Claim No: ARB 029/2025

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

OZAN

Claimant/Respondent

and

OWAIN

Defendant/Appellant

ORDER WITH REASONS OF H.E. CHIEF JUSTICE WAYNE MARTIN

UPON the Order with Reasons of H.E. Justice Shamlan Al Sawalehi dated 7 January 2026 (the "R&E Order")

AND UPON the Order with Reasons of H.E. Justice Shamlan Al Sawalehi dated 20 April 2026 directing that the Defendant shall pay the Claimant 80% of the Claimant's costs (the "Costs Order")

AND UPON the Order with Reasons of H.E. Justice Shamlan Al Sawalehi dated 9 April 2026, dismissing the Defendant's Appeal Notice dated 16 January 2026 seeking permission to appeal the R&E Order

AND UPON the Defendant's Renewed Permission to Appeal Application dated 21 April 2026 seeking permission to appeal the R&E Order (the "Renewed Application")

AND UPON the Claimant's submissions in opposition dated 12 May 2026

AND UPON the Defendant's letter application for an oral hearing of the Renewed Application dated 19 May 2026

IT IS HEREBY ORDERED THAT:

1. The Renewed Application is granted in respect of both grounds of appeal.

2. Enforcement of the R&E Order is stayed unless and until the Claimant provides to the Court a written undertaking executed by a person or persons with demonstrated authority to bind the Claimant to the effect that it will only pursue enforcement or execution proceedings on the basis that any monies or other assets obtained as a result of such proceedings are held by the Dubai Courts or the DIFC Courts to be dealt with in accordance with any directions made by the Court of Appeal.

3. Any dispute between the parties as to the adequacy of any written undertaking proffered by the Claimant pursuant to the preceding order shall be referred to and determined by the Court of Appeal.

4. Enforcement of the Costs Order is stayed until the determination of the appeal.

5. The costs of the Renewed Application are reserved to the Court of Appeal.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 5 June 2026
At: 3pm

SCHEDULE OF REASONS

Introduction

1. The Defendant, Owain ("**Owain**") applies to the Court of Appeal for permission to appeal from the decision of the Judge at first instance (the "**Judge**") granting the application of the Claimant, Ozan ("**Ozan**") for recognition and enforcement of an arbitral award dated 10 November 2023 issued under the Rules of the Singapore Charter of Maritime Arbitration (the "**Award**"). The application is made to the Court of Appeal because the Judge dismissed Owain's initial application for permission to appeal.

2. For the reasons which follow, there is a real prospect that Owain will establish that the decision to order recognition and enforcement of the Award was wrong and/or unjust because of a serious procedural irregularity in the proceedings in the lower court.

3. Issues relating to the consequential orders appropriately made as a result of the grant of permission to appeal will be addressed later in these reasons.

Procedural history

4. The issues raised by the appeal turn entirely upon the procedure that was followed. That procedure is established by the Court record, and is not contentious. The appeal does not raise any issue with respect to the merits of the underlying dispute between the parties or with respect to the merits of the application for recognition and enforcement of the Award.

5. On 1 August 2025, Ozan commenced these proceedings by filing an Arbitration Claim pursuant to the jurisdiction conferred upon the Court by Articles 41-43 of the DIFC Law (2008). The application claimed recognition and enforcement of the Award, and payment of the amount of the Award - USD 3,072,936.53.

6. The application was said to be made pursuant to Rule 43.66 of the Rules of the DIFC Courts ("**RDC**"). That Rule sets out the matters which must be provided in support of an application for recognition and enforcement.

7. The application makes no mention of RDC 43.62, which expressly provides that applications for recognition and enforcement may be made without notice, although the application form suggested that the application would be made without notice.

8. However, in fact the application and supporting material was served on Owain on 4 August 2025 by courier. Accordingly, pursuant to RDC 9.27, the deemed date of service was the second business day after the documents were sent by courier - namely, 6 August 2025. Nothing turns upon the precise date upon which service was effected. It is sufficient to note that there is no doubt that the Arbitration Claim was served on Owain.

