IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TECHTERYX LTD.

Claimant/Applicant

and

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

Defendants/Respondents

REASONS FOR THE ORDER OF H.E. JUSTICE MICHAEL BLACK KC DATED 18 MARCH 2025

INTRODUCTION

1. On 28 February 2025, at a without notice hearing, I granted a worldwide freezing order (**"WFO"** or **"the Order"**) on the application of Techteryx Ltd (**"Techteryx"**) including amongst other things a proprietary Injunction restraining Aria Commodities DMCC (**"Aria DMCC"**) until the Return Date or further Order of the Court in any way disposing of, dealing with, or diminishing the sum of USD 456 million transferred to it from Legacy Trust Company Limited (**"Legacy"**) and First Digital Trust Limited (**"FDT"**) and any traceable proceeds, profits, substitutes, assets, interest or other income received or derived from those monies.

2. The WFO is made in support of proceedings brought in the High Court of the Hong Kong Special Administrative Region, Court of First Instance, by Techteryx against Aria DMCC and others. In those proceedings, Techteryx alleges that Aria DMCC is party to an elaborate fraud whereby it holds USD 456 million transferred to it by FDT together with their traceable proceeds, substitutes or fruits on constructive trust for Techteryx.

3. The Return Date was fixed as 17 March 2025.

4. The matter is of some considerable complexity as witnessed by the fact that the parties are agreed on further rounds of evidence and that the Return Date has been adjourned to a 2 to 3 day hearing on 12 May 2025.

5. On 17 March 2025, Aria DMCC sought variation of the Order to remove the proprietary element and adjournment of the Return Date to allow it a proper opportunity to present its evidence and submissions on the balance of the issues, together with an order requiring Techteryx to fortify the cross-undertaking. Specifically, Aria DMCC sought:

(a) Variation of the WFO so as to delete paragraph 7 and to remove reference to paragraph 7 from paragraph 17(1):

i. Paragraph 7 read -

> Until the Return Date or further Order of the Court, the First Respondent must not in any way dispose of, deal with, or diminish the value of the following cash or assets:
>
> (1) the sum of USD 456,000,000 transferred to it from Legacy Trust Company Limited and First Digital Trust Limited, including in particular (without limitation):
>
> (i) any monies in the First Respondent's bank account no. AE600330000019000065359 with the Second Respondent;
>
> (ii) any monies in the First Respondent's bank account no. AE940260000515772100902 with the Third Respondent;
>
> (iii) any monies in the First Respondent's bank account no. AE160500000000019012559 with the Fourth Respondent; and
>
> (2) any traceable proceeds, profits, substitutes, assets, interest or other income received or derived from the monies referred to in sub-paragraph (1).

ii. Paragraph 17(1) read -

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

(b) An order that Techteryx post security as a condition of the continuation of the WFO;

(c) Directions for the exchange of evidence and for the Return Date.

6. At the hearing, Mr David Holloway, Counsel for Techteryx, made an application that the privacy of the proceedings be lifted which I immediately rejected on the grounds that the early stages of proceedings where allegations of fraudulent conduct are made against parties who have not yet have the opportunity to defend themselves should normally be held in private.

7. After hearing Mr Holloway and Mr Tom Montagu-Smith KC for Aria DMCC, I made the following Order as a matter of urgency and reserved my reasons to be provided subsequently in writing:

(a) The Order shall be amended as follows:

(i) The Return Date shall be 12 May 2025.

(ii) Paragraph 15 of the Order shall be varied to read *"Matthew William Britain shall make and swear an affidavit confirming the contents and enclosure to the letter dated 16 March 2025 from Quinn Emanuel Urquhart & Sullivan UK LLP to Al Tamimi & Co by 4pm (GST) on 19 March 2025"*.

(iii) The words *"However, this exception does not apply to any assets subject to the prohibitions in paragraph 7 of this Order"* shall be deleted from paragraph 17(1) of the Order.

(iv) The Claimant shall provide security in fortification of its undertaking at paragraph 1 of Schedule B to the Order in the sum of USD 2 million by way of payment into Court or other means approved by the Court by 4pm (GST) on 31 March 2025 in default of which the Order shall lapse.

(b) The Order as amended shall continue to have effect until 14 May 2025 or further order of the Court, whichever is sooner.

(c) The First Defendant shall file and serve its evidence in response to the continuation of the Order by 4pm (GST) on 3 April 2025

(d) The Claimant may file and serve any evidence in reply by 4pm (GST) on 25 April 2025.

(e) The First Defendant and the Claimant shall file and serve skeleton arguments by 4pm (GST) on 5 May 2025.

(f) The Return Date hearing shall take place on 12 May 2025 with an estimated length of hearing of two days (with a third day in reserve).

