THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

N/A

BETWEEN

PEYTON

Claimant

and

PAUL

Defendant

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON the Claimant's Arbitration Claim dated 23 December 2025, for an order setting aside the Final Arbitral Award dated 26 June 2025, rendered in DIAC Case (the "Award"), in whole, or alternatively in such substantial part as the Court considers appropriate (the "Arbitration Claim" or the "Claim")

AND UPON the Court having dismissed the Arbitration Claim by an Order issued on 16 September 2026 and having given directions in that Order for the determination of any costs application the Defendant wishes to apply for its costs of and occasioned by the Arbitration Claim (the "Cost Directions")

AND UPON the parties having complied with the Cost Directions

AND UPON the Court having considered (i) the Defendant's Application No. ARB-051-2025/1 dated 25 September 2026 (the "Costs Application"); (ii) the Defendant's schedule of Costs Claimed annexed to its submissions in support of its costs application; (iii) the Defendants costs submissions dated 25 September 2026; (v) the Claimant's submissions in answer dated 12 October 2026; and (vi) the Defendant's submissions in reply dated 26 October 2026

AND PURSUANT TO the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Claimant is to pay the Defendant its costs of and occasioned by the Arbitration Claim assessed on the standard basis in the sum of USD 11,700 (the "Costs").

2. The Claimant is to pay interest on the Costs at US Prime Rate as varied from time to time from 14 days after service of this Order on the Claimant on the sum outstanding from time to time until payment of the whole of the Costs have been paid.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 29 October 2026
At: 2pm

SCHEDULE OF REASONS

Introduction

1. This is the determination on paper of the Defendant's application for an order that the Costs Application be determined by an Order that the Claimant pay the Defendant's costs of and occasioned by the Arbitration Claim on the indemnity basis in the amount of USD 16,750.00, together with interest thereon from the expiry of the period for payment ordered by the Court until payment in full. The Claimant opposes that application and submits that either (i) the Costs Application should be dismissed and there should be no order as to costs; or (ii) each party should be ordered to bear their own costs or (iii) any costs awarded should be assessed on the standard basis only in a sum that is substantially lower than that claimed.

Applicable Principles

2. In applying the costs principles set out in the RDC, it is appropriate that this Court have regard to the approach of the Courts of England and Wales on the comparable provisions of the Civil Procedure Rules (the "CPR") because of the high level of similarity between the rules set out in the RDC and the CPR concerning costs - see *Al Khorafi v. Bank Sarasin-Alpen (ME) Limited* [2009] DIFC CFI 026 (16 January 2017).

3. By RDC 38.7, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party unless the Court orders otherwise. Equally generally costs are to be assessed on the standard basis unless the court decided that costs should be assessed on the Indemnity basis.

4. The principles that apply to deciding whether costs should be ordered to be assessed on the indemnity basis are essentially the same as those applied by the Courts of England and Wales. The applicable test is that established by *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson (A Firm)* [2002] EWCA Civ 879 and is that indemnity costs will be ordered only where the conduct of the paying Party is outside the norm (i.e. outside ordinary and reasonable conduct) to be expected of those conducting civil litigation, or as it is sometimes put, is conduct which was unreasonable to a high degree. Paragraph 1 of Practice Direction No. 5 of 2024 does not set out the applicable principle in any different terms.

5. Whilst there is some authority for the proposition in the context of an indemnity assessment being sought following a trial, that bringing a claim that is ".speculative, weak, opportunistic or thin." is capable of being conduct beyond the norm (see *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm)), generally the circumstances would have to be extreme before that would of itself justify an order that costs be assessed on the indemnity basis. Generally, the receiving party's success over the paying party, however emphatic, is not sufficient of itself to justify an award of costs to be assessed on the indemnity basis - see *Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883 at [83]. Generally, there have to be aggravating circumstances above and beyond lack of merit before a court will be justified in directing an indemnity assessment of the successful party's costs. Exceptionally, an indemnity assessment may be ordered where the claim is considered totally without merit - that is one that is ". without justification or basis in law or fact. This term is often used to indicate that the application was frivolous or groundless and had no reasonable chance of success." - see *Nazeer v Noah* [2024] DIFC ARB 011 at [105].

