IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NASHRAH

Claimant

and

(1) NAJEM
(2) NEX

Defendants

REASONS FOR THE ORDER OF H.E. JUSTICE SHAMLAN AL SAWALEHI DATED 6 FEBRUARY 2025

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1. This application is brought by the Defendants seeking the Interim Anti-Suit Injunction ("ASI") Order ("ASI Order") dated 20 January 2025 be discharged, for the Claimant to pay for damages for losses caused by the ASI Order, and for the Claimant to pay the Defendant's costs on an indemnity basis to be assessed by the Registrar if not agreed (the "Discharge Application" or "Application").

2. The Defendant's grounds in support of the Application are listed categorically, but all submissions will be discussed in conjunction with the determinative matters prioritised.

Relevant Background and Preceding History

3. The Claimant is a party to an arbitration agreement contained in the Repatriation Agreement with Mr Najem (the First Defendant) acting through his Agent. The arbitration agreement refers to disputes proceeding under the DIFC-LCIA rules with the seat as "Dubai", to be conducted in English.

4. The dispute was initiated in the English High Court by the Defendant pursuant to legal advice that the arbitration agreement was void as it only owed to the DIFC-LCIA rules, which have since become redundant.

5. In response to the Claimants filing an application for a mandatory stay of the English High Court Proceedings, the Defendant filed for an AAI before the English high Court seeking to restrain the Claimant from pursuing or continuing arbitration proceedings pursuant to the *kompetenz-kompetenz* principle and an asserted state of urgency on the basis that the English high Court must be the only determinative forum (the "AAI Application").

6. The English High Court AAI Application hearing was scheduled to be on 21 January 2025 (the "21 January 2025 Hearing").

7. In turn, the Claimant sought ex parte urgent relief from the DIFC Courts due to the risk of being foreclosed from exercising its arbitral rights.

8. On 20 January 2025, an urgent hearing was held before H.E. Justice Shamlan Al Sawalehi, followed by the issue of an injunction preventing the Defendants from proceeding before the English Courts respect of the Anti-Arbitration Injunction ("AAI") Hearing on 21 January 2025. The injunction remained in force until the Return Date on 5 February 2025.

9. Nonetheless, the Defendants attended the 21 January 2025 Hearing but only addressed their Substitution Application that sought to substitute Mr Najem for the Executors and transfer the English High Court Proceedings to the Commercial Court and sought to expedite the Section 9 Application.

10. Anticipating a jurisdictional battle, the Section 9 Application was swiftly progressed. The request for an order to restrict the Claimant from challenging the English Courts' jurisdiction was denied.

11. On 23 January 2025, the English Court issued an order that expedited the hearing of the Section 9 Application to 26 and 27 February 2025. The Claimant fears that the English Court is proceeding in a manner that is inconsistent with English Law.

12. On 3 February 2025, the Agent filed his answer to the request for Arbitration filed by the Claimants in DIAC on 13 December 2024.

13. On 5 February 2025, the Return Date Hearing was held before H.E. Justice Shamlan Al Sawalehi.

14. On 6 February 2025, the Order of H.E. Justice Shamlan Al Sawalehi was issued in favour of the Claimant with reasons to follow.

The Application

<u>No Compliance with Full and Frank Disclosure</u>

15. The Defendants claim that the Claimant acted in breach of their obligations for full and frank disclosure under Rule 23.11 of the Rules of the DIFC Courts ("RDC"), which reads:

"On all applications without notice it is the duty of the Defendant and those representing him to make full disclosure of all matters relevant to the application including, in particular, disclosure of any possible defences that may be available to the Claimant in response to the application."

16. In an ex parte application, the duty extends to making a full and accurate disclosure of all material facts and to draw attention to significant factual, legal and procedural aspects of the case, including potential defences and making proper enquiries before the application is filed, thus creating a high threshold to satisfy the obligation.

