IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

NAATIQ

Claimant

and

NABEEH

Defendant

ORDER WITH REASONS OF JUSTICE RENE LE MIERE

UPON the Claim Form and Particulars of Claim filed on 2 August 2024

AND UPON the Claimant's Application No. ARB-018-2024/1 seeking directions from the Court

AND UPON the Claimant's Application No. ARB-018-2024/2 seeking to stay proceedings pending the determination of the Claimant's application to the Judicial Committee (the "Stay Application")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at a Directions Hearing held on 13 September 2024 (the "Directions Hearing")

AND UPON review of the parties' submissions on the case file

IT IS HEREBY ORDERED THAT:

1. The Stay Application is granted.

2. The proceedings in relation to the Arbitration Claim are stayed pursuant to Article 7 of Decree 29 of 2024.

3. The costs of the Stay Application and of the Directions Hearing are reserved.

Issued by
Hayley Norton
Assistant Registrar
Date of issue: 25 September 2024
At: 1pm

SCHEDULE OF REASONS

Summary

1. The Defendant, Nabeeh ("Nabeeh") commenced arbitration of a dispute with the Claimant, Naatiq ("Naatiq") pursuant to the Dubai International Arbitration Centre Arbitration Rules ("DIAC Rules").

2. The seat of the arbitration is the DIFC.

3. At the request of Nabeeh, the Dubai International Arbitration Centre ("DIAC") appointed an Emergency Arbitrator.

4. At the request of Nabeeh, the Emergency Arbitrator granted emergency interim relief in the form of an order dated 16 February 2024 (the "February Order").

5. On 27 March 2024 the Emergency Arbitrator dismissed an application by Naatiq to discharge the February Order and ruled that the February Order would remain in effect (the "March Order").

6. On 4 June 2024 Nabeeh commenced proceedings in the Courts of Dubai seeking ratification of the February Order, and ordering enforcement measures to be taken against Naatiq to implement the provisions of the approved interim measures.

7. On 12 July 2024 the Emergency Arbitrator confirmed to the Dubai Court that she gave permission for the execution of the interim relief granted by the February Order (the "July Permission").

8. On 2 August 2024 Naatiq issued these proceedings seeking an Order pursuant to Articles 41(2)(a)(ii) and (iv) of the Arbitration Law 2008 nullifying the February and March Orders and the July Permission and an injunction prohibiting Naatiq from enforcing the February and March Orders and the July Permission in the Dubai Courts, or elsewhere (the "Arbitration Claim").

9. By Application No. ARB-018-2024/2 Naatiq seeks an order that pursuant to Article 7 of Decree No. (29) of 2024 Concerning the Judicial Committee for Resolving Conflicts of Jurisdiction between the Dubai International Financial Centre Courts and Judicial Entities in the Emirate of Dubai ("the 2024 Decree" or "Decree 29 of 2024"), these proceedings are stayed ("Stay Application").

10. On 13 September 2024 the Court heard the Stay Application and a directions hearing for the hearing of the Arbitration Claim.

11. For the reasons that follow the Court will order:

(a) The proceedings in relation to the Arbitration Claim are stayed pursuant to Article 7 of Decree 29 of 2024.

(b) The costs of the Stay Application and of the directions hearing on 13 September 2024 are reserved.

The parties

12. Naatiq is a joint stock company incorporated and existing under the laws of Libya whose principal place of business is Libya. Naatiq carries on the business of a passenger airline.

13. Nabeeh is a free zone company incorporated and existing under UAE Law with trade licence registration and whose registered office is in UAE. The Defendant is an aircraft lessor.

14. Neville (" Neville ") is a company incorporated under the laws of Ireland whose registered office and principal place of business is at Ireland.

15. Neville is the owner of an Airbus A320-200 aircraft ("the Aircraft").

The Lease Agreement

16. By back-to-back lease agreements dated 27 September 2022, Neville leased the Aircraft to Nabeeh as lessee and Nabeeh, with the consent of Neville, leased the Aircraft to Naatiq (the "Lease Agreement").

17. The Lease Agreement is for 71 months (until 30 September 2028) with a rent of USD 190,000 per month in addition to certain ancillary charges (approximately USD 13,490,000 in total).

18. The Lease Agreement includes the following provisions:

(a) The agreement and any non-contractual obligations arising from or in connection with it are governed by and shall be construed in accordance with English law.

(b) The courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with the agreement and any non-contractual obligations arising out of or in connection with the agreement and for such purposes each party irrevocably submits to the jurisdiction of the English courts ("the Jurisdiction Clause").

(c) Notwithstanding the Jurisdiction Clause, Nabeeh may elect that any dispute arising out of the formation, performance, interpretation, nullification, termination or invalidation of the agreement or arising there from or related thereto shall be settled by arbitration in accordance with the DIAC Rules by three arbitrators appointed in compliance with those rules.

(d) The seat and legal place of the arbitration shall be the DIFC.

(e) Naatiq waives any immunity from suit, from the jurisdiction of any court or from any legal or judicial process or remedy and waives in accordance with Article 57 of the Cape Town Convention any sovereign immunity from jurisdiction of the courts specified in the Jurisdiction Clause or relating to the enforcement of rights and interests relating to the Aircraft.

19. The Aircraft was delivered to Naatiq on 4 October 2022. The Aircraft then underwent repairs and other refurbishment before entering service on 16 November 2022.

The Termination Notice

20. Naatiq says that it complied with its obligations pursuant to the terms of the Lease Agreement. In addition to payment of the Security Deposit, the first lease payment was made on 29 September 2022 and thereafter timely rental payments were made. As Naatiq operates in the State of Libya, it faced capital controls and other regulatory hurdles in remitting funds abroad. Naatiq says that Nabeeh was aware of these difficulties and granted the Defendant certain forbearance in complying strictly with the timelines imposed by the Lease Agreement.

21. Nabeeh says that Naatiq repeatedly failed to make the payments due to Nabeeh under the Lease Agreement.

22. On 28 November 2023, Nabeeh issued Naatiq with a termination notice ("Termination Notice") under clause 20(1)(c) of the Lease Agreement. The Termination Notice stated that an event of default had occurred and is continuing in that Naatiq had failed to pay when due pursuant to the Lease Agreement the amount set out in a schedule. The Termination Notice stated that Nabeeh terminated the leasing of the Aircraft, required that the Aircraft be placed under its control and possession, and required that the Aircraft be ferried to the international airport to be specified by Nabeeh.

23. On 7 February 2024 Neville issued a notice requiring Naatiq to ground the Aircraft at Istanbul airport and to give notice of the Aircraft's

location.

