Claim No. ARB 015/2026

ARB 027/2026

DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

PRINCETON

Claimant/Applicant in ARB-015-2026

Defendant/Respondent in ARB-027-2026

and

PERSEPHONE

Defendant/Respondent in ARB-015-2026

Claimant/Applicant in ARB-027-2026

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON a final majority arbitral award dated 19 January 2026 ("Final Award") being issued in a Dubai International Arbitration Centre ("DIAC") arbitration between the parties (the "Arbitration")

AND UPON the Claimant's arbitration Claim No. ARB-015-2026 dated 2 March 2026 under Article 41 of DIFC Law No.1 of 2008 ("Arbitration Law") to set aside the Final Award ("Set-Aside Claim")

AND UPON the without-notice arbitration Claim No. ARB-027-2026 dated 20 April 2026 filed by the Defendant under Article 42(1) of the Arbitration Law and RDC 43.62 for recognition and enforcement of the Final Award ("Recognition Claim")

AND UPON the Defendant's informal application made by email on 29 April 2026 for the Set-Aside Claim to be determined on the papers ("Informal Application")

AND UPON the Order of H.E. Justice Mark Pelling dated 6 May 2026, made without notice and on the papers, granting the Recognition Claim ("Recognition Order")

AND UPON the Order of H.E. Justice Mark Pelling dated 11 May 2026, refusing the Informal Application, giving directions for the hearing of the Set-Aside Claim and reserving costs

AND UPON the Claimant's Application No. ARB-027-2026/1 dated 1 June 2026 under paragraph 4 of the Recognition Order, under RDC 4.2(6) and 43.70(1) and under Article 44(2) of the Arbitration Law to stay/set aside the Recognition Order ("Application No. ARB-027-2026/1")

AND UPON the Defendant's Application No. ARB-027-2026/2 dated 5 June 2026 under Article 44(2) of the Arbitration Law for security in the event the Court is minded to grant Application No. ARB-027-2026/1 (the "Security Application")

AND UPON the Order of H.E. Justice Mark Pelling dated 1 July 2026, made after hearings in private on 23 and 25 June 2026, dismissing the Security Application and prohibiting the enforcement of the Final Award until after the final determination of the Set-Aside Claim

AND UPON the Order of H.E. Justice Mark Pelling dated 14 August 2026 by which he ordered that (i) The Final Award be set aside and (ii) the Recognition Order be set aside and (iii) the Recognition Claim is dismissed (the "Set Aside Order")

AND UPON the directions contained in the Set Aside Order concerning the determination of which party should pay costs, how those costs were to be assessed and by reference to what basis of assessment (the "Costs Direction")

IT IS HEREBY ORDERED THAT:

1. By no later than 4pm (GST), 5 days after the service of this Order on the parties by the Registry, the parties are to agree and lodge with the Court for approval a draft order which:

(a) Gives effect to the assessment of costs set out in Paragraphs 28-36 of the Schedule of Reasons set out below (the "Reasons");

(b) Contains the undertakings referred to in Paragraph 28 of the reasons; and

(c) Contains an order that the Defendant pay interest on the sum referred to in (a) above pursuant to Article (9)C of Law No. 2 of 2025 at the rate of 9% from the date of the Court's costs order until payment in full.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 21 September 2026
At: 9am

SCHEDULE OF REASONS

Introduction

1. In this Judgment, I refer to the Claimant/Applicant in ARB-015-2026 and Defendant/Respondent in ARB-027-2026 as "*Princeton*" and the Defendant/Respondent in ARB-015-2026 AND Claimant/Applicant in ARB-027-2026 as "*Persephone*". Each party has complied with the Cost Directions and this Order with Reasons determines the costs issue that arise between the parties.

