Claim No. CFI 085/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) SALEM MOHAMMED BALLAMA ALTAMIMI
(2) DAVID NIGEL CROLL STARK
(3) PAUL JAMES LEGGETT

Claimants

and

(1) EMIRATES NBD BANK (P.J.S.C.)
(2) HSBC BANK MIDDLE EAST LIMITED
(3) ICICI BANK LIMITED, BAHRAIN BRANCH
(4) ICICI BANK UK PLC
(5) UNION BANK OF INDIA
(6) BANK OF JORDAN COMPANY
(7) NATIONAL BANK OF BAHRAIN BSC
(8) AHLI UNITED BANK B.S.C. (DIFC BRANCH)
(9) COMMERCIAL BANK OF DUBAI PSC
(10) WARBA BANK K.S.C.P.
(11) AL AHLI BANK OF KUWAIT K.S.C.P.
(12) MASHREQBANK PSC
(13) ARAB BANKING CORPORATION (B.S.C.)
(14) NATIONAL BANK OF OMAN (S.A.O.G.)
(15) STATE BANK OF INDIA
(16) REGERA S.A.R.L
(17) INTERNATIONAL ELECTRO MECHANICAL SERVICES CO. (L.L.C.)

Objecting Parties

(1) EMIRATES HOSPITALS GROUP LLC
(2) KHALEEFA BUTTI OMAIR YOUSIF AHMED AL MUHAIRI
(3) H.E. SAEED MOHAMMED BUTTI MOHAMMED KHALFAN AL QEBAISI
(4) EMIRATES HEALTHCARE L.L.C.
(5) EMIRATES HOSPITAL L.L.C.
(6) EMIRATES SPECIALTY HOSPITAL FZ-LLC
(7) EMIRATES HOSPITALS & CLINICS L.L.C.
(8) EMIRATES HOSPITALS REHABILITATION AND HOMECARE SERVICES L.L.C.
(9) EXCEL HEALTHCARE L.L.C.
(10) EMIRATES PHARMACY L.L.C.
(11) COSMESURGE AND EMIRATES HOSPITAL PHARMACY L.L.C.
(12) VEINCURE CLINIC DMCC
(13) EMIRATES HOSPITAL DAY SURGERY & MEDICAL CENTRE L.L.C.
(14) EMIRATES HOSPITALS CLINICS BUSINESS BAY L.L.C.
(15) KLINIKA MAHARLIKA L.L.C.
(16) AL SABAH MEDICAL CENTRE LLC
(17) COSMOPOLITAN MEDICAL CENTRE L.L.C.
(18) EMIRATES STAR MEDICAL CENTRE L.L.C.
(19) KBBO CPG INVESTMENT LLC
(20) ONE PREPAY COMPANY LLC
(21) TELE LINK COMMUNICATION LLC
(22) CENTURION PARTNERS INVESTMENT L.L.C
(23) FRESH FOODS GROUP - SOLE PROPRIETORSHIP L.L.C.
(24) FRESHLY FROZEN FOODS FACTORY LLC
(25) SENORA FOODS LLC
(26) SENORA QUALITY GENERAL TRADING LLC
(27) FRESHLY FOODS BAKERY LLC
(28) BIN BUTTI INVESTMENTS LLC
(29) INFINITE PARTNERS INVESTMENT LLC
(30) INFINITE INVESTMENT-LLC
(31) KHALEEFA BUTTI BIN OMAIR GROUP-SOLE PROPRIERTORSHIP LLC
(32) KBBO INTERNATIONAL HEALTH CARE LLC - SOLE OWNERSHIP

Related Parties

AMENDED JUDGMENT OF JUSTICE SIR JEREMY COOKE

Hearing : **31 January 2022**

Harris Bor instructed by Hamad Al Rahma Advocates and Legal Consultants on behalf of the Claimants.

David Russell QC instructed by BSA Ahmad Bin Hezeem & Associates LLP on behalf of Mashreq Bank PSC and instructed by Al Tamimi and Company on behalf of Al Ahli Bank of Kuwait.

Counsel : John Taylor QC instructed by Addleshaw Goddard (Middle East) LLP on behalf of the ENBD Claimants.

David Holloway instructed by Allen & Overy LLP on behalf of EHG Claimants.

Antonios Dimitracopoulos instructed by BSA Ahmad Bin Hezeem & Associates LLP on behalf of International Electro Mechanical Services Co. (L.L.C.).

Judgment : **11 February 2022**

UPON reviewing the Part 8 Claim Form dated 14 October 2021 and remedies sought within

AND UPON the decision of Justice Sir Jeremy Cooke dated 25 October 2021 and the Reasons of the decision dated 26 October 2021 made in CFI-045-2020

AND UPON Justice Sir Jeremy Cooke's directions to the parties dated 15 November 2021

AND UPON reviewing the Objecting Parties' submissions in response to the Part 8 claim

AND UPON reviewing the Claimants' Application No. CFI-085-2021/1 dated 25 October 2021 to stay the proceedings against the debtors and joined litigants (the **"Stay Application"**)

AND UPON reviewing the Claimants' reply to the objections dated 16 December 2021

AND UPON reviewing the Claimants' Application No. CFI-085-2021/3 dated 31 January 2022 to add David Stark and Paul Leggett as Trustees (the **"Joinder Application"**)

AND UPON reviewing the Claimants and Objecting Parties skeleton arguments filed on 25 January 2022

AND UPON hearing Counsel for the Claimants and Counsels for the Objecting parties at a hearing on 31 January 2022 and 1 February 2022

IT IS HEREBY ORDERED THAT:

1. The Joinder Application is granted.

2. The Remedies sought in the Claim form are refused.

(a) The application for recognition of the Abu Dhabi proceedings as a foreign main proceeding and the alternative application for recognition as a foreign non-main proceeding are refused.

(b) The application for a stay of all litigation in the DIFC against Mr KBBO as the Debtor and the Joined Litigants is refused.

(c) The application for recognition and enforcement of the Abu Dhabi order for a stay of such proceedings is refused.

(d) The application for a stay of all such litigation on the basis of the Court's inherent jurisdiction and case management powers is also refused.

(e) The application for recognition or execution of the Dubai to DIFC Delegation Letter, the Abu Dhabi to DIFC Delegation Letter and all requests for cooperation and assistance from such other courts by staying proceedings in the DIFC are refused.

3. The application for discharge or variation of existing injunctions, which was not pursued, is dismissed with costs.

4. All other costs are reserved.

(a) The Parties have provided Schedules of Costs to the Court.

(b) The Claimants are to file and serve written submissions within 3 working days in which they address the issue of costs, advance any reasons why they should not pay the Objecting Parties' costs and set out any objections to the quantum claimed.

(c) Within 3 working days thereafter, the Objecting Parties are to file and serve any response.