9. Ozan contends that it only served the claim because it had understood the Court to request that the claim be served. It is unnecessary to enquire into the accuracy of that assertion, as the relevant fact is that the claim was served. The reason why the claim was served wouldn't appear to be relevant to any issue in the appeal.

10. Owain filed an acknowledgement of service on 19 August 2025 in which it indicated that it intended to contest the jurisdiction of the DIFC Courts. On 2 September 2025, Owain filed an application for a declaration that the DIFC Court did not have jurisdiction, and a striking out of the claim, or alternatively a stay of the proceedings. During September 2025 Ozan filed its evidence in answer to the jurisdiction challenge and Owain filed its evidence in reply. The jurisdictional challenge was heard by the Judge on 22 December 2025.

11. Owain submits that it made clear to the Judge during the course of oral submissions that it was only dealing with its challenge to the jurisdiction of the Court and was not responding to the application for recognition and enforcement. Ozan contends that while the Judge accepted that proposition, he also indicated to the parties that he would likely deal with the application for recognition and enforcement on an *ex parte* basis.

12. It doesn't appear that for the purposes of the appeal anything turns upon the question of what was said during the hearing. The fact is that Owain had challenged the jurisdiction of the Court and had not submitted any substantive answer to the application for recognition and enforcement - no doubt because dealing with the merits of the application could have amounted to an acknowledgement of the jurisdiction of the Court. Accordingly, whatever was said during the hearing, it seems clear that the only matter properly before the Court was Owain's challenge to the jurisdiction of the Court.

13. On 7 January 2026, the Judge made the R&E Order for recognition and enforcement of the Award which is the subject of Owain's appeal. He further entered the amount due under the Award as a money judgment of the Court and ordered Owain to pay interest on the amount of the Award and the costs of the application for recognition and enforcement. It was further ordered that unless Owain paid the judgment sum, interest and costs within 14 days, Ozan was at liberty to apply to the Execution Judge of the Dubai Courts for enforcement and execution of the order for recognition and enforcement.

14. The order included the following term:

> "The Defendant has the right to apply to set aside this order within 14 days of being served with the order. The Award may not be enforced until after the end of that fourteen day period or, if the Defendant makes an application within that period, after the application has been finally disposed of."

15. The R&E Order made by the Judge followed the usual format of an order for recognition and enforcement made following an application without notice pursuant to RDC 43.62. The reference in the order to Owain having 14 days within which to apply to set aside the R&E Order corresponds to the provisions of RDC 43.70, which expressly provide that a party served with an order for recognition and enforcement made without notice and which is served within Dubai may apply to set aside such an order within 14 days. That view is consistent with the fact that the recitals to the R&E Order make no reference to either service of the claim or the acknowledgement of service, the challenge to the jurisdiction of the Court, the hearing of that challenge, or to any hearing of the application for recognition and enforcement. The essence of Owain's complaint, and of the appeal, is the assertion that this course was not open to the Judge given that the Arbitration Claim had been served, an acknowledgement of service filed and a challenge made to the jurisdiction of the Court which had not been resolved at the time the order for recognition and enforcement was issued. Owain's submissions in support of that contention will be summarised below.

16. On 8 January 2026, which is of course the day after the order for recognition and enforcement had been made, the Judge issued an order dismissing Owain's challenge to the jurisdiction of the Court and ordering Owain to pay the costs of that application. The recitals to that order referred to the challenge to the jurisdiction of the Court and the hearing on 22 December 2025.

17. It is apparent from the Judge's reasons for dismissing the challenge to the jurisdiction of the Court that the challenge was based upon the proposition that the jurisdiction of the Court under Article 42 of the Arbitration Law depended upon some connection between the parties and the DIFC, or the subject matter of the dispute and the DIFC, or upon the Defendant having assets within the DIFC. The Judge rejected that proposition and no appeal has been brought from that decision.

