**IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**INNOVATIVE PRODUCTION GROUP FZE**

Claimant/Respondent

and

**INNOVATION FACTORY ROYAL INVESTMENT GROUP LLC**

Defendant/Applicant

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**ORDER WITH REASONS OF H.E. JUSTICE MICHAEL BLACK KC**

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**UPON** the Part 7 Claim Form filed on 30 May 2025 (the "Claim")

**AND UPON** the Defendant's Application No. CFI-054-2025/1 dated 6 August 2025 seeking to contest the jurisdiction of the DIFC Courts (the "Jurisdiction Application")

**AND UPON** hearing counsel for the Claimant and counsel for the Defendant at the Application Hearing held before H.E. Justice Michael Black KC on 9 October 2025 (the "Hearing")

**IT IS HEREBY ORDERED THAT:**

1. The Application is dismissed

2. The DIFC Courts have jurisdiction over this Claim.

3. The Defendant shall pay the Claimant's costs of the Application in the sum of AED 272,593.39.

Issued by:
**Hayley Norton**
Assistant Registrar
Date of issue: 15 October 2025
At: 12pm

**SCHEDULE OF REASONS**

1. The Claimant is a company incorporated in Fujairah and operating from Dubai outside the DIFC, serving as the exclusive rights holder of the Lanka Premier League (**"LPL"**) Cricket Tournament. The Defendant is a company incorporated in and carrying on business in Dubai outside the DIFC. The Defendant operates sporting franchises.

2. This case concerns the grant of franchise rights by the Claimant to the Defendant to acquire and operate a cricket team in the Kandy region of Sri Lanka.

3. In its Claim Form dated 30 May 2025, the Claimant claims that on or about 30 May 2023, the Claimant entered into an agreement with the Defendant granting exclusive rights to own and manage a team in the League from Season 4 (2023) onwards. Key terms included the Defendant's obligation to remit USD 1 million by 31 May 2023, covering both a discounted franchise fee and player/logistics payments. The agreement stipulated that paid sums would be forfeited upon termination by either party, and the Claimant retained the unilateral right to terminate in the event of payment default or material breach.

4. The Claimant alleges that it fully discharged its obligations under this agreement, enabling the Defendant's team to participate in Season 4 of the League, culminating in their victory as champions. However, the Defendant failed to make the required payments in full, leaving an outstanding balance of USD 339,202. As a direct consequence of this breach, the Claimant exercised its contractual right to terminate the First Franchise Agreement on 6 October 2023.

5. The Claimant pleads that subsequent to the termination of the First Franchise Agreement, the parties engaged in mediation in January 2024, resulting in a new agreement to reinstate the team for League Season 5 (2024). Under the Second Franchise Agreement the Defendant committed to paying the Claimant USD 1.6 million in instalments for franchise fees, player fees, support staff remuneration, and logistics.

6. The Claimant says it fulfilled its obligations under the renewed agreement, reinstating the team and facilitating its participation in the player auction on 21 May 2024. Furthermore, the Claimant claims that it incurred and paid USD 849,364.18 to Sri Lanka Cricket to ensure the team's participation in Season 5 on behalf of the Defendant. It is the Claimant's case that despite these actions, the Defendant failed to make any of the required instalment payments, nor did it reimburse the Claimant for the costs incurred on its behalf. This resulted in an outstanding balance of USD 2,449,364.18 under the Second Franchise Agreement.

7. The Claimant claims:

(1) USD 339,202 under the First Franchise Agreement;

(2) USD 2,449,364.18 under the Second Franchise Agreement;

(3) Wasted expenditure incurred by preparation for and in reliance upon the Defendant's promised performance;

(4) Lost management time resulting from the necessary diversion of the Claimant's senior personnel to address the disruptions caused by the Defendant's failures;

(5) Costs of emergency financing that the Claimant was compelled to obtain due to the Defendant's non-payment.

8. The Claim Form was served on 30 May 2025. On 26 June 2025 the Claimant filed a request for default judgment. Notwithstanding three requests to file a statement of costs from the Registry the Claimant failed to do so.