8. What follows are my reasons.

BACKGROUND

9. In summary, the factual background of the claim is that Techteryx is a BVI company. Prior to 2020, a Delaware company, Truecoin, carrying on business in California, began offering a stablecoin called TrueUSD (**"TUSD"**). A stablecoin is form of crypto asset where the token value is pegged to a fiat currency - in this case the US dollar. One TUSD was worth one USD. Purchasers would obtain and could redeem (or *"burn"*) TUSD from the Truecoin website. There was therefore a cash fund equivalent to the number of TUSD in circulation referred to by all parties as the *"Reserves"*. The Reserves would of course have to be liquid at least in part to meet any redemption requests.

10. The Reserves were held by Legacy (a Hong Kong company) under an Escrow Services Agreement which provided that no more that 85% of the Reserves would be invested and investment decisions would only be made on the basis of signed investment proposals based on the advice of a licensed and regulated advisor. To that end, Legacy entered into an Account Investment Management Mandate with Crossbridge Capital Asia Pte (a Singapore company) (**"Crossbridge"**).

11. In December 2020, Techteryx entered into a Strategic Alliance Agreement and a Master Services Agreement with Truecoin whereby Techteryx acquired certain assets from Truecoin including Truecoin's rights and interests in the Reserves. There are legal issues in particular as to whether the coinholders remained beneficially entitled to the Reserves or whether Techteryx acquired beneficial ownership.

12. During negotiations, but prior to the Strategic Alliance Agreement and Master Services Agreement Techteryx entered into an agreement for trust, fiduciary and custody services and a custody services agreement with FDT (a Hong Kong company).

13. Techteryx says that without its consent in January 2021, Truecoin, Legacy and FDT transferring the assets from Legacy to FDT. Whether or not there was consent, very shortly thereafter Techteryx entered into an Escrow Services Agreement with FDT subject to the same terms as those that governed the agreement with Legacy. In March 2021, FDT entered into a Discretionary Investment Management Agreement with a Singapore company called Finaport Pte Ltd (**"Finaport"**).

14. There are allegedly links between Legacy, FDT, Crossbridge and Finaport on which Techteryx bases allegation of fraudulent conspiracy.

15. On 8 March 2021, Techteryx passed a board resolution appointing a Mr de Lorraine (who is alleged to be implicated in the fraud) as Authorized Person to deal with FDT and approved an investment proposal to invest in Aria Commodity Finance Fund (the **"Aria Fund"** or **"the Fund"**). The Ara Fund is a Cayman Fund that had apparently been recommended by Crossbridge based on a Fund Term Sheet for a Commodity Finance Medium Term Note. There was also discrepancy concerning the respective dates of the Board Resolution and the Discretionary Investment Management Agreement although that may be no more sinister than a typographical error in the date of the resolution.

16. Of more significance was the investment proposal by Finaport that disapplied the 15% liquidity requirement, removed the need for signed investment proposals based on the advice of a licensed and regulated advisor, and permitted Finaport to Invest in Aria Fund.

17. In April 2021, on the joint instruction of Techteryx and Legacy, Legacy was instructed to transfer all Escrow Assets to FDT.

18. Between May 2021 and March 2022, FDT is said to have invested USD 468 million of the Reserves in Aria Fund in instruments called

"Class C USD 3 YR 6% Coupon". Of those sums USD 456 million was in fact directly remitted to Aria DMCC (a Dubai freezone company) (**"the Six Remittances"**)

Product	Reference	Units	US$	Settlement	Maturity	Subscriber	Recipient
Class C USD 3 YR 6% Coupon	SU011169	12,000	12M	31/5/21	27/5/24	FDT	Aria Fund
ditto	SREF/5812	10,000	10M	30/6/21	30/6/24	Legacy	Aria DMCC
ditto	SREF/5813	17,000	17M	ditto	ditto	Legacy	ditto
ditto	SREF/5818	100,000	100M	31/7/21	31/7/24	FDT	ditto
ditto	N/A	100,000	100M	31/8/21	31/8/24	FDT	ditto
ditto	SU011174	29,000	29M	ditto	ditto	FDT	ditto
ditto	SU011195	200,000	200M	31/3/22	31/3/25	FDT	ditto

19. There is a curious feature, neither remarked upon nor explained by either party, that two days prior to the two subscriptions by Legacy of 30 June 2021, on 28 June 2021, there appear to be subscriptions in the identical amounts to a different product, *"Class B USD 3 YR 6% Coupon"*. Each of the four forms bears the same subscription reference "ADC_BIT_5642_06_21".

20. The Managing Director of Aria DMCC is Mr Matthew Willaim Brittain (**"Mr Brittain"**) and his wife was the sole shareholder. He is also the CEO and Chief Investment Officer of Aria Fund and the sole director and sole shareholder in Aria Capital Management, a Cayman company, the ultimate owner and controller of Aria Fund.

21. Thereafter, Aria Fund did honour some redemption requests but by no means all and failed to pay any coupon or repay the instruments on their maturity.