18. Also on 8 January 2026, Owain wrote to the Court asserting that the order issued on 7 January 2026 had been issued in error because of the

provision of RDC 12.8 to the effect that after the jurisdictional challenge was dismissed the acknowledgement of service ceased to have effect and Owain had the opportunity to file a further acknowledgement of service within 14 days of the dismissal of the jurisdictional challenge. Owain requested revocation of the R&E Order for recognition and enforcement pursuant to RDC 4.7.

19. After Owain and Ozan exchanged submissions by correspondence on the issue, on 15 January 2026, the Registry advised the parties that the Judge had directed that the R&E Order would not be revoked and that Owain was at liberty to file any application it considered appropriate.

20. On 16 January 2026, Owain applied for permission to appeal from the order for recognition and enforcement. Owain did not and has not applied to set aside the R&E Order pursuant to RDC 43.70 or pursuant to the term of the R&E Order granting liberty to make such an application within 14 days of service.

21. Owain's application for permission to appeal and its associated application for a stay of proceedings were the subject of a hearing before the Judge on 10 March 2026.

22. On 9 April 2026, the Judge issued orders with reasons dismissing the application for permission to appeal and the stay application. As the Judge gave no reasons for his decision to order the recognition and enforcement of the Award on terms which are only consistent with the Arbitration Claim form not having been served on Owain, his reasons for rejecting Owain's application for permission to appeal can be viewed as a surrogate for his reasons for following the procedural course, which was taken.

23. In his reasons, the Judge referred to the provisions of the RDC Part 43 relating to applications for recognition and enforcement without notice - that is, RDC 43.62 and RDC 43.70. The Judge expressed the view that RDC Part 43, dealing with arbitration claims, should be regarded as having created a discrete regime and that RDC 12.8 should not be regarded as forming any part of that regime. The Judge also expressed the view that the fact that the Arbitration Claim was served did not displace the capacity of the Court to proceed with the application for recognition and enforcement as if it had been made without notice.

24. The Judge also rejected the submission that the order for recognition and enforcement was issued prematurely and in error. In his reasons, he stated that after deciding that the Court had jurisdiction to hear the claim he directed the Registry to issue both the order dismissing the challenge to the jurisdiction of the Court and the order for recognition and enforcement of the Award. He stated that it was his intention that the orders would be issued contemporaneously and the fact that the order for recognition and enforcement was issued before the order dismissing the challenge to the jurisdiction of the Court was "properly understood as an administrative sequencing of the orders by the Registry, rather than as reflecting any separate or subsequent judicial determination".

25. The Judge also rejected Owain's contention that the Court ought to have revoked the order for recognition and enforcement pursuant to RDC 4.7. He expressed the view that there was no procedural irregularity of the kind that would justify the exercise of the Court's power under that Rule.

Permission to appeal - legal principles

26. RDC 44.117 provides:

> "44.117 The Court of Appeal will allow an appeal from the decision of the Court of First Instance where the decision of the lower Court was:
>
> (1) Wrong; or
>
> (2) Unjust because of a serious procedural or other irregularity in the proceedings in the lower Court."

27. RDC 44.5 requires that an appellant obtain permission to appeal to the Court of Appeal except where the appeal is against a committal order.

28. RDC 44.19 provides:

> "44.19 Permission to appeal may only be given where the lower Court or the Appeal Court considers that:
>
> (1) The appeal would have a real prospect of success; or
>
> (2) There is some other compelling reason why the appeal should be heard."