9. On 22 July 2025 the Defendant served its Acknowledgement of Service intimating an intention to contest jurisdiction. On 23 July 2025 the Claimant eventually filed a statement of costs but by then the Acknowledgement of Service had been served and on 25 July 2025 the Court dismissed the request for default judgment.

10. On 6 August 2025 the Defendant issued an application seeking an order that the Court:

(1) declare that it has no jurisdiction over the Claimant's claim; alternatively, decline to exercise any jurisdiction it may have over the claim;

(2) set aside the Claim Form;

(3) award the Defendant its costs of this application; and

(4) make any other orders it deems appropriate.

**APPLICATION OUT OF TIME**

11. The Claimant contends that the application is out of time.

12. The material rules are:

***"11.2***

*A defendant shall file an acknowledgment of service if:*

*(1) the claimant serves a claim form without serving particulars of claim;*

*(2) the defendant is unable to file a defence within the period specified in Rule 16.9; or*

*(3) the defendant wishes to dispute the Court 's jurisdiction.*

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***11.4***

*If:*

*(1) a defendant fails to file an acknowledgment of service within the period specified in Rule 11.5; and*

*(2) does not within that period file a defence in accordance with Part 16 or serve or file an admission in accordance with Part 15,*

*the claimant may obtain default judgment if Part 13 allows it.*

***11.5***

*The general rule is that the period for filing an acknowledgment of service is 14 days after service of the claim form.*

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***12.1***

*A defendant who wishes to:*

*(1) dispute the Court's jurisdiction to try the claim; or*

*(2) argue that the Court should not exercise its jurisdiction;*

*may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.*

***12.2***

*A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 11.*

***12.4***

*An application under this Part must:*

*(1) be made within 14 days after filing an acknowledgment of service; and*

*(2) be supported by evidence.*

***12.5***

*If the defendant files an acknowledgment of service and does not make an application disputing the Court's jurisdiction within the period specified in Rule 12.4:*

*(1) he is to be treated as having accepted that the Court has jurisdiction to try the claim; and*

*(2) if his acknowledgment of service indicates an intention to dispute jurisdiction, he will be treated as if he has not filed an acknowledgment of service for the purposes of any application for judgment in default under Part 13."*

13. By RDC 12.4, a jurisdiction challenge application must be made within 14 days after filing an Acknowledgement of Service according to Part 11 and supported by evidence. The Claimant points out that the Claim Form was sent to the Defendant on 30 May 2025 by email and deemed served on it on 30 May 2025 via email and 3 June 2025 via courier pursuant to RDC 9.27. I do not consider that the Claim Form was properly served by email as there is no evidence that the Defendant had previously expressly indicated in writing that it was willing to accept service by electronic means within the meaning of RDC 9.3(1). If the Claim Form was sent by courier to the Defendant's Dubai place of business on 3 June 2025, it was deemed served on 5 June 2025 under RDC 9.27.

14. The Defendant was therefore required to file its Acknowledgement of Service by 19 June 2025 pursuant to RDC 11.5, but it did not do so until 22 July 2025.

15. Had the Defendant complied with RDC 11.5 it would have been obliged to make its application challenging jurisdiction by 3 July 2025. The application was served on 6 August 2025, that is to say, 34 days later than the timetable contemplated by the RDC

16. In his first witness statement dated 20 August 2025, Mr Anil Mohan, the CEO of the Claimant suggests at paragraph 16 that the Defendant filed its Acknowledgment of Service 39 days beyond the deadline under RDC 11.5 - without applying for relief. The difference is accounted for by the fact that he had worked from the service by email whereas the correct approach is to work from service by courier plus the 2 days under RDC 9.27.

17. In response Mr Muhammad Umar Khan, the Managing Director of the Defendant, stated in his second witness statement dated 3 September 2025 at paragraph 10:

> "The delayed filing of Acknowledgment of Service: Mr Mohan asserts in AM1/16 that the Defendant filed its acknowledgement of service 39 days beyond the deadline "without applying for relief", and that this somehow "undermines the bona fides of its jurisdiction challenge". I am advised that Mr Mohan's assertion misunderstands the concept of "relief from sanctions" under the RDC. The Claimant has neither sought nor obtained any order for sanctions, and there is no basis in the RDC for imposition of sanctions on a defendant for filing the acknowledgment of service out of time. In any event, I apologise for the delay occasioned by the Defendant unexpectedly having to instruct DIFC registered practitioners in a manner that it had not previously contemplated."