The Issues between The Parties

2. Princeton submits that Persephone should be ordered to pay Princeton's costs of and occasioned by the Set-Aside Claim, the Informal Application, the Recognition Claim and Application No. ARB-027-2026/1, that such costs should be assessed on the Indemnity basis and that they should be immediately assessed without a hearing in the sum claimed which inclusive of VAT is AED 1,340,910.95 or such costs should be subject to a detailed assessment with Persephone being directed to pay an interim payment on account of "*AED 1,340,910.95 or such other sum as the Court considers appropriate*". This last-mentioned formulation is unhelpful because it fails to engage with the obvious point that if there is to be a detailed assessment the payment on account (if any) should be less than the sum claimed since otherwise ordering a detailed assessment would be pointless. This was moderated in the reply submission, where it was submitted that if the Court rejected Princeton's primary case that any payment on account should be quantified at 100% of the sums claimed, then 70% of the sums claimed was sought. In fact, the issue does not matter since both parties ask the court to carry out an immediate assessment of the costs due from Persephone to Princeton. I consider it would be plainly inappropriate not to give effect to that joint position and so I intend to say no more about payments on account in this judgment.

3. Persephone does not dispute that Princeton obtained the principal relief sought in the Set-Aside Claim and that therefore costs should follow that event. That concession was inevitable since the incidence of costs depend on who applying a common-sense test has been successful and who has not. However, Persephone disputes the contention that Princeton's costs (or any part of those costs) should be assessed on the indemnity basis; and submits that payment should be deferred until after determination of an application for permission to appeal which had not yet been and may never be made.

4. Persephone opposes a direction that the costs be assessed by detailed assessment and instead submits that there should be an immediate assessment on the standard basis with an unspecified but substantial discount from the sum claimed. It further submits that payment should be deferred until after determination of any application for permission to appeal.

5. By way of Reply, Princeton points out that although running to 101 paragraphs, Persephone's costs submissions do not particularise any entry in Princeton's costs claim that is specifically disputed, does not challenge the rates that have been adopted or suggest that any of the time costs claimed are either unreasonable or disproportionate. It notes that Persephone accepts that Princeton has obtained the principal relief sought, that Princeton's conduct cannot be and is not criticised, that immediate assessment is the preferred route of disposal and that Princeton's claim for interest on costs at 9% under Article 9(C) of the DIFC Courts Law is not opposed.

6. It follows that the real issues between the parties are (i) the basis of assessment, (ii) the sum to be assessed due from Persephone to Princeton, (iii) the treatment of VAT, and (iv) the time for payment.

Basis of Assessment

7. The principles that apply to deciding whether costs should be ordered to be assessed on the indemnity basis are not in dispute. The applicable test is that established by Paragraph 1 of Practice Direction No. 5 of 2014, which is in materially similar terms to that established in England and Wales by *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson (A Firm)* [2002] EWCA Civ 879 and is that indemnity costs will be ordered only where the conduct of the paying party is outside the norm (i.e. outside ordinary and reasonable conduct) to be expected of those conducting civil litigation, or as it is sometimes put, is conduct which was unreasonable to a high degree.

8. The principles applied by this Court are essentially the same as those applied by the Courts of England and Wales. In applying the provisions of the RDC in relation to costs, it is therefore appropriate for the Court to have regard to the approach established in respect of the comparable provisions in the English Civil Procedure Rules - see *Al Khorafi v Bank Sarasin-Alpen (ME) Ltd* [2009] DIFC CFI 026 (16 January 2017) at [36]. Whilst there is some authority for the proposition in the context of an indemnity assessment being sought following a trial, that bringing a claim that is "*.speculative, weak, opportunistic or thin."* is capable of being conduct beyond the norm (see *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm)), generally the circumstances would have to be extreme before that would of itself justify an order that costs be assessed on the indemnity basis. Generally, the receiving party's success over the paying party, however emphatic, is not sufficient of itself to justify an award of costs to be assessed on the indemnity basis - see *Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883 at [83]. Generally, there have to be aggravating circumstances above and beyond lack of merit before a court will be justified in directing an indemnity assessment of the successful party's costs.