29. RDC 44.19 provides that permission to appeal may only be given where the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

30. In the context of an assessment of the prospects of success "real" means realistic rather than fanciful and involves the same test as is applied in applications for immediate judgment.[1]

31. A real prospect of success does not mean a probability of success, but more than mere arguability.[2]

32. "Some other compelling reason why the appeal should be heard" may include the public interest in clarifying the meaning and scope of relevant practice and provisions of DIFC and wider UAE law.[3]

33. It is established that "real" in the context of an assessment of the prospects of success means realistic rather than fanciful, applying the same test as is applied in an application for immediate judgment.[4]

34. It is also established that a real prospect of success does not mean a probability of success, but more than mere arguability.[5]

35. Accordingly, in order to obtain the grant of permission a prospective appellant needs to establish more than the proposition that the proposed

appeal is reasonably arguable - rather, it must be established that there is a real prospect of success.[6]

36. Particular principles apply to applications for permission to appeal against case management decisions and multi factorial assessments undertaken by a Judge at first instance, given the hurdles which must be overcome to obtain appellant intervention in such cases.[7] However, as this case does not involve either an application to appeal against a procedural or case management decision, or against a multi factorial assessment by the trial Judge, it is unnecessary to essay the relevant principles in these reasons.

37. When a renewed application made to the Court of Appeal is refused, it is appropriate for the Court to provide reasons which adequately explain the reasons why permission has been refused. The adequacy and extent of those reasons will be informed by the fact that the refusal of permission is final and conclusive and determines the issues the subject of the appeal.

38. On the other hand, when a renewed application for permission to appeal is granted, the reasons for the grant can and should be expressed more briefly, and any views expressed should be expressed and read as provisional, on the basis that a different view might well be formed following the consideration of the fuller argument which will be presented at the hearing of the appeal. Any views expressed in these reasons should be read and construed on that basis. Further, the reasons for granting permission in respect of grounds of appeal will be expressed economically, not only because the determination of the issue raised by the ground must await the hearing of the appeal but also to limit the prospect that a party might consider that a member of the Court of Appeal does not retain an open mind in relation to any of the issues in the appeal.

The grounds of appeal

39. There are two grounds of appeal:

Ground 1: The Learned Judge erred in law in issuing his R&E Order.

Ground 2: The Learned Judge erred in failing to revoke the R&E Order.

Owain's submissions

40. Owain submits that:

(a) The Judge erred by issuing the R&E Order prior to the determination of Owain's challenge to the jurisdiction of the Court;

(b) The Judge was required to first determine the challenge to jurisdiction because, once the challenge to jurisdiction was dismissed, RDC 12.8 then provided that the acknowledgement of service filed by Owain was no longer effective and Owain had 14 days within which to file a further acknowledgement of service;

(c) The course taken by the Judge deprived Owain of the opportunity of filing a further acknowledgement of service, after which, pursuant to RDC 43.64, the Arbitration Claim would have continued in accordance with the procedures specified in RDC 43.31-43.33 which would have included an opportunity for Owain to serve written evidence in opposition to the application for recognition and enforcement of the Award within 21 days after the date by which Owain was required to acknowledge service (that is, 35 days after the dismissal of the challenge to jurisdiction);

(d) The procedure in RDC 43.62 and RDC 43.70 only applies to applications for orders made without notice, and Ozan had applied for recognition and enforcement upon notice to Owain;

(e) The Judge was wrong to conclude that RDC Part 12 in general, and RDC 12.8 in particular did not apply to arbitration claims brought pursuant to RDC Part 43, relying on *King and Wood Mallesons (MENA) LLP v Meydan Group LLC and Banyon Corporate PTE Ltd*;[8]

(f) The Judge failed to give effect to RDC 43.64, which provides that:

> "The parties on whom the Arbitration Claim Form is served must acknowledge service and the recognition and enforcement proceedings will continue as an arbitration claim."

(g) The Judge was wrong to conclude that the fact that the Arbitration Claim had been served did not exclude the operation of the procedure for applying and ordering recognition and enforcement of an Award without notice;

(h) As the R&E Order was issued irregularly and contrary to the Rules, RDC 4.7 should have been utilised to revoke the R&E Order and return the procedure to a regular course, relying upon *Lancelot v Leedor*[9] for the proposition that RDC 4.7 is not limited to cases in which there has been a change of circumstances. Although that case establishes that the Court would usually exercise restraint in using the power to relitigate issues which had already been determined, that issue did not arise in this case because there had been no litigation of the issue relating to recognition and enforcement of the Award;

(i) The ambit of the power provided by RDC 4.7 was a matter of general importance and provided a compelling reason for the grant of permission to appeal even if the Court considered that the grounds of appeal did not, of themselves, have a real prospect of success.

