IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

PHENIX

Claimant

and

PATTON

Defendant

ORDER WITH REASONS OF H.E. JUSTICE RENE LE MIERE

UPON the Claimant's Application No. CFI-087-2025/2 dated 13 July 2026 seeking an order that Patton join these proceedings as the Second Defendant and for permission to amend the Particulars of Claim (the "Application")

AND UPON the Order with Reasons of H.E. Justice Rene Le Miere dated 12 October 2026

AND UPON the Claimant's costs submissions dated 26 October 2026

AND UPON the Defendant's cost submissions dated 26 October 2026

IT IS HEREBY ORDERED THAT:

1. In this Order, the "Account Amendments" means the proposed amendments at paragraphs 27A, 27B, 28.9 and 31A, their associated references, and the implied-term amendment at paragraph 27.4.8 of the proposed amended Particulars of Claim.

2. The Claimant shall pay, on the standard basis, only the additional costs reasonably and proportionately incurred by the Defendant by reason of the inclusion and pursuit of the Account Amendments, being the amount by which those amendments increased the costs of responding to the Application beyond the costs that would have been incurred had those amendments not been included.

3. For the purposes of assessing the costs payable under paragraph 2:

(a) costs which would have been incurred in responding to the remaining Application shall be excluded, notwithstanding that the work also assisted the Defendant in resisting the Account Amendments;

(b) where a single charge includes severable work relating to the Account Amendments and work relating to the remaining Application, that charge may be divided to identify the additional costs recoverable under paragraph 2;

(c) costs of the stay and consequential trial directions shall be recoverable only to the extent that they constitute additional costs falling within paragraph 2; and

(d) costs incurred exclusively for Patton Lebanon, including the Lebanese legal advice identified in the costs evidence, shall be excluded.

4. The determination of the amount payable under paragraph 2 is deferred until after the conclusion of the trial listed to commence on 18 November 2026. For the purposes of this Order, the trial concludes upon completion of closing submissions, including any written closing submissions directed by the Court.

5. The parties shall endeavour to agree the amount payable under paragraph 2 within 21 days after the conclusion of the trial. If they reach agreement, they shall notify the Registry in writing, and paragraphs 6-8 shall cease to apply.

6. Unless the amount has been agreed, the Defendant shall, within 14 days after expiry of the period specified in paragraph 5, file and serve a revised costs schedule:

(a) separately identifying solicitors' costs, each counsel's fees and other disbursements;

(b) identifying the additional costs claimed under paragraph 2 and explaining why those costs would not have been incurred had the Account Amendments not been included;

(c) explaining the basis of any division of a composite charge under paragraph 3(b); and

(d) excluding costs falling outside the scope of this Order.

7. Within 14 days after service of the revised costs schedule, the Claimant may file and serve written submissions identifying any disputed items and the grounds of objection.

8. Unless agreed, the amount payable under paragraph 2 is reserved. After receiving the revised schedule and any response, the Court shall determine whether to assess the costs summarily or direct a detailed assessment.

9. No costs order is made in favour of Patton Lebanon.

10. Save as provided above, each party shall bear its own costs of the Application, the permitted amendments and the consequential pleading changes.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 2 November 2026
At: 12pm

SCHEDULE OF REASONS

A. Introduction

1. These reasons concern the costs of the Claimant's application dated 13 July 2026 to join Patton ("Patton Lebanon") as a Second Defendant and to amend his Particulars of Claim (the "Application"). By the Order with Reasons dated 12 October 2026, the Court refused joinder and the contested amendments, permitted specified unopposed amendments, and reserved costs.

2. The Defendant and Patton Lebanon seek their costs of and occasioned by the Application, including the stay and consequential directions, assessed on the indemnity basis at AED 578,945.97. The Claimant submits that each party should bear its own costs under Practice Direction No. 1 of 2025 (the "Practice Direction").

B. Applicable principles

3. Paragraph 3.1 of the Practice Direction sets out the general rule that each party to an employment dispute bears its own legal costs. Paragraph 3.2 permits an adverse costs order where a party has brought or conducted proceedings unreasonably, acted vexatiously or in bad faith, or where an order is otherwise in the interests of justice. Any such order must be proportionate and accompanied by reasons.

4. In *AZ v BY*, [2025] DIFC CFI 119 (14 July 2025), at [6]- [8], the Court explained that departing from the general rule is exceptional. Paragraph 3.2(a) requires unreasonableness to a high degree. Establishing a gateway is necessary but not sufficient: the Court must then decide separately whether to exercise its discretion to make an order.

5. Those principles apply to amendment applications. In *Pernella v Pearson* [2026] DIFC CFI 018 (30 September 2026), the Court held that the Practice Direction qualifies the ordinary amendment-costs rule in Rule 18.27 of the Rules of the DIFC Courts ("RDC"). It also recognised that a discrete amendment episode may justify an adverse costs order without warranting an order for the remaining costs.