9. Exceptionally, an indemnity assessment may be ordered where the claim is considered totally without merit - that is one that is ". *without justification or basis in law or fact. This term is often used to indicate that the application was frivolous or groundless and had no reasonable chance of success." - see Nazeer v Noah [2024] DIFC ARB 011 at [105].* Whilst that may be the sort of exceptional case engaged by the summary set out above, some care is needed before that case is applied other than to cases where there has been an unsuccessful challenge to an arbitral award. I reach that conclusion because Paragraph 3 of Practice Direction No. 1 of 2017 (Indemnity Costs for failed Challenges to Arbitral awards in the DIFC Courts) establishes a lower indemnity costs threshold for such challenges - see in particular the cases

referred to at footnote 2. Thus, although Princeton relies on Nazeer (ibid.) as supporting its claim to be entitled to an order directing an indemnity assessment in this case, I do not accept that is so. Firstly, that case was concerned with a challenge to an arbitral award that failed on the grounds that it was totally without merit in the relevant sense - see [107], whereas this case is concerned with a challenge that was resisted. Secondly, the point made earlier by reference to cases such as *Arcadia* does not appear to have been argued in that case and may have been thought immaterial given the terms of Paragraph 3 of Practice Direction No. 1 of 2017. The other case referred to by Princeton is *AES v GSB [2023] DIFC CFI 060*. AES (ibid.) is a fact specific decision that an indemnity assessment would not be ordered expressly because the court was not satisfied that the conduct relied on by the receiving party was improper, sufficiently unreasonable, or exceptional to warrant an award of costs on the indemnity basis. Thus, it provides some support for the proposition that aggravating factors beyond losing a case emphatically are generally required before a court exercises its discretion to order assessment on the indemnity basis. This approach is consistent with the emphasis placed by Paragraph 1(i)-(iii) of Practice Direction No. 5 of 2014 on the need for deliberate misconduct, inappropriate pre-litigation conduct or an abuse of process.

10. Princeton submits that although there were a number of different claims and applications that had to be decided, the reality is that that broadly there were two claims that were determined together being (i) the Set Aside Claim and (ii) the Recognition Claim, each of which engaged identical or almost identical principles. The Security Application is not relevant because the costs of that application have been disposed of by a separate Order. Princeton submits that I should resist Persephone's attempt to focus attention of each of the different applications that were in truth attributable to one or other of the Set Aside or Recognition Claims and should resolve the question of whether costs should be assessed on the indemnity basis by approaching the claims and applications as an indivisible whole because that reflects the reality of the situation. It has prevented any other approach being taken because it has filed a single costs schedule containing a rolled up costs claim for the Set Aside and Recognition Claims. As a result, even if I considered that Persephone's conduct in respect of particular applications crossed the indemnity threshold but did not in others, I would be unable to give that effect by assessing some of the costs on an indemnity basis and some on the standard basis.

11. The facts or matters that Princeton relies on as taking Persephone's conduct outside the ordinary and reasonable conduct of litigation comprise the following:

(a) In breach of paragraph 5 of the Recognition Order, which expressly forbade Persephone from enforcing the Final award until 14 days following service or final disposal of any application to set aside, Persephone issued an Enforcement Application within the meaning of RDC 45.20. It is submitted that this is a paradigm case for costs to be assessed on the indemnity basis.

(b) The Recognition Claim was made without notice and therefore attracted the duties of full and frank disclosure but in breach of those duties, Persephone failed to draw the Court's attention to the existence or basis of the Set-Aside Claim, filed and served some six weeks earlier or that Persephone owed Princeton USD 5m. It is submitted that had these facts been disclosed to the Court as they should have been, then I would have directed that the application be heard on notice together with the Set Aside Claim;

(c) The Recognition Claim was entirely unnecessary and duplicative and thus a waste of time, costs and court resources given that the Set aside Claim has been issued some weeks earlier since its outcome would depend upon the outcome of the Set Aside Claim. It is further submitted that the Recognition Claim was issued as the foundation of the Security Application and thus a means of seeking to discourage Princeton from proceedings with the Set Aside Claim.

(d) The pursuit of the Informal Application, which I dismissed unarguable;

(e) Pursuit of the Article 9 argument on the Set Aside Application was hopeless. In relation to this point whilst I agree the point was entirely without merit, it did not take up a material amount of time cost or resource and in other circumstances might be characterised as an argument that failed but which of itself would not justify directing an indemnity assessment of costs;

(f) Persephone's defence of the Set Aside Claim failed. It is said that Persephone should have narrowed its case given the findings ultimately made.