22. It was alleged in the Hong Kong proceedings that:

(a) There were no legitimate reasons for the payments to Aria DMCC;

(b) The investment funds were misappropriated by Aria DMCC;

(c) No-one had any authority to invest in Aria DMCC;

(d) There were no audited financial statements of Aria Fund;

(e) Aria Fund has not issued any annual returns or audited financial statements to the Cayman Island Monetary Authority (**"CIMA"**);

(f) Aria Fund has never issued any share certificates to Legacy or FDT;

(g) Aria Fund has not kept a share register as required by Cayman Law.

23. It was on the basis of the foregoing that I found there were serious issues to be tried, there was a risk of dissipation and the balance of convenience favoured the making of the proprietary and freezing injunctions sought. In a brief extempore judgment, I observed that:

(a) I had not seen any evidence that was presented before the Hong Kong court that shares were even issued in the Aria Cayman fund;

(b) I had seen two affirmations from a director of the first defendant (Mr Brittain) contesting jurisdiction in the Hong Kong courts, and I had found them to be very carefully drafted and in some respects, at least arguably, misleading. Those respects were -

i. He appeared to assert that there was an exclusive jurisdiction clause in favour of the Cayman Courts in the subscription documents by selective quotation and omitting express reference to the non-exclusive jurisdiction of the Cayman Courts; and

ii. He claimed that FDT's shareholding in the Fund was evidenced by a document headed "Shareholders register". This was untrue. The document exhibited evidenced only the management shares in the Fund, not those of investors. This latter point is of central importance and will be considered further below.

(c) Consequently, I did not have a huge amount of confidence in Mr Brittain's evidence and considered that I was justified therefore in considering that there was a risk of dissipation.

THE CURRENT APPLICATION

24. While I am bound to record that Aria DMCC's position is that the injunction should never have been granted, it accepts that the discharge application should be adjourned for full argument. However, Aria DMCC says that of immediate concern is the proprietary element of the Order which it claims is having a catastrophic effect on its business and that the Order must be varied. Mr Montagu-Smith contends that I must therefore form some view on the merits.

25. Mr Brittain has provided two affidavit/witness statements. He focusses on the allegation made by Techteryx that Aria Fund is not a genuine fund and never made genuine investments.

26. In the first affidavit dated 14 March 2025, he seeks to refute of those allegations together with supporting documents (Mr Brittain's evidence in italics):

(a) *Net Asset Value Statements. Statement have been produced since the Fund started operating in 2019. These statements were*

produced on a quarterly basis and record the holdings of the Fund from time to time. He chose to produce a NAV statement as of 31 January 2023. He does not explain why. I note that an intercompany receivable from Aria DMCC is shown as a little under USD 120M which is perhaps surprising since the Six Remittances were nearly 4 times that sum. The NAV statement was in the sum of USD 547,804,826.47;

(b) *Administrator's Reports. The Fund had an independent third party administrator (IFIT Fund Services) which prepared reports recording (among other matters) the net asset value*. By way of example, he provided a copy of the report from 30 January 2025 relating to the period 31 April 2024 to 31 July 2024. No explanation is given why that example was chosen. IFIT Fund Services is apparently a Greek company based in Athens. No information is provided about its ownership or regulatory status. The report indicates that the NAV was USD 500,740,500 at 31 July 2024;

(c) *Subscription Forms. In order to make an investment in the Fund, an investor was required by the Administrator, to fill out a subscription form for shares*. He provided a number of examples:

i. He included a number of forms and confirmations that do not relate to the Six Remittances for Class C USD 3 YR 6.00% Coupon units - by FDT for GBP 5 million on 21 March 2021, FDT 31 March 2021 USD 5 million, Legacy 1 May 2021 USD 29 million, Legacy 30 June 2021 USD 30 million, Legacy 31 July 2021 GBP 5 million, Legacy 31 July 2021 CAD 5 million, Legacy 31 July 2021 AUD 15 million, FDT 5 August 2021 USD 100 million, and Legacy 31 August 2021 USD 3.66 million. There is no explanation how or why these were particular documents were chosen;

ii. He also produced the forms in relation to the Six Remittances;

iii. A curious feature is that he produced the form for the subscription by FDT for USD 100 million in Class C USD 3 YR 6.00% Coupon units signed on 9 August 2021 and also a form for subscription by FDT for USD 100 million in Class B 6.0% 3 YR USD units signed by FDT on 5 August 2021. Both forms bear the same reference "ACD_TER_5821_08_21";

(d) *Subscription Confirmations. Upon the issue of shares in the Fund, a subscription confirmation was created recording the contractual terms on which the shares were issued to the subscriber.* Mr Brittain produces a single example dated 21 March 2021 in relation to an investment by FDT that does not appear to be on behalf of Techteryx. It is not explained why it was chosen. It does not record the contractual terms on which the shares were issued to the subscriber. It merely identifies the product, base currency, amount, subscription and maturity dates, the NAV per unit and the number of units;