(d) Issues of cost shall be determined without a hearing in writing.

Issued by:
Nour Hineidi
Registrar
Date of issue: 11 February 2022
Date of re-issue: 31 March 2022
At: 9am

JUDGMENT

The Claimants and the Application

1. At the commencement of the hearing on 31 January 2022, the First Claimant applied for the joinder of the Second and Third Claimant in the Part 8 proceedings begun by a claim form issued on 14 October 2021. On 7 October 2021, the First Claimant had made a witness statement in which he described himself as "a trustee in bankruptcy appointed by the Abu Dhabi Court" and his statement was being made "in support of an application asking the DIFC Court to, among other things, recognise the bankruptcy proceedings against the Debtor and each of the Joined Litigants commenced in the Abu Dhabi Courts as foreign main proceedings under Article 15 of Schedule 4 of the DIFC Insolvency Law No 1 of 2019 (the **"UNCITRAL Model Law"**). The witness statement also referred to applications which he supported to discharge freezing and ancillary orders made in CFI-045-2020 and to impose a stay of proceedings of all claims before the DIFC Court against the Debtor and Joined Litigants, save in respect of any application to discharge or vary any orders already made.

2. In essence these applications are now before this Court (other than the application to discharge the freezing and ancillary orders), to which those referred to as "the **Objecting Parties**" are opposed, each being a claimant in DIFC proceedings against the **"Debtor"**, the **"Joined Litigants"** and/or other companies associated with the Debtor. The proceedings in question are CFI-045-2020, CFI-060-2020, CFI-063-2020, CFI-080-2020 and CFI-114-2020. With the exception of International Electro- Mechanical Services Co. (LLC) (**"IEMS"**) in CFI-114-2020, all are banks (the **"Banks"**) who have lent money on loans which have been accelerated by reason of alleged default by the Joined Litigants and/or those associated companies. They claim to have the benefit of guarantees issued by the Debtor, who is Mr Khalifa Butti Bin Omair Al Muhairi (**"Mr KBBO"**) and by HE Saeed Al Qebaisi (**"HEAQ"**). IEMS has a claim in respect of certified construction works. In CFI-045-2020 and CFI-060-2020, judgment has been given against the defendants except for HEAQ. In CFI-063-2020, an application is intended to be made, if no stay is ordered on the current application. Previous orders seeking a stay on the grounds of the Abu Dhabi proceedings made by defendants in some of those actions have been dismissed, but this is the first hearing of an application by the Claimants.

3. As is now common ground between the parties to these proceedings, on 27 July 2021 pursuant to an application made by Mr KBBO on 23 June 2021, the First Claimant was appointed by the Abu Dhabi Court to carry out the functions described in an order of that date, which is referred to as the **"Commencement Order"**. On 23 May 2021, Mr KBBO had concluded a written agreement with HEAQ in which they agreed that they would make an application to the Abu Dhabi Court on behalf of themselves and companies in which they each had an interest. The application was made by Mr KBBO as the **"Debtor"**, with HEAQ and 28 corporate bodies in which they were interested, named as **"Joined Litigants"**. In it, Mr KBBO stated that his permanent place of residence was in Abu Dhabi city and that he carried on business "personally" or through a group of sole proprietorships or companies owned by him or in which he held a majority of the shares and the application was for "restructuring" on the ground of his insolvency. The basis of the application was that the initial financial statements filed with the Court showed that his assets were insufficient, if liquidated and sold, to pay the full value of his debts whether constituted by loans or guarantees. Reference was made to a judgment against him in the Abu Dhabi Court in favour of United Arab Bank for a sum in excess of AED 132 million and further claims made by other banks on accelerated loans including a claim in the DIFC by Credit Suisse AG for a sum in excess of AED 1 billion as a guarantor of loans made to the EHG Group. It was said that extensive efforts had been made to reach agreement with creditors under the supervision and control of the Financial Reorganisation Committee but that these had failed. In consequence, a request was made to the Abu Dhabi Court to commence with the restructuring of his business and obligations under Chapter 4 of Federal Decree No 9 of 2016 (the **"Federal Bankruptcy Law"**) by appointing the First Claimant as the "amin" or trusted person (hereafter referred to as **"the Trustee"**, without the legal connotations attaching to that expression in English or DIFC law), to prepare a restructuring plan for approval by the creditors and the Court. An order was also requested for the suspension of all judicial procedures and judicial enforcement against him and his companies pending the approval of the restructuring plan. The final request was for approval by the Court of such a restructuring plan when it was forthcoming or, if it was not possible to reach an agreement with the creditors, for a declaration of bankruptcy and liquidation of his businesses.

4. In the accounts furnished to the Abu Dhabi Court, upon which Mr KBBO relied in his petition, reference was made to the debts owed by his companies to various banks and his guarantees of:

4.1. 85.5% of the loans made to the EHG Group;

4.2. 95% of the loans made to the KBBO CPG Investment Group;

4.3. 100% of the loans made to the Fresh Foods Group.

Any subsequent suggestion that Mr KBBO's signature of such guarantees was forged might thereafter be thought to ring hollow in the face of his reliance upon such guarantees in his petition to the Abu Dhabi Court, but that has not stopped him from saying so in witness statements filed in CFI-063-2020 (the **"Mashreqbank proceedings"**).

5. The Commencement Order issued by the Abu Dhabi Court on 27 July 2021 referred to 9 joinder applications made in the application to the Court for restructuring by Mr KBBO as the Debtor. This brought the 29 Joined Litigants into the proceedings. Reference was made not only to the judgment entered against Mr KBBO but to actions filed by a number of banks in Abu Dhabi and Dubai against the group of companies which he owned or in which he held shares. It was said that the funds of the Applicant Debtor were inextricably intertwined with the funds of HEAQ and the companies for which joinder was requested and that the opening of separate proceedings for the Joined Litigants would not be practical or feasible in terms of cost. Reliance was placed on Article 80(2) of the Federal Bankruptcy Law which provides that the Court may join any other person in the bankruptcy "if the assets of such person overlap with the debtor's assets in a way that is hard to disaggregate or in case the Court

considers that it shall not be practical or feasible in terms of the cost, to open separate procedures concerning such persons". The Court found that "the commencement procedures in one application provides adequate and sufficient protection for the creditors. Accordingly, their inclusion in the proceedings shall be acceptable pursuant to Article 80(1) of the Federal Bankruptcy Law. The Court stated that it was acceptable to commence the restructuring immediately and to start preparing a restructuring plan and ruled that a trustee should be appointed to carry out the functions set out in the Federal Bankruptcy Law, which included making an inventory of the assets, and reporting back to the Court, advertising for creditors, preparing a list of creditors, preparing and developing a restructuring plan and advising the Court at least every twenty-one working days on progress made. It also ordered a stay of judicial proceedings against the Debtor and the Joined Litigants and a stay of execution proceedings against their assets.