(g) Inappropriate conduct by Persephone's legal team towards the Court and Registry by pressing the Registry to list the Recognition Claim and the security Application ahead of the Set Aside Claim. As Princeton correctly submit, the Recognition and Set Aside Claims raise the same issues because Articles 41 and 44 of the Arbitration Law are in similar terms and the Set Aside Order both granted the Set aside Claim and dismissed the Recognition Claim. It is submitted therefore that by pressing the Registry to list the Recognition Claim ahead of the Set aside Claim, Persephone were causing additional cost and work to no useful purpose when plainly the two claims should have been listed together because they are simply different sides to the same coin.

(h) The insistence of Persephone's legal team that the Security Application be listed at a time that suited it coupled with threats to approach the Chief Justice unless its demands were complied with.

(i) Finally, Princeton relies on what it characterises as the wilful failure of Persephone to pay the costs it was ordered to pay by my Order disposing of the Security Application. It is submitted that this is a case of won't pay not cannot pay because it was at the same time apparently paying its own lawyers.

It is submitted that cumulatively these factors take Persephone's conduct outside what ordinary and reasonable conduct of litigation.

12. As to (a) above, whilst I agree that as matter of principle that such conduct crosses the indemnity threshold, such an order would normally be confined to the assessment of costs incurred in the claim or application where such conduct has been found to have occurred. It is difficult to see how such conduct leads to the conclusion that the whole of the costs of the Set Aside and Recognition Claims should be assessed on the indemnity as opposed to the standard basis. I do not consider that *Techteryx Ltd v. Aria Commodities DMCC* [2025] DIFC DEC 001 at [70] is of any assistance on this point. It is not authority for the proposition identified by the Claimant. That paragraph was concerned with the effect on a costs order of a breach of the duty of full and frank disclosure by an applicant for a freezing order in relation to the existence of financial statements for a specific year. In the circumstances, the Court was unable to identify a specific sum of wasted costs attributable the breach and so deprived the Claimant of USD 10,000 of the sums it was otherwise entitled to recover for its successful application for a worldwide freezing order. That is an

entirely different to the submission being made by the Claimant in these proceedings, which is that conduct in relation to particular applications that crosses the threshold for an indemnity assessment ought to result in all the costs incurred by Princeton in respect of all the claims and applications to be assessed on the indemnity basis.

13. As to (f) above, I regard that submission as falling squarely within the general principle that the receiving party's success over the paying party, however emphatic is not sufficient of itself to justify an award of costs to be assessed on the indemnity basis. The real question is whether there is anything in the conduct of the paying party (here Persephone) that justifies the conclusion that not merely did it lose and lose emphatically but that the way it conducted the proceedings in a manner that fell outside the ordinary and reasonable conduct of litigation. If the submission that Princeton's costs should be assessed on an indemnity basis is to succeed, it has to show aggravating circumstances above and beyond lack of merit which increased cost or increased the delay inherent in the litigation. The criticism that Persephone should have narrowed the focus of submission to whether the irregularities on which Princeton relied had caused prejudice does not assist because Persephone lost on that issue as it lost on the other issues.

14. As to (h) above, seeking a listing that was considered in Persephone's best interests was not of itself outside ordinary and the reasonable conduct of litigation. However, the *in terrorem* threat to approach the Chief Justice of the Court unless the listing decision as resolved in the manner sought on behalf of Persephone went beyond what is acceptable conduct.

15. With some hesitation, I have come to the conclusion that directing an assessment of the whole of Princeton's costs on the indemnity basis would be wrong and that the manner in which Princeton have chosen to present its cost claim means that I am not able to assess parts of its costs on that basis and other parts on the standard basis with the result that its costs will have to be assessed on the standard basis. I reach that conclusion for the following reasons.

16. Firstly, as I have said the mere fact that Persephone lost emphatically is not of itself a justification for directing an assessment on the Indemnity basis. In its Reply submissions, Princeton makes clear that is not the basis of its application that it costs be assessed on the indemnity basis so it is not necessary I say more about that point other than that this concession is plainly consistent with the approach to indemnity costs set out earlier. However, I should make clear that I reject as unarguable the submission by Persephone that the value of the Award (at over USD 18m) would have justified resisting the Set Aside Claim (or advancing the Recognition Claim) on grounds that would otherwise have been frivolous or groundless as an obvious a *non sequitur*. It is not a submission that ought to have been made.