6. By RDC 38.17, 38.18 and 38.21, where costs are to be assessed on the standard basis the Court ". is to have regard to all the circumstances in deciding whether costs were. (a) proportionately and reasonably incurred; and (b) were proportionate and reasonable in amount.". In relation to proportionality, in *Kazakhstan Kagazyp plc v Baglan Abdullayevich Zhunus* [2015] EWHC 404 (Comm) at [13]. Leggatt J (as he then was) emphasised that what a party might subjectively consider reasonable to pay to advance its own interests in litigation is not the relevant test. The relevant test when assessing recoverable costs between the parties is an objective one and is the lowest sum that the receiving party could reasonably have been expected to spend in order to have its case conducted and presented proficiently. As Leggatt J added:

> ". The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceeding or otherwise causing costs to be incurred and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests. There are also good policy reasons for drawing this distinction, which include discouraging waste and seeking to deter the escalation of costs for the overall benefit for litigants.".

This statement has been approved by the Court of Appeal of England and Wales in *Kington SARL v Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 1003 and *Saipem SPA and Others v Petrofac Ltd and Another* [2025] EWCA Civ 1106; [2025] Costs LR 1481, and by the Court of Appeal of the DIFC Courts in *The Industrial Group Limited v. Hamid* [2022] DIFC CA 005/006 (30 October 2023). It is therefore a principle that should now be applied in all standard assessments in this jurisdiction.

7. One aspect of ensuring that no more than a sum that is proportionate in amount is assessed, is to have regard to the guideline rates fixed so far as this Court is concerned by Registrar's Direction No. 1 of 2023 - Indicative Hourly Legal Charges (the "RD1"). It establishes the following benchmark rates:

Level of Legal Experience	Average Hourly Rate (AED)	Average Hourly Rate (USD)
Paralegals	1450	415
Trainees/lawyers up to 5 years	2391	651
Lawyers 6-10 years	2972	809
10+ years	3298	898
Partners	3746	1020

Whilst RD1 is not a provision that fixes rates but provides a starting point when assessing proportionality, a departure from the guideline rates will be appropriate only where a clear and compelling case for adopting a higher rate has been objectively established. "It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate." - see *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466 per Males LJ at [4] to [6].

8. Where costs are to be assessed on the indemnity basis, proportionality has no role to play and costs are recoverable for all work reasonably carried out in a no more than a reasonable amount - see RDC 38.17(2) and 38.21(2). Any doubt the court may have as to whether costs were reasonably incurred or are reasonable in amount is to be resolved in favour of the receiving party - see RDC 38.19. The effect of this provision is to place the burden on the paying party to show that costs were unreasonably incurred or are unreasonable in amount - see *Kirtanlal International DMCC v State Bank of India (DIFC Branch) and others* [2022] CFI 04 (25 January 2024) per Sir Jeremy Cooke J at [2].

Incidence of Costs and Basis of Assessment - Discussion

9. The Defendant's core submission is that it should recover its costs and that they should be assessed costs should be assessed on the indemnity basis because it ". was wholly successful in the Arbitration Claim. The Court dismissed the Arbitration Claim in its entirety."

10. The Claimant submits that the Defendant was not wholly successful because the Defendant contended that the Arbitration Claim should be dismissed as out of time under Article 41(3) of the DIFC Arbitration Law, relying on alleged defects in service under RDC 9.43 and RDC 9.28, but that contention failed. In relation to the submission that the Defendant's costs should be assessed on the indemnity basis, the Claimant submits that this contention should be rejected because no conduct by or on behalf of the Claimant that was outside the normal has been identified much

less established. The Claimant submits that it exercised a statutory right of recourse under Article 41 of the DIFC Arbitration Law, complied with every direction of the Court (as recorded in the Order), and its challenge was considered and determined on each ground in a reasoned judgment. In response, the Claimant alleges that Paragraph 3 of PD No. 1 of 2017 provides that the principle of awarding indemnity costs may also be invoked for unsuccessful applications for the setting aside of arbitral awards.