17. The following statements made by the Claimant at the ex parte hearing are submitted to be in breach of the duty:

i."Now, the last point here is, **today**, if the court allows them to proceed, what they are seeking is **not a temporary injunction**, your Excellency. **They have sought a permanent injunction**. I can never arbitrate on this issue and your Excellency will appreciate I do not have a right to appeal." [DIFC Transcript, page 61] [emphasis added]

ii."If I lose tomorrow **without leading expert evidence**, without having put any evidence on record, without pleading my case, if I lose tomorrow, I need a leave to appeal and then I will go to Court of Appeal. Then I will go to Supreme Court." [DIFC Transcript, page 61]

18. The Defendants interpret the first quote to mean that the Claimant lead the Court to believe that the Defendants were seeking a permanent injunction in the 21 January 2025 Hearing, which was also stated in the witness statement of Mr Wilmot dated 18 January 2025, paragraph 39, and the Urgent Application Notice.

19. The AAI Application Notice explained what was being sought at the 21 January 2025 Hearing:

"The Court is invited to make an anti-arbitration injunction initially on an interim basis until the Defendant's s.9 Stay Application is determined, and if the Defendant's s.9 Stay Application is unsuccessful then the interim injunction should be made into a final injunction."

The Claimant was under duty to make clear that a permanent injunction was not sought; they failed to do this, therefore misleading the Court on the justification for an ex parte urgent application. A permanent injunction would only be sought after an unsuccessful section 9 Stay Application in the English High Courts if it was ruled that the arbitration clause was void.

20. It is also submitted that the second statement was plainly false, as the Claimant had an opportunity to file expert evidence in the English High Court and failed to answer the Judge's question "have you filed your reply before the English Court or not yet?" truthfully, by not saying yes. On 19 January 2025, the Claimant's English solicitor, Mr Wilmot, put a detailed witness statement in reply to the AAI Application Hearing in the English High Court.

21. Section 9 Applications include both parties filing expert evidence. The directions for the Section 9 Application were under discussion when the Claimant made its ASI Application in the DIFC Court - the final direction was for the Claimant to file its expert evidence on the 6 February 2024 and is listed for a hearing in the last week of February.

22. Further, the Section 9 Application process was only expedited as the Claimant attempted to sabotage the process - the AAI Application would not have stopped the Claimant from filing evidence.

23. As the Claimant misrepresented the Defendants' position, and failed to correct the record, it acted in breach of its duty of full and frank disclosure.

<u>The DIFC Courts Do Not Have Supervisory Jurisdiction</u>

24. The Defendants submit that the DIFC is not the seat of the arbitration, and so the DIFC Courts do not have supervisory jurisdiction.

25. As the arbitration agreement was concluded after Article 6(a) of Decree 34, and so is invalid. Article 6(a) reads:

"All agreements to resort to arbitration at the Abolished Arbitration Centres, **concluded by the effective date of this Decree**, are hereby deemed valid. The DIAC will replace the Abolished Arbitration Centres in considering and determining all Disputes arising out of the said agreements unless otherwise agreed by the parties thereto." [Emphasis added]

26. The Defendants oppose the Claimant's interpretation of this Article, which is that the pair of commas means that all agreements referring to arbitration at the DIFC are deemed valid irrespective of whether they are concluded before and after, as two commas means the phrase can be removed and the sentence is still correct.

27. The reason for the opposition is twofold; first, this is a misunderstanding of the grammatical use of commas, and the Article is translated from Arabic which can affect the original intention.

28. Additionally, the Claimant could not cite any authority to support its interpretation.

29. Therefore, the Defendants insist that Article 6(a) plainly only applies to agreements before the Decree was issued.

30. Further, the Claimant's suggestion that a post-Decree 34 agreement stating "Dubai, United Arab Emirates" could mean DIFC lacks supporting authority. The opposite is agreed by Article 4 of the Statute of the Dubai International Arbitration Centre, and was stated by H.E. Justice Shamlan Al Sawalehi at the ex parte hearing. There is no ambiguity.