18. The Court is not assisted by assertions of law made by unqualified persons and I will focus on the facts. It does appear that the Defendant did not seek an extension of the time limit under RDC 11.5 for filing an Acknowledgement of Service. I find Mr Khan's excuse for the Defendant's failure to comply with the time limit wholly unconvincing. I fail to understand why a party should be surprised that it is necessary to instruct DIFC registered practitioners if served with DIFC Court proceedings. I find *"in a manner that it had not previously contemplated"* meaningless verbiage. A party who did not ignore DIFC Court proceedings through negligence or insouciance could easily retain representation by DIFC registered practitioners within 14 days.

19. The Claimant refers to *Lara Basem Musa Khoury v Mashreq Bank PSC* [2022] DIFC CA 007 (28 November 2022). In that case Ms Khoury appealed the Order of Justice Lord Angus Glennie whereby he set aside service of the Claim Form on the ground that Ms Khoury had served it one day out of time. Insofar as material the Court of Appeal held:

> *"53. Secondly, the obvious course for Ms Khoury to have taken if something had gone wrong in serving the Claim Form, was to seek an extension of time under RDC 7.22 (if sought during the currency of the period for service) or 7.23 (if sought once the period for service had expired). However, for any such application to stand a prospect of success it would need to have satisfied the conditions in those Rules. Notably, the requisite conditions in RDC 7.23 (set out above) are strict. In the absence of any explanation or prompt application, any application by Ms Khoury under RDC 7.23 was doomed to fail.*
>
> *54. Thirdly, if unable to meet the specific conditions applicable in this context for an extension of time, there is no room for recourse to any freestanding principle of reasonableness. Were such a course open to a party who had failed to comply with the applicable time limit, the time limit provision would be gravely undermined. The DIFC authorities to which Mr Sheheen referred, noted by the Judge, do not therefore assist his argument.*
>
> *55. Fourthly, as observed in the English authorities to which Mr Montagu-Smith drew our attention, there is nothing unjust in the*

*application of a strict time limit in a case such as this where, wholly unexplained, service of the Claim Form had been left to the last-minute. The policy objective of such limits is to guard against cost and delay in a failure (without good reason) to comply with the time periods for service of the Claim Form and making progress with the claim. Necessarily, if a time limit does bring a claim to a halt, it will not have been decided on the merits; it does not at all follow that there has been any injustice, nor that the claim has failed for "hyper-technicality" (to use Mr Sheheen's expression). The safety valve is found in the RDC providing for applications to extend time but, as already discussed, those could not have availed Ms Khoury here. On the facts of this case, Ms Khoury has no one to blame but herself or her lawyers (it matters not whom for present purposes) for not getting on with service of the Claim Form."*

20. The Claimant also referred to two English Court of Appeal cases which it said showed that there was nothing unjust in the application of strict time limits in the furtherance of the policy objective of such limits to guard against cost and delay in a failure (without good reason) to comply with the time periods. I do not find Sayers v Clarke Walker [2002] EWCA Civ 645 totally apposite. It was largely directed to the changes in the appeal regime wrought by the (then) recent introduction of the Civil Procedure Rules, of which reading between the lines, the Court of Appeal did not wholly approve. Time has moved on since then.

21. *Altomart Ltd v Salford Estates (No. 2) Ltd* [2014] EWCA Civ 1408 confirmed that where rules do not prescribe the consequences of a failure to comply, an application for an extension of time for compliance was in substance an application for relief from sanctions. The court had the advantage of a further 12 years of experience over the court in Sayers and it approved the following guidance:

(1) enforcing compliance with the rules is not an end in itself and that it is not part of their function to impose sanctions merely for punitive purposes;

(2) the decision to extend time for compliance should be addressed in three stages:

(a) identifying and assessing the seriousness and significance of the default,

(b) identifying its cause, and

(c) evaluating all the circumstances of the case, including those specifically mentioned, so as to enable the court to deal with the application justly.