6. The latter order was unnecessary, it would appear in Abu Dhabi, as under the terms of Article 162(1) of the Federal Bankruptcy Law, the commencement of such procedures would automatically result in the stay of actions against the Debtor and stay of execution on his assets and for such stay to continue until approval of a restructuring plan or the expiry of a ten-month period, subject to any further extension by the Court. The statute provides for the possibility of a creditor with security to request the Court to be excluded from the stay of execution, but such a request has to be notified within one working day of the commencement of the proceedings which rendered the making of such a request by the Banks in the present case impossible.

7. There was dispute between the parties as to the effect of this Order, a matter to which I shall revert, but after appointment of the First Claimant, a grievance petition was filed by several creditors on 23 August 2021 in which objection was taken to him as the Trustee on the grounds of inadequate expertise and too close a contact with Mr KBBO. That objection was rejected by the Abu Dhabi Court but resulted in the additional appointment on 26 September 2021 of the Second and Third Claimants, who are partners in Deloitte, as **"Additional Trustees"** (who, together with the Trustee, are referred to herein as the **"Trustees"**). On 30 September 2021, a grievance petition was filed by Mr KBBO and the Joined Litigants challenging the appointment of these Additional Trustees, but this was dismissed by the Court on 7 October 2021.

8. In consequence, as at the time of making his witness statement, the First Claimant must have been aware that he was only one of a panel of three Trustees, of which he was the chairman. The evidence shows that on 12 October 2021, the Additional Trustees took the legal oath and accepted their mandate. By the time the Claim Form was filed on 14 October 2021, any proceedings therefore, as he must have known, had to be instituted with the authority of the panel which had not been obtained.

9. As recorded in previous decisions of this Court in other proceedings pursued by the Banks against various debtor companies in the KBBO Group, against Mr KBBO and against HEAQ personally, an application notice was not issued by the First Claimant until 25 October 2021 seeking a stay of all proceedings in the DIFC Court and no service of the Claim Form or the application was effected until I ordered that it take place on all parties to the proceedings in this Court in which Mr KBBO and the Joined Litigants were involved.

10. The Second and Third Claimants made witness statements on 15 December 2021 which have been produced to this Court. Mr Stark has since made two further witness statements. In them, the Additional Trustees each stated that they fully supported and adopted the applications that had been made by the First Claimant. Each of the other parties to this action, in their skeleton arguments pointed out that the Additional Trustees ought to be party to this action if any claim was going to be made by someone claiming to be the "Foreign Representative" within the meaning of Schedule 4 to the DIFC Insolvency Law. Belatedly, an application was made by the First Claimant on the day of the hearing for their joinder, which was unopposed. Adverse criticism was directed against them for their part in what was said to be a continuing attempt to stymie the Banks' claims in the various actions in which a stay is now being sought by them. The past behaviour of the defendants in those actions and the First Claimant has already been the subject of judicial comment in some of those other proceedings. Of greater importance, perhaps, in the context of the current application, was an attack on all three Trustees for their conduct since the panel of three was in place. Such matters may be relevant to the exercise of any discretion by this Court, but the foundational questions which the Court has to determine relate to the jurisdiction and powers of this Court as set out in the DIFC Insolvency Law No. 1 of 2019 (the **"Insolvency Law"**).

"Foreign Proceedings" and "Foreign Representative"

11. Under Schedule 4 to the Insolvency Law, the terms "Foreign Representative" and "Foreign Proceeding" each have a defined meaning which assumes some importance in the context of the applications which are made in this Part 8 Claim. In Article 2 of the Schedule, the following definitions appear:

> *"(a) "Foreign Proceeding" means a collective judicial or administrative proceeding in a foreign State including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;*
>
> *(d) "Foreign Representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;*
>
> *(e) "Foreign court" means a judicial or other authority competent to control or supervisory foreign proceeding; and*
>
> *(f) "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services."*

12. Under Article 15 of Schedule 4, which deals with recognition of foreign proceeding and relief to be given in relation to such recognition, "a foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed". Whether or not the Abu Dhabi proceedings, instituted by the Commencement Order of 27 July 2021 constitute a "Foreign Proceeding", it is plain that, at the time when the Part 8 Claim was issued, and as at the date of the Application and the hearing, the First Claimant could not be the Foreign Representative on his own. On those dates, the Trustees constituted those who were authorised by the Abu Dhabi Court to act under the Commencement Order.

13. The question arises however as to the nature of the Abu Dhabi proceedings and whether they are truly a Foreign Proceeding within the meaning of the definition set out above. The Objecting Parties draw attention to what they say are inaccuracies in the witness evidence of the First Claimant and the Additional Trustees and refer to Articles 157, 160 and 161 of the Federal Bankruptcy Law. At paragraphs 8.5-8.8 and 11 of his witness statement, the First Claimant said that the Debtor was prohibited from carrying out a number of activities, including the management of his business, disposing of its assets or paying any claims except in a number of limited situations. "This is unless I instruct the debtor to do otherwise. Under the law, I am able to instruct the debtor to do all actions necessary to preserve the interests of the business which would include allowing a debtor to manage its business and take actions and proceedings, but this would be under my instruction." He said he remained duty bound to seek a stay of all proceedings against the Debtor and Joined Litigants in the DIFC.

14. The Objecting Parties say that it is not right to say that the assets of the Debtor or the Joined Litigants have vested in the Trustees or that they have control of such assets. Under Article 15 of the Federal Bankruptcy Law, the debtor, with effect from the date of decision of opening the procedures, shall not manage his assets or pay any claims arising before the issuance of the decision (with limited exceptions) or dispose of his assets except in accordance with the Federal Bankruptcy Law. Under Article 160, the court may decide to suspend any of the debtor's business based on the urgent request of the trustee. That has not been done. Under Article 161, the trustee may, during his management of the procedures, request the debtor to carry out all that is necessary to preserve the interests of his business and may request the debtor to meet the valid contracts to which he is a party. In practice, it was common ground that following the Commencement Order, Mr KBBO continues to run his businesses with the permission of the Trustee or Trustees, whilst they seek to put together a plan for restructuring the affairs of the Debtor and the Joined Litigants to be put to the creditors for approval. The Objecting Parties represent just under 40% of the Creditors by reference to the value of debts claimed.

15. Under Article 68 of the Federal Bankruptcy Law, an application to open bankruptcy procedures can be made by the debtor where he ceases to pay his debts as they fall due for a period exceeding thirty consecutive working days in consequence of financial difficulties or insolvency. Under Article 69, a creditor or a group of creditors owed not less than AED 100,000 can also make such an application where thirty consecutive working days have expired since a demand for the sum due. Article 72 provides that the Public Prosecutor may also request the court to open bankruptcy procedures, where the debtor is insolvent and the public interest requires it. Where the application is made by the debtor, he must specify whether it is for the purpose of restructuring or adjudication of bankruptcy and liquidation and he must, in accordance with Article 73 explain the reasons for the application with supporting financial documents.