The Arbitration

24. On 12 February 2024, Nabeeh filed with DIAC a request for arbitration, which claimed relief including sums due under the Lease Agreement, damages, and declarations that Naatiq must immediately return the Aircraft.

25. At the same time Nabeeh filed with DIAC, without notice to Naatiq, an application pursuant to Article 2.1 of Appendix II of the DIAC Rules for the appointment of an emergency arbitrator and emergency interim relief ordering Naatiq to cease commercial operation of the Aircraft, not to move it to Libya, and to permit Nabeeh to take possession of the Aircraft.

26. DIAC appointed an emergency arbitrator ("the Emergency Arbitrator").

27. Following a hearing where only Nabeeh was present or represented, the Emergency Arbitrator made an order on 16 February 2024 amongst other things to the following effect:

(a) Naatiq must immediately cease operation of the Aircraft;

(b) Naatiq must not move the Aircraft to Libya, or maintain it there;

(c) Nabeeh was authorised to take possession of the Aircraft, deregister it, and transfer it from wherever it was situated;

(d) Naatiq was to cooperate with Nabeeh for the Aircraft's deregistration and transport; and

(e) Naatiq had liberty to apply at any time for the variance or discharge of the order.

28. Naatiq describes the 16 February Order as "the February Award". I prefer to describe the order as an order, as the Emergency Arbitrator did, and mindful that the order is emergency interim relief. I make no decision on whether the February Order is an award to which Article 41 of the Arbitration Law 2008 applies.

29. On 21 February 2024, Nabeeh sought possession of the Aircraft under the terms of the February Order whilst it was on the ground in Istanbul. Naatiq did not comply.

30. On 16 March 2024 Naatiq made an application to discharge the February Order ("the Discharge Application"), which was heard on 20 March 2024.

31. On 27 March 2024, the Emergency Arbitrator dismissed the Discharge Application and ruled that the February Order would remain in effect. The Emergency Arbitrator issued an order to that effect on 27 March 2024. The Claimant describes that order as "the March Award". I prefer to describe it as the March Order.

Proceedings in Dubai Courts

32. On 4 June 2024 Nabeeh commenced proceedings in the Courts of Dubai, by petition ("the Petition"), by which Nabeeh sought ratification of the interim measures issued by the Emergency Arbitrator, that is the February Order, and ordering enforcement measures to be taken against Naatiq to implement the provisions of the approved interim measures.

33. On 13 June 2024 the Dubai courts directed Nabeeh to obtain from the arbitral tribunal a written authorization for the execution of the interim measures issued by the tribunal.

34. Nabeeh asked the Emergency Arbitrator for the written authorization.

35. On 9 July 2024 the Emergency Arbitrator asked Nabeeh if she could hear Naatiq' comments on this request and/or application by close of business on 12 July 2024 and any reply should be provided by close of business on 14 July 2024.

36. On 12 July 2024 Nabeeh responded that it had just come to their attention that Naatiq' legal representative was inadvertently not copied to the email exchange requesting the written authorization. However, Nabeeh stated, Article 21.4 of Federal Law No. 6/2018 (the UAE Arbitration Law) only requires notification of the other party and there is no mechanism for Naatiq to reject or challenge the request for written authorization.

37. On 12 July 2024 the Emergency Arbitrator sent to Nabeeh written confirmation that she gave permission for the execution of the interim relief she granted in her order of 16 February 2024. The Emergency Arbitrator gave that written confirmation, without having heard from Naatiq. Naatiq describes the Emergency Arbitrator's written confirmation as "the July Award". I prefer to describe it as the July Permission because that descriptor provides a clearer picture of what is being described.

38. In response to subsequent requests from Naatiq to make submissions, the Emergency Arbitrator forwarded to Naatiq a copy of her written confirmation - the July Permission.

39. After further correspondence from Naatiq, the Emergency Arbitrator informed it:

> "I gave the confirmation provided. Any question as to whether that confirmation should have been given or is sufficient is a matter for the enforcing court."

40. On 2 August 2024, Naatiq issued the Arbitration Claim Form, seeking the following relief:

(a) Emergency arbitration awards nullified

(i) Pursuant to Article 41 of the DIFC Arbitration Law (DIFC Law No. 1 of 2008) (the "Arbitration Law") the [February Order], [March Order] and [July Permission] are nullified and set aside.

(b) Antisuit injunction

(ii) Until further Order of the Court, the Defendant, whether by its directors, officers, employees or agents or in any other way, shall refrain from taking any steps to enforce the Emergency Arbitration Awards [the February Order, the March Order, and the July Permission], or any subsequent interim arbitral awards, in the Dubai Courts or elsewhere. In this respect, the Defendant shall take all steps necessary to withdraw Petition [the Petition] and associated proceedings.

41. Naatiq seeks nullification of the Emergency Arbitration Awards, that is the February and March Orders, and the July Permission, pursuant to Articles 41(2)(a)(ii) and (iv) of the Arbitration Law, on the grounds that the procedure adopted by DIAC and the Emergency Arbitrator was not in accordance with the agreement of the parties, and that Naatiq was not given proper notice of the appointment of the Emergency Arbitrator or of the emergency arbitral proceedings, and was unable to present its case.

42. Article 41(2) does not refer to nullification. It provides that an arbitral award may be set aside by the DIFC Court if, amongst other things, the party making the application furnishes proof of the matters in sub-paragraphs (ii) and (iv). In the context of arbitration, nullification and setting aside an arbitral award generally refer to the same legal process. Both terms describe the action taken by a court to invalidate or annul an arbitration award, rendering it unenforceable. I will treat Naatiq' application as an application to set aside the February and March Orders and the July Permission.

43. Naatiq submits that Nabeeh's application to the Dubai Courts is unlawful on the ground that the UAE acceded to the Convention on International Interests in Mobile Equipment signed at Cape Town on 16th November 2001 (the "Cape Town Convention"), and by reason of the Convention interim measures in respect of an aircraft can only be granted by a court. Furthermore, pursuant to the Arbitration Agreement, the curial court for the DIAC Arbitration is the DIFC Court. As such, the enforcement of the February and March Orders and the July Permission in the Dubai Courts is an express breach of the Arbitration Agreement.

