THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) ABRAAJ INVESTMENT MANAGEMENT LIMITED (IN OFFICIAL LIQUIDATION)
(2) ABRAAJ CAPITAL LIMITED (IN OFFICIAL LIQUIDATION)

Claimants

and

(1) KPMG LOWER GULF LIMITED
(2) KPMG (a firm)
(3) KPMG LLP

Defendants

ORDER WITH REASONS OF H.E. JUSTICE ANDREW MORAN KC

UPON the Claimants' Application No. CFI-041-2021/14 dated 18 September 2025 for document production Orders pursuant to Rule 28.36 of the Rules of the DIFC Courts (the "RDC") (the "DPO Application")

AND UPON the Order with Reasons of H.E. Justice Andrew Moran KC of 7 November 2025(the "DP Order")

AND UPON paragraph 12 of the DP Order providing for the filing of written submissions on the issue of the costs of the Claimants' DPO Application, failing agreement between the Parties

AND UPON consideration of the Defendants' and Claimants' submissions so provided for, dated respectively 18 November 2025 (the "DCS") and 24 November 2025 (the "CCS")

IT IS HEREBY ORDERED THAT the Defendants shall pay the Claimants' costs of the DPO Application assessed in the amount of USD 400,000.00 within fourteen days of the date of this Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 29 January 2026
At: 2pm

SCHEDULE OF REASONS

Introduction

1. The Claimants seek a summary assessment of their costs of the DPO Application, consequent upon their success on the DPO Application (per The Rules of the Dubai International Financial Centre Courts (the "RDC") 38.7(1)), and all the circumstances of the Application including the conduct of the Defendants (per RDC 38.8).

2. They submit that per RDC 38.40, an order for costs should provide for payment within 14 days.

3. The Defendants do not agree that the Claimants should have their costs. The Defendants propose that:

(a) costs should be in the case; or alternatively

(b) only 50% of the Claimants' costs should be ordered, with an assessment downwards from that starting point of 50% because the costs are "excessive".

4. The Claimants served a Statement of Costs in advance of the hearing of the DPO Application on 27.10.25. The costs claimed total USD 458,101.65.

5. The Defendants served a Statement of Costs in relation to the DPO Application on 28.10.25 in the amount of AED 1,400,003.64 (or USD 385,250.00).

6. The Parties made submissions in support of their proposed orders and I now find as follows on the principal points of contention (without express reference to all that was advanced but after full consideration of all of it).

Findings on allocation and entitlement to costs:

7. This is not a case where a Judge might rule against the Defendants on costs as a Judge once memorably did, in caesarean fashion, *"They came,*

they fought, they lost, they pay"; rather, it is a case where they came, they fought before, and for a while at the hearing, they surrendered in some important respects but fought on others, they lost overall substantially and they must pay substantially. Their late-coming co-operation and concessions merit some discount. The extent of that discount is not a matter capable of mathematical calculation but is based on a broad and fair assessment of all the circumstances, including some small saving of time and costs, some excess in the Claimants' original requests, and the need to encourage (including in other cases before the Courts) earlier co-operation and recognition of procedural merit, when and where required on both sides (in the future conduct of this heavy litigation).

8. There can be no doubt the Claimants succeeded almost in full by timely concession, late concession or order. The Defendants long-maintained objections to production of documents (lately abandoned); and the exaggerated grounds, and uninformative presentation of their objections; and their lack of constructive engagement until a late stage before and at the hearing, would have generated a need for substantial work and labour in the Claimant's legal team, that could have been avoided. The Court accepts that the Defendants did, eventually, but very late in the day, behave reasonably; had they done so earlier, significant costs could and would have been avoided.

9. The Court does not consider it appropriate to mitigate the costs consequences of failed resistance to the Claimants' application, by reason of the Parties' agreement to costs in the case on the Defendants' application, for the reasons set out 21 of the CCS. Consequently, the Defendants' submissions at 7 of the DCS on the same point, are rejected.

10. On the comparison of costs incurred and claimed, I am satisfied that the Claimants' costs incurred were bound to be higher for the reasons given in 23 of the CCS. I find the itemised and explained expenditure, under the various headings at 25 of the CCS A- D, to be justified; and reflect costs reasonably and proportionately incurred, which were reasonable and proportionate in amount. For the avoidance of doubt, I have made no deduction in the amount awarded as costs, on the grounds of any excess in the amounts incurred or charged by the Claimants' representatives, to their clients.

11. As for the Defendants' submissions, first, the overall submission that costs should be in the case, particularly as put at 2 DCS, is so divorced from the reality of its conduct and contestation of the application and its outcome, as to be untenable. The submission at 3 DCS, that applications of this nature should be viewed as assisting the litigation process completely misses the point that it is the process of voluntary disclosure of documents that ought to be seen as potentially relevant by a party, in accordance with well-established rules, tests, principles and guidance, which really assists the litigation process. If parties do not respond to reasonable requests in a timely fashion (even allowing for the magnitude of the task of responding, which needs to be adequately resourced for their lawyers to do so) and fight to the death or near death before giving in, or being ordered to produce; then they must bear the costs consequences of that approach. It is a novel and ambitious argument, in my experience, to suggest that there should be no adverse order for costs in the case of such resistance, until after it can be ascertained whether the documents requested and ordered to be produced, turn out to be relevant or not. I do not accept that argument as a valid basis for departing from the general rule that costs will normally follow the event.

12. As for the Defendants' point that their failure or delay in engaging properly and informatively on the requests, was due to the Claimants' desire for expedition, that is a very poor excuse. The Claimants' desire to progress the proceedings to adhere to a procedural timetable set, was commendable. It should and could have been matched on the Defendants' side but was not; and the recourse they now have, to some "ordinary timetable", for such heavy applications is unconvincing and rejected. The timetable was set by the Court with the Parties' agreement. Unfortunately, it has turned out not to be attainable but that does not in my judgment justify the Defendants' failure to do sooner that which it eventually did; after a large amount of costs had been incurred by the Claimants in getting it to do so. The Court rejects in all respects the Defendants' conclusive submission at 4.7 DCS and the arguments on which it is based.

13. There is however some force in the Defendants' submissions at 5 DCS and its sub- paragraphs concerning some initial excess in the Claimants' document requests and persistence with them in the manner and to the extent described. I have taken this excess into account in the discounting process, but it comes nowhere close to justifying an order for costs in the case, or a discounting of any award by 50%. The Court does not accept that the submissions made at 6 DCS and its sub-paragraphs (apart from those in relation to request 15 (ii) and 7 H, which the Court has factored into in its discounting) would justify any further discounting of the order for costs made above. Rather, the movements referred to in those submissions, reflect the dynamics of the process and the Claimants' reasonable reactions, modifications and concessions made during the course of it.

14. I have already rejected the relevance of the agreement to an order for costs in the case on the Defendants' application. What occurred with that application, due to co-operation, concessions and agreement at an early stage, would have merited an order for costs in the case, as was sensibly agreed. Both Parties are to be commended for the settlement of that application, but in that settlement, the Claimants' (and the Defendants') approach was significantly different to the Defendants' approach to the Claimants DPO Application, as found above.

15. I have already found that the total amount of costs claimed by the Claimants is reasonable and proportionate; and in doing so, I have considered and rejected the comparisons in the Defendants' submissions at 11 DCS and its sub-paragraphs, as demonstrating anything to the contrary.

16. For all of the foregoing reasons, I have concluded that the claim for costs is substantially justified but that some discount from the claimed amount is appropriate. I have made an order accordingly.