11. Turning first to the incidence of costs, I accept the Defendant's submissions that it should be awarded the whole of its costs of the Arbitration Claim. Whilst it is true to say that it failed in a preliminary submission concerning service, it is not every such failure that will result in a reduction of the costs that are recoverable by an otherwise successful party. Where an issue which an otherwise successful party lost on clearly generated substantial costs and took a substantial amount of time at a hearing, a reduction by a percentage of the sums otherwise recoverable may be justified. However, that will not be appropriate in respect of every case where a minor issue has been lost because it is in the nature of litigation that an otherwise successful party may lose on subsidiary issues which have not clearly increased cost or the time needed to resolve the claim or application. In this case, I accept that the Claimant has not shown there is a quantifiable amount attributable solely to the service issues, nor demonstrated that the overall volume of work would have been materially lower without those arguments. This last point is important because a conclusion to this effect is necessary before any percentage reduction can sensibly be adopted. Whilst it is possible to conclude that a few dollars might have been saved from the costs of preparing the Defence if this point has not been taken, speculating about how much is likely to result in unfairness to the receiving party that outbalances any marginal unfairness that might be suffered by the Claimant if no account is taken of this point. This is a material consideration in particular where the Defendant as receiving party has succeeded decisively on all other issues.

12. The next issue is whether costs should be assessed on the indemnity basis. I am clear that they should not be. I do not understand the Practice Direction on which the Defendant relies detracts from the general discretion that applies to costs orders and I do not consider that the Court should too readily be persuaded that an Arbitration Claim that has failed, was one that should be regarded as totally without merit. Such a conclusion may discourage realistically arguable challenges and thus undermine the reputation of the court as a robust supervisory jurisdiction and in my judgment should be reserved for such claims that truly can be said to be so devoid of merit that it should never have been brought. Such claims must be firmly discouraged but are by their nature the exception rather than the norm. This Claim is one which in the end the Defendant won and the Claimant lost. There was nothing about the conduct of the Claimant (other than that it brought a Claim that ultimately failed) that could justify departing from the general rule that costs should be assessed on the standard basis.

Assessment and Disposal

Hourly Rates

13. The Defendant seeks recovery of the Defendant's costs based on hourly rates for the Managing Partner of USD 1,000/hour, an Associate Partner of USD 750/hour and a Junior Associate of USD 250/hour. No attempt has been made initially to identify the years of experience of any of the lawyers involved, which the RD1 requires for every fee earner other than a partner. I would have been prepared to assume for present purposes that that the Managing Partner comes within the RD1 category of partner and as such his hourly rate is lower than the guideline rate. I am also prepared to assume that the Associate Partner should be regarded as being either a partner or a lawyer of 10+ years' experience. Which of these alternatives should apply will depend on whether the costs are to be assessed on the Indemnity basis or the Standard basis. The Junior Associates has been charged at a rate that is lower than any of the guideline rates.

14. I have decided that costs should be assessed on the Standard basis. The effect of RDC 38.18(2) is that any doubt as whether any work was work that it was unreasonable or disproportionate to carry out or was unreasonable or disproportionate in amount is to be resolved in favour of the paying party. In relation to the rates issue, I am now considering this means I would have treated the Associate partner as coming within the RD1 category of Lawyers of 10+ years. The accuracy of this approach was confirmed ultimately by Paragraph 26 of the reply submissions. However, the rate claimed is less than the guideline rate for such a lawyer. In those circumstances, I am satisfied that applying the Indemnity principle (i.e. that a receiving party should not recover more than the sum it has paid or will have to pay its lawyers) costs should be assessed on the standard basis applying the rates claimed by the Defendant.