31. The DIFC Court will not grant an ASI unless satisfied that there is a high degree of probability that the DIFC is the seat.

32. In *Ledger v Leeor* [2022] DIFC ARB 016 ("Ledger"), H.E. Justice Black KC determined that "place of Dubai" was enough to mean that the "seat" is Dubai as the wording of the arbitration agreement in that case was not ambiguous enough to be interpreted differently. The same line of interpretation applies here; an express reference to "Dubai" cannot mean DIFC.

33. Further, the Claimant's position that the proceedings being in English means the parties intended to have DIFC as the seat is wrong, as having Dubai as the seat does not mean the proceedings must be in Arabic. The language is elective. Relying on Article 27 of the Arbitration Law for this point is also wrong, as that Article concerns circumstances where the dispute is governed by DIFC Law, which doesn't apply here.

The Dispute Concerns a Consumer Contract

34. The Defendants categorise the contract as a consumer contract, which results in the arbitration clause being unenforceable pursuant to Article 12(2) of the DIFC Arbitration Law.

35. Article 12(2) reads:

> "An Arbitration Agreement referring future disputes between the parties arising out of or in connection with:
>
> (a) a contract of employment within the meaning of the Employment Law 2005; or
>
> (b) a contract for the supply of goods or services, other than residential property, to a consumer made by a supplier who is a natural or legal person acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned, cannot be enforced against the employee or consumer in respect of any such dispute except:
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> i. with his written consent given after the dispute in question has arisen;
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> ii. where he has submitted to arbitration proceedings commended under the Arbitration Agreement, whether in respect of that dispute or any other dispute; or
>
> iii. where the DIFC Court has made an order disapplying this Article on the grounds that the DIFC Court is satisfied that it is not detrimental to the interests of the employee or consumer for the dispute in question to be referred to arbitration in pursuance of the Arbitration Agreement instead of being determined by proceedings before a Court. For the purposes of this Article, "consumer" means "any natural or legal person who is acting for purposes which are outside his trade, business or profession".

36. The Defendants submit that there are only three circumstances in which a consumer can be compelled to arbitrate:

> (a) Consent is given after the dispute has arisen
>
> (b) Where the consumer has submitted to arbitration proceedings
>
> (c) Where the DIFC Court made an order disapplying Article 12(2)
>
> None of these circumstances apply.

37. As the Defendants are private individual consumers who contracted to use the air ambulance service, it is wrong for the Claimant to describe the parties are "commercial". Therefore, the Court ought to employ Article 12(2) of the Arbitration Law to ensure the arbitration agreement is not enforced.

No Undertaking

38. The Defendants submit that the ASI Order ought to be discharged as the Claimant failed to provide a valuable undertaking, as mandated in RDC 25.25 at the ex parte hearing. The Claimant also failed to provide material information to the Court that they had no DIFC assets, nor did they disclose their financial position in the UK, which is submitted to be precarious.

39. While the remainder of the Claimant's submissions are below separately, as this is a short submission I see it best to add the response here.

40. The Claimant rejects this notion on the basis that in the event the Court grants the Claimant's sought relief the question of cross-undertaking does not arise, nonetheless the financial statement provided by the Defendants is outdated (November 2023) and raised too late for the Claimant to sufficiently prove its current financial standing. However, the Claimant is prepared to fortify its cross-undertaking through a parent company undertaking, with the Court's permission.

There is no Basis for an Anti-Suit Injunction

41. The Defendants submit that the DIFC Court does not have jurisdiction to grant an ASI, as Article 24(b)(iii) of the DIFC Arbitration Law, Articles 22(2) and 32 of the DIFC Court Law, and RDC 25 - all of which the Claimant rely on - do not apply in these circumstances.

42. The justification for this is that Article 24(b)(iii) application is limited by Article 7 of the same statute to arbitration agreements that state the seat is the DIFC, which is not the case here. Regarding Article 22(2) and 32 of the DIFC Court Law, and RDC 25, the application depends on the Court having the underlying jurisdiction to grant the interim ASI which requires one of the Judicial Authority Law Article 5A gateways to be satisfied.