17. Whilst I accept that Persephone's Article 9 argument in the Set Aside Application was ". *without justification or basis in law or fact . frivolous or groundless and had no reasonable chance of success.",* that would only justify directing all Persephone's costs to be assessed on the indemnity basis if the point had taken up a substantial amount of the time cost and resource utilised by Princeton in advancing its claim. Had that been the case, it may well have been arguable that the inability of Princeton to point to the costs actually attributable to the Article 9 argument would not have been an answer to a claim that its costs of the Set Aside Claim should be assessed on the indemnity basis. However, that is not the case as I have explained. It was an argument that took no material time to consider, argue or dispose of in the substantive judgment. I do not regard this point as being one that is capable of providing cumulative support for an Indemnity assessment of all Princeton's costs, much less that it should be regarded as a free standing basis for such an order.

18. Of more concern is the breach of Paragraph 5 of the Recognition Order. Had the costs of and occasioned by the Enforcement Application been sought separately from the rest of the costs of the proceedings between the parties, I would have awarded the costs of those proceedings to Princeton to be assessed on the indemnity basis. Persephone breached an order of this Court at a time when it had been served with the Order and therefore knew or ought to have known of its contents. It was obviously conduct that was outside the ordinary and reasonable conduct to be expected of those litigating in this Court. What occurred should never have happened. However, that is not the way in which Princeton has chosen to advance its costs claim. As I have said, it submits that all the costs should be treated as part of a single dispute which is why there is a single statement of costs with a single sum claimed by reference to it. It attempts a notional apportionment between the Set Aside Claim costs and the Recognition Order costs but no justification is offered for that and the way in which the costs schedule has been presented means that there is no safe basis on which I could carry out an indemnity assessment only in respect of the Recognition Claim costs. The position might have been different if there was to be a detailed assessment but both parties have made clear that this is not what either wants to happen and it was not suggested on behalf of Princeton that it would abandon the rolled-up approach if there was an to be a detailed assessment. Where there is a single rolled up costs claim and neither party is seeking a detailed assessment, the fact that one relatively confined element merits costs being awarded against Persephone on the indemnity basis does not lead to the conclusion that the whole of the costs claimed for the whole of the proceedings should be assessed on that basis.

19. Persephone's answer to Princeton's submissions concerning its want of full and frank disclosure is unsatisfactory. It is not disputed that Persephone failed to disclose the existence of and grounds for the Set Aside Application when applying for the Recognition Order. I accept Princeton's submission that this was a breach of the duty to be full and drank with the Court when making without notice applications. I consider it likely that had the existence of and grounds for the Set Aside Application been disclosed, I would have directed the application to be heard on notice. The reasons for this are obvious - the principes that apply to a challenge to a recognition order are in all material respects the same as those that apply to set aside claims. It would have made no sense if, with knowledge of the Set Aside Claim, I had then proceeded to make a Recognition Order even if subject to the Paragraph 5 qualification. To have made such an order would have wasted time, costs and resources and would have been bound to have resulted in what in fact happened - that is the Recognition Claim and the Set Aside Claim being heard together. To have proceeded to make the Recognition Order in such circumstances would have been a breach of the Overriding Objective under at least RDC 1.6(1), (2), (4) and (5).

20. That USD 5m was due from Persephone to Princeton was of less significance but it should have been disclosed. Whilst of itself it might not have led to a direction that the application for the Recognition Order be heard on notice (because the sum said to be due was far less than the sum apparently due under the Award) once it is taken together with the existence and grounds of the Set Aside Application I consider that issue should have been disclosed even if Princeton's claim was disputed.

21. I should make clear however, that I do not consider that the commencement of the Recognition Claim was wrong. The point is simply that it

having been commenced, it should have been listed on notice and had it been, directions would have been given that led to it being listed as it was, at the same time as the Set Aside Claim.