(e) *Register of shares. The Administrator of the Fund kept a register of shares in the Fund. This register was updated periodically to reflect the identity of the shareholders (and their holdings) as they changed over time.* He produced an example of the investors in Aria Fund as at 30 April 2021. Legacy is shown as owner of 1 million units. Apparently on 1 June 2021, the number of units held by each investor was divided by 10, thus on 30 April 2021, the units had not been changed. One unit was USD 100. Therefore, Legacy held USD 100 million and there does appear to be evidence that Legacy did invest USD 97 million in the Aria Fund in 2020. However, the document Mr Brittain calls a share register is certainly not one, even on his own case. It is also odd that Mr Britain produces both a subscription form and confirmation relating subscriptions by FDT in March 2021, but FDT is not shown on this document. The other document in support of Mr Brittain's contention that the Fund Administrator kept a register of shares in the Fund is entitled *"Investor Listing for ARIA Commodity Finance Fund on 29 March 2022"*. That document does not even show the investors' holding of units, let alone shares in the Fund. I will come back to share registers later in these Reasons;

(f) *Distribution Statements. These statements showed a running record of distributions made to investors in relation to their holdings*. He produces a single document dated 7 November 2021 in relation to FDT's investment of USD 12 million reference SU01169 FDT is said to hold 120,000 units. However, on 1 June 2021 FDT's holding was revalued to 12,000 units;

(g) *Redemption Requests. These were required to be prepared to a subscriber in the Fund to liquidate his holding in the Fund.* Mr Brittain provides an example of a Redemption Request. It is not clear whether it was honoured.

27. Mr Brittan explains the nature of Aria DMCC's business. Aria DMCC is principally involved in commodities trading and trade financing and raises finance from different means, including by way of loans from Aria Fund. It is part of a group of companies (the **"Aria Group"**) which includes trading entities that operate in different parts of the world. These include entities based in: the Hamriyah Freezone (Aria Bio Industries FZE (**"Aria Bio FZE"**)); Tanzania (Aria Bio Industries Tanzania (**"Aria Tanzania"**) and Aria Bio Industries East Africa (**"Aria East Africa"**)); Australia (Aria AAAX Pty Limited (**"Aria Australia"**); the United States (**"Aria USA"**); and Ukraine (**"Aria Ukraine"**).

28. In accordance with the disclosure provision of the WFO. Aria DMCC has disclosed that Aria Bio FZE is a 100% subsidiary in Sharjah, Aria Tanzania may or may not be a refence to a 99% Tanzanian subsidiary called ARIA Bio-Industries International Ltd, Aria East Africa may or may not be a refence to a 99% Tanzanian subsidiary called ARIA Industries East Africa Limited, Aria Australia may or may not be a refence to a 100% Australian subsidiary called ARIA AAAX Australia Pty Ltd and Aria USA may or may not be a refence to a 100% US subsidiary called ARIA Commodities USA LLC and there is a 100% subsidiary in the Ukraine called ARIA Commodities Ukraine but the ultimate beneficial owner is said to be one Oleg Levchenko. (These questions may have been resolved by disclosure subsequent to the hearing).

29. Mr Brittain says that Aria Bio FZE has developed a series of production plants in the Hamriyah Free Zone, including (1) a bitumen facility; (2) a refinery and distillation plant; (3) an extrusion plant; and (4) terminal storage (the **"Hamriyah Production Plants"**). He also refers to 2 mining concessions in Tanzania used to extract coal deposits, developed by Aria Tanzania and Aria East Africa and various other assets and projects in Tanzania, Australia, and Latvia as well as 5 cargo vessels, without disclosing their ownership. It may be possible to deduce their ownership from the disclosure list but I have not been able to do so in the absence of some guidance.

30. Mr Brittain say that the second aspect of Aria DMCC's business is to provide trade finance facilities to assist commodities traders.

31. Turning to the use of the Six Remittances (which he termed the **"DMCC Payments"**). He said that the reason why payments were made directly to Aria DMCC rather than to the Fund (as they had been prior to that date) was because the subscriber, FDT had raised an issue with respect to the payment of sums to Glassdoor (a related entity of FDT), which obtained introducers ' commission in relation to investments made in the Fund. FDT complained that the Fund was taking too long to pay this commission to Glassdoor. FDT therefore proposed that sums be paid directly to Aria DMCC, which would be able to make the payments to Glassdoor more expeditiously. No documentary evidence was produced in support of this explanation.

32. Mr Brittain says that the following documents were created in relation to each DMCC Payment:

(a) Subscription Form;

(b) Subscription Confirmation, issued by the Administrator; and

(c) Trade Finance Facility, between FDT and Aria DMCC, corresponding to the amount of the DMCC Payment.

33. The first example of a subscription form for a DMCC Payment is the subscription dated 24 June 2021 for USD 17 million by Legacy in Class B 6.0% 3 YR USD units which I have referred at paragraph 19 above and does not appear to be one of the Six Remittances/DMCC Payments. It is followed by a subscription confirmation bearing the same serial number ("ACD_BIT_5642_06_21") but in a different amount (USD 10 million).