43. Neither of the parties are DIFC entities, the dispute does not concern a DIFC contract, the application does not arise out of an incident or transaction within the DIFC, no statute or regulation confer jurisdiction, and the parties did not agree to opt-in. Further, Article 32 of the DIFC Law does not create a freestanding gateway; the Claimant's reliance on *UniCredit Bank GmbH v. RusChemAlliance* [2024] UKSC 30 is wrong

as the case concerned an arbitration agreement that had English Law as the governing law, and in these circumstances the governing law is not DIFC Law, and the Claimant failed to cite any DIFC authority that grants a gateway through Article 32. Therefore, the ASI should be discharged.

44. Further, all case law cited (whether DIFC or foreign) do not relate to a post-Decree 34 arbitration agreement, and so cannot be validly relied on to advance the Claimant's position.

45. In the alternative, if the Court is satisfied that it does have jurisdiction, the Defendants insist that the high threshold - as established by Brookfield which set the precedent that the DIFC Courts would only grant an ASI in unusual and exceptional circumstances when the DIFC is not the seat - has not been met.

46. The Defendants deny there is anything exceptional or unusual about this case.

47. The Defendants submit that this matter is appropriate for the English Courts to decide, and the DIFC Courts should be cooperative of such proceedings. The Defendants have already provided expert evidence on UAE law to the English High Court - the Claimant is expected to follow suit - and the Section 9 Application continues. A key question when considering an ASI application is whether a foreign jurisdiction can provide justice; there is no reason not to trust the English High Court can do so. Having simultaneous proceedings in the DIFC Courts and DIAC is nonsensible and contrary to the overriding objective. What the Claimant is now attempting is to try to prevent the English High Court from even considering the question of whether the English High Court proceedings should be stayed in favour of arbitration. If the Section 9 Stay Application is unsuccessful then the claim will continue in the English High Court. There is no reason for the DIFC Courts to prevent the English High Court from deciding the Section 9 Stay Application.

48. Finally, the Claimant places reliance on the intention to arbitrate as a principle on which an ASI can be granted, which is unsupported by authority - Article 12(2) of the Arbitration Law establishes that arbitrable consumer contracts are an exception, and these circumstances are not an exception. Only the Section 9 Application in the English High Court can establish whether this contract is arbitrable, as well as the choice of law and governing law, which is likely to be English law.

DIAC Proceedings are a Duplication of English High Court Proceedings

49. The English High Court proceedings were 11 months in process when the Claimant filed a Request for Arbitration in DIAC on 13 December 2024 for declaratory relief on the question of validity.

50. DIAC stated that there is no prima facie case against the First Defendant and have refused a claim against him, therefore only the English High Court can address the case with both defendants.

51. The Defendants submit that the Claimant approaching DIAC was illogical, unnecessary and imposed unjustified substantial costs on the Defendants just to answer the same question the English High Court is considering.

52. The Claimant should be compelled to wait for the outcome of the Section 9 Application before continuing DIAC proceedings; all issues submitted by the Claimant can be dealt with in the English High Court, including the issue of *kompetenz-kompetenz*.

The Defendants are Entitled to Damages

53. The Defendants submit that the ex parte interim ASI issued 20 January 2025, the AAI Application on 21 January 2025 was not able to continue; upon discharge, the Claimant is compelled to pay damages on a prima facie basis unless exceptional circumstances can be shown.

54. Further, the Defendants are entitled to recover losses incurred by the interim injunction on the usual rules on causation.