22. By RDC 4.2(1) the Court in the exercise of its case management powers may extend or shorten the time for compliance with any Rule, Practice Direction or Court order (even if an application for extension is made after the time for compliance has expired). The reference to *"those specifically mentioned"* in *Altomart* refers to circumstances mentioned in connection with relief from sanctions. They are to be found in the RDC at Rule 4.49:

(1) the interests of the administration of justice;

(2) whether the application for relief has been made promptly;

(3) whether the failure to comply was intentional;

(4) whether there is a good explanation for the failure;

(5) the extent to which the party in default has complied with other Rules, Practice Directions and Court orders;

(6) whether the failure to comply was caused by the party or his legal representative;

(7) whether the trial date or the likely trial date can still be met if relief is granted;

(8) the effect which the failure to comply had on each party; and

(9) the effect which the granting of relief would have on each party.

23. In the present case the Defendant appears from the evidence of Mr Khan to recognise that it filed its Acknowledgment of Service out of time but, even as of the start of the hearing, the point having been raised the Claimant, it had failed to seek an extension of time for filing. It was only upon the point being raised by the Court that Counsel for the Defendant made an oral application during his submissions for a retrospective extension. Counsel for the Claimant pointed to RDC 23.16 which states that every application should be made as soon as it becomes apparent that it is necessary or desirable to make it and objected to the application.

24. In reply the Defendant submitted that even if its filing of the Acknowledgement of Service were found to be ineffective and judgment in default were entered, it would be entitled to apply to have the judgment set aside under RDC 14.2 on the grounds that it has a real prospect of successfully defending the claim, that is to say, an absence of jurisdiction.

25. I am not willing to grant the Defendant's last minute "on the hoof" application. I have not found the reason for failing to file the Acknowledgment of Service in compliance with the Rules in the first place convincing, there is even less of an excuse for failure to seek a retrospective extension to the time for filing once the Defendant had instructed DIFC- registered lawyers. It may well be that it was the genuine opinion of the Defendant's lawyers that it was not necessary to do so as the RDC neither spell out sanctions for failure to file an Acknowledgement of Service timeously, nor (in contrast to the service of originating process) an express procedure for extending the time.

26. I am afraid I disagree. There are many places in the RDC where an express sanction is not stated for failure to comply with a time limit. The sanction for non-compliance is that the relevant step or act is not permitted. Relief from that sanction may be gained by an application for a retrospective extension of the time limit. Relief will only be granted for good reason based on evidence and if made without undue delay. These

principles clearly emerge from the decision of the Court of Appeal in *Khoury*.

27. In the absence of an extension, I am minded to treat the Defendant as having failed to serve an Acknowledgement of Service. That appears to me to be consistent with the scheme of Part 11 as exemplified by RDC 11.4 which allows judgment in default of service if a defendant fails to file an Acknowledgment of Service within the period specified in Rule 11.5. It is true that in the present case judgment in default was refused. Unfortunately, the Order did not disclose the reasons why. Both Counsel did explain their understanding of the reasons but they were not entirely consistent.

28. It is a condition precedent to an application disputing the Court's jurisdiction by RDC 12.2 first to file an Acknowledgment of Service in accordance with Part 11. Since I find that no valid Acknowledgment of Service was served in accordance with Part 11 in the present case and there is no retrospective extension of the time for service, it follows that no valid application under Part 12 can be made and I dismiss the present application on that basis.

29. If I am wrong to dismiss the application without more and it is said that is a disproportionate sanction for the failure to serve the Acknowledgment of Service in time, I should consider the criteria under RDC 4.49.

30. First, it seems to me that the interests of the administration of justice generally require parties to comply with the Rules. The delay was substantial. The scheme of the RDC is that any challenge as to the jurisdiction of the Court must be brought within 28 days of service of the Claim Form. Here the additional delay was nearly 6 weeks.