44. Further, Naatiq says that Nabeeh's attempt to enforce the February and March Orders, and the July Permission in the Dubai Courts represents an attempt to circumvent the established process for the recognition and enforcement of an award issued in a DIFC-seated arbitration, in Dubai, set down by Dubai Law No. 12 of 2004 (Judicial Authority Law or "JAL"). Naatiq submits that the effect of JAL Article 7 and RDC 45 is that Nabeeh, as an award creditor, is required by both mandatory UAE law and the rules of the supervisory courts to apply for recognition of the February and March Orders and the July Permission in the DIFC Courts, prior to commencing enforcement proceedings in the Dubai Courts. In commencing enforcement proceedings directly, it has sought to avoid the required process (with the effect of avoiding scrutiny of the procedural validity of the February and March Orders and the July Permission by the DIFC Courts). Naatiq submits that this attempt to evade and bypass the proper jurisdiction of the DIFC Courts in an arbitration matter amounts to an abuse of process.

Application to Judicial Committee

45. On 2 September 2024 Naatiq filed an application to the Judicial Committee for Resolving Conflicts of Jurisdiction between the Dubai International Financial Centre Courts and Judicial Entities in the Emirate of Dubai, which is formed and regulated as an independent judicial committee pursuant to the provisions of Decree 29 of 2024 (the "Judicial Committee" and the "JC Stay Application").

46. The JC Stay Application states that the legal basis for the request for a ruling on the jurisdiction of the DIFC Courts is as follows:

"Determining the court competent to supervise arbitration, proceedings thereof, and recognition and/or nullification of its awards is a matter that is firstly and foremost based on the determination of the venue of the "seat of arbitration," as Article One of Federal Arbitration Law No. 6/2018 (upon which [Nabeeh] relies in its Application before the esteemed Dubai Courts) identified the "court" (to which the litigants have recourse in respect of supervision over the arbitration proceedings, issuance of interim orders relevant thereto, recognition, and annulment) as:

"The federal or local Appeal Court agreed by all Parties or which the Arbitration is carried out within its area of jurisdiction."

Consequently, since Article (55) of the same Law provides that: "1- Any person willing to enforce an arbitral award shall submit a request for the recognition of the arbitral award and the issuance of an enforcement order to the president of the Court, etc.", therefore the president of the court intended by this provision is the president of the court in which jurisdiction the arbitration proceedings fall; i.e., the court within which jurisdiction the seat of arbitration exists.

This means, in the present case, that the court within which circuit the arbitration is conducted is, according to the Arbitration Law, the court competent with issuing recognition and/or nullification decisions of arbitrators' interim or final orders and with issuing the summary or interim orders relevant to the arbitration.

Whereas it is established as per the arbitration contract clause agreed upon under the Agreement that both parties agreed upon conducting the arbitration proceedings in accordance with the DIAC Arbitration Rules, provided that the seat of the arbitration is DIFC. This means that both parties expressly agreed that the venue of the seat of arbitration is the DIFC.

Whereas Article 20-1 of the DIAC Arbitration Rules of 2022 provides that:

"The parties may agree in writing on the seat of the arbitration. Where the parties have not agreed a seat, but they have agreed a location/venue for the arbitration, unless the parties agree otherwise, such location/venue shall be deemed to be the seat of the arbitration.etc"

[Nabeeh's] declaration in its Statement of Arbitration by an order on petition submitted thereby before the Dubai Courts of Appeal, expressly says the DIFC is the seat of arbitration agreed upon between the parties.

It is further established as per the interim orders that are the subject of the DIFC nullification claim filed by [Naatiq] and the subject of the enforcement Application filed by [Nabeeh], the seat of the arbitration, is DIFC, which means that the seat of the arbitration has been finally and indisputably determined to be the DIFC Court. Therefore, this court is the one competent to decide on the recognition and/or nullification of any decisions to be issued regarding such arbitration proceedings between the parties, whether issued by an emergency arbitrator or the full arbitral tribunal."

47. Naatiq seeks the following decision from the Judicial Committee in the JC Stay Application:

"Summarily, to issue an order suspending all legal proceedings and lawsuits whether before the Dubai Courts or DIFC Courts existing between both attending litigants regarding the interim orders issued by the emergency arbitrator on the arbitration claim, the subject of the present dispute, including, without limitation, claim No. ARB-018-2024, the Order on Petition, Arbitrationbefore the Dubai Courts.

To issue a decision stating that the DIFC Courts have the exclusive jurisdiction to hear [Nabeeh's] request against [Naatiq] to have the interim orders issued by the emergency arbitrator in the Arbitration Claim, DIAC recognized (as well as [Naatiq] claim against [Nabeeh] filed before the DIFC Courts requesting the nullification and set aside of the same orders) since the seat of the arbitration is DIFC, and therefore decide that the Dubai Courts do not have jurisdiction over any requests or lawsuits regarding the ratification and/or nullification of such interim orders, a decision, or any arbitral award to be rendered on such a dispute between the parties to the present litigation ([Naatiq] and [Nabeeh] with regards to the Agreement, the subject matter of the aforementioned Arbitration)."

48. Later, on 2 September 2024, the Dubai Court held a hearing in relation to the Petition. Naatiq filed an application for a stay in view of the JC Stay Application to the Judicial Committee.

49. On 5 September 2024 the Conflict of Jurisdiction Tribunal Registry served Nabeeh by email with Application No. 11 of 2024 and its supporting documents filed in the Conflicts of Jurisdiction Tribunal, and informed Nabeeh that a Respondent's Notice form must be filed within 14 days, by no later than 4pm on Thursday, 19 September 2024.

50. On 12 September 2024, the Dubai Court held a further hearing in relation to the Petition. Nabeeh submitted a memorandum requesting that the Court enforce the interim award which is the subject of the Petition. The case was reserved for a decision on 30 September 2024.

The Stay application

51. Meanwhile, on 3 September 2024, Naatiq applied in these proceedings an application for an order pursuant to Article 7 of the 2024 Decree that these proceedings are stayed pending the determination of Naatiq' application to the Judicial Committee.

52. The 2024 Decree establishes the Judicial Committee as the judicial authority which has the final say in conflicts of jurisdiction between the DIFC Courts and the onshore Dubai Courts and other judicial bodies.

53. Article 7 of the 2024 Decree must be read in conjunction with Article 6. Article 6 provides for establishing the Judicial Committee's authority over applications and their determination. Article 7 provides that establishing the Judicial Committee's authority over an application will result in, amongst other things, stay of proceedings of the claims or applications in respect of which a conflict of jurisdiction exists pending the determination of the Judicial Committee.

54. The question now before this Court is whether the Judicial Committee's authority over the Arbitration Claim proceedings has been established and therefore the Arbitration Claim proceedings have been stayed.