16. The Federal Bankruptcy Law is therefore framed by reference to a "debtor", in this case, Mr KBBO, whilst Article 80 provides for the joinder of persons whose assets overlap with the debtor's assets in a way which is hard to desegregate. Such persons are not characterised as "debtors" and the effect of Section 2 of that Law, including Articles 157 - 162 is to create potential or actual restrictions on the use by the debtor of his assets and not those of the Joined Litigants. A clear distinction is drawn between the "Debtor" on the one hand and the "Joined Litigants" on the other. The Commencement Order does not refer to multiple debtors. Those Joined Litigants might become party to a restructuring or perhaps be put into liquidation in due course but they are not "debtors" at the current stage of proceedings in Abu Dhabi. That, as appears below, has some significance, in the context of the application of the Insolvency Law and the application for recognition of the Abu Dhabi proceedings as a Foreign Proceeding.

17. The definition of a "foreign proceeding" is apt to include an interim judicial or administrative proceeding, pursuant to a law relating to insolvency in which the assets and affairs of the debtor are subject to supervision by a foreign court for the purpose of reorganisation. Regardless of any question of vesting of assets or the actual management and control of the business affairs of Mr KBBO and his companies, which appear to lie with them, the assets and affairs of the Debtor and the Joined Litigants are, it appears to me, subject to the supervision of the Abu Dhabi Court in an interim proceeding pursuant to a law relating to insolvency for the purpose of reorganisation, even if no further orders have yet been made in relation to restructuring or liquidation. That is the purpose of the Commencement Order which will be followed by the Abu Dhabi Court making further orders in relation to their assets and affairs.

18. A difficulty for the Claimants in the present case is however that the definition of a "foreign representative" requires such a person, whether appointed on an interim basis or otherwise, to be "authorised in a foreign proceeding to administer the reorganisation. of the debtor's assets or affairs or to act as a representative of the foreign proceeding". As yet, although the order made is described as a Commencement Order and it is said that commencement of restructuring has begun, no order has been made for any reorganisation or liquidation by the Abu Dhabi Court and the functions of the Trustees are only, as set out above, to put forward proposals for restructuring for the approval of the creditors and the Court on the basis of information gathered by them in relation to the assets and liabilities of the debtor, with a list of creditors where liability is accepted or disputed. In the circumstances, they are not, as it appears to me, as matters stand, authorised to administer any reorganisation until such time as an order has been made for such reorganisation or restructuring. I cannot therefore be satisfied that the Trustees qualify as the Foreign Representative, authorised in a Foreign Proceeding to administer the reorganisation of the Debtor's assets and affairs. This may appear a narrow distinction and there may be a broader underlying intention in the Insolvency Law in relation to cross border insolvencies, so it might be said that the preparatory work for such a reorganisation is part of it, but it is hard to see that the Trustees are authorised as yet to administer any reorganisation and if bankruptcy or liquidation is ordered, there never will be such a reorganisation. I do not reach this conclusion with enthusiasm, but as there are more fundamental issues in the applications which militate against their acceptance, this conclusion is of lesser significance.

19. Once again, as found in previous applications made by the borrowers and guarantors in other cases, the application fails on the basis of the absence of locus on the part of the applicants in question to make the application. Again, it may very well be the case that in due course the Trustees will become the Foreign Representative and would then perhaps have standing to make an application to this Court. There are however other barriers which stand in the way of a successful application.

The DIFC Insolvency Law and Recognition

20. It is necessary to see the provisions relating to recognition and stay of a Foreign Proceeding which are to be found in Chapter III of Schedule 4 to the Insolvency Law in the context of the Law as a whole. The first point to note is that there is nowhere in the Insolvency Law any provision relating to the bankruptcy of an individual in the DIFC, as opposed to a corporate entity or those involved in a limited liability partnership. Provisions for Company Voluntary Arrangements, Rehabilitation, Administration, Receivership and Winding Up all apply only to corporate bodies.

Under Article 88 (2), when a winding up order has been made by the Court, no action or proceeding shall be commenced or continued against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.

21. When set against that background, it is no surprise to see that Part 7 of the Insolvency Law relates to Recognised and Foreign Companies and that Article 117 relates to Proceedings in respect of Foreign Companies. Article 117 provides, insofar as material, as follows:

> *(1) Where a Foreign Company is the subject of insolvency proceedings in its jurisdiction of incorporation, the Court shall upon request from the court of that jurisdiction, assist that court in the gathering and remitting of assets maintained within the DIFC.*
>
> *(2) ...*
>
> *(3) The UNCITRAL Model Law (with certain modifications for application in the DIFC) as set out in Schedule 4 of this Law has force in the DIFC in respect of Foreign Companies. This law applies with such modification as the context requires for the purpose of giving effect to this Article 117 (3).*

22. Despite contrary submissions, the effect of this appears to me to be clear. Whilst previous dicta of mine may have been misunderstood in other proceedings, and I may not have expressed myself with sufficient clarity, I have never taken the view that Article 117(1) restricts the application of Article 117(3) to Foreign Companies where their insolvency proceedings take place in the jurisdiction of their incorporation. Nor have I taken the view that assistance in the gathering and remitting of assets is the only possible assistance that the DIFC Court can give although most other forms of assistance to be given are expressed, in Schedule 4, to follow upon the grant of recognition of a foreign proceeding (e.g. Articles 20, 21, 23 and 24) and it may well be that assistance, in the absence of such recognition, whilst theoretically available, would be hard to justify. Article 117(1) and Article 117(3) however must be read as giving the DIFC Court separate jurisdiction and powers, whilst questions of assistance falling outside Article 117(1) would fall to be decided in the light of the overall scheme of the Insolvency Law and Schedule 4.

23. A Foreign Company is defined by reference to the Companies Law, as "a body corporate incorporated outside DIFC". Article 117(1) provides for assistance when a Foreign Company is the subject of insolvency proceedings in its jurisdiction of incorporation, on request from the court of that jurisdiction. It has no wider application and is expressly related to the gathering and remitting of assets maintained within the DIFC. There is no room for "assistance" under that subparagraph in respect of insolvency proceedings in any other jurisdiction than the jurisdiction of incorporation of the Foreign Company in question nor in relation to any other form of assistance. No application is made in reliance upon this provision.