31. Specifically, the effect of the jurisdiction challenge in the present case would leave the Claimant's claim in something of a procedural no-man's land. While not expressly stating that the appropriate forum is ICC Arbitration in Sri Lanka, the Defendant makes reference to *"the Parties' reliance on the Franchise Agreements in their correspondence with the SLCB* [Sri Lanka Cricket Board]. *Clause 18 of the Franchise Agreements provides for ICC arbitration in Sri Lanka"*. It is however an undisputed fact that *"the Parties subsequently negotiated the terms of a full-length Franchise Agreement, but this was never signed and remained in draft form"* (see the facts in more detail below at paragraphs 40 and 41). It is therefore, at best, highly debateable whether Clause 18 of the draft agreements governs relations between the parties. I would anticipate protracted proceedings before the Sri Lankan courts. As the Claimant points out, had the Defendant genuinely considered that there was an effective arbitration agreement between the parties it would have sought dismissal or stay of the proceedings under Article 13 of the DIFC Arbitration Law. That it did not gives rise to a fear that the Defendant is doing no more than indulging in stalling tactics.

32. I observe in passing that there was some suggestion in argument that the references to *"Franchise Agreements"* in the Claim Form was reference to the unexecuted agreement between the parties and SLCB. That is simply unsustainable.

33. Secondly, the application for relief has not been made promptly.

34. Thirdly, taking the criteria under RDC 4.49(3) and (4) together. As noted at paragraph 18 above, I have found the Defendant's explanation for the failure wholly unconvincing. I cannot however on the evidence before me find that it was intentional, but equally, I cannot find that it was not, while recognising that carelessness or indifference is a more likely explanation than deliberate wrongdoing.

35. Fourthly, the criteria under RDC 4.49(5) and (7) are not relevant.

36. Fifthly, Mr Khan's evidence indicates that the failure to comply was caused by the Defendant not its legal representatives.

37. Sixthly, the criteria under RDC 4.49(8) and (9) merge into the considerations identified by the English Court of Appeal in Altomart set out at paragraph 21(2) above. I consider the default to have been serious. It is of the utmost importance that litigants do not ignore DIFC Court proceedings. I have found the most likely cause of the default to have been a careless or indifferent disregard of the proceedings. I do not know why default judgment was not entered but the effect of permitting the challenge to proceed is serious delay and disruption to the resolution of the parties' differences necessitating substantial additional costs.

38. Thus, even if the decision to dismiss the application under Part 12 were an exercise of discretion, I would still dismiss the application.

**THE MERITS**

39. If I am wrong to dismiss the Defendant's application, I should go on to consider the merits. I can do so relatively briefly as the issues are not as complicated as would appear from the parties' submissions.

40. The undisputed facts are straightforward and I take them on the Defendant's case from Mr Khan's evidence (albeit that it largely contains impermissible legal submissions which I disregard in their entirety).

(1) On 30 May 2023, the Claimant and the Defendant entered into a "Term Sheet" for the grant of franchise rights in the LPL cricket tournament (the **"2023 Term Sheet**").

(2) Pursuant to the 2023 Term Sheet, the Defendant agreed to grant the Claimant the right to own, establish and operate an LPL team.

(3) The 2023 Term Sheet provides as follows in relevant part:

> ***"Governing Law and Dispute Resolution***
>
> *This Term Sheet and the Franchise Agreement shall be governed by the laws of DIFC, UAE."*

(4) On 8 March 2024, the Claimant and the Defendant entered into a second Term Sheet (the "**2024 Term Sheet**"). Clause 10 of the 2024 Term Sheet provides as follows:

**"Governing Law and Dispute Resolution**

This Agreement shall be governed by and construed in all aspects in accordance with laws of DIFC, UAE."

(5) Both the 2023 and 2024 Term Sheets were prepared by the Claimant on its letterhead. Mr Khan led the negotiations with the Claimant and signed the Term Sheets on the Defendant's behalf. He says that the parties never discussed the matter of DIFC Courts' jurisdiction over any disputes in respect of the Term Sheets.

(6) Both the Claimant and Defendant are UAE entities, negotiations took place in Dubai (and not in the DIFC), and the Term Sheets were substantially performed within the UAE (and not in the DIFC).

(7) The Term Sheets also contemplate the Claimant, the Defendant and the SLCB entering into a Franchise Agreement in the future. Accordingly, the parties subsequently negotiated the terms of a full-length Franchise Agreement (in respect of which Mr Khan led the negotiations on the Defendant's behalf), but this was not signed by the Claimant. Clause 18 of the Franchise Agreement provided that:

(a) The Agreement would be governed by and construed in all aspects in accordance with the laws of Sri Lanka; and

(b) Any disputes including any question regarding the existence or validity of the Agreement, would be resolved by arbitration in accordance with the rules of the International Chamber of Commerce. The seat and venue of the Arbitration would be Colombo, Sri Lanka.