Ozan's submissions

41. Ozan submits that the procedures embodied in RDC 43.62 and RDC 43.70 are available notwithstanding that the Arbitration Claim form was served. No authority is cited for that proposition and it is difficult to identify any reasoning in support of the proposition in the skeleton argument other than general assertion.

42. Ozan further submits that Owain could have filed another acknowledgement of service within 14 days of the dismissal of its challenge to the

jurisdiction of the Court. However, Owain submits that such an acknowledgement would have been:

(a) Inconsistent with the terms of the R&E Order made for recognition and enforcement of the Award which proceeds on the basis that it was made without notice; and

(b) Somewhat pointless, given that the R&E Order had already been made.

43. Ozan submits in the alternative that RDC 43.64 would have applied after the R&E Order was served, giving Owain the opportunity to file an acknowledgment of service at that point. However, Owain submits that such an acknowledgement of service would have to have been filed in conjunction with an application to set aside the award for recognition and enforcement of the Award within 14 days of service of the order, as compared to a procedure in which Owain had fourteen days within which to file an acknowledgement of service, a further 21 days in which to file evidence and submissions in opposition to the application, and would not carry the burden of proving that the order for recognition and enforcement should be set aside.

44. Ozan submits that RDC Part 43 should be regarded as providing a discrete and "stand alone" regime for arbitration claims which excludes the operation of RDC Part 12, with the consequence that Owain's argument that it had 14 days within which to file an acknowledgement of service, after which the procedure for a contested arbitration claim on notice would apply is flawed.

45. Owain submits that service of the claim and acknowledgement of service does not convert the proceedings into an inter partes process which prevents the Court from proceeding in the absence of engagement from a defendant.[10] No authority or reasoning is provided in support of this surprising proposition, given the fundamental obligation of the Court to provide procedural fairness to all parties before the Court.

46. Ozan further submits that the Arbitration Claim was issued without notice, although it is admitted that the claim was served.[11] The skeleton argument does not appear to provide any reasoning to explain or justify the apparent contradiction in that submission.

47. Ozan further submits that the reasoning of the Judge in his reasons for refusing the initial application for permission to appeal was correct.

48. Ozan further submits that RDC 4.7 had no application because there was no error or irregularity in the procedure followed by the Court. Ozan further contends that the ambit of the powers conferred by RDC 4.7 is not ambiguous or uncertain and there is no reason to grant permission to appeal to enable the ambit of those powers to be clarified at appellate level.

Analysis

49. Owain's submissions appear to rely upon the application of the natural and ordinary meaning of the relevant Rules to the circumstances of the case, whereas Ozan's submissions rely upon:

(a) Reading provisions of the RDC which relate only to applications and orders made without notice as applying to applications on notice; and

(b) Impliedly excluding RDC Part 12 in general and RDC 12.8 in particular from the operation of RDC Part 43; and

(c) Excluding RDC 43.64 and the provisions of RDC Part 43 with respect to contested arbitration claim forms from application to an Arbitration Claim made on notice.

50. A significant weakness in Owain's arguments would appear to be the fact that it could have contested the R&E Order by filing an acknowledgement of service and an application to set aside the Award within 14 days of service of the R&E Order for recognition and enforcement. However, the question of whether Owain should have been limited to those rights instead of the rights to which it asserts it was entitled by the proper application of the Rules is a matter apt for determination by the Court of Appeal.

51. Owain has established that its grounds of appeal have a real prospect of success and permission to appeal should be granted.

52. The circumstances of this case are unusual and do not give rise to any issue of general importance with respect to the ambit of RDC 4.7 which would have justified the grant of permission to appeal in the absence of the appeal having a real prospect of success.