55. The Defendants invite the Court to assess the damages at the Return Date,

The Claimant's Position

56. On the Return Date, the Claimant approached the Court seeking the following relief:

(a) A final and permanent injunction restraining the Defendants in proceedings before any court or tribunal in the United Kingdom or any other jurisdiction except before the arbitral tribunal duly constituted in the Arbitration;

(b) Mandating the Defendants to withdraw the English Proceedings; and

(c) Alternatively, confirmation of the interim relief granted in the ASI order, and its expansion to proceedings before any court or tribunal in the United Kingdom or any other jurisdiction except before the arbitral tribunal fully constituted in the Arbitration and to mandating the Defendants to adjourn the English Proceedings.

57. First, the Claimant submits that the source of the jurisdiction of the DIFC Courts to grant injunctions comes from Article 32 of the Court Law, as per *Hayri International LLC v Hazim Telecom Private Limited & Anor* [2016] DIFC ARB 010 ("Hayri"); *Brookfield Multiplex Constructions LLC v DIFC Investments LLC* [2016] DIFC CFI 020 ("Brookfield"); *Ledger v Leeor* [2022] DIFC CA 013 ("Ledger"); and *Narciso v Nash* [2024] DIFC ARB 009 ("Narciso").

58. It is under this Article that the Court has supportive jurisdiction in the alternative to supervisory jurisdiction, therefore the negative aspect of an arbitration agreement (no other forms of dispute are permitted) is independently enforceable whether the DIFC is the seat or not, and so an ASI may be granted by a supportive jurisdictional court in exceptional circumstances.

59. In *Brookfield*, the inability of the seat court to grant an injunction or the practical ineffectiveness of any such remedy is considered a very good reason to grant an ASI. Non-DIFC Courts would not issue such restraint on the Defendants, therefore it is crucial for the DIFC Courts to

intervene. Moreover, due to consistent delays and the Defendant's behaviour, the Claimant is unable to seek relief from the arbitration itself. The Claimant only requests that the parties comply with the agreement, not to impose restraint on the English Courts. A remedy from the DIFC Courts is a more effective deterrent.

60. The AAI Application was filed by the Defendant with a false urgency, and upon success would permanently injunct the Claimant from pursuing any arbitration under the agreement, therefore undermining the whole process.

61. The accelerated timeline in the English proceedings suggests the Judge pre-emptively determined the validity of the agreement, contrary to legal principles. The English Court's premature decision to expedite the Section 9 Application, including directions for cross-examination before the Defendants had filed evidence contradicts English law and suggests that the English Court has wrongly already assumed jurisdiction over the validity of the agreement. The DIFC Court must therefore intervene to restore procedural fairness, restraining the English proceedings, including the Section 9 Application, by (i) extending the scope of the interim anti-suit injunction; and (ii) granting a final and permanent anti-suit injunction; all this does is uphold the agreement between the parties.

62. Additionally, the Defendants' insistence on a public Section 9 hearing undermines the confidentiality obligations under the Repatriation Agreement. This bears another justification for the injunction.

63. Further, the seat of the Arbitration is the DIFC Courts on a prima facie basis and in the context of the final injunction on a final basis, as the contractual objective intent of the arbitration agreement was to have the DIFC as the seat.

64. In line with *Hayri* "Dubai" can mean "DIFC Courts" depending on the context. As the DIFC-LCIA rules were originally intended to be engaged, and the language of the arbitration was to be English, the DIFC Courts have a more substantial connection to the dispute.

65. Once the Court's supervisory jurisdiction is logically and objectively established as the seat court, it naturally follows that the Court ought to exercise its discretion to restrain the proceedings in the English High Court, unless the Defendants can show strong reasons to refuse the relief, as per *Narciso*.

66. Next, it is the Claimant's position that a valid, effective and binding arbitration agreement exists, as the Defendants' claim that all arbitration agreements that cite the DIFC-LCIA rules are invalid is baseless.

67. Decree 34 dictates that DIFC-LCIA arbitrations are now conducted under the DIAC Rules; on 24 December 2024 DIAC accepted jurisdiction on a prima facie basis post initiation by the Claimant.

68. The replacement of the DIFC-LCIA rules does not render the arbitration agreement void, as agreed by the Court at the ex parte hearing for interim relief.