41. I would add from a straightforward perusal of the documents annexed to Mr Khan's witness statements:

(1) The Term Sheets were expressly described as *"binding"*;

(2) Both Term Sheets contained the following:

*"The intent of this binding Term Sheet is to describe some key terms of the proposed grant of Franchise Rights (defined below). The detailed terms of the proposed grant of Franchise Rights and the conditions governing such grant, detailed obligations of each Party, and other rules and regulations pertaining to the Tournament will be set forth in the Franchise Agreement to be entered into by and between the Franchisor, the Franchisee and Sri Lanka Cricket ("Franchise Agreement")."*

(3) Not only were the full-length Franchise Agreements not signed by the Claimant, but they were also not signed by the SLCB.

42. The short point is whether the *"Governing Law and Dispute Resolution"* clause (**"the GLDR Clause"**) in the Terms Sheets is sufficient to amount to an opt into the DIFC Court's jurisdiction under Article 14.B of Dubai Law No. 2 of 2025 Concerning Dubai International Financial Courts (the **"Court Law 2025"**) which provides:

*"The DIFC Courts have jurisdiction to hear and determine civil and commercial claims and applications, where the parties expressly agree in writing to the DIFC Courts' jurisdiction, whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."*

43. In *Akhmedova v Akhmedov and anor* [2018] DIFC CA 003 (19 June 2018) the Court of Appeal indicated that where the question of satisfaction of a jurisdictional gateway was *"solely one of law and the Court has the necessary background evidence to determine it, the normal approach is for the Court to get on and determine the question"*. In the present case the issue is one of law, namely the construction of the GLDR Clause and I see no reason why I should not get on and decide it - indeed neither party contends otherwise.

44. If the GLDR Clause is to be regarded as only addressing the choice of governing law, that would not, as a matter of established DIFC jurisprudence automatically carry with it the implication that jurisdiction is conferred on the DIFC Courts: *Khoury v Mashreq Bank PSC at [65]: Goel and ors v Credit Suisse (Switzerland) Ltd* [2021] DIFC CA 002 (26 April 2021) at [99].

45. Whether a provision is specific, clear and express is a matter of contractual interpretation. The DIFC principles of contractual interpretation are embodied in the Contract Law which is different from English common law in certain respects. Part 5 on the interpretation of contracts provides in material part:

**"49 Intention of the parties**

(1) A contract shall be interpreted according to the common intention of the parties.

(2) Subject to Article 49(3), if such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

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**50 Interpretation of statements and other conduct**

(1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.

(2) . if Article 50(1) is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

...

**51 Relevant circumstances**

In applying Articles 49 and 50, regard shall be had to all the circumstances, including

(a) preliminary negotiations between the parties;

(b) practices which the parties have established between themselves;

(c) the conduct of the parties subsequent to the conclusion of the contract;

(d) the nature and purpose of the contract;

(e) the meaning commonly given to terms and expressions in the trade concerned .; and

(f) usages.

**52 Reference to contract or statement as a whole**

Terms . and expressions . shall be interpreted in the light of the whole contract or statement in which they appear.

**53 All terms to be given effect**

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

**54 Interpretation against party responsible**

If contract terms supplied by one party are unclear, an interpretation against that party is preferred."

46. Since the evidence in the present case is that the parties did not discuss jurisdiction, their common intention cannot be found as a fact and the parties' intentions and the meaning of the words used in the Term Sheets must be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to them in the same circumstances.

47. Mr Khan states that both parties are UAE entities, negotiations took place in Dubai, the Term Sheets were substantially performed within the UAE and the Term Sheets were expressly subject to DIFC Law. It would seem highly improbable that reasonable persons of the same kind as the parties would intend that the courts of Sri Lanka would be the appropriate forum. In any event I am not satisfied that either arbitration or litigation in Sri Lanka would be an available option and so the only choices would be between the courts of Dubai either within or outside the DIFC.

