In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

IN THE MATTER OF CASE NUMBER ADGMCFI-2024-322
BETWEEN

A17
Claimant/ Applicant

and

B17
First Defendant/ First Respondent

C17
Second Defendant/ Second Respondent

D17
Third Defendant/ Third Respondent

IN THE MATTER OF CASE NUMBER ADGMCFI-2024-323
BETWEEN

A18
Claimant/ Applicant

and

B18
First Defendant/ First Respondent

C18
Second Defendant/ Second Respondent

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2025] ADGMCFI 0001
Before:	Justice Sir Andrew Smith
Decision Date:	21 February 2025
Decision:	1. The Jurisdiction and Discharge Application and Recognition and Enforcement Set Aside Application are dismissed. 2. By 4.00 pm on 3 March 2025, the parties shall file and serve: a. in case no. ADGMCFI-2024-322, their further submissions in relation to the Information Application that arise consequentially upon the Judgment; b. In case no. ADGMCFI-2024-322, any submissions as to the terms of the WFO; and c. in case nos. ADGMCFI-2024-322 and ADGMCFI-2024-323, their submissions in relation to costs and any other matters that arise consequentially upon the Judgment. 3. The cases be listed for a further hearing in relation to the matters set out in paragraph 2 above, such hearing to be conducted virtually and in private (the "Consequential Hearing"). The parties shall liaise with the Court Registry in relation to fixing the date for the Consequential Hearing. 4. Costs reserved. 5. Liberty to apply.
Hearing Date(s):	28 January 2025 and 29 January 2025
Date of Order:	21 February 2025
Catchwords:	Application to discharge worldwide freezing order. Jurisdiction of the Court to make worldwide freezing order. Chabra jurisdiction. Application for further information under information order. Application to set aside recognition and enforcement order of arbitral award.
Legislation Cited:	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ADGM Arbitration Regulations 2015 ADGM Court Procedure Rules 2016

	Abu Dhabi Law No 4 of 2013, as amended by Abu Dhabi Law No 12 of 2020 Application of English Law Regulations 2015 Judicial Authority Law (No. 12 of 2004) Senior Courts Act 1981 Civil Jurisdiction and Judgments Act 1982
Cases Cited:	Guarantee Trust Co of New York v Hannay & Co [1915] 2 KB 536 Abu Dhabi Commercial Bank PJSC v Bavaguthu Raghuram Shetty and ors [2021] ADGM CFI 0004 Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24 Conocophillips China Inc v Greka Energy (International) BV and anor [2013] EWHC 2733 (Comm) Cruz City 1 Mauritius Holdings v Unitech Ltd and ors [2014] EWHC 3704 (Comm) Abu Dhabi Commercial Bank PJSC v Prasanth Manghat [2024] ADGM CFI 010 Carmon Reestrutura-engenharia E Services Tecnios Especiais, (SU) LDA and anor v Antonio Joao Catete Lopes Cuenda [2024] DIFC CA 003 Sandra Holding Ltd and anor v Nuri Musaed Al Saleh and ors [2023] DIFC CA 003 Fourie v Le Roux and ors [2007] UKHL 1 Lakatamia Shipping Co Ltd v Morimoto [2019] EWCA Civ 2203 TSB Privat Bank International SA v Chabra and anor [1992] 1 WLR 231 PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and ors [2013] EWHC 422 (Comm) Wolverhampton City Council and ors v London Gypsies and Travellers and ors [2023] UKSC 47 ArcelorMittal USA LLC v Essar Steel Services (UK) Ltd and ors [2019] EWHC 724 Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line (case c-391/95) Republic of Haiti v Duvalier [1990] 1 QB 202 Mobil Cerro Negro Ltd v Petroleos de Venezuela SA [2008] EWHC 532 (Comm) Motorola Credit Corpn v Uzan and ors (No 2) [2003] EWCA Civ 752 AC Network Holding Ltd and ors v. Polymath Ekar SPV1 and ors [2023] ADGM CA 0002