6. An unsuccessful application is not necessarily unreasonable. Nor does refusing an amendment for want of a real prospect of success, without more, establish the degree of unreasonableness required. The Court must identify the particular conduct, assess it in its contemporary circumstances, and explain why it goes beyond an ordinary unsuccessful litigation choice.

C. The joinder application

7. The joinder application served a genuine forensic purpose. The Court found a real issue as to which entity was liable for the Claimant's profit share and accepted that there was a real case for joinder. Joinder could have avoided separate proceedings and inconsistent decisions.

8. Nevertheless, the application was very late, its lateness was not satisfactorily explained, and the proposed claim against Patton Lebanon required material repair. Joinder would also have required the trial dates to be vacated. Those considerations justified refusing joinder. They do not, in the circumstances, establish that seeking joinder was unreasonable to the high degree required for an adverse costs order.

9. In particular, the practical question of whether the trial could proceed if joinder were refused required substantial examination at the hearing. The Court initially expressed concerns about the remaining preparation and ultimately concluded that the trial could proceed. That conclusion does not retrospectively render unreasonable every submission challenging the timetable.

D The account and implied-term amendments

10. The proposed account claim is different. It sought to extend the existing profit-share claim, concerning specified breaches in 2023-2025, to every deduction, provision and adjustment from October 2019 onwards. It proposed to place on the Defendants the burden of justifying those matters over an open-ended period.

11. The Claimant identified no legal basis for that relief. Neither the contractual entitlement to profit share nor the parties' unequal access to information established a right to an account. The latter concern had already been addressed through document production and the permitted forensic accounting evidence.

12. The associated implied-term amendment was also materially deficient. It alleged a duty to calculate the profit share honestly, in good faith, rationally, and not arbitrarily or capriciously, but pleaded no facts capable of establishing a breach of that duty. Several matters relied upon concerned benefits unrelated to the calculation of underwriting profit.

13. These were not merely defects of expression. The proposals sought a substantial enlargement of the claim without identifying the necessary legal and factual foundation. The account amendment would independently have required further disclosure, witness evidence and a substantially

larger expert exercise, making the existing trial dates untenable.

14. The Claimant maintained those proposals throughout the hearing. His offer in reply to obtain instructions on withdrawing the account element did not provide the missing foundation. I do not criticise the willingness to reconsider or withdraw a claim. The relevant conduct was pursuing these materially unsupported proposals to determination, notwithstanding their scope and procedural consequences.

15. Taken together, those features distinguish this episode from ordinary amendment as a claim develops. I find that the pursuit of the account and associated implied-term amendments was objectively unreasonable to a high degree. Paragraph 3.2(a) is engaged in respect of that episode. I make no finding of vexatiousness, bad faith or improper tactical purpose.

16. The statutory amendments were refused because the claims were brought as distinct claims outside the applicable limitation period. The Claimant's arguments that they were alternatives or extensions of existing claims were rejected. I am not satisfied that their pursuit, considered separately, crossed the exceptional threshold.

E. Exercise of discretion

17. I have separately considered whether an adverse costs order should follow. The access-to-justice purpose of the Practice Direction remains important after a gateway is established. It weighs against treating the Application as a single unsuccessful event for which the Claimant must pay all costs.

18. Nevertheless, the account and implied-term proposals required the Defendant to undertake substantive work independent of the joinder question. In my judgment, it is appropriate that the Claimant bear the reasonable and proportionate additional costs arising from those proposals. The order is compensatory, not punitive.

F. Scope of the costs award

19. The costs award should compensate the Defendant for the additional expenditure caused by the amendments the Court has found were pursued unreasonably. It should not transfer to the Claimant costs the Defendant would have incurred in responding to the remaining application in any event.

20. I adopt, by analogy, the incremental approach explained by Dixon J in *Smith v Madden* (1946) 73 CLR 129 at 133-137. Although that case concerned the separate taxation of claim and counterclaim costs, its distinction between common work and additional work provides an appropriate means of defining the present award.

21. For this purpose, the "Account Amendments" comprise the proposed amendments at paragraphs 27A, 27B, 28.9 and 31A, their associated references, and the implied-term amendment at paragraph 27.4.8.

22. The remaining Application is to be considered as if the Account Amendments had not been included. The Claimant's liability is confined to the amount by which the Defendant's reasonable and proportionate costs of responding to the Application were increased by the inclusion and pursuit of the Account Amendments.

23. Costs that would have been incurred in responding to the remaining application are not recoverable merely because the work also served to resist the Account Amendments. Where a single charge covers severable work relating to the Account Amendments and to the remaining application, the charge may be apportioned to identify the additional costs properly attributable to the Account Amendments. That apportionment is distinct from allocating a proportion of genuinely common costs to those amendments.

24. The same approach applies to the costs of the stay and the consequential trial directions. Those costs are generally not recoverable. They fall within the award only to the extent that the Defendant establishes additional expenditure caused by the inclusion and pursuit of the Account Amendments that would not otherwise have been incurred.