48. The parties have concluded their agreement in English not Arabic, and none of their dealings were in Arabic. The currency of account is the US dollar, which is widely regarded as the currency of business in the DIFC. The subject matter is international rather than in the UAE. While there was some difference between the parties, I accept for the purposes of argument that the Dubai Courts would be willing to determine claims according to DIFC law. Notwithstanding, if one were looking for the "natural" forum there would be a strong case that "reasonable" parties would have intended the DIFC rather than Dubai outside the DIFC. However, that is not the exercise for present purposes. What I must determine is whether the GLDR Clause, which refers to both governing law and dispute resolution in its title, but refers only to governing law in its text, is to be interpreted as an agreement in specific, clear and express terms as to jurisdiction.

49. The Defendant submits that in all the cases where the DIFC Courts have interpreted a term to confer jurisdiction on the DIFC Courts there was reference to a court. In response the Claimant pointed to the decision of the Court of Appeal in Goel which cited propositions formulated by Justice Martin (as he then was).

"(1) It is not necessary for a jurisdiction agreement to specifically refer to the "DIFC courts" or some variant of that expression to engage the gateway to jurisdiction provided by [Article 14.B of the Court Law 2025].

(2) The question which the Court must determine as a matter of contractual construction, is whether it was the mutual intention of the parties to confer jurisdiction upon the DIFC courts to hear and determine a dispute of the kind that has arisen.

(3) That question is to be resolved by reference to the natural and ordinary meaning of the words of the jurisdiction agreement as they would have been mutually understood by the parties (objectively) having regard to the background circumstances, the nature of the agreement, and the context in which the words are used.

(4) If the Court concludes that, as a matter of construction of their agreement, the parties did intend to confer jurisdiction upon the DIFC courts to hear and determine a dispute of the kind that has arisen by the words they have used in their agreement, those words will satisfy the requirement imposed by [Article 14.B of the Court Law 2025] for *"specific, clear and express provisions."*"

50. The Claimant submits the additional words *"and construed in all aspects in accordance"* in the clause in the second Term Sheet emphasise the jurisdiction of the DIFC Courts. I do not accept that the natural and ordinary meaning of the words relates to jurisdiction - *"all respects"* is prefaced by *"construed"*. The words relate to the construction of the Term Sheets not jurisdiction.

51. The Claimant submits that the GLDR Clause should be interpreted in context and in light of the criteria of effectiveness and commerciality. It says that dealings were in English, the parties chose DIFC law, the Term Sheets were executed and it was never denied the DIFC Courts had jurisdiction. I accept that these matters could point to an agreement as to the jurisdiction of the DIFC Courts as aids to construction in accordance with Article 51 of the Contract Law.

52. The Defendant referred to the observation in the English Supreme Court of *Arnold v Britton* and others [2015] UKSC 36 at [19] that the

mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. The Defendant also relied on Article 54 of the Contract Law which provides that if the contract terms supplied by one party are unclear, an interpretation against that party is preferred, noting that it was the Claimant who proffered the relevant language. Both references emphasize that the primary task of the Court is to interpret the actual words used.

53. I agree with the Defendant that the words "dispute resolution" can comprehend both governing law and jurisdiction. I am however greatly assisted in resolving the issue of interpretation by the judgment of the Court of Appeal in *National Bonds Corporation PJSC v (1) Taaleem PJSC and (2) Deyaar Development PJSC* [2011] DIFC CA 001 (11 May 2011) at [39]:

> "It can, therefore, be inferred with reasonable confidence that where at the moment of contracting the parties select the Laws of Dubai as the governing law they intend to select either Civil Law Dubai Law, as applied in the non-DIFC Courts, or Common Law Dubai Law, as applied in the DIFC Courts. The one selection which, in our judgment, it can confidently be asserted would not have been made by either party would have been such body of law as was applied in such Court as was accorded jurisdiction over a given future dispute by the general laws of the Emirate of Dubai, depending on whether the dispute fell inside or outside Article 5(A)(1) of Law No.12 of 2004. The assumption that in a clause such as this the parties could have mutually intended to disassociate the body of law governing the contract from the court upon which they conferred jurisdiction is, in our view, although theoretically possible, distinctly implausible. Their selection of one body of law can thus be assumed to reflect their agreement to confer jurisdiction on the Courts of that one place where that body of law will be applied. Since their selection of a body of law must be immutable unless the contract is subsequently varied, there must be the very strongest inference that their selection of a Court applying that body of law is also intended to be immutable."