55. Both parties made submissions on the scope and application of Article 7 of the 2024 Decree based on the judicial interpretation of the scope and application of Article 5 of Decree No. 19 of 2016 (the "2016 Decree"), which the 2024 Decree repealed and replaced. I will start by referring to the 2016 Decree.

Decree No. 19 of 2016 (the "2016 Decree")

56. The 2016 Decree established the Joint Judicial Committee (the "JJC" or "JJT") to resolve jurisdictional conflicts between the Dubai Courts and the DIFC Courts.

57. Until 2021, the practice of the Dubai Courts and the DIFC Courts was that once an application was made to the JJC for it to resolve a conflict of jurisdiction, the Dubai Courts and the DIFC Courts stayed their respective proceedings until the application was determined by the JJC. This practice was based on the prevalent interpretation of Articles 4 and 5 of the 2016 Decree, which correspond to Articles 6 and 7 of the 2024 Decree.

58. The authoritative text of the 2016 Decree is the Arabic version. There is no authoritative English translation. I will refer to the translation on the website of the Supreme Legislation Committee in the Emirate of Dubai ("SLC").

59. Article 4 provided that:

"Where a conflict of jurisdiction arises between the Dubai Courts and the DIFC Courts by reason that both of them assert or decline jurisdiction over a claim, or that they deliver conflicting judgements on a claim, the following procedures must be applied:

(a) an application to determine the competent court or the enforceable judgement will be referred to the Judicial ..

(b) .; and

(c) the Judicial Committee will determine the applications submitted to it in the cases stipulated in this Decree .."

60. Article 5 provided as follows:

> "The referral of a dispute to the Judicial Committee pursuant to Article 4 of this Decree will result in:
>
> (a) the stay of proceedings for hearing the claims or applications in respect of which a conflict of jurisdiction arises until the issuance of the Judicial Committee's decision determining the competent court having jurisdiction over these claims or applications; and
>
> (b) stay of execution of conflicting judgments until the enforceable judgment is determined pursuant to a relevant resolution issued by the Judicial Committee."

61. The dispute which Article 4 refers to must be a dispute as to jurisdiction between the Dubai Courts and the DIFC Courts.

62. It had been understood that a mere referral of a dispute to the JJC triggered a stay. In other words, even if there was no conflict of jurisdiction, a referral to the JJC alleging a conflict of jurisdiction meant that proceedings were stayed.

Lakhan v Lamia

63. The decision of the Court of Appeal in Lakhan v Lamia [2021] DIFC CA 001 (24 June 2021) established that a mere referral of a dispute to the JJC did not stay proceedings in the DIFC Court.

64. In Lakhan v Lamia a defendant to proceedings in one Court commenced proceedings in another Court, applied to the JJT for a determination as to which of the proceedings should be permitted to continue and then relied upon the application to the JJT as a basis for seeking a stay of both proceedings.

65. The critical feature of the factual circumstances in Lakhan v Lamia was the fact that in this Court the only step which had been taken after commencement of the proceedings was the lodgement of an objection to the jurisdiction of the Court by the defendant to those proceedings, which objection was unresolved. The Court of Appeal held that no conflict of jurisdiction within the meaning of the 2016 Decree existed at that time.

66. In Five Holding Limited v Qatar Insurance Company [2021] DIFC CFI 027 and CFI 028 (4 August 2021) Justice Wayne Martin (as he then was), who was a member of the Court of Appeal in Lakhan v Lamia, explained at [38] that the essence of the reasoning in Lakhan v Lamia is that a mere application to the JJT is not sufficient, of itself, to require the grant of a stay of proceedings in both Courts. Rather, the trigger for a stay was the existence of a conflict of jurisdiction in one of the forms described in the chapeau to Article 4 of the 2016 Decree. The mere existence of proceedings involving the same claim in both Courts was not enough to give rise to a relevant conflict of jurisdiction. Further, no conflict of jurisdiction arose when the only steps taken by one of the Courts were to receive the initiating process and then embark upon an inquiry as to its jurisdiction to entertain the claim. It followed that because, in Lakhan v Lamia, this Court had done nothing other than receive the initiating process and an objection to jurisdiction, until that objection to jurisdiction was determined, no conflict of jurisdiction within the meaning of the 2016 Decree had occurred, and both the application to the JJT and the grant of a stay were premature. If the objection to jurisdiction was upheld, no conflict in jurisdiction would arise.

67. In Five Holding Justice Wayne Martin found that a conflict of jurisdiction had arisen. His Honour said that in order to assess whether a conflict of jurisdiction has arisen, it was necessary to consider the terms of Articles 4 and 5 of the 2016 Decree, which must be read together.

68. After observing that, one of the difficulties for an English language Court undertaking this process is that the Arabic text is authoritative, and there is no official translation of the Decree into English, his Honour referred to the translations before the Court. His Honour said that the differences in the English words used in the translations impeded a search for meaning by reference to the natural and ordinary meaning of the precise language of the legislative instrument.

69. The Wilberforce Chambers translation of Article 4 was:

> "In the event that there is a dispute as to jurisdiction between the Dubai Courts and the DIFC Courts either where both Courts had claimed or disclaimed jurisdiction or where the two Courts have issued inconsistent decisions on jurisdiction ."

Justice Wayne Martin said that the Wilberforce Chambers translation includes both inconsistent decisions on jurisdiction and both courts "claiming or disclaiming jurisdiction" suggesting that the exercise of jurisdiction is itself sufficient to create a conflict without necessarily requiring an express decision to exercise jurisdiction, but it was not necessary to resolve that question in that case.

70. Justice Wayne Martin said that all translations identified the circumstances which will give rise to a dispute or conflict as to jurisdiction - namely, either:

> (a) both Courts exercising jurisdiction (or perhaps expressly deciding to exercise jurisdiction) in respect of the same dispute; or
>
> (b) both Courts declining to exercise jurisdiction in respect of a dispute; or
>
> (c) both Courts issuing inconsistent or contradictory judgments.

71. His Honour continued:

> "The policies or objectives which underpin Article 4 are clear. Inconsistent or contradictory judgments by the same or different Courts in a single jurisdiction create uncertainty and bring the system of justice in that jurisdiction into disrepute. The existence of inconsistent or contradictory judgments is one of the triggers of a conflict of jurisdiction. However, the exercise of jurisdiction over the same dispute by different Courts can also result in oppression to the parties as a result of multiplicity of proceedings with all their burdens of time and cost. On any translation of the Decree, it is clear that the JJT is given jurisdiction to intervene prior to the point of inconsistent or contradictory judgments having been reached." [44] - [45].