34. The next example is also not a DMCC Payment as defined - it is a subscription dated 15 July 2021 by FDT for USD 50 million in Class B 6.0% 3 YR USD reference "ACD_HNT_5645_06_21".

35. The next example is also not a DMCC Payment as defined - it is a subscription dated 5 August 2021 by FDT for 100 million in Class B 6.0% 3 YR USD reference "ACD_TER_5821_08_21".

36. The next example is also not a DMCC Payment as defined - it is a subscription dated 9 March 2022 by FDT for 200 million in Class D 6.0% 3 YR USD reference SU011195. This is the same reference as one of the Six Remittances but that subscription was dated 31 March 2021 for 200 million in Class C 6.0% 3 YR USD. I also note that while the units are said to be in 3 year units the maturity date is shown as 2 years. A 3 year maturity date is however shown on the confirmation.

37. No further examples are given. These subscriptions (if different from Six Remittances/DMCC Payments) amount to USD 367 million.

38. As to the Trade Finance Facility, Mr Brittain says that FDT provided the DMCC Payment to Aria DMCC by way of loan, which Aria DMCC then on-lent to different trading entities in the Aria Group. Mr Brittain produced a blank term sheet for Trade Finance Notes on Aria Fund's headed paper. The issuer is said to be *"Aria Commodities"* which is ambiguous and there is no further identification. The actual Trade Finance Facility, between FDT and Aria DMCC, corresponding to the amount of the DMCC Payment is not produced. It has never been suggested that the Six Remittances were anything other than subscriptions for units in the Aria Fund.

39. Mr Brittain says that the DMCC Payments were sent by Aria DMCC to several of its trading entities and to finance third-party borrowers.

40. Mr Brittain admits that at the time of the DMCC Payments, no shares were recorded in the share register pertaining to the Fund. However, the position was later regularised, with the holdings being registered in the Fund which corresponded to the DMCC Payments. He says that in around December 2022, FDT identified that no holding was recorded in the Fund in relation to the DMCC Payments. As a result, FDT requested the Administrator of the Fund to regularise the position, by 'porting' the DMCC Payments into the Fund. This would have involved the Administrator amending its register relating to the Fund so that it recorded holdings in the Fund corresponding to the quantum of the payments made. A suite of documentation was then executed, mirroring the documentation that would have been executed at the time of the DMCC Payments, on the basis that each Payment represented an investment in the Fund from the date it was made. No documentary evidence was produced in support of the foregoing.

41. He says that in respect of the DMCC Payments, new Subscription Forms were created to record the position. As a consequence of the increase in value of the total holdings in the Fund, it was necessary also to restructure the share capital, so that each 1,000 units held was replaced by a holding of 100 units. This change was backdated so that the effective date of the corporate action was 1 June 2021, prior to the date when the FDT DMCC Payments were made.

42. Thereafter, the DMCC Payments were recorded as holdings in the Fund from the date on which the payments were made. Mr Brittain states that he believes the share register maintained by the Fund Administrator recording holdings in the Fund was adjusted accordingly, and he had requested a copy of the share register from the Administrator in relation to this period.

43. The other consequence of revising the structure of the holdings was that Aria DMCC handed over its assets to the Fund so that the Fund held the assets directly (with the Fund loaning amounts to Aria DMCC). After the 'porting' process, therefore, the Fund held Aria DMCC's mining interests in Tanzania and the Hamriyah Production Plants.

44. Mr Brittain says that of the Six Remittances/DMCC Payments cash redemptions have been provided to FDT in relation to three redemption requests, in the sums of USD 30 million, USD 10 million and USD 17 million. Accordingly, holdings corresponding to the two investments of USD 100 million and the one investment of USD 200 million remain unredeemed (a total of USD 400 million). He says that the process of redemption was halted in the absence of information as to the ultimate beneficial owner of the shares in the Fund. In order to address the issue, the Fund took the view that it would be preferable if it could find a way of (1) addressing FDT' s concerns about its holdings in the Fund; and (2) permitting FDT to redeem those holdings.

45. The proposal Mr Brittain devised was a scheme to securitise the assets of the Fund. He refers to a presentation which seems to be an undated general marketing proposal for Aria Fund to offer securitised notes representing trade finance rather than loaning money directly to third-party borrowers. The presentation does not on its face appear to be linked to the requested redemptions by FDT. However, Mr Brittain says that given

the unanswered AML/KYC concerns raised by the Fund in relation to Techteryx, the Fund could not proceed with the securitisation proposal, without obtaining (1) appropriate professional advice that realising redemptions in this way did not give rise to any potential AML concerns; and (2) extensive valuation reports and related evidence to support the restructuring, a process which has taken some time. No documentary evidence was provided in support, only what appears to be a routine request from IFIT for information about the ultimate beneficial owners of the shares in Techteryx.