22. In those circumstances, had there been a free-standing claim for the costs of the Recognition Claim, I would have directed those costs to be assessed on the indemnity basis. The duty of full and frank disclosure arises wherever applications are made without notice because ". *it is the necessary corollary of the court being prepared to depart from the principle that it will; hear both sides before reaching a decision, a basic principle of fairness* ." - see *Tugushev v Orlov* [2019] EWHC 2031 (Comm) at [7(ii)]. There is no question of this information not being actually known to Persephone. Persephone's conduct in those circumstances was outside the ordinary and reasonable conduct to be expected of those litigating in this Court. However, this element suffers from the same difficulty mentioned earlier - where there is a single rolled up costs claim and neither party is seeking a detailed assessment, that one relatively confined element (relevant only to the Recognition Claim) merits costs being awarded against Persephone on the indemnity basis does not lead necessarily to the conclusion that the whole of the costs claimed for the whole of the proceedings should be assessed on that basis.

23. Finally, I need to consider Persephone's informal application for the Set Aside Claim to be determined without a hearing. That application failed and cost were reserved. Persephone has argued that Princeton had waived its right to a hearing, coupled with its assertion (now shown to be wrong) that the Set-Aside Claim was dilatory in nature. That was an application that should not have been made. Persephone submitted that there should be no hearing because ". *the Claimant has not requested one*." and/or that it has waived the right to a hearing by not requesting one in its Particulars of Claim. I rejected the first of these submissions as misconceived and the waiver argument as unarguable because the default position was that applications and claims will be determined at hearings unless a court concludes that a hearing would not be appropriate. I concluded it to be obvious that such an order ought not to be made for the reasons I set out in Paragraphs 3 to 5 of the Schedule of Reasons in the order. I concluded that ". *it is plain that this Claim should be determined at a hearing*." As is apparent from the Reasons when read as a whole, Persephone's conduct in making the application (and making it informally) was outside the ordinary and reasonable conduct to be expected of those litigating in this court. However, the familiar difficulty arises - whilst the costs of the application were reserved, the Claimant has not sought a separate order in relation to the costs of the informal application, nor has it provided a separate costs schedule in respect of those costs.

24. I am not persuaded that the matters so far not considered add anything. Even if I could conclude that the correspondence with the Registry went beyond what was appropriate the remedy for that does not lie in directing that the Claimant's costs be assessed on the indemnity basis. Any additional costs caused by this would be the costs of writing correspondence that might otherwise be avoided. The difference between the costs of such correspondence when assessed on the indemnity as opposed to the standard basis is likely to be immaterial. I agree with Persephone's submissions relating to the attendance of Mr Farchakh's attendance. That there was a disagreement over the costs of his attendance does not justify ordering the costs of all the litigation to be assessed on the Indemnity as opposed to the standard basis. nonpayment of an outstanding costs order falls into the same category. Costs orders are capable of being enforced as if they were judgments. Nonpayment does not justify directing the costs that follow be assessed on the indemnity as opposed to the standard basis.

25. As set out above, I consider that there are four elements to the conduct of this litigation by Persephone that was outside the ordinary and reasonable conduct to be expected of those litigating in this Court - (i) the reliance on Article 9, (ii) the breach of Paragraph 5 of the Recognition Order; (iii) the failure to disclose the existence of and grounds for the Set Aside Application when applying for the Recognition Order and (iv) the making of the informal application for an order that the Set Aside Application be determined on paper. Of these (i) and (iv) are minor infractions and the real focus of attention must be on (ii) and (iii). Whilst I regard each as a serious failure on the part of Persephone that ought not to have happened, I am not satisfied they individually or collectively merit a direction requiring all Princeton's costs to be assessed on the indemnity as opposed to the standard basis. I agree with Princeton that deliberate conduct in breach of an order of the Court is the paradigm case for indemnity costs - but of the claim or application by reference to which the breach occurred. Similar considerations apply to breach of the duty of full and frank disclosure. Suppose, hypothetically, there are 2 applications to be heard together one of which results in the successful party incurring USD 50,000 in costs and the other USD 250,000. Suppose there was a breach of a court order relevant to the first but not the second application. Whilst it would be appropriate to direct that the costs of the first application be assessed on the indemnity basis, it would not be appropriate to order the costs of the application that was unaffected by the breach also to be assessed on the indemnity basis simply because the applications had been tried together. If the receiving party chose to submit one costs schedule for both applications then if (as here) the Court cannot disentangle the costs attributable to the first and to the second then it has no choice but to assess all the costs on the standard basis.