72. In Five Holding there were two actions in the DIFC Courts, but there was no significant difference between them. The first claimant was the holding company of the second claimant. The second claimant had made a claim on its insurance policy with the defendant insurer. The defendant rejected the claim. In essence, the second claimant claimed a right to indemnity from the defendant in the Dubai Courts and the first and second claimants claimed a right to indemnity in the DIFC Courts. The parties agreed that the same issues arose in both cases. But the claimants submitted that there was no conflict in jurisdiction in relation to claims made by the first claimant in those proceedings, because the first claimant was not a party to the proceedings in the Dubai Courts.

73. Justice Wayne Martin rejected that argument for several reasons. First, while the defendants might raise separate defences to the claims brought by the first claimant to those advanced in respect of the claims brought by the second claimant, that did not have the consequence that the claims brought by the first claimant were separate and divisible from the claims brought by the second claimant. Irrespective of whether the matter was viewed through the perspective of the form of the proceedings brought in the DIFC Courts, or the underlying substance of the claims, there was an inextricable overlap and commonality in the claims brought by the first claimant and the claims of each second claimant.

74. His Honour observed that a judgment in the Dubai Courts in favour of the individual claimant in each of the proceedings before those Courts would be inconsistent with the judgments in the DIFC Courts in favour of the claimants jointly.

75. Justice Wayne Martin then said that even if the claims brought jointly in the names of both claimants and the judgments entered in favour of those claimants jointly could somehow be regarded as separate and severable claims brought on behalf of each separate claimant, and as separate judgments entered in favour of each separate claimant, it would not follow that the stay imposed by Article 5 of the Decree would only apply to the claims brought by each second claimant in the DIFC proceedings. His Honour noted that in each of the English translations the relevant phrase was qualified by the requirement that the relevant claim, application, action, motion or proceeding must be that which is the subject of the conflict or dispute in jurisdiction referred to the JJT pursuant to Article 4. Put another way, the ambit of the stay properly granted in accordance with Article 5 was to be ascertained by reference to the ambit of the conflict or dispute as to jurisdiction within the meaning of Article 4. That ambit was to be ascertained by reference to the evident objectives of the 2016 Decree, which include preventing the risk of inconsistent judgments and avoiding the burden of multiple proceedings in respect of the same dispute.

76. His Honour said that the ambit of any stay appropriately granted pursuant to Article 5 should be determined by reference to the manifest objectives of the Decree, rather than by reference to the form of the proceedings or a strict legal analysis of the divisibility or severability of the relative rights and obligations of different parties to the actions in the different Courts. Put another way, the operation of the Decree should be determined based on substance rather than form and by reference to the substantive risks of inconsistency and duplication. Viewed as a matter of substance, there was one insurance policy which was the subject of the corresponding claims in each of the Courts. In each of the Courts the insured events said to give rise to the claims were identical. The claims made by the first claimant were inextricably bound up with the corresponding claim made by its wholly owned subsidiary in each proceeding. The prosecution of claims in the DIFC Courts by the first claimant simultaneously with the prosecution of a claim by its subsidiary against the same defendant, under the same policy, arising from the same insured events in the Dubai Courts would create a serious risk of inconsistent judgments and would inevitably engage all parties in a multiplicity of proceedings in respect of what is, in substance, the same dispute.

77. Justice Wayne Martin held that as the continued prosecution of the claims brought by the first claimant in the DIFC Courts would defeat the evident objectives of the Decree, it was appropriate that those claims should be stayed along with the claims of the relevant subsidiary.

78. In Lancelot v Leedor [2021] DIFC CFI 060 (9 August 2021) Justice Wayne Martin helpfully summarised principles that apply to the operation and effect of the 2016 Decree:

> (a) The mere commencement of proceedings relating to the same dispute in both Courts will not, of itself, give rise to a conflict of jurisdiction which enlivens the operation of the Decree;
>
> (b) Nor will an application to the JJT, of itself, give rise to an automatic stay of proceedings in both Courts under Article 5 of the Decree;
>
> (c) Rather, when an application is made to a Court for a stay of proceedings pursuant to Article 5 of the Decree, after application has been made to the JJT, it will be necessary for that Court to determine whether there is in fact a conflict of jurisdiction as between the two Courts;
>
> (d) A conflict will arise if both Courts exercise jurisdiction over the same dispute, or both decline to exercise jurisdiction over that dispute, or if both Courts issue inconsistent or contradictory judgments;
>
> (e) A Court will not exercise jurisdiction so as to give rise to a conflict merely by proceeding to determine an objection to its jurisdiction;
>
> (f) Whether or not each court has exercised jurisdiction in relation to the same dispute so as to give rise to a conflict of jurisdiction which engages the jurisdiction of the JJT will generally depend upon the facts and circumstances of the particular case;
>
> (g) A Court will assess whether there is a conflict of jurisdiction in any particular case as a matter of substance rather than form, having regard to the evident objectives of the Decree which are:
>
> > (i) to minimize the risk of inconsistent or contradictory judgments or decisions; and
> >
> > (ii) to avoid a multiplicity of proceedings with respect to the same dispute.

79. In that summary, Justice Wayne Martin distinguishes between a potential conflict of jurisdiction and an actual conflict of jurisdiction, although His Honour does not use those terms.

80. The mere commencement of proceedings relating to the same dispute in both Courts gives rise to a potential conflict of jurisdiction, but it is not an actual conflict of jurisdiction that, of itself, gives rise to a conflict of jurisdiction which enlivens the operation of the Decree.

81. The potential conflict of jurisdiction becomes an actual conflict of jurisdiction if and when both Courts exercise jurisdiction over the dispute, or both decline to exercise jurisdiction over that dispute, or if both Courts issue inconsistent or contradictory judgments.

82. There is a conflict of jurisdiction enlivening the Decree, relevantly staying the applications or claims in both courts, when two conditions are met. First there must be a potential conflict of jurisdiction from the commencement of proceedings relating to the same dispute in both Courts. Secondly, the potential conflict becomes an actual conflict when both Courts exercise jurisdiction over the dispute, or both decline to exercise jurisdiction over that dispute, or if both Courts issue inconsistent or contradictory judgments.

83. Whether there is a potential conflict of jurisdiction is to be assessed as a matter of substance rather than form, having regard to the objectives of the Decree which are:

(i) to minimize the risk of inconsistent or contradictory judgments or decisions; and

(ii) to avoid a multiplicity of proceedings with respect to the same dispute.