46. This was done and in 2024 Aria Fund started implementing the securitisation process. Mr Brittain says that USD 42 million of assets have been securitised and that but for the WFO USD 400 million would have been securitised in about 6 weeks.

47. Mr Brittain estimates that over 80% of the Assets of Aria Fund are represented by the DMCC Payments. He says that the practical difficulty of identifying the traceable proceeds of the DMCC Payments since the date of their investment in May 2021 means in reality that paragraph 7 of the WFO effectively precludes Aria DMCC from dealing with any assets traceable to holdings in the Fund, for fear of breaching the prohibition set out therein. If paragraph 7 of the WFO continues, it creates a serious risk that the entire business of Aria DMCC will be put in jeopardy. By way of illustration, he refers to the following matters:

(a) There are contracts to deliver pre-sold bitumen orders manufactured at the plant in Hamriyah. The orders (with a value of c. USD 12m) are due to be delivered to Africa and elsewhere within two weeks;

(b) At the same time, buyers of bitumen have been queueing up 'ex gantry' (i.e. lining up at the port and offering to buy bitumen) at the Durban import terminal facility;

(c) Approximately 110 people are employed at the bitumen plant in Hamriyah, which is an asset of the Fund traceable to monies represented by the DMCC Payments. As a result of paragraph 7 of the WFO, there is a real risk that Aria DMCC must cease any production from the plant;

(d) As a consequence of the Order, Aria Australia has had to give up the monthly LAYCANs (i.e. the time window within which a ship must arrive at the agreed port or place for loading) it has reserved from April 2025. This has generated rumours that the Aria Group is in financial difficulty and may be facing an insolvency event, which would give grounds to terminate a valuable five year agreement;

(e) As with the Hamriyah bitumen plant, the Tanzanian mines operated by Aria Tanzania would likely need to be shut down and any mining activity ceased;

(f) Without amendment, paragraph 7 of the WFO will prevent Aria DMCC from taking any further steps to implement the securitisation. The effect of significant delay in that process is unpredictable. However, there is a possibility it will cause the scheme to be abandoned altogether by the participating parties, especially if the value of the underlying assets plummets, so that securitisation no longer represents a viable means of realising value for those assets.

48. Mr Brittain addressed the two observations I made at the without notice hearing referred to at paragraph 23(b) above. As to the point about the jurisdiction of the Cayman Courts, I did accept that it may well be that his Hong Kong lawyers were trying to be "clever" in drafting his evidence. As to the share register, he apologised to the Court. He accepted that the document exhibited was a register of the voting shares of the Fund, not the share register recording holdings in the Fund. He says that there was a share register for holdings in the Fund and had contacted the Administrator to send him copies of the same and to provide an explanation of the nature of this register, which he would provide to the Court as soon as they are available.

49. Mr Brittain's second witness statement is dated 16 March 2025. He first addressed the issue of the share register. He exhibited the Cayman Companies Act 2024, section 40 which provides at sub-section 40(1):

"Every company shall cause to be kept in writing, a register of its members and there shall be entered therein -

(a) the names and addresses of the members of the company, with the addition of, in the case of a company having a capital divided into shares, a statement of the shares held by each member, and the statement shall -

(i) distinguish each share by its number (so long as the share has a number);

(ii) confirm the amount paid, or agreed to be considered as paid on the shares of each member;

(iii) confirm the number and category of shares held by each member; and

(iv) confirm whether each relevant category of shares held by a member carries voting rights under the articles of association of the company, and if so, whether such voting rights are conditional;

(b) the date on which the name of any person was entered on the register as a member; and

(c) the date on which any person ceased to be a member."

50. Notwithstanding, Mr Brittain's assertions to the contrary the documents referred to at paragraph 26(e) above do not come close to satisfying the statutory criteria. They do not record the information required by subsection (a)(i)-(iv)(inclusive), (b) or (c). He exhibits *"the most up-to-date extract of the Fund's redeemable, participating, non-voting share register from the Administrator"* which records that as of 14 March 2025, FDT and Legacy hold (combined) 100% of the Class C USD 3 YR 6.00% shares. This document does, at least, appear to satisfy subsections 40(1)(a)(ii) and (b). It records that in total FDT and Legacy hold units valued at USD 500,740,500. This is the same figure as appears in the NAV statement as 31 July 2024. It is unclear to me whether this is meant to be the whole NAV of the Fund.

51. Mr Brittain points to financial statements issued by the well-known international accounting firm Mazars for the year ending 30 June 2021. The

Auditor's Report is unqualified. Net assets attributable to holders of redeemable Participating and management shares at year end were valued at USD 142,771,886. This was of course before the Six Remittances were received. Apparently audited financial statements for the subsequent years have not yet been prepared/produced.