24. Article 117(3) provides for the UNCITRAL Model Law as set out in Schedule 4 to have force in the DIFC but only in respect of Foreign Companies. The first sentence of that subparagraph makes it plain that the Model Law is modified for application in the DIFC and the second sentence makes it plain that the Insolvency Law, which includes Schedule 4, applies with whatever modifications are necessary in order to give effect to Article 117(3). The effect of this is that the operation of the Model Law in the DIFC is restricted to Foreign Companies. It is nothing to the point that Schedule 4, Article 16(3) refers to the presumption, in the absence of proof to the contrary that the debtor's registered office, "or habitual residence in the case of an individual", is the centre of the debtor's main interests, since the Schedule has to be read as modified by Article 117(3) which expressly limits the application of the Schedule to Foreign Companies. Article 117 of the Insolvency Law is the controlling provision in the statute as to the effect and operation of Schedule 4.

25. The consequence of this is that the provisions of Schedule 4, whether relating to recognition under Chapter III or to cooperation or assistance under Chapter IV cannot apply to individuals such as Mr KBBO or HEAQ and any attempt by them to rely upon such provisions is misplaced. It is not open to them to seek recognition or a stay of proceedings under any provision of the Model Law enshrined in Schedule 4 or the Insolvency Law. Any application for a stay by either of those individuals would have to be based on other grounds, whether under some other statutory provision or case management powers. The application for a stay of DIFC proceedings against them on the basis that the Abu Dhabi proceedings should be recognised cannot therefore succeed. The point goes further than that, however, because, as appears below, Mr KBBO is the only Debtor referred to in the Commencement Order and the proceedings for which recognition is sought.

26. Article 17 of Schedule 4 sets out the basis for recognition of a Foreign Proceeding. Article 17(1) requires the Foreign Proceeding and the Foreign Representative to meet the definitions in Article 2 but goes on to provide as follows in article 17(2):

The foreign proceeding shall be recognised:

> *(a) as a foreign main proceedings if it is taking place in the State where the debtor as the centre of its main interests; or*
>
> *(b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.*

27. It will be noted that each of the provisions refers to the "debtor", with a need in the former case to show that the insolvency proceedings are taking place in the location of its centre of main interests, and in the latter case to show that it has an establishment in that location. As there is only one "Debtor" referred to in the Commencement Order and the Abu Dhabi proceedings, and that is Mr KBBO, to whom the provisions of Schedule 4 cannot apply, there can be no relevant debtor for the purposes of recognition in the DIFC. Of course, the Joined Litigants may owe debts and on the Banks' case, do owe considerable sums of money but they are not classified as insolvent debtors who are petitioning for restructuring or liquidation. They are joined because of the overlap of assets. The location of the centre of main interests or of any establishment of the Joined Litigants is then of no relevance because, if they are not classified as debtors for the purpose of the proceedings in Abu Dhabi, they cannot be so classified when recognition is sought for the proceedings in the DIFC. There is, as it appears to me, no room for recognition of a foreign proceeding either as a main proceeding or as a non-main proceeding where there is no relevant corporate debtor to which Schedule 4 can apply. The DIFC and the Insolvency Law know of no procedure for recognition of proceedings which do not include a debtor who falls within the scope of Schedule 4 (quite apart from any problems which would present themselves in the case of a foreign proceeding in respect of multiple debtors).

28. In order to qualify under Article 17(2) of Schedule 4 the location of the centre of main interests or the establishment of the relevant corporate debtor (and each relevant debtor if proceedings against multiple debtors could be recognised) would have to be established to the Court's satisfaction. The DIFC has no provision relating to Joined Litigants or recognition of proceedings which involve them, whether or not the requirements of Article 2(a) of Schedule 4 are otherwise met. As pointed out earlier, the Joined Litigants did not apply to the Abu Dhabi Court for restructuring or liquidation as debtors and were not recognised as such there. If they were not so classified there, they cannot be so classified in the DIFC.

29. The application for recognition must therefore fail in limine and the application for a stay based on that, as against Mr KBBO, HEAQ and each of the Joined Litigants, must also fail. There simply is no jurisdiction to recognise the Abu Dhabi proceedings, even if they had been brought by a Foreign Representative.

The Jurisdiction to stay proceedings in the DIFC

30. In any event, the evidence put before the Court as to the centre of main interest and location of establishment of the twenty-eight corporate bodies who are Joined Litigants was unsatisfactory. There is no definition of the centre of main interests in Schedule 4, but Article 16(3) of that Schedule provides that "in the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests".

31. A number of international authorities were cited to me as to the criteria for ascertainment of the centre of the debtor's main interests. The US Court of Appeals for the Second Circuit has stated that it lies where "the debtor conducts its regular business, so that the place is ascertainable by third parties" and that there is a presumption that this is where the debtor's registered office is found. Other factors that fall for consideration are the location of the headquarters, decision-makers, assets, creditors and the law applicable to most disputes. The European Court of Justice has looked for the place where the debtor had its central administration and conducted its business. The location where litigation involving the entity in question is relevant as is also the fact that insolvency proceedings have been recognised as foreign main proceedings in other jurisdictions.

32. Leaving to one side the parties to proceedings where a stay is sought but where they are not Joined Litigants at all (3 defendants in CFI-060-2020, the **"Credit Suisse Proceedings"**, and 11 defendants in CFI-045-2020, the **"ENBD Proceedings"**) against whom the existence of the Abu Dhabi proceedings would appear to present no ground for a stay as such, because they are not party to the Commencement Order), issues of fact arise in relation to the centre of main interests or the location of any establishment for many of the Joined Litigants. A table produced by Mr Stark in his third witness statement is not reliable evidence (as was shown in argument by reference to evidence from various Objecting Parties) and the source of the tabulated information is unknown. It is recognised that, of the twenty-eight Joined Litigants other than HEAQ, eighteen are incorporated in onshore Dubai, two other Joined Litigants are incorporated in both Abu Dhabi and Dubai and eight are incorporated in Abu Dhabi. The prima facie presumption that the place of incorporation/ registered office represents the centre of main interest will apply unless there is evidence to rebut it. The licences exhibited to an affidavit of Mr Roderick for those borrowers in CFI-060-2020 which were incorporated in Dubai show that they operate there, which supports the presumption in their case. When the defendants in CFI-063-2020 commenced proceedings in on-shore Dubai they each gave addresses for service there. Where attempts have been made by the Trustees to rely on letters and other materials sent to KBBO Group Headquarters in Abu Dhabi, the materials, when examined, do not support the proposition that Abu Dhabi represents the centre of main interest of those entities. There is very limited evidence to set against the presumption of the place of incorporation or registered office.