84. Whether each court has exercised jurisdiction in relation to the same dispute so as to give rise to an actual conflict of jurisdiction will generally depend upon the facts and circumstances of the case.

The 2024 Decree

85. The authoritative text of the Decree is the Arabic version. Both parties referred to the English translation of the text on the SLC website.

86. I approach the natural and ordinary meaning of the words of the Decree mindful that they are a translation of the authoritative Arabic text. I have regard to the context in which the law was written. This includes the purpose of the law and the problem it aims to address.

87. There are differences between the 2016 Decree and the 2024 Decree including differences in their scope and focus, the composition, role and function of the Judicial Authority and the effect of Judicial Authority decisions.

88. Nevertheless, both decrees address conflicts of jurisdiction between the Dubai Courts and the DIFC Courts. Their main objectives are to determine the competent court to hear claims where there might be a jurisdictional conflict and to resolve conflicting judgments issued by the Dubai Courts and the DIFC Courts.

89. Minimizing the risk of inconsistent or contradictory judgments and avoiding a multiplicity of proceedings with respect to the same dispute which Justice Wayne Martin identified as evident objectives of the 2016 Decree are also objectives of the 2024 Decree. Both decrees aim to resolve jurisdictional conflicts between the Dubai Courts and the DIFC Courts, thereby reducing the chances of conflicting judgments and ensuring that disputes are handled efficiently by the appropriate court.

90. Article 7 of the 2024 Decree, consistent with Article 5 of the 2016 Decree, provides that pending consideration of an application to the Judicial Committee, the proceedings subject to the application are stayed. However, the wording of Articles 6 and 7 of the 2024 Decree which must be read together, is different from the wording of Articles 4 and 5 of the 2016 Decree.

91. The SLC translation of Articles 6 and 7 of the 2024 Decree is:

"Establishing the Judicial Committee's Authority over Applications and their Determination

Article (6)

1. In case of a conflict of jurisdiction between the DIFC Courts and any Judicial Entity, in which neither or both of them relinquish jurisdiction over a claim or an application, or in which they deliver conflicting judgements on the same, litigants may submit an application to the Judicial Committee to determine the competent judicial entity having jurisdiction over the claim, or to determine the enforceable judgement.

2. The Judicial Committee will determine the applications submitted to it in the cases stipulated in this Decree in accordance with the rules of jurisdiction prescribed by the legislation in force.

Effects of Establishing the Judicial Committee's Authority over Applications

Article (7)

Establishing the Judicial Committee's authority over an application will result in:

1. stay of proceedings of the claims or applications in respect of which a conflict of jurisdiction exists, pending the issuance of the Judicial Committee's decision determining the competent judicial entity having jurisdiction to hear and determine these claims or applications;

2. stay of enforcement proceedings, pending the issuance of the Judicial Committee's decision determining the enforceable judgement; and

3. suspension of the limitation periods and time-bar periods prescribed by the applicable legislation. This suspension will take effect from the date of submitting the application to the Judicial Committee."

92. The wording of Article 5 of the 2016 Decree - "The referral of a dispute . will result in . the stay of proceedings" - is replaced in Article 7 of the 2024 Decree by the words "Establishing the Judicial Committee's authority over an application will result in . stay of proceedings"

93. It may be argued that the replacement of the words "the referral of a dispute" in Article 5 of the 2016 Decree by words in Article 7 of the

2024 Decree which do not include "a dispute" is inconsistent with the approach of in Lakhan v Lamia where the Court of Appeal established that the DIFC Court must be satisfied that there is a genuine conflict of jurisdiction to impose a stay.

94. Neither party submitted that the mere making of an application to the Judicial Committee automatically stays the DIFC proceedings.

95. Nabeeh submitted that Article 7 provides that the establishment of the Judicial Committee's authority gives rise to a stay of the proceedings in respect of which a conflict of jurisdiction exists. Nabeeh submitted that the reasoning in Lakhan v Lamia applies even more strongly [a fortiori] under the wording of the 2024 Decree, "which specifically addresses the lacuna in the text of the Decree's predecessor, and sets out that a stay is the effect not of a mere application to the Judicial Committee, but, instead, of the establishment of the Judicial Committee's authority."

96. Naatiq was more equivocal. It submitted as follows. As Lakhan v Lamia was decided under the 2016 Decree, the language of which differs from that of the 2024 Decree, its reasoning is not binding on this Court, but even if that reasoning is adopted, there is a genuine jurisdictional dispute between the DIFC Courts and the Dubai Courts. Conflicting proceedings are on foot in both courts: the DIFC Courts have accepted jurisdiction over these proceedings (which has not been challenged by Nabeeh), and the Dubai Courts are considering the Petition and have held a hearing. Neither Court has relinquished jurisdiction over the relevant proceedings. If the Petition and the DIFC proceedings progress, there is a real danger of conflicting judgments. For example, the Dubai Courts may recognise and enforce the Emergency Arbitral Awards while the DIFC Courts prohibit their enforcement.

There is a potential conflict of jurisdiction

97. In my opinion there is a potential conflict of jurisdiction between the DIFC Courts and the Dubai Courts.

98. Whether there is a conflict of jurisdiction is to be assessed as a matter of substance rather than form, having regard to the evident objectives of the Decree which are:

(i) to minimize the risk of inconsistent or contradictory judgments or decisions; and

(ii) to avoid a multiplicity of proceedings with respect to the same dispute.

99. The Petition states that the subject of the case is:

"First: - Ratification of the interim or precautionary measures issued by the arbitration panel on 2/16/2024 in the dispute between the plaintiff and the defendant regarding the operating lease agreement and the side agreement dated 9/27/2022.

Second: - Ordering enforcement measures to be taken against the defendant to implement the provisions of the approved interim. measures."

100. The Petition does not state the provisions of the UAE Federal Arbitration Law under which Nabeeh seeks relief. However, as I have observed Nabeeh's request to the Emergency Arbitrator for written authorization was said to be made under Article 21.4 of Federal Law No. 6/201 (the UAE Arbitration Law).

101. Article 21 deals with "Interim or precautionary measures". Article 21.4 provides:

"A party in whose interest an interim order is granted and upon a written authorisation from the Arbitral Tribunal, may request the Court to grant an order for the enforcement of the order issued by the Arbitral Tribunal or any part of the same, .."

102. Nabeeh's claim or application to the Dubai Court is for an order to enforce the February Order. The Dubai Court may decline to grant an order for the enforcement on the grounds which include grounds for the annulment of an award substantially similar to the grounds in Article 41(2)(ii) and (iv) of the Arbitration Law 2008 on which Naatiq asks this Court to set aside the February Order.