DISCUSSION

52. I must remind myself and emphasize that we are at a very early stage in these proceedings. Both parties, but particularly Aria DMCC, have had very little time to marshal their evidence and submissions. Even though Mr Montagu-Smith presses me to form some view on the merits when considering his application to lift the proprietary element of the WFO it is in the recognition that more time is needed properly to present the case. I must bear in mind that with a fuller opportunity to present its evidence Aria DMCC may satisfactorily explain the anomalies I have identified above.

53. Further, Mr Montagu-Smith foreshadows powerful legal arguments that may well be dipositive of the claim for an injunction in whole or in part. There are serious issues to be tried as to whether any Hong Kong judgment would be enforceable at all in the DIFC, and if so, whether a proprietary claim would enforceable or only a monetary judgment such that interim proprietary relief could not be justified.

54. There are serious issues as to whether Techteryx ever had a proprietary interest in the monies in the Escrow Account held by FDT. Much will turn on the meaning of the description of FDT as *"a fiduciary"* and whether that FDT held the funds as trustee. Coincidentally, two days after this application was argued, a 7 judge panel of the UK Supreme Court gave judgment in *Rukhadze and others v Recovery Partners GP Ltd and another* [2025] UKSC 10. It does address the duties of fiduciaries and remedial trusts irrespective of whether the fiduciary had been a trustee. However, it is a long and wide-ranging judgment in the context of circumstances somewhat different from the present. Also, it may or may not be persuasive authority under Hong Kong law. I will leave to the parties to consider whether or not it may be of assistance.

55. It is common ground that these issues cannot be resolved before the adjourned Return Date.

56. The current focus is therefore on what is said to be the very significant harm that the proprietary element of the WFO threatens to cause to Aria DMCC.

57. I accept Aria DMCC's submissions that when the Court is considering making (or continuing) an interim injunction *"The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other" (per Lord Hoffmann in National Commercial Bank Jamaica Ltd v Olint Corporation Ltd* [2009] UKPC 16 adopted by this Court in *Larmag Holding B.V. vs (1) First Abu Dhabi Bank Pjsc (2) FAB Securities LLC* [2019] CFI 030 at [19]).

58. The risk of irremediable prejudice by causing damage to a business is always a significant factor in weighting the balance of convenience. In *Arcelormittal USA LLC v Mr Ravi Ruia* [2020] EWHC 740 (Comm) [240] Mr Justice Henshaw noted:

> "VTB is in my view correct in pointing out that, particularly in the present case, the scope for debate about what does and does not constitute the ordinary and proper course of business, in the context of a freezing order with a penal notice attached, inherently undermines the ability of the group to go about its business with third parties. Every transaction of any size will carry the risk of a subsequent allegation of contempt of court (or aiding and abetting a contempt of court) unless prior consent is obtained. Having to seek prior consent either from a major competitor or from the court is bound to have a severe chilling effect on the carrying on of the group's business. It is therefore not unreasonable for Mr Galkin of VTB to state that "VTB considers that there is a real prospect that a WFO would cripple the Essar Group's business and cause loss to VTB."

59. I also agree with the submission that there is an analogy to be drawn between the test applicable to the grant of mandatory interim injunctions and proprietary interim injunctions. The latter, like the former, involves a higher risk of injustice because they may deprive a business of the right to deal with specific assets. Aria DMCC points to *Films Rover International Ltd v Cannon Film Sales Ltd* [1987] 1 WLR 670 at 680G Mr Justice Hoffman (as he then was) said:

> ". describing an injunction as "mandatory" will usually also have the consequence of creating a greater risk of injustice if it is granted rather than withheld at the interlocutory stage unless the court feels a "high degree of assurance" that the plaintiff would be able to establish his right at a trial. I have taken the liberty of reformulating the proposition in this way in order to bring out two points. The first is to show that semantic arguments over whether the injunction as formulated can properly be classified as mandatory or prohibitory are barren. The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term "mandatory" to describe the injunction, the same question of substance will determine whether the case is "normal" and therefore within the guideline of "exceptional" and therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a "high of degree of assurance" about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction."

60. This Court is not hide-bound by (as Hoffman J put it) barren semantic arguments. In each case there is a balancing exercise. The Court should consider all the facts available to it, which are likely to be limited at the interlocutory stage, to reach a decision as to where the greater risk of injustice lies. With respect (even to Hoffman J's reformulation) phrases like *"high degree of assurance"*, *"normal"* and *"exceptional"* do little to assist in the context of a specific case. The exercise is straightforward in concept, albeit often difficult in practice: does the risk of harm to the applicant by refusing the injunction justify the intrusion and harm to the respondent's business? It would be wrong to attempt to enumerate the factors to be taken into account, but the strength of the applicant's case and the extent to which any damage to either party would be compensable were the decision (either way) ultimately to be held not to have been justified are certainly among them.