33. It is not good enough to show that the centre of main interests for Mr KBBO or HEAQ is Abu Dhabi nor to make a blanket assertion that the centre of main interests for the Group is Abu Dhabi. It plainly cannot be established, on the evidence available to this Court, that the centre of main interests for each of the corporate Joined Litigants is Abu Dhabi. On the basis of the existing evidence, the majority do not fall into that category. Whilst there appears to be every likelihood that many will have an establishment, within the meaning of the definition in Article 2(f) of Schedule 4, in Abu Dhabi, each would have to be considered separately if it were to be characterised as a debtor in a foreign proceeding for which recognition was sought. Recognition of such a foreign proceeding might be possible in relation to some of the corporate entities but not others. If it became crucial to establish the location of each company's centre of main interest or whether it had an establishment in Abu Dhabi, greater enquiry would be needed, above and beyond the evidence presented to this Court on a Part 8 application.

34. The significance of the difference between the location of an entity's centre of main interests and the location of an establishment arises because of the distinction drawn between recognition of a foreign proceeding as a foreign main proceeding and recognition as a foreign non-main proceeding.

35. Under Article 20(1) of Schedule 4, there is an "automatic" stay of proceedings concerning the debtor's assets, rights and liabilities/obligations where the foreign proceedings are recognised as main proceedings. Where recognition is given of the foreign proceedings as non-main proceedings, under Article 21 "the Court may", at its discretion grant such a stay. In practice, the distinction is limited in its effect because of the terms of Article 20(4), which gives power to the Court to terminate such a stay, and Article 20(2) which provides that the scope, or termination, of the stay referred to in Article 20(1) applies in the same way as a moratorium under Article 88(2) of the Insolvency Law and does not affect any rights to take steps to enforce security. Article 88(2) of that Law provides that the court may give leave for actions to be continued against the company subject to such terms as the court may impose. Whilst there was a measure of debate about the principles to be applied in the exercise of this power to lift the automatic stay or to impose a discretionary stay, the essential criterion to be adopted by the Court is that it must do what is right and fair according to all the circumstances of the case. The effect of the "automatic" stay under Article 20 is effectively to put the burden of proof upon the party resisting a stay, whereas the burden may rest upon the party seeking a stay under Article 21.

36. It does not seem to me to matter, on the facts here, whether the issue of stay, if it had arisen for decision, would fall for decision under Article 20 or Article 21 because the result would be the same.

37. On the basis of what I have already held, recognition of foreign proceedings involving the bankruptcy of an individual is not available under the DIFC Insolvency Law and there is therefore no relevant debtor. Since Mr KBBO is the Debtor in the Abu Dhabi proceedings and the insolvency relates to him, no purpose would be served if proceedings in the DIFC were to continue against him whilst staying proceedings against any corporate Joined Litigants who had a centre of main interest or establishment in Abu Dhabi. Where there are defendants which are not Joined

Litigants, the proceedings would continue against them in any event. Where Mr KBBO and/or HEAQ are guarantors or alleged guarantors of the liabilities of Joined Litigants, a continuation of proceedings against either of them would involve a determination of the guaranteed liabilities of the borrowers and it makes obvious sense for the liability of all the borrowers and guarantors to be determined at the same time in a decision which is binding on all parties. Their liability of the borrowers and corporate guarantors has yet to be determined in two of the outstanding sets of Bank proceedings in the DIFC, whilst it has already been determined in two others. The liability of the defendants in the IEMS proceedings has yet to be decided and there are no guarantors, so the position there is distinct.

38. As there are no known assets in the DIFC, execution of any judgment is not a practical possibility in this jurisdiction in any event. If an attempt is made to export any DIFC judgment to another jurisdiction, the courts of that jurisdiction are likely to be faced with the same or similar issues with which this Court has had to grapple in determining whether there is any good reason for a stay when no reorganisation or liquidation has, as yet, commenced, in the light of their own domestic law insofar as it relates to cross border insolvency and recognition of proceedings in other jurisdictions.

39. HEAQ, as an individual, falls into a different category from the other Joined Litigants as there are even greater discretionary factors which militate against a stay of proceedings against him as a personal Joined Litigant. An extraordinary feature of the conduct of the Trustees, since the appointment of Mr Leggett and Mr Stark is their failure to record the claims against HEAQ, even as a disputed debt. This reinforces the conclusion reached above that the Joined Litigants are not treated as insolvent debtors in the Abu Dhabi proceedings. In the list of creditors, the Trustees have steadfastly refused to acknowledge the fact that claims are made against HEAQ as the guarantor of loans. He has, it is thought, substantial assets and alleges that his signature was forged on the guarantees upon which the Banks rely. That represents a real issue of fact which has meant that where immediate judgment was given against Mr KBBO and the corporate borrowers and guarantors in two of the DIFC cases, no application was pursued for immediate judgment against HEAQ because of the serious issues of fact which arise. The proofs of debt which were submitted by the Banks to the Trustees (with a full reservation of rights to pursue the proceedings in the DIFC as the agreed jurisdiction), included the claims against him, but nowhere do those claims appear in the Final List of Creditors compiled by the Trustees. Despite this being pointed out to them on more than one occasion, they have refused to rectify the position and I was informed that, at the date of the hearing, the Court of Cassation was hearing an application which was opposed by the Trustees for the inclusion of the claims as disputed debts. The position is that HEAQ does not accept that he is indebted to the Banks at all and the issue of forgery must be determined. There is no basis for a stay of any proceedings against him for this additional reason.

40. The stance of Messrs Leggett and Stark in relation to determination of his liability, together with that of the First Claimant, is revealed by Mr Stark's witness statements. At paragraph 12.3 of his first witness statement, he stated that the Trustee Panel had kept all claims made under review and had not made any determination on the guarantee claims. He goes on to say: "The process for review of claims is being carefully managed by the Abu Dhabi Court and will include submissions, meetings and detailed discussions with the Debtors and Objecting parties surrounding such claims. The Trustee Panel also has the authority to appoint its own experts to review the claims, including independent forensic handwriting experts. In all respects, the restructuring process is being carefully and adeptly managed by both the Trustees and the Abu Dhabi Court."

41. At paragraph 15 of the same witness statement, he states that, notwithstanding any judgments of this Court, the Trustees will still have to review the underlying claim and cannot accept any orders of this Court made after 27 July 2021 at face value. In consequence, he says that allowing the DIFC claims to run "does more harm than good". The determination of liability in the court of the chosen jurisdiction between the Banks and the borrowers is therefore said, on this basis, to be valueless because the Trustee Panel arrogates to itself the power to second-guess or override any such determination, subject to any grievance raised against their decision which would be heard by the Abu Dhabi Court. That appears to me to be an irresponsible position to take, regardless of the position adopted in the Abu Dhabi proceedings and the desire to bring about a restructuring, if enough creditors agree. Although it was pointed out in Ms Davis' witness statement that the Final List of Creditors produced by the Trustees failed accurately to reflect the ENBD Claimant's claims in a number of respects, and in his witness statement in reply he said that some of those were being rectified, he specifically ignored the point that the HEAQ guarantee had not been included anywhere. Counsel for the ENBD Claimants was not slow to point this out as an example of irresponsibility, which did not inspire confidence in the independent judgment of the Trustees.