103. In any event, the application before the Dubai Court involves whether the Court will or will not enforce the February Order.

104. Naatiq' claim in this Court includes a claim to set aside the February Order, March Order and July Permission pursuant to Article 41 of Arbitration Law 2008.

105. An order by one court to set aside an award or order and an order by another court to enforce the award or order are contradictory. This is because the two orders directly oppose each other: one court is nullifying the order while the other is upholding it. It is impossible to comply with both orders simultaneously, as enforcing an order or award that has been set aside is inherently contradictory.

106. As a matter of substance, the applications to both courts raise the same dispute - is the February Order valid and should be enforced or is it unenforceable and should be set aside?

There is an actual conflict

107. Nabeeh submits that the Judicial Committee's authority has not been established. Put another way, the application to this Court to set aside the orders/awards and the application to the Dubai Court to enforce the same orders/awards gives rise to a potential and not actual conflict of jurisdiction. Nabeeh submits that an actual conflict of jurisdiction will only arise, and the Judicial Committee's authority be established, if both courts assert their jurisdiction and issue conflicting decisions. For example, if this Court sets aside the orders/awards while the Dubai Court enforces them, this creates a direct conflict. However, until both courts make their decisions, it remains a potential and not actual conflict.

108. I do not agree.

109. First, Article 6 of the 2024 Decree distinguishes between a conflict of jurisdiction where neither or both courts relinquish jurisdiction over a claim or an application on the one hand and a conflict of jurisdiction where they deliver conflicting judgements on the other hand. That is, there may

be a conflict of jurisdiction other than when conflicting judgments are delivered on the same claim or application.

110. Secondly, whether there is a conflict of jurisdiction in any case is to be determined as a matter of substance rather than form and having regard to the evident objectives of the Decree to minimize the risk of inconsistent or contradictory judgments or decisions and to avoid a multiplicity of proceedings with respect to the same dispute. To construe the 2024 Decree to not stay proceedings until each court has heard the claims or applications and delivered contradictory orders would defeat those objectives and fail to ensure that the dispute is handled efficiently by the appropriate court.

The claim or application in this Court

111. Naatiq claim in this Court is twofold. First, a claim to set aside the February Order, March Order and July Permission pursuant to Article 41 of Arbitration Law 2008. Secondly, an injunction to restrain Nabeeh from taking any steps to enforce the February Order, March Order and July Permission, or any subsequent interim arbitral awards, in the Dubai Courts or elsewhere.

112. An order by one court to set aside an award and an order by another court to enforce the award are contradictory. This is because the two orders directly oppose each other: one court is nullifying the award, while the other is upholding it. It is impossible to comply with both orders simultaneously, as enforcing an award that has been set aside is inherently contradictory.

113. A conflict will arise if both Courts exercise jurisdiction over the same dispute.

114. Nabeeh submits that the application to this Court to set aside the order/award and the application to the Dubai Court to enforce the same order/award gives rise to a potential and not actual conflict of jurisdiction. Nabeeh submits that an actual conflict of jurisdiction will only arise if both courts assert their jurisdiction and issue conflicting decisions. For example, if this Court sets aside the order/award while the Dubai Court enforces it, this creates a direct conflict. However, until both courts make their decisions, it remains a potential conflict.

115. I do not agree.

116. First, Article 6 of the 2024 Decree distinguishes between a conflict of jurisdiction where neither or both courts relinquish jurisdiction over a claim or an application on the one hand and a conflict of jurisdiction where they deliver conflicting judgements. That is, there may be a conflict of jurisdiction other than when conflicting judgments are delivered. on the same claim or application.

117. Secondly, whether there is a conflict of jurisdiction in any particular case is to be determined as a matter of substance rather than form and having regard to the evident objectives of the Decree to minimize the risk of inconsistent or contradictory judgments or decisions and to avoid a multiplicity of proceedings with respect to the same dispute. To construe the 2024 Decree to provide that proceedings in respect of the same claim or dispute in two courts are not stayed until each court has heard the claims or applications and delivered contradictory orders would defeat the objectives of minimizing the risk of inconsistent or contradictory judgments or decisions; and avoiding a multiplicity of proceedings with respect to the same dispute.

118. Nabeeh alternatively submits in effect that there is no actual or operative conflict of jurisdiction unless and until the Court has taken some step in the proceedings amounting to a relevant exercise of jurisdiction by the Court, or refusal of the step on jurisdictional grounds.

119. That was the position under the 2016 Decree as the Court of Appeal found in Lakhan v Lamia.

120. As I set out earlier in these reasons the Court reached that conclusion by observing that Article 4 of the 2016 Decree "requires a positive act on the Court's part".

121. In Lakhan v Lamia, the claimant said that it was not necessary that the Court decide to hear the matter, it was enough that there was a "negative act" meaning that it had not abandoned its jurisdiction. Thus, the claimant submitted, so long as the two cases were "alive" without a ruling on jurisdiction, there was a conflict of jurisdiction.

122. The Court of Appeal did not accept that submission. Their Honours held that there must be some step in the proceedings amounting to a relevant exercise of jurisdiction by the Court, or refusal of the step on jurisdictional grounds, in order that there be maintenance or declining of jurisdiction within the words in the chapeau to Article 4. Their Honours noted that all translations required a positive act on the Court's part ("claimed or disclaimed jurisdiction"; "assert or decline jurisdiction over a claim"; "no court decides to waive hearing of the action or both courts waive the hearing thereof"). As to "no court decides to waive the hearing of the action", their Honours said that the phrase must be read with the alternative of waiving the hearing, indicating a choice; there must be at least an occasion for deciding to waive or not waive, as is clear from the other translations.

123. The words of Article 6 of the 2024 Decree - "in which neither or both of them relinquish jurisdiction over a claim or an application" - are different to those of the Westlaw translation of Article 4 of the 2016 Decree - "no court decides to waive hearing of the action or both courts waive the hearing thereof" (emphasis added). The phrase "neither or both of them relinquish jurisdiction over a claim or an application" do not necessarily indicate a decision or a choice to relinquish, that is give up, jurisdiction. They indicate only that neither or both courts has relinquished or given up jurisdiction.

124. Where, as here, there is a potential conflict of jurisdiction and neither Court has relinquished jurisdiction, the proceedings in this Court are stayed.

125. If I am wrong, and the condition that neither or both courts relinquish jurisdiction over a claim or an application requires that neither or both courts have decided to relinquish jurisdiction or taken a step or steps in the exercise of jurisdiction, that requirement is met in this case.