	Yukong Line Ltd v Rendsburg Investments Corp. [2000] EWCA Civ 358 Alexander Tugushev v Vitaly Orlov and ors [2019] EWHC 2031 (Comm) A v C [2020] EWCA Civ 409 Lachesis v Lacrosse [2021] DIFC CA 005 A4 v B4 [2019] ADGM CFI 0007 General Dynamics United Kingdom Limited v the State of Libya [2022] EWHA 501 (Comm)
Case Numbers:	ADGMCFI-2024-322 and ADGMCFI-2024-323
Parties and representation:	**ADGMCFI-2024-322** Mr Arash Koozehkanani, Allen Overy Shearman Sterling LLP (Claimant/ Applicant) Mr Patrick Dillon-Malone SC and Mr William Prasifka, Clyde & Co LLP (First, Second and Third Defendants/ Respondents) **ADGMCFI-2024-323** Mr Arash Koozehkanani, Allen Overy Shearman Sterling LLP (Claimant/ Applicant) Mr Patrick Dillon-Malone SC and Mr William Prasifka, Clyde & Co LLP (First and Second Respondents)

JUDGMENT

Introduction

Procedural History

1. These proceedings arise from a London-based arbitration conducted under the rules of the London Court of International Arbitration ("**LCIA**") and brought by the Claimant, A17/A18 ("**A17**"), a company incorporated in "on-shore" Abu Dhabi, against the First Respondent, B17/B18 ("**B17**"), and the Second Respondent, C17/C18 ("**C17**"), both Cypriot companies. After a hearing on 20 and 24 May 2024, the Tribunal made an award dated 13 August 2024 and issued to the parties on 15 August 2024 (with an addendum of corrections dated 17 September 2024) (the "**Award**"). A17 was awarded against both B17 and C17 US$149 million, together with contractual interest of US$76,057,704.88, further interest and costs. Counterclaims against A17 were dismissed by the Tribunal. The time for challenging the Award has expired. It remains wholly unsatisfied.

2. On 6 December 2024, in its claim in case no. ADGMCFI-2024-322, A17 applied for a worldwide freezing order ("**WFO**") and ancillary orders against B17, C17 and the Third Respondent("**D17**"), a company incorporated in the Abu Dhabi Global Market ("**ADGM**"). The application was supported by an affidavit of Mr David Odejayi, a solicitor with Allen Overy Shearman Sterling LLC ("**A&O Shearman**"), A17's solicitors. It is convenient to mention here in passing that the Respondents have criticised A17 for relying on a lawyer's evidence to support its ex parte application. Given the nature of the evidence, I reject that criticism.

3. On 9 December 2024, A17 brought its claim in case no. ADGMCFI-2024-323 against B17 and C17 for an order for recognition and enforcement of the Award. It was supported by a witness statement of Mr Odejayi.

4. After an ex parte hearing on 11 December 2024, I made a WFO against B17, C17 and D17 with a return date of 19 December 2024, subject to a limit of US$250,000,000. The WFO included an order (the "**Information Order**") that the Respondents provide information about their assets worldwide that exceed US$50,000 in value. I gave reasons for my order in an oral ruling (the "**Ruling**") at the hearing.

5. On 17 December 2024, the Respondents, by their solicitors, Clyde & Co LLP ("**Clydes**"), acknowledged service in case nos. ADGMCFI-2024-322 and ADGMCFI-2024-323. The Respondents also filed and served in response to the Information Order an affidavit of Mr D, Vice-President of D17, dated 17 December 2024 and a witness statement of 17 December 2024 by Ms B, Chief of Staff of the Respondents' Group, which includes B17, C17 and D17. This evidence was filed and served expressly subject to the Respondents' reservation of their rights to challenge the Court's jurisdiction. A17 complains that the Respondents' response to the Information Order is inadequate.

6. At a hearing on 19 December 2024, Clydes appeared for the Respondents without prejudice to their challenge to the jurisdiction of the Court. Mr Patrick Dillon-Malone SC of Clydes said that the Respondents would apply to set aside the WFO on jurisdictional and other grounds. I directed a timetable for the Respondents' proposed application, and a hearing of it on 28 January 2025. I continued the WFO pending the hearing.

7. On 19 December 2024, I also made an order (the **"Recognition and Enforcement Order**") under section 61 of ADGM Arbitration Regulations 2015 (the "**Arbitration Regulations**") for the recognition and enforcement of the Award, subject to provisions delaying enforcement pending the determination of an application by the Respondents to set it the Recognition and Enforcement Order aside, which was to be filed and served by 10 January 2025.

8. On 10 January 2025, the Respondents in each case respectively filed and served:

   a. an application (the "**Jurisdiction and Discharge Application**") for a declaration that the Court had no jurisdiction to make the WFO, including the Information Order, and for an order discharging the WFO, together with other relief; and

   b. an application (the "**Recognition and Enforcement Set Aside Application**") for a declaration that the Court should not have exercised its jurisdiction to make the Recognition and Enforcement Order and setting it aside, together with other relief.