Work done

15. The Defendant claims for a total of 4 hours attendances on the Defendant. In my judgment, that is in excess of what is proportionate for an Arbitration Claim concerned with a short and straight forward Award in relation to a low value claim. The need for such a high level of attendance on the Defendant is unexplained. In my judgment, this should be capped at a total of 2 hours spread equally across other the senior fee earners.

16. I accept that attendances on the Claimant were reasonable and proportionate.

17. The "Other work not covered" is a head that requires caution. No attempt has been made to justify it in the initial submissions. It was challenged by the Claimant in its submissions in answer on the basis that it was unexplained or covered work otherwise covered by the Defendant's Costs schedule. In its reply submissions, the Defendant submitted that the sums claimed were in respect of time spent on the Defendant's correspondence with the Registry, including its request of 24 March 2026 that the claim be determined on paper. That assertion is not particularised or justified. It is difficult to see how it could be proportionate to spend 3 hours in such activity. I disallow the sum claimed for Mr Joseph and reduce the sum recoverable in respect of Mr Jose's time under this head to 2 hours.

18. The work on documents is relatively substantial, being 4.5 hours for the Partner, 6.5 hours for the associate Partner and 10.5 hours for the junior associate. In my judgment, this is in excess of what is proportionate. It is largely explained by the drafting of the Statement of Defence, followed by a further 1 hour 30 minutes of review by the Managing Partner, a further 3 hours 30 minutes across all three fee earners for reviewing the Claimant's Reply and the bundles, which consisted largely of the Award, the Claim and the Defendant's own Defence. Taking a total of 7.5 hours to review the Statement of Claim and then a further 8 hours to draft the Defence (and a further 1.5 hours to review it) is in excess of what is reasonable and proportionate. It would be wrong to attempt to adjust each element for each fee earner because this is not a detailed assessment. I consider that recovery should be capped at 70% of the whole for the sum claimed for items 2-4 in order to ensure what is being claimed is proportionate applying the principles identified above. This sum comes to USD 6,825. The remaining work on documents is allowed as asked as being both reasonable and proportionate.

Sums Assessed Due

19. These adjustments result in costs being assessed in the total sum of USD 11,700.

Interest

20. It is appropriate that interest should run from 14 days after the date this Order is served on the Claimant because until then the Claimant will not know what sum has to be paid to discharge the costs order. RDC 38.40(1) is capable of working unfairly since it provides that interest should run from the date of the Order rather than its service. Adjusting it in the way I have eliminates that as a risk.

21. The interest rate claimed (9%) is excessive. This costs claim is to recover costs denominated in USD. The US Federal Funds rate (the rate banks in the US lend to each other) is currently 3.88%. US Prime Rate (the rate set by US Commercial banks as the minimum cost at which they will lend to retail customers) is currently 7%. The Federal Funds rate is the equivalent of Bank of England Base Rate, which when used as a basis for awarding interest on sterling denominated claims invariably has a sum of between 2-3 % added to it by courts assessing interest to provide a proxy for the commercial cost of borrowing the sum on which interest is being awarded. An alternative course would be to adopt the Secured Overnight Financing Rate (which is currently 3.9%) and add an uplift to reflect the cost of commercial lending as opposed to overnight intermarket lending. A reasonable uplift on that rate to provide a proxy for the commercial cost of borrowing would result in a similar rate of about 7%.

22. I consider that US Prime Rate is the appropriate rate to adopt in the circumstances because it provides the best estimate of the likely cost of borrowing the sum outstanding from time to time in respect of the costs I have assessed as due to the Defendant. Whilst this will result in a fluctuating interest rate that accurately reflects the commercial realities of borrowing for commercial purposes, where rates are almost always fixed by reference to a fluctuating rather than a fixed rate.