[No doubt the Claimant also thought it was of assistance as it cited the same passage in full twice in its written submissions].

54. The later decisions in *Khoury* and *Goel* preclude the assumption that the mere selection of a governing law is sufficient to confer jurisdiction, but the assumption in Taaleem still has force as an aid to the construction of words that could be interpreted as conferring jurisdiction. I am happy to accept that guidance and interpret the heading of the GLDR against the background of putative reasonable persons of the same kind as the parties, the factual and commercial background to the Term Sheets and the actions of the parties as an intention not only to make DIFC Law the governing law of the Term Sheets but also to confer jurisdiction on the DIFC Courts.

55. Once one has interpreted a clause on its proper construction as representing the parties' intention to confer jurisdiction on the DIFC Courts it will generally be regarded as specific, clear and express as H.E. Justice Sir Jeremy Cooke noted addressing the predecessor provisions to the Court Law 2025 in *Sunteck Lifestyles Limited v (1) Al Tamimi And Company Limited (2) Grand Valley General Trading Llc* [2017] DIFC CFI 048 (23 November 2017) at [24]:

> "At the end of the day, it would be nonsensical to conclude that the parties had agreed to the jurisdiction of the DIFC Courts, as opposed to the onshore courts but that the words were not sufficiently "specific, clear or express" to amount to an agreement for the purposes of Article 5(A)(2) of the amended JAL, with the result that the matter would have to be determined in the onshore courts. If the purpose of the amended JAL had been to allocate all cases with Dubai choice of law agreements to the onshore courts unless the relevant agreement included the actual words "the courts of the DIFC", "the courts of the Dubai International Financial Centre" or "DIFC" in some form, that is what the provision would have said. What it is looking for is an agreement which is specific enough and sufficiently clearly expressed to amount to a choice of the DIFC Courts. Whilst, in an ideal world, the use of wording such as that set out in the Practice Direction would be employed, the Courts do not live in an ideal world and have to construe the contracts in issue to determine the parties' chosen jurisdiction when faced with clauses such as those found here. Once the clause has been construed the Court reaches its conclusion which in itself means that the words used are specific enough, clear enough and express enough for that conclusion to be reached. When general words such as those used here are first seen, they do not appear to be "specific, clear and express" as a choice of either the DIFC Courts or the onshore Dubai Courts. It is only when the process of analysis is undertaken that the true meaning is ascertained. If the parties have agreed to the jurisdiction of the DIFC Courts, on the proper construction of a jurisdiction clause, the agreement is, ex hypothesi, sufficiently specific, clear and express. The words used are given a meaning so that the provision is express. In the context, the words are specific in identifying the DIFC Courts and in the overall circumstances it is clear that this is what the parties intended. The provisions are therefore "specific, clear and express".

56. In the circumstances, I find that the GLDR Clause satisfies the terms of Article 14.B of the Court Law 2025 and that the DIFC Court has jurisdiction over the Claim.

57. It is suggested that should the Court find that it has jurisdiction over the Claim, the Court should not exercise such jurisdiction in view of the parties' reliance on the unexecuted tripartite Franchise Agreements in their correspondence with the SLCB. I find that is not a basis for the Court to decline to exercise its jurisdiction for the reasons set out at paragraphs 31 and 41**Error! Reference source not found.**.

58. The Defendant's application is accordingly dismissed.

**COSTS**

59. The costs of the application must follow the event and be paid by the Defendant to Claimant according to the general rule in RDC 38.7(1).

60. It is appropriate to make an immediate assessment of the costs under RDC 38.30(1).

61. The Court's task is made easy in the present case as each party has served a Statement of Costs in almost an identical amount. I am happy that the hourly rates used fall within those set out in *Registrar's Direction No. 1 Of 2023 - Indicative Hourly Legal Charges*. The only deduction I would make would be 5% representing VAT on both expenses/disbursements and legal fees as the Claimant is a trading entity and will be able reclaim the VAT.

62. I therefore assess the costs payable by the Defendant to the Claimant in the sum of AED 272,593.39.