9. The Respondents' applications were supported by affidavits of Mr D and Ms B dated 10 January 2025.

10. Further, on 10 January 2025, A17 filed and served an application (the "**Information Application**") for an order requiring the Respondents to give on affidavit further information about their assets. It was supported by a witness statement of Mr Odejayi dated 10 January 2025.

11. The parties served further evidence:

    a. in respect of the Jurisdiction and Discharge Application and the Recognition and Enforcement Set Aside Application, by way of an affidavit of Mr Odejayi dated 18 January 2025, an affidavit of Mr D dated 21 January 2025, and an affidavit of Ms B dated 21 January 2025; and

b. in respect of the Information Application, by way of an affidavit of Ms B dated 17 January 2025 (and subsequently on 5 February 2025), and a witness statement of Mr Odejayi dated 21 January 2025.

12. Thus, on 28 and 29 January 2025, I heard three applications: the Jurisdiction and Discharge Application, the Recognition and Enforcement Application and the Information Application. The Claimant in each case was represented by Mr Arash Koozehkanani of A&O Shearman, and the Respondents were represented by Mr Dillon-Malone and Mr William Prasifka of Clyde & Co.

The Parties

13. A17 is a developer and provider of autonomous systems in the defence sector. It is a subsidiary of A17's Indirect Parent's Group.

14. The Respondents are all companies in the Respondents' Group, which is described in the Award as a group of companies owned by Mr I "*operating in the field of defence aerospace and security*". In a declaration of 24 September 2024 (the "**G Declaration**") made in proceedings in the United States Bankruptcy Court for the District of Delaware (the "**Delaware Proceedings**", and the "**Delaware Court**"), Mr G, then the Chief Executive Officer ("**CEO**") of the Respondents' Group, said that the Respondents' Group was founded in 1994 in South Africa, and over time it expanded to work over five continents, employing over 400 employees, and that the Respondents' Group is now "*headquartered in Abu Dhabi*".

15. C17 is wholly owned by B17, and both are ultimately owned by Mr I. D17 is owned as to 74% by C17 and as to 26% by Respondents' Affiliated Company 1. According to the G Declaration, D17 had placed the 26% holding in Respondents' Affiliated Company 1 "*to hold as nominee for A17 in connection with A17's purported investment*" in D17, but A17 does not, on the present state of its information, accept that.

The Underlying Claim

16. By an agreement of 30 January 2019 (the "**Facility**"), A17 agreed to lend C17 US$150 million by way of a term loan facility. By a corporate guarantee of the same date ("the **Guarantee**"), B17 guaranteed the performance of C17's obligations under the Facility.

17. A17 advanced under the Facility, and C17 utilised, sums totalling US$149 million, but, as A17 claims, C17 defaulted under the Facility, and A17 exercised its rights to cancel it and to require repayment of the loan with interest and other amounts payable under the Facility, and to make demand under the Guarantee. The Award upheld A17's claims.

18. D17 has no liability to A17 in respect of the Facility or the Guarantee, and it was not party to the Award. However, as was required by the terms of the Facility, by a share charge dated 25 April 2019 (the "**Charge**"), C17 charged its shares in D17 by way of security of performance of its obligations under the Facility.

The Delaware Proceedings

19. It is convenient next to describe the Delaware Proceedings, which were Chapter 11 Proceedings brought by the Respondents. I must do so at some length.

20. On 22 July 2024, the Respondents' Group incorporated in Delaware, United States of America ("**USA**") Respondents' Group Company 1. It is wholly owned, directly or indirectly, by D17.

21. On 25 July 2024, Respondents' Group Company 1 and the Respondents passed resolutions authorising the companies to file for bankruptcy in the Delaware Court under Chapter 11 of title 11 of the United States Code ("**Chapter 11")**. On 15 August 2024, the day when the Award was notified to the parties to the arbitration, the Respondents and Respondents' Group Company 1 (together, the "**Petitioners"**) filed voluntary petitions for bankruptcy in the Delaware Court. They filed schedules of assets and liabilities on 13 September 2024 and statements of their financial affairs on 17 September 2024.

