2] Accordingly, the Judge awarded ABNIC 100% of its costs, notwithstanding that it had failed to achieve a declaration to the effect that AWRIS was liable to indemnify ABNIC in respect of any liability under the primary level policy, and notwithstanding its failure on the issues relating to the governing law of the reinsurance policy and the incorporation of the Placement Document into that Policy.

50. The principal factor which motivated the Judge to award costs in ABNIC's favour - namely, its success on the issue of Defence Costs has been reversed by the Court of Appeal. Nevertheless, ABNIC's success at first instance in relation to AWRIS's assertion that it was entitled to avoid the Policy by reason of misrepresentation or non-disclosure, or defend any claim under the Policy by reason of a time bar or late notification, were significant successes by ABNIC at first instance, and on appeal ABNIC was successful in establishing that the Placement Document was part of the insurance policy. These were issues of potentially much greater economic significance to the parties than the issue relating to defence costs.

51. Taking these matters into account, the Court concludes that ABNIC remains the successful party in relation to the proceedings at first instance, notwithstanding the findings of the Appeal Court. However, ABNIC's costs should be reduced by 50% in recognition of the issues upon which it failed at first instance and on appeal. Accordingly, the order of the Judge should be revised to provide that AWRIS was obliged to pay ABNIC's costs in the amount of AED 2,281,525.87. As AWRIS has paid twice that amount, ABNIC should be ordered to repay AWRIS the amount of AED 2,281,525.87 plus interest at the rate of 9% per annum from 5 December 2025 until the date of payment.

The applications for permission to appeal

52. ABNIC and AWRIS each made an application for permission to appeal which was refused by the Judge. Each renewed their application to the Court of Appeal. ABNIC was successful in respect of all of its proposed grounds, but only partially successful on appeal. AWRIS was only partially successful in respect of all its grounds, and remained partially successful on appeal.

53. As each party has had a measure of success on appeal, recovery of the costs of the applications for permission to appeal would ordinarily be an incident of that success. However, as each would be entitled to such an order, the appropriate course, in order to avoid further time and expense in the assessment of costs, is to set off those entitlements against each other and direct that there be no order with respect to the costs of the applications for permission to appeal.

The application to adduce further evidence and the application for security for costs and a stay on the order relating to the costs at first instance

54. ABNIC made an application to adduce further evidence on appeal which succeeded, and AWRIS made an application for the provision of security for costs of the appeal and for a stay of the order made with respect to the costs at first instance which failed. There is no reason why costs should not follow the event in each application, and AWRIS will be ordered to pay ABNIC's costs of each of those applications to be assessed on the standard basis by a process of detailed assessment by the Registrar.

The appeal

55. ABNIC's contention on appeal to the effect that the Judge erred by not concluding that the reinsurance contract was governed by UAE Law was rejected. However, ABNIC succeeded in establishing that the Placement Document formed part of the reinsurance policy.

56. As already noted, ABNIC abandoned grounds 1 and 2 of its appeal relating to its entitlement to declaratory relief with respect to AWRIS's liability to provide indemnity in the event that ABNIC was found liable under the primary level policy on the second day of the appeal hearing. The withdrawal of those grounds rendered AWRIS's third ground of appeal moot. The Court accepts AWRIS's contention that orders for costs should be made in relation to the appeal on the basis that ABNIC should be held responsible for the costs thrown away by reason of the abandonment of those grounds.

57. AWRIS's contention with respect to ABNIC's lack of insurable interest was rejected, although its ground of appeal relating to liability to indemnify in respect of Defence Costs was upheld.

58. Taking into account ABNIC's abandonment of significant grounds of appeal relating to its entitlement to indemnity under the reinsurance policy and the success of AWRIS in relation to the issue relating to Defence Costs, AWRIS should be regarded as the successful party on appeal. However, its costs should be reduced by 25% to reflect the issues upon which it failed. Accordingly, ABNIC will be ordered to pay 75% of AWRIS's costs of the appeal to be assessed by the Registrar on the standard basis by a process of detailed assessment. The Court is not persuaded that this is an appropriate case in which to order ABNIC to pay a proportion of the costs claimed by AWRIS in advance of that assessment.

The costs of the issues relating to costs

59. As with the appeal, each party has had a measure of success and failure in relation to the costs issues. The appropriate order is for those costs to lie where they fall, so that there will be no order in respect of the costs of the submissions made by the parties relating to the matters determined by these reasons.