61. Mr Montagu-Smith catalogued the *"catastrophic"* disruption to Aria DMCC's business caused by the proprietary nature of the WFO:

(a) The bitumen plant will have to shut down, over 100 workers cannot be paid for their jobs and there will be health and safety issues;

(b) The mining operations will have to cease;

(c) LAYCANs are being lost in Australia; and

(d) Aria DMCC will be forced to default on all kinds of obligations

62. Mr Holloway began his reply submissions by making criticisms of Aria DMCC's asset disclosure. He described some assets as non-existent "ghost assets" and there was no actual evidence as to who in fact owns the trading companies. He said that Mr Brittain's evidence was selective, misleading and unreliable in a large number of respects. He made a number of granular points, but having regard to what I said at paragraph 52 above I must reserve my judgment.

63. Turning to Aria DMCC's allegations of loss, he submitted there was no evidence of damage to Aria DMCC's business.

64. He said that Aria DMCC does not own the Hamiryah bitumen plant. Any contract to sell bitumen is not with Aria DMCC. There is no evidence that the Bitumen plant needs to close. The evidence is that the plant is owned by Aria Bio FZE and the WFO does not stop that company from trading, it stops Aria DMCC from dealing with any shares it may hold in that company. He said there was no evidence of any link between Aria DMCC and the trading entities and described Mr Montagu-Smith's submission as *"hyperbolic"*.

65. The parties have raised many other issues that must be left for the Return Date and it would be unwise of me at this stage to express any view.

66. In my judgment, Mr Holloway's submission that Aria DMCC is not the trading entity renders Mr Montagu-Smith's points moot. Mr Holloway appears to be conceding that Techteryx would have no claim to the assets of the trading companies. Indeed, it is Aria DMCC's case that it would be impossible to attribute those assets to the Six Remittances since the funds have been turned over several times in the intervening four years. There is also a commercial logic in Mr Holloway's position. Assuming that Techteryx can trace into Aria DMCC's assets and that Aria DMCC does in fact own the trading entities, the material assets would be Aria DMCC's shareholding in the trading entities. It would be contrary to Techteryx's interests to diminish the value of those assets by causing the trading entities to cease to trade.

67. I am however confused as to who does own the trading entities. As noted at 43 above, Mr Brittain stated expressly at paragraph 35 of his first affidavit that Aria DMCC handed over its assets to the Fund so that the Fund held the assets directly (with the Fund loaning amounts to Aria DMCC) whereby after the 'porting' process, the Fund held Aria DMCC's mining interests in Tanzania and the Hamriyah Production Plants. If that is so, it is untrue to suggest that WFO affects the DMCC's mining interests in Tanzania and the Hamriyah Production Plants because they are no longer owned by Arai DMCC. There would also therefore appear to be an inconsistency between Mr Brittain's evidence in his first affidavit and the asset disclosure.

68. If I am obliged at this stage to take a necessarily tentative view of the merits, I am bound to say that I find that Mr Brittain's evidence in answer to the without notice Order raises more questions than it answers. I find the so-called "porting" procedure summarised at paragraph 40 above hard to understand and Mr Brittain's explanation difficult to follow. What it does mean is that documents that appear hitherto to have been presented as contemporaneous with their dates are not in fact genuine as they have been backdated. I am disturbed by the discrepancies I have described at paragraphs 19, 26(a), 26(c)iii, 26(f), 33 to 36, and 38 above. Experience teaches us that such discrepancies are "red flags".

69. I am perhaps most disturbed by the Fund Administrator's unwillingness or inability to produce a share register for the Aria Fund that complies with the Cayman legislation.

70. There may of course be perfectly reasonable explanations for all of the foregoing and as presently advised I am not inclined to accept that the Aria Fund and the whole Aria structure was set up with the sole specific purpose to execute a fraud on Techteryx. There does however seem to me to be a good arguable case that an existing legitimate structure (as evidenced by the Mazars Audit Report) was subsequently used as an opaque vehicle to receive funds from FDT which it held in a fiduciary capacity in breach of its fiduciary duties and which may therefore have been impressed with a constructive trust.

71. As Mr Montagu-Smith emphasised, in order for such allegation to succeed it would be necessary to show that Aria DMCC was guilty of knowing assistance or dishonest receipt. Findings of that nature can only be inferences from the surrounding facts. I consider that the matters described above give rise to serious issues to be tried as to such inferences. This is, in my view, particularly the case where it does appear that it is the money invested by Legacy and FDT, which may have derived from the Reserves, which may be funding the Aria Fund either wholly or in substantial part.

CONCLUSIONS

72. I am therefore inclined to leave paragraph 7 of the WFO in place.

73. However, given that Aria DMCC is represented by legal representatives who can be trusted not to permit Aria DMCC to abuse the legal costs exception and that the legal costs are certainly going to be substantial if Arai DMCC is going to have a fair opportunity both to answer the case made against it and my concerns, I consider that it is appropriate to delete the prohibition on recourse to assets caught by paragraph 7 of the WFO.

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

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 24 March 2025
At: 2pm