22. The Petitioners also filed various "*first day motions*", which were supported by the G Declaration. They included a motion filed on 24 September 2024 (the "**CMS Motion**"), which sought inter alia authority to continue to operate a cash management system (the "**CMS**") (rather than transfer the funds to a bank that was party to a Uniform Depository Agreement in accordance with the Bankruptcy Code), and to continue to carry out inter-company transactions within the Respondents' Group. I shall return to these matters later in my judgment: here, I confine myself to citing the opening sentences of the "*overview*" of them in the CMS Motion. Of the CMS, it was said, "*In the ordinary course of business, [Respondents' Group Company 1, B17 and C17] do not maintain any bank accounts, while [D17] maintains an integrated cash-management system …that is essential to collect, transfer, manage and disburse funds generated and used in the Company's business*": the "*Company*" is a term defined to mean the Petitioners, including B17 and C17, and their "*Non-Debtor Affiliates*". The CMS Motion goes on to say that the CMS operates through bank accounts and a corporate credit card account, and to refer to: (i) an exhibit to the proposed order identifying the bank accounts; and (ii) a "*diagram depicting the [CMS], including the flow of funds between Bank accounts"* (the "**Schematic**"). Of the inter-company transactions, the CMS Motion states, "*In the ordinary course of business, the [Petitioners] have engaged in routine business relationships with each other and their Non-Debtor Affiliates … resulting in intercompany receivables and payables (the "Intercompany Balances"). Accordingly, at any given time, there may be Intercompany Balances owing by one Debtor to another Debtor or Non-Debtor Affiliate"*.

23. The CMS Motion also referred to so-called "*Inadvertent Payments*", payments to the total of some US$1.9 million which, it was said, had been made after the Delaware Proceedings had been brought in respect of liabilities that had been incurred earlier. I return to the Inadvertent Payments at para 98 below.

24. Mr D has given evidence in these proceedings that he had been advised that such motions are "*routinely granted*", and criticised A17 for opposing it. However, the decision of Judge Laurie Silverstein of the Delaware Court shows that the CMS Motion was not a formality: she rejected it. Nevertheless, according to the Trustee's Motion, to which I refer below at para 31, the Petitioners "*made no effort to protect these funds by transferring them to an authorized bank or one willing to enter into a uniform depository agreement with the U.S. Trustee*", sc, the United States Trustee for Region Three (the "**US Trustee**") (which includes Delaware), who is charged with overseeing the administration of bankruptcy cases.

25. On 18 September 2024, there was a meeting of creditors of the petitioners conducted by the US Trustee. Mr G gave evidence at it.

26. Mr G also made the G Declaration of 24 September 2024 in support of the petitions and the first day motions, including the CMS Motion**.** He said that the Petitioners "*operate primarily as holding companies within the larger Company structure*", and that they had "*affirmative claims against [A17, A17's Parent and other companies in A17's Indirect Parent's Group] stemming from such parties' intentional interference in [the Respondents' Group's] business, operations, and customers, including through the poaching of key [Respondents' Group] employees and the unauthorized use and misappropriation of [the Respondents' Group's] intellectual property*".

27. Earlier, on 6 September 2024, A17 had filed a motion seeking permission to request discovery in the Delaware Proceedings by way of witness testimony and production of documents. There was a hearing of A17's motion on 8 October 2024. The Petitioners objected to production of some, but not of all, of the documents that A17 requested, inter alia on the grounds that A17 is a competitor of the Respondents' Group. Judge Silverstein ruled that "*If the argument … that [A17] is a competitor and there is sensitive information that the debtor doesn't want to provide, I need some evidence on that. I have no evidence on that. And if there's going to be a basis for withholding information, then I need evidence. So I'm going to continue this matter …, but in the meantime … the documents that the debtor said it would provide should be provided, and then we'll figure out what additional documents may or may not need to be provided*".

28. The Judge also ordered Mr G to attend a deposition. However, before it could take place, he resigned from the Respondents' Group (including Respondents' Group Company 1, of which he was the sole director). According to submissions made in the proceedings by Mr Kenneth Pasquale of Paul Hastings LLP, A17's representatives, he resigned on 9 October 2024, and he was said to have "*disappeared*" when A17 sought to serve him with papers for the deposition.

29. Following the hearing on 8 October 2024, the Petitioners disclosed some documents on 25 October 2024. On 4 November 2024, they said that they would provide more on 5 November 2024. However, they did not do so. In an email of 8 November 2024, A17's American lawyers wrote to the Petitioners' lawyers to confirm, inter alia, that the Respondents had said that they "*do not intend to satisfy or respond to … [t]he Court's order to produce documents at the October 8, 2024 hearing in response to [A17's] … motion*".