26. Had Princeton sought its costs of the various applications and claims separately it may have been the case that the costs of the claims or applications to which (ii) and (iii) relate would have been directed to be assessed on the indemnity basis. However, that is not the approach that has been adopted. Princeton has advanced a single rolled up costs claim and neither party is seeking a detailed assessment so that an immediate assessment is sought by both parties. In those circumstances, directing an assessment on the indemnity basis of the whole of Princeton's rolled up costs claim would be exorbitant and disproportionate.

27. In the result, the costs are to be assessed on the standard rather than the indemnity basis. However, even on such an assessment misconduct by the paying party may be relevant to how the standard assessment is carried out and as I explain below, I have taken conduct into account in arriving at my final assessment.

The Assessment

28. The Foundational principle is that set out in RDC 38.18, which is that on a standard assessment the court will allow only such costs as are proportionate to the matters in issue. This implies that a court must ask itself two questions on such an assessment - first what work for which payment is claimed was it reasonable to carry out and secondly in respect of such work, what was the reasonable and proportionate amount payable in respect of it - see RDC 38.18(2). Although RDC 38.18(2) is concerned with the resolution of any doubts when assessing costs on the standard basis, that formulation would make no sense unless the assessment required those two questions to be asked and answered. In relation to the second of those two questions, proportionality is understood in relation to the costs rules within the Civil Procedure Rules that apply in England and Wales as ". *not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances.*" - see *Kazakhstan Kagazy Plc v Zhunus* [2015] EWHC 404(Comm). Expenditure over and above that level is for a party's

own account and not recoverable from the other party. There is no reason not to adopt this approach in relation to hard fought commercial litigation in this jurisdiction.

29. That being the test that the court is required to apply, it was to be expected that Persephone would have descended into the detail sufficiently to identify any element of the costs claimed that was alleged to be in respect of work that it was unreasonable to carry out or which it was alleged was unreasonable and disproportionate in amount. Regrettably that has not been the approach. Persephone submits that the costs claimed requite "*proper scrutiny*" for duplication; the allocation of work between the Set Aside and Recognition Claim and whether the costs of the security Application have been completely excluded, and that there should be "*a substantial discount"* from what has been claimed but offers no specific challenges whilst submitting there should be an immediate assessment and a substantial discount ". *to reflect duplication, excessive fee-earner involvement, insufficient particularisation, and the need to separate properly recoverable legal costs from administrative, overlapping or inadequately evidenced work*."

30. Princeton's submission is that the total sum claimed has been apportioned as to 91% of the sum claimed to the Set Aside Application and 9% in respect of the Recognition Claim. Whilst that is asserted in Princeton's initial costs submissions (see paragraph 14) there is nothing in the Costs Schedule that reflects that apportionment. In its reply submissions, it notes that Persephone advances no particularised objection to any of the sums claimed. Princeton submits that (a) no sum attributable to the Security Application is claimed; (b) the case has been conducted so as to avoid duplication; and (c) junior resources were used to reduce cost, both at the level of its primary legal representatives, where substantial document work was undertaken by a paralegal, and in terms of advocacy, where junior counsel was instructed alongside leading counsel thereby reducing leading counsel's fees. It is pointed out that the Costs Schedule contains a statement of truth signed by a senior counsel employed by Princeton's Legal Consultants.

31. Princeton seeks to rely on a comparison of its costs with those of Persephone. In England, it has been held that is wrong in principle for a judge to conclude that, because the paying party's costs are much the same as those of the receiving party the latter's costs could be assumed to be costs that it was reasonable for the paying party to pay. The judge's task is to focus on the heads of costs they are being asked to assess and to form their best judgment of the proportion it was reasonable to require the paying party to pay. In those circumstances, little assistance is to be obtained from a submission that broadly the costs of each party are the same.

32. In those circumstances, reasonableness and proportionality has to be approached with a very broad brush. The hourly rates adopted by Princeton's Legal Consultants are in compliance with those set out in the Registrar's Direction No. 1 of 2023 save for Mr Chadwick whose rate I reduce for assessment purposes to AED 3746 and Ayman Saey, whose rate I reduce for assessment purposes to AED 1450. The sums recoverable should be recalculated applying these reduced rates. There is nothing in the attendances that are obviously unreasonable or disproportionate save for the "*Other Work*" which is not explained even in the reply submissions. I accept that those concerned with a case of this sort will carry out work it is reasonable to carry out not falling within any of the other categories set out in the Schedule. However, the volume of hours is higher than might be expected. I am required by RDC 38.18(2) to resolve any doubt I might have in favour of the paying party. Given the necessarily broad brush nature of the exercise, I consider that the number of hours should be reduced by 30% for each fee earner and re-calculated using the adjusted hourly rates set out above.