42. In their opposition to the Objecting Parties' case in the Court of Cassation, the Trustees informed that Court that the DIFC judgment in CFI-060-2020 was not sufficient proof of the debt. The Hadef defendants have attacked the judgment of this Court against defendants other than HEAQ in that suit and contended that the absence of any immediate judgment against HEAQ is confirmation of the unenforceability of his guarantee. The claims made for common interest privilege in respect of communications between the Hadef defendants and the Trustees reinforce the suspicions of the Banks that the Trustees are still too close to the borrowers and the guarantors. Such suspicions do not exist without reason.

43. It cannot be said to be in the interest of the creditors for the assets of HEAQ to be unavailable to satisfy the debts of the borrowers/Joined Litigants, if there is a valid guarantee. The Trustees, exercising their functions in a responsible manner would be expected to do all that they could to maximise the assets available for distribution to the creditors, whether there is ultimately to be a restructuring or a liquidation. The existence of the disputed claim against HEAQ which would, if established, result in the availability of greater funds for the creditors requires that matter to be properly investigated. The fears of the Banks that the First Claimant was too closely associated with Mr KBBO have not therefore been assuaged by the appointment of the Additional Trustees in the light of the stance they have taken.

44. Whilst HEAQ maintains that he is not a party to this guarantee because he says that his signature is forged and he is not therefore bound by the jurisdiction clause in favour of the DIFC, there can be no doubt in the mind of any objective observer that this Court is better equipped to determine issues of forgery with the benefit of disclosure, cross examination and expert evidence than the Trustees with the limited right of a grievance procedure involving the Abu Dhabi Court in the event of a decision by the Trustees that there is or is not any liability on HEAQ under the alleged guarantees. The procedure that the Trustees envisage for their determination does not involve the rigorous investigation which would be carried out by this court with due process, both sides being heard, disclosure and cross examination of witnesses and experts. Moreover, any raising of a grievance in respect of their decision has to be resolved in a ten or twelve day period in which the Abu Dhabi Court has to reach a decision without the benefit of the evidence which would be available to this Court and without hearing from anyone save for the entity raising the grievance and the Trustees. The party with adverse interest does not get to be heard and the audi alteram partem principle is inapplicable.

45. There is therefore every reason for the proceedings against HEAQ to continue in this jurisdiction regardless of any other consideration. Where other Joined Litigants are concerned, the issues appear to be limited, as shown by the immediate judgment granted against some of them by the DIFC Courts in respect of the loans and guarantees and the figures which have been accepted temporarily by the Trustees which correlate to a significant extent with the claims made by the Banks in the DIFC. As determination of the sums in question in the DIFC, in the absence of a stay, will be made against borrowers who are not Joined Litigants and Mr KBBO and HEAQ, in any event, regardless of the position of the Joined Litigants, the determination of indebtedness on the part of Joined Litigants who may have an establishment or centre of main interests in Abu Dhabi can be achieved at limited or no cost to the Trustees depending on the attitude they take to these proceedings. In CFI-045-2020, the ENBD defendants and the First Claimant ultimately decided not to contest the summary judgment application, which was then investigated fully in order to ensure that the debts claimed were due. Crystallisation of the indebtedness by such a determination by this Court should be welcomed by the Trustee Panel. Whilst costs may be incurred by the Trustees in relation to the DIFC proceedings, the reality is that they have to investigate the position in any event and should be able to take a view as to whether or not the claims against the apposite Joined Litigants are worth defending or whether the ascertainment of liability can be left to the Court to determine on full evidence which it would be bound to explore. None of this impacts execution of such judgments at this stage because of the absence of assets in the DIFC.

Assistance and Co-operation

46. Reliance was placed by Counsel for the Trustees, if recognition was refused, on Articles 25 - 27 of Schedule 4. Under Article 25, "in matters referred to in Article 1 [assistance sought in the DIFC by a foreign court or a foreign representative in connection with a foreign proceeding], the Court may cooperate with foreign courts or foreign representatives either directly or through a DIFC insolvency office - holder". Article 27 states that "cooperation. may be implemented by any appropriate means" which specifically includes "coordination of the administration and supervision of the debtor's assets and affairs, approval or implementation by courts of agreements concerning the coordination of proceedings and coordination of concurrent proceedings regarding the same debtor". The power to stay proceedings must be available to this Court as a means of cooperation in the context of coordination of proceedings and administration of the debtor's assets and affairs, though, as already set out, there is no relevant corporate debtor to which the Schedule 4 provisions could apply. Without such a corporate debtor, Articles 25 - 27 are as inapplicable as the recognition provisions in Article 15.

47. It was submitted that the powers available under Articles 25 - 27 are independent of any question of recognition of the foreign proceedings. It is open to this Court to stay the existing proceedings as a form of cooperation or assistance in connection with an insolvency proceeding taking place abroad, but it is hard to think of any reason why the Court should do so if the proceedings in question are not capable of recognition as a "foreign proceeding" for any of the reasons set out earlier in this judgment, even if there was a relevant corporate debtor, in respect of which cooperation could be sought. If the Insolvency Law makes provision for a stay to be granted in specified circumstances, it would need very good reason to grant a stay where the preconditions for such a stay in accordance with that Law were not met.

48. Where the law has provided for circumstances in which, in the case of the insolvency of a foreign company, a stay should be imposed, it would be odd to impose a stay in other circumstance which would result in achieving by the back door, what was not permitted by the front. Where the proceedings are incapable of recognition because there is no foreign representative or where the only insolvent debtor, recognised as such in the foreign court, is an individual to whom the statute does not apply, there is no room for reliance on any part of Schedule 4, whether in relation to cooperation or otherwise. The Insolvency Law provisions are of no application to the bankruptcy of an individual in Abu Dhabi proceedings and there is no reason, as a matter of judicial policy, to find some other way of achieving the same result. What good reason could there be for granting a stay against him, or companies which he owns or in which he has a majority interest, or guarantors of the liability of such companies?

49. Under Article 7 of Schedule 4, it is provided that nothing in the Model Law limits the power of a court to provide additional assistance to a foreign representative under other laws of the DIFC. The Trustees relied on Article 24 of the DIFC Courts Law and Articles 7(4), 7(5) and 7(6) of the JAL and on what was said to be the common law recognition of the desirability of assistance in cross-border insolvencies, regardless of statute or convention. It was submitted that the Court should recognise and execute the Commencement Order itself with its imposition of a stay, or should recognise the Delegation Letters from the on-shore Dubai Court and/or the Abu Dhabi Court itself, whether as orders to be executed or as requests for assistance.