G. Basis and amount

25. I decline to order an indemnity assessment. The analogy with indemnity-costs principles informs the threshold under paragraph 3.2(a) but does not make indemnity assessment automatic. The unreasonable episode was part of a broader application containing genuine disputes. A confined award on the standard basis adequately reflects the conduct and preserves scrutiny of proportionality.

26. The present schedule does not permit a fair assessment of the amount. Of the total AED 578,945.97 claimed, AED 424,290.85 is presented as a single disbursement figure covering counsel and Lebanese advice. These components are not separately quantified.

27. The suggested allocation of 70% to amendment work and 30% to joinder is expressly a broad estimate. Moreover, amendment work includes matters outside the episode for which costs are awarded. That allocation does not identify the additional costs caused by the Account Amendments and cannot simply be adopted as the measure of recovery.

28. Although RDC 38.30 generally favours immediate assessment following a hearing lasting no more than one day, there is good reason not to fix the amount on this material. The Defendant must provide a revised schedule identifying the separate disbursements and the additional solicitors' and counsel's costs incurred because of the Account Amendments, excluding costs which would have been incurred in any event. Where a composite charge is divided, the schedule must explain the basis for identifying the additional work and the amount claimed for it.

29. The Claimant must have an opportunity to respond. The Court will then determine whether summary assessment is practicable or detailed assessment is required.

H. Patton Lebanon and the permitted amendments

30. I make no costs order in favour of Patton Lebanon. Its participation in resisting joinder does not itself justify departure from the Practice Direction. The unreasonable episode identified above principally concerned expansion of the existing claim against the Defendant. Joint representation does not establish that Patton Lebanon is entitled to recover its expenditure.

31. Costs incurred exclusively for Patton Lebanon, including the Lebanese advice identified in the evidence, must therefore be excluded. The Defendant may recover only its own additional costs falling within the confined award.

32. Each party will bear its own costs of the permitted amendments and consequential pleading changes. Those amendments particularised or quantified existing claims or corrected arithmetic without materially widening the trial issues. No basis has been established for departing from paragraph 3.1 in respect of them.

I. Conclusion

33. The Claimant shall pay, on the standard basis, only the additional costs reasonably and proportionately incurred by the Defendant by reason of the inclusion and pursuit of the Account Amendments, being the amount by which those amendments increased the costs of responding to the Application beyond the costs that would have been incurred had those amendments not been included. Quantum is reserved pending further particulars and submissions.

34. Otherwise, each party shall bear its own costs of the Application, the permitted amendments and consequential pleading changes. No costs order is made in favour of PattonLebanon.

J. Orders

35. The Court orders:

1. In this Order, the "Account Amendments" means the proposed amendments at paragraphs 27A, 27B, 28.9 and 31A, their associated references, and the implied-term amendment at paragraph 27.4.8 of the proposed amended Particulars of Claim.

2. The Claimant shall pay, on the standard basis, only the additional costs reasonably and proportionately incurred by the Defendant by reason of the inclusion and pursuit of the Account Amendments, being the amount by which those amendments increased the costs of responding to the Application beyond the costs that would have been incurred had those amendments not been included.

3. For the purposes of assessing the costs payable under paragraph 2:

(a) costs which would have been incurred in responding to the remaining Application shall be excluded, notwithstanding that the work also assisted the Defendant in resisting the Account Amendments;

(b) where a single charge includes severable work relating to the Account Amendments and work relating to the remaining Application, that charge may be divided to identify the additional costs recoverable under paragraph 2;

(c) costs of the stay and consequential trial directions shall be recoverable only to the extent that they constitute additional costs falling within paragraph 2; and

(d) costs incurred exclusively for Patton Lebanon, including the Lebanese legal advice identified in the costs evidence, shall be excluded.

4. The determination of the amount payable under paragraph 2 is deferred until after the conclusion of the trial listed to commence on 18 November 2026. For the purposes of this Order, the trial concludes upon completion of closing submissions, including any written closing submissions directed by the Court.

5. The parties shall endeavour to agree the amount payable under paragraph 2 within 21 days after the conclusion of the trial. If they reach agreement, they shall notify the Registry in writing, and paragraphs 6-8 shall cease to apply.

6. Unless the amount has been agreed, the Defendant shall, within 14 days after expiry of the period specified in paragraph 5, file and serve a revised costs schedule:

(a) separately identifying solicitors' costs, each counsel's fees and other disbursements;

(b) identifying the additional costs claimed under paragraph 2 and explaining why those costs would not have been incurred had the Account Amendments not been included;

(c) explaining the basis of any division of a composite charge under paragraph 3(b); and

(d) excluding costs falling outside the scope of this Order.

7. Within 14 days after service of the revised costs schedule, the Claimant may file and serve written submissions identifying any disputed items and the grounds of objection.

8. Unless agreed, the amount payable under paragraph 2 is reserved. After receiving the revised schedule and any response, the Court shall determine whether to assess the costs summarily or direct a detailed assessment.

9. No costs order is made in favour of Patton Lebanon.

10. Save as provided above, each party shall bear its own costs of the Application, the permitted amendments and the consequential pleading changes.