The application for a stay

53. Owain applies for a stay of execution of the R&E Order. Owain accepts that RDC 44.4 and established authority provide that an appeal does not, of itself, operate as a stay of execution on the order of the lower court but contends that in the particular circumstances of this case, a stay should be granted on the enforcement of the R&E Order because of the difficulty which would be experienced in recovering funds provided to Ozan as a result of enforcement if its appeal is successful. Owain has adduced evidence with respect to the procedures which would have to be followed in China for recovery of funds remitted to Ozan to support this submission.

54. Ozan opposes the application for a stay, and submits that there has been no change in circumstance since the initial application for a stay was refused by the Judge. That submission must be rejected. The relevant change in circumstance is that permission to appeal will be granted.

55. Ozan contests Owain's assertion that recovery of funds from Ozan in China would be cumbersome and time consuming. However, Ozan submits that if the Court were minded to grant a stay it should instead receive undertakings from Ozan in the following terms:

"(1) Where payment is made by manager's cheque by the Defendant, the Claimant will not present, negotiate, or take steps to cash or enforce such manager's cheque(s) pending determination of the DIFC Court appeal and any subsequent substantive hearings; and

(2) Where any sums are paid into or held by the UAE Courts pursuant to enforcement or execution proceedings, the Claimant will not take steps to withdraw, enforce against, or otherwise dispose of such funds pending final determination of the DIFC Court appeal and any subsequent substantive hearings."

Analysis

56. The application for a stay must be assessed in the context in which the Court has decided that Owain's appeal has a real prospect of success. If the appeal succeeds, either the R&E Order will be set aside, or, perhaps, the time within which Owain may apply to set aside the Award may be extended to enable Owain to make such an application. If the Court of Appeal, after allowing the appeal, takes the former course, or if takes the latter course and Owain's application to set aside the R&E Order is successful, it would be necessary to repatriate to Owain any funds or assets attached by way of execution in the meantime. Although the parties disagree as to the precise extent of the steps that would have to be taken by Owain in China to secure that outcome, the Court considers that such steps would be potentially time-consuming and expensive.

57. The undertakings proffered on behalf of Ozan are not sufficient to prevent the prejudice upon which Owain relies in support of the application for a stay because they do not deal with the disposition of any funds or assets obtained by reason of the processes of enforcement following the determination of the Court of Appeal.

58. In evaluating these matters, the Court takes into account that Owain has provided no indication of the grounds upon which it opposes the R&E Order or upon which it would have applied to set aside the Award had it taken that course following the order of 7 January 2026. Accordingly, the Court has no means by which to assess the likelihood of Owain's ultimate success in its opposition to the recognition and enforcement of the Award. The Court recognizes that the grant of a stay in these circumstances could cause prejudice to Ozan in the event that the appeal is dismissed, or in the event that Owain's challenge to the recognition and enforcement of the Award fails.

59. In these circumstances, the Court considers that an appropriate balance of competing considerations lies in the grant of a stay unless and until Ozan provides a written undertaking executed by a person or persons with demonstrated authority to bind Ozan to the effect that it will only pursue enforcement or execution proceedings on the basis that any monies or other assets obtained as a result of such proceedings are held by the Dubai Courts or the DIFC Courts to be dealt with in accordance with any directions made by the Court of Appeal. Any issue with respect to the conformity of any written undertaking proffered by Ozan with these requirements should be referred to and resolved by the Court of Appeal.

60. Owain also seeks a stay of execution in relation to the orders made by the Judge in relation to the costs of the initial application for permission to appeal. Given that permission to appeal has now been granted, a stay in respect of such costs is clearly appropriate. The practical difficulty is that the Judge has assessed those costs and the costs of the challenge to jurisdiction in one combined amount. As it is impossible to identify the component of that assessment which relates to the application for permission to appeal, there should be a stay of enforcement of the order for costs made by the Judge on 20 April 2026.