50. Putting to one side the issue of the "foreign representative" for the purposes of this argument, since that is the expression in Article 7 of Schedule 4, each of the alternative ways of arriving at the same result is objectionable for other reasons. Article 7(4) of the JAL applies "where the subject matter of execution is situated in the DIFC" which can have no application here. There is no subject of execution. The same condition must apply to Article 7(6) of the JAL which follows on from Article 7(4) and (5). The decision by the Abu Dhabi Court to stay proceedings was a procedural decision of that court which does not have extra-territorial effect in the DIFC. No process of execution can apply. So too, was the on-shore Dubai Court's decision to stay proceedings in that jurisdiction. There is no question of executing either beyond their borders. Neither were final and executory decisions which fall for execution under the terms of the JAL and neither are orders capable of execution under RDC 45. Nor can an order for a stay of proceedings be properly characterised as an order in rem, as was submitted.

51. Despite argument to the contrary, taking objection to the appointment of the First Claimant in the Abu Dhabi proceedings and the filing of proofs of debt following the Commencement Order, with a full reservation of rights in relation to the jurisdiction of the DIFC Court to determine the proceedings before it, cannot amount to an acceptance of the right of the Trustees or Abu Dhabi Court to determine such issues, to order a stay of proceedings elsewhere or take effect as a waiver of any right to resist a stay of the DIFC proceedings. The issue of a stay of DIFC proceedings is, apart from any situation where it is mandated by statute, a procedural decision for the DIFC Court alone and not for any other Court.

52. I have already determined the nature and effect of the Delegation Letters at paragraphs 27-30 of my judgment of 22 September 2021 in CFI-063-2020 which I shall not repeat. I have no reason to change my views on the subject. Whether put on the basis of "conduit jurisdiction" in respect of an order of the on-shore Dubai Court or recognition of the Commencement Order for execution in the DIFC or as a response to letters of request, I can see no basis for not following the requirements of the Insolvency Law. To stay the proceedings in the chosen forum on the basis of proceedings in Abu Dhabi which have not yet reached the point of any approved scheme of reorganisation or order for liquidation, when the Insolvency Law does not provide for it, would be to subvert the effect of that legislation.

53. Any restructuring plan or liquidation process will in fact be facilitated by this Court's decisions on liability, subject only to the additional expense involved if the Trustees decide to contest claims made against the borrowers or on the construction contract or are made subject to orders for costs in favour of successful claimants. The incurring of cost in ascertaining the assets and liabilities of insolvent debtors, is however part of any insolvency process and is an inevitable feature of it. Lawyers' and accountants' fees regrettably consume assets which would otherwise be available to creditors but to some extent, the quantum of such expenditure lies in the hands of the Trustees and the decisions they take as to admission of debts. Whatever applications are now made for immediate judgment in the DIFC proceedings, the Trustees have time to consider whether they are well made and whether to incur any expenditure in opposing them and racking up costs on their side as well as increasing the costs of the Banks or IEMS.

Discretion

54. The last powers of this Court to which the Claimants appealed were its case management powers but that involves consideration of the same factors set out above. If there is no basis for the exercise of any discretion in favour of the Claimants in the context of the Insolvency Law or other applicable statutory provision, there can be none for the exercise of case management powers.

55. If it is asked why the parties adopt the stance that they do, the answers seem readily apparent. The Banks and IEMS wish to pursue their claims for determination in the contractually chosen forum and to obtain judgment. They would like the maximum assets to be available for any scheme of reconstruction or for payment of dividend in a liquidation with the inclusion of HEAQ' assets under his alleged guarantees. They have no interest in the pool of available funds being dissipated in lawyers' fees in litigation but wish to have their debts crystallised by the decisions of the DIFC Court for consideration in the reconstruction or liquidation. That is a legitimate aim on their part. Their aim is not to steal a march on the other 60% of creditors and as there are no available assets for execution in the DIFC, the obtaining of judgments will not have that immediate or imminent result. To the extent that any enforcement is sought against the individual guarantors who may have assets elsewhere in the world, any enforcement there would be subject to the ability of the Trustees to take objection on the same or a similar basis as in the application before this Court, by reference to the insolvency laws and conventions applicable in that jurisdiction.

56. The Trustees are anxious that the DIFC Court should not decide any case against the Joined Litigants or the borrowers and even more specifically HEAQ. They wish to decide the existence and amount of indebtedness themselves, subject to a limited right of an aggrieved party to present his grievance to the Abu Dhabi Court. They profess to wish to avoid unnecessary expense for the benefit of the creditors as a whole, but appear not to be interested in a judicial determination of an issue of forgery which can only be appropriately decided, if genuinely in dispute, by the court process, which could result in an increase of the assets available to the whole body of creditors.

57. The past history shows that the First Claimant appeared to cooperate with the borrowers and guarantors in efforts to prevent the hearing of claims in the DIFC. The defendants in those actions abused the process of the Court in a number of actions. The First Claimant and the Additional Trustees have not covered themselves in glory in the launching of this application, the failure to serve it and in the delaying tactics adopted. The current attitude of the Trustees, even since the appointment of the Additional Trustees, as described above, is unfortunate but on any view is not deserving of indulgence by this Court or the exercise of any discretion in their favour. It is plain that it is not just breathing space that they seek in order to consider claims objectively without the burden of litigation. Considerable time has already passed and there is plenty of time available before any further hearing takes place in the DIFC proceedings for them to consider the position in relation to each claim.

Conclusion

58. For all the above reasons all of the Claimants' applications for relief, as listed in the "Remedy Sought" section of the Claim Form dated 14 October 2021, are refused. The first application for recognition of the Abu Dhabi proceedings as a foreign main proceeding must fail (as would an application for recognition as a foreign non-main proceeding) and a stay of litigation against Mr KBBO as the Debtor and the Joined Litigants is refused. The application for recognition and enforcement of the Abu Dhabi order for a stay of proceedings is refused as is the application for recognition or execution of the Dubai to DIFC Delegation Letter, the Abu Dhabi to DIFC Delegation letter and all requests for cooperation and assistance from such other courts by staying proceedings in the DIFC. A stay on the basis of the Court's inherent jurisdiction and case management powers is also refused. There is likewise no reason to stay execution against the assets of Mr KBBO or the Joined Litigants.

59. Costs must follow the event in the absence of any special factors of which I am unaware.

60. The application for discharge or variation of existing injunctions was not pursued and is dismissed with costs.

61. The Parties have provided Schedules of Costs to the Court. In these circumstances, I direct that the Claimants should file and serve written submissions within 3 working days in which they address the issue of costs, advance any reasons why they should not pay the Objecting Parties' costs and set out any objections to the quantum claimed. Within 3 working days thereafter, the Objecting Parties should file and serve any response and I will decide issues of costs in writing.