69. It is also submitted that the Defendants accept that a valid arbitration agreement would bind the Claimant and the Agent as well as Mr Najem as a principal, as the Agent entered into the Repatriation Agreement on behalf of Mr Najem. Such agent authority is accepted in Article 11 of the Application of DIFC Law.

70. Further, the Claimant submits that no compelling reasons have been brought by the Defendants to show why the arbitration agreement cannot be enforced.

71. First, Mr Najem is not a consumer, which means "any natural or legal person who is acting for purposes which are outside his trade, business or profession", as Mr Najem's Agent entered into the Repatriation Agreement as a pilot, which is his profession and Mr Najem merely accompanied his wife (the only person capable of being categorised as a consumer) on the plane to South Korea.

72. In the alternative that the Court accepts Mr Najem as a consumer, an arbitration agreement can still be enforced against him if it is not detrimental to the interests of the consumer for the dispute to be referred to arbitration. It is not detrimental on the basis that the dispute is only in relation to whether the arbitration agreement is valid and binding, which has no effect on consumer rights, Mr Najem had an informed and clear understanding of the arbitration agreement entered into, and Mr Najem is not a vulnerable consumer.

73. Second, the Defendants are wrong to invoke comity principles to resist relief or justify the English Court having the right to determine the Section 9 Application, as comity does not apply where a court seeks to hold the parties to their contract by way of an ASI, and the DIFC Courts ought to issue an ASI to protect the arbitration agreement. An ASI does not defer to such stay, and the UK Supreme Court recognises that an ASI can be issued even if an arbitration is not in process.

74. Further, the English Court of Appeal previously issued an ASI to restrain a party from seeking clarification from a foreign court regarding the validity of an arbitration agreement, and so to that end the English Court is not in a jurisdictional battle as the English Courts do not properly have jurisdiction.

75. Finally, in the alternative, the Claimant submits that the court ought to exercise its supportive jurisdiction under Article 13 of the Application of DIFC Law, read with Article 32 and Article 5(A)(1)(E) of the JAL.

76. Since the Repatriation Agreement does not specify the law governing the dispute, as per Article 10 of the Application of DIFC Law (D/1486), the contract shall be governed by the law of the DIFC. Article 13 of the Application of DIFC Law (D/1487) mandates that submission to arbitration within a contract shall be effective, reflecting the statutory position that in contracts governed by DIFC Law, arbitration agreements will be given effect.

77. Article 13 of the Application of DIFC Law r/w Article 32 of the Court Law and Article 5(A)(1)(e) of JAL would grant jurisdiction to the Court to grant an anti-suit injunction, when its absence would render Article 13 of the Application of DIFC Law ineffective This is because the DIFC Court has power under Article 32 of the Court Law to issue interim or interlocutory orders in proceedings before the Court, including cases

where the remedy sought is in relation to proceedings outside the DIFC, and by operation of Article 5(A)(1)(e) of the JAL, the Rules of Court fall within the category of `DIFC Regulations' which can be a source of jurisdiction. Additionally, the express provision of Article 13 confirming "effectiveness of express submission to.arbitration", suggests that the Court has the jurisdiction and powers to ensure arbitration agreements are given effect.

78. Furthermore, the lengthier and costlier Section 9 Application contradicts the overriding objective, and the English High Court seeks to address complex issues of DIFC and non-DIFC Dubai law, which are better suited for the DIFC Courts to interpret. This would require detailed expert testimony on issues of law, which can be avoided by this court ruling on the issue.

79. Decree 34 is part of both DIFC and non-DIFC Law, and Article 6 validates arbitration clauses designating DIFC-LCIA as the institution. On this basis, the DIFC Court should exercise jurisdiction to safeguard the Arbitration Agreement and not leave this decision to a foreign court.