126. The steps taken in this Court have gone beyond the mere receipt of initiating process. The steps include the following.

(a) Naatiq filed an application to set aside the February and March Orders and July Permission, an application for an anti-suit injunction, and an application for directions to facilitate the determination of the relief sought.

(b) Nabeeh filed an acknowledgement of service in which it does not contest the jurisdiction of the Court and states that it intends to defend all of this claim.

(c) Naatiq filed a witness statement in support of the relief it seeks.

(d) Nabeeh filed a witness statement in opposition to the relief sought by Naatiq in which it particularises the bases on which it says Naatiq Arbitration Claim should be dismissed. I will refer to that witness statement in more detail later in these reasons.

(e) Naatiq filed a skeleton argument in support of the directions it seeks.

(f) Nabeeh filed a skeleton argument in which it seeks the dismissal of Naatiq' application to stay the proceedings, the provision of directions for the making and determination of an application for security for Nabeeh's costs of the proceedings, and directions for Nabeeh to file evidence in response to the Arbitration Claim and for the matter to proceed to a two day hearing.

(g) Nabeeh has filed draft orders for, amongst other things, an order for security for costs and directions for hearing Naatiq' Arbitration Claim and its claim for an anti-suit injunction.

(h) The Court has held a hearing for directions for hearing Naatiq' Arbitration Claim and its claim for an anti-suit injunction.

127. The witness statement filed by Nabeeh is a witness statement of Nezer in which Mr Nezer states that Nabeeh contends that the Arbitration Claim should be dismissed on the following basis.

(a) Clause 2.15 of Article 2 of Appendix II of DIAC Rules requires that any agreement to vary the appointment and the powers of the Emergency Arbitrator provided for by Appendix II of DIAC Rules are required to be made in writing and there had been no such agreement between the parties under the terms of the Lease or otherwise.

(b) Naatiq' interpretation that in accordance clause 25.3.1 of the Lease three arbitrators are required for the determination of an application for emergency interim relief under Article 2 of Appendix II of DIAC Rules is inconsistent with:

(i) the natural reading of Article 2 of Appendix II of DIAC Rules clearly contemplates that the "Emergency Arbitrator" will be an individual arbitrator and not a panel of arbitrators; and

(ii) the object and purpose of the emergency arbitration procedures which are to allow an aggrieved party an opportunity to be heard on an urgent issue and obtain relief expeditiously in circumstances where that party cannot wait for constitution of a panel of arbitrators.

(c) Article 25 of the DIFC Arbitration Law does not have the effect of prohibiting ex parte relief in arbitral proceedings.

(d) The ex parte applications made by Nabeeh were made in accordance with the procedure prescribed by Article 2 of Appendix II of the DIAC Rules, and all requirements for the issuance of an ex parte order in the form of the February Order were complied with.

(e) Through the Discharge Application pursuant to which Naatiq was availed the right to file reply submissions and an oral hearing and the Emergency Arbitrator issued detailed written reasons for the March Order, Naatiq was afforded the opportunity to challenge the February Order and in doing so Naatiq was not denied procedural fairness.

(f) Libya is not a party the Cape Town Convention and therefore, the Cape Town Convention has no application or relevance to this matter.

(g) The provisions of the Law No.12 of 2004 on which Naatiq seeks to rely do not apply to enforcement of the February Order sought by Nabeeh in the Dubai Courts.

(h) The procedure for challenging an ex parte preliminary order is prescribed by clause 1.11 of Appendix II of DIAC Rules and accordingly it is not appropriate for the DIFC Court to grant, the relief sought by Naatiq.

128. Nabeeh is resisting Naatiq' claim on its merits, not opposing the claim on the ground that the Court does not have jurisdiction to hear and determine the claim.

129. There will be no occasion for this Court to question its jurisdiction to hear and determine Naatiq' Arbitration Claim and its claim for an anti-suit injunction before hearing and determining those claims. But for the Stay Application to the Judicial Committee, this Court will be obliged to hear and determine those claims in the ordinary way. This Court has not relinquished its jurisdiction. To the contrary it is exercising its jurisdiction.

130. The steps taken in the Dubai Court have gone beyond the mere receipt of initiating process. The steps include the following.

131. On 13 June 2024 the Dubai Courts directed Nabeeh to obtain from the arbitral tribunal a written authorization for the execution of the interim measures issued by the tribunal. Subsequently, Nabeeh filed at the Dubai Court the written authorization for the execution of the interim measures it obtained from the Emergency Arbitrator.

132. On 2 September 2024, the Dubai Court held a hearing in relation to the Petition.

133. Naatiq filed an application for a stay in view of its application to the Judicial Committee.

134. On 12 September 2024, the Dubai Court held a further hearing in relation to the Petition. Nabeeh submitted a memorandum requesting that the Court enforce the interim award which is the subject of the Petition. The case was reserved for a decision on 30 September 2024.

135. The has been no challenge to the jurisdiction of the Dubai Court's jurisdiction to hear the Petition. The Dubai Court has held hearings in relation to the Petition. There will be no occasion for the Dubai Court to question its jurisdiction to hear and determine the Petition. But for the application to the Judicial Committee, the Dubai Court will hear and determine the Petition in accordance with its usual procedures. The Dubai Court has not relinquished its jurisdiction. To the contrary it is exercising its jurisdiction.

136. For all those reasons, I find that the Arbitration Claim is stayed pending the issuance of the Judicial Committee's decision determining the competent judicial entity having jurisdiction to hear and determine the Arbitration Claim to this Court and the Petition to the Dubai Court.

Costs

137. Naatiq is the successful party in the sense that pursuant to Article 7 of the 2024 Decree, these proceedings are stayed pending the determination of Naatiq' application to the Judicial Committee, which is the outcome it sought and Nabeeh resisted.

138. However, there are three reasons why Naatiq should not be awarded the costs of the Stay Application.

139. First, on 7 August 2024 Naatiq asked the Registry for directions for hearing the Arbitration Claim. The directions hearing was listed and subsequently, at the request of Naatiq, the Stay Application was listed for hearing at the same time.

140. Secondly, a significant part of the hearing was taken up with matters which related to the merits of the Arbitration Claim rather than the Stay Application.

141. Thirdly, a significant part of the hearing was concerned with the directions hearing.

142. Fourthly, in its application Naatiq proposed that the costs of the application be reserved. That is an appropriate order. The proper order as to costs may be affected by the outcome of the proceedings in the Dubai Court, the determination of the Judicial Committee and, if the Arbitration Claim proceeds, the merit of that claim.