33. In relation to work on documents, I am bound to adopt a broadly similar approach given the paucity of information provided. Whilst I take the point that what has been provided is what the DIFC Courts form requires, a party seeking a high overall recovery for work done on documents should consider providing a more detailed breakdown, particularly once a dispute as to the sums claimed for such work has manifested itself as it had by the time Princeton came to file its reply submissions.

34. In order to take account of the conduct issues that Princeton rely on (being essentially the same as the points relied on in support of its Indemnity assessment claim) I have allowed a rather higher recovery for work on documents that I might otherwise have done by reference to those conduct issues mentioned earlier - (i) the reliance on Article 9, (ii) the breach of Paragraph 5 of the Recognition Order; (iii) the failure to disclose the existence of and grounds for the Set Aside Application when applying for the Recognition Order and (iv) the making of the informal application for an order that the Set aside Application be determined on paper. I reduce the hours recoverable by each of the fee earners identified by 20% when otherwise I would have discounted by a rather larger amount. The sum recoverable is to be calculated applying the adjusted rates referred to above. The filing fees are allowed as asked. So far as leading counsel's fees are concerned Mr Craig KC claimed fees are USD 6,025.96 (attendances), USD 5,133.20 (documents) and USD 85,000.00 (brief for the hearing). Those too are allowed as asked. They are within the range of what is reasonable and proportionate for experienced commercial KCs practising in London. I allow junior counsel's fees as asked to save for the hearing. Junior counsel's work at the preparatory stages was reasonable and proportionate because it will have reduced the work that would otherwise have had to be carried out by leading counsel. However, I do not consider it is reasonable for an experienced leader to require the support a junior at the hearing that lasted one day or less where there is no cross examination to be carried out. However, at least some of Ms Dzwig's brief fee will have been for the preparation of the skeleton argument. I reduce her brief fee for assessment purposes to USD12,500.

35. In relation to attendances at the hearing, having three fee earners each attending for 5 hours is in excess of what is reasonable. Given the importance of the case for Princeton. I accept that Mr Khan should have been present to support leading counsel. That is a further reason why junior counsel being present as well was unreasonable. It was unreasonable for Mr Farchakh and Mr Saey to be present at the hearing. The sums claimed for their attendance is disallowed for assessment purposes.

36. The sums claimed in respect of the costs submissions are in excess of what is reasonable and proportionate. I reduce Mr Saey's hours to 20 hours. I accept that Mr Khan would have wished to check those submissions as part of the internal supervision processes within Princeton's Legal Consultants. However, the time claimed is in excess of what is reasonable and I reduce that to three hours.

Value Added Tax

37. In the original Statement of Costs, VAT was omitted from the Statement in error. That has been corrected by the supply of an amended Statement. It is submitted by Persephone that this disentitles Princeton from recovering VAT. I reject that submission. The real issue concerns what is to happen in the event that a claim to recover VAT is made by or on behalf of Princeton which succeeds. In my judgment, this is properly to be managed by an undertaking by Princeton (a) to apply to recover the VAT claimed in these proceedings as input tax; and (b) to account for any

sum recovered to the extent that had been paid by Persephone.

Time For Payment

38. An Appeal Notice has been filed on behalf of Persephone on 4 September 2026. There is an application to extend time for the filing of its grounds and skeleton argument within 21 days of 4 September, which will expire on 25 September 2026. Costs orders must be paid within 14 days of the date of an order being made that states the amount of the costs unless the time for payment is extended - see RDC 38.40. An appeal does not operate as a stay without an order - see RDC 44.4. It would be a wrong exercise of discretion to extend time because (a) there is as yet no Grounds of Appeal or skeleton argument in support; and (b) there is no evidence that supports the assertion that if sums are paid to Princeton by Persephone, there is a risk that any sums so paid will not be recoverable in the event the proposed appeal succeeds.