80. In *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, the UK Supreme Court's view was since the governing law of the contract was English Law the Arbitration Agreement was governed by English law, which was sufficient to establish the jurisdiction of the English Courts over a claim to enforce that agreement. Based on that reasoning, an anti-suit injunction was available from the English Courts even if the contract provides for arbitration seated in a different jurisdiction on account of the English Court having a role in the policing and protection of arbitration agreements subject to English law. therefore, since Article 8A of the DIFC Application Law states that DIFC statutes can be supplemented by (English) common law, the English position in *Unicredit* should thus apply to the DIFC. This because while the Arbitration Agreement would be governed by law of the seat (DIFC or non-DIFC Dubai) as per Decree 34, Article 6 of Decree 34 and Article 13 of the Application of DIFC Law being part of the governing law will provide the same basis of policing and protection of arbitration agreements where the substantive contract was subject to DIFC law.

Discussion and Conclusion

81. This case lends to a complicated conflagration of opposing interpretations and duplicate applications in an apparent race to establish the same principle in as many courts as possible.

82. The parties' positions have been well explored in the 20 January 2025 and 5 February 2025 hearings, as well as through the written submissions. Not all points will be discussed here; priority will be given to the determinative submissions, though all evidence presented has and will be considered.

83. I accept that the source of this Court's supportive jurisdiction to grant the ASI stems from Article 32 of the Court Law, as this is a general interim relief not necessarily restricted to arbitration cases, and it follows the precedent set by the Court of Appeal. I also accept that there has been a good amount of contextual evidence shown to skew the favour of the DIFC being the seat of the arbitration, but not satisfied enough that the high probability threshold has been met. Further investigation will be needed, but nonetheless the Article 32 jurisdiction is an independent power irrespective of the seat, and I am sufficiently convinced that these are exceptional circumstances to exercise this power. This stems from the fact that the seat has not yet been established, nor has either court (the DIFC or the English High Court) determined the seat, but granting the ASI protects the contractual obligations of the parties.

84. I am also satisfied that a valid arbitration agreement exists between the parties. DIAC accepted jurisdiction on a prima-facie basis and registered the arbitration initiated by the Claimant, and so I see no reason why the DIFC Court would act contrary to this decision; nonetheless, the move from DIFC-LCIA to DIAC would not render DIFC-LCIA agreement invalid, but merely linguistically outdated. I am not entirely convinced by the grammatical interpretation of Article 6 of Decree 34, given that the article is a direct translation of the Arabic draft and so the intricate grammatical rules of English literature may not always apply as per the intention of the translation, but this has not affected my decision on the matter. Following from this, I accept that Mr Najem is equally bound by the Arbitration Agreement as a principal pursuant to Articles 130 and 131 of the DIFC Contract Law.

85. I am not satisfied that it is a consumer contract. The Defendants have done little other than insist that it is the reasonable course of understanding that the Defendants are consumers. The DIFC Arbitration Law is clear on who amounts to a consumer, and as Mr Najem is a pilot who entered into the Repatriation Agreement within the course of his trade, he cannot be regarded as a consumer irrespective of whether it is reasonable to assume that he has hired other planes previously. This matter does not invalidate the enforcement of the Arbitration Agreement.

86. On the comity principle, in my view this is insufficient to justify or assume the English High Court's unwavering jurisdiction to determine the Section 9 Application particularly since the Section 9 Application hearing has not happened yet, nor does comity apply where the intention of granting an anti-suit injunction is to hold parties to their contractual obligations. Given that, in my view, this Court has jurisdiction to issue the ASI, I see no reasonable reason not to grant it since the ASI offers similar protection akin to a stay as sought by the Defendant.

87. On the matter of the cross undertaking of damages, given that this order favours the Claimant, this is a non-issue for the application.

88. On 20 January 2025, I was satisfied that the conditions to grant an interim injunction were met; I am satisfied here again for the anti-suit injunction to be granted, restraining the Defendants from initiating or continuing proceedings before any court or tribunal in the United Kingdom, or any other alternative jurisdiction outside the DIFC.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 19 February 2025
At: 3pm