30. On 25 October 2024, A17 filed a motion for the appointment of a Chapter 11 Trustee to manage the affairs of the Petitioners, or, in the alternative, an Examiner to investigate their affairs.

31. On 31 October 2024, the US Trustee filed a motion (the "**Trustee's Motion**") to have the petitions dismissed. The Trustee's Motion referred to the incorporation of Respondents' Group Company 1, observing that "*But for the creation of [Respondents' Group Company 1], the sole U.S. entity, it appears that the [Petitioners] would not have a basis to file and maintain these bankruptcy cases in the United States*", that Respondents' Group Company 1 was incorporated shortly before the petitions were filed and that, only three days after its incorporation, it passed a resolution authorising its chapter 11 petition. The Trustee's Motion referred to so-called "*Transferred Assets*", meaning equity interests in subsidiaries that were transferred to Respondents' Group Company 1 by D17 in July 2024, and it said, "*After the creation of the Delaware entity, the [Petitioners] conveyed the Transferred Assets to [Respondents' Group Company 1]. All the uncontroverted evidence points to the fact that the [Petitioners] orchestrated the creation of [Respondents' Group Company 1], the transfer of the Transferred Assets and the filing of the [petitions]. This was done with the purpose of creating the basis for these bankruptcies and to thwart [A17's] execution of the Arbitration Award. To quote this Court: 'These bankruptcy petitions fall on the dark side of the spectrum ranging from the clearly acceptable to the patently abusive'. In re Rent-A-Wreck 580 B.R. at 833*".

32. The Trustee's Motion made other criticisms of the Petitioners, including their failure to transfer funds to an authorised depository (see para 24 above) and that they had, as they acknowledged, made "*improper and illegal transfers of more than $1.8 million*" and had "*provided absolutely no explanation as to why these transfers were made and who authorized the transfers*".

33. On 5 November 2024, the Petitioners informed A17 that they would consent to the Delaware Proceedings being dismissed. On 7 November 2024, they filed a consent and joinder to the Trustee's Motion.

34. On 12 November 2024, Respondents' Group Company 2, which was owned by Respondents' Group Company 1 and so was an indirect subsidiary of D17, brought proceedings under the South African Companies Act 2008 by way of "*business rescue proceedings*", which, according to the evidence of Mr Odejayi that has not been disputed by the Respondents, brought about a moratorium on legal proceedings belonging to or in the possession of Respondents' Group Company 2 in South Africa, but does not have extraterritorial effect or prohibit proceedings against the Respondents.

35. On 13 November 2024, A17 requested the Court to convene a conference about the Petitioners' failure to make disclosure of documents. At a conference on 15 November 2024, A17 told the Court that it would invite an adverse inference from the transfers of assets by the Petitioners within the Respondents' Group, but the Petitioners' representative responded that they would not be providing more evidence to explain them. He stated the Petitioners' position as follows: "*when [Mr G] resigned from his positions with the [Petitioners], that changed everything. … We, with the [Petitioners], took efforts to retain independent directors and when that quote came in for the D&O insurance at that rate, which [A17] dismisses as something insignificant, but when the [Petitioners], in their bank accounts, have only a few million dollars and the D&O insurance is going to cost almost a million dollars upfront, non-refundable, in the face of motions to dismiss and motions to appoint the Chapter trustee, it would have been irresponsible for the [Petitioners] to proceed with that*".

36. There was a further hearing in the proceedings on 22 November 2024, at which Judge Silverstein heard argument about the Trustee's Motion and A17's motion for the appointment of a Chapter 11 trustee or an examiner. In a reserved judgment delivered on 3 December 2024, Judge Silverstein described the proceedings as having been filed *"in bad faith"* and she ruled that the Delaware Proceedings should be dismissed. The Court so ordered on 6 December 2024.

37. The Respondents have put in evidence a declaration of a Mr Clinton E Cameron, a partner in Clydes' Chicago office and Clyde & Co US LLP, a Delaware partnership, who has considerable experience in American bankruptcy cases. (A17 raised no objection to this evidence, although the Respondents had not sought or obtained permission for expert evidence: I shall receive it.) Mr Cameron explained that good faith is an implicit requirement in filing a Chapter 11 bankruptcy case and if a case has not been filed in good faith, it is dismissed; and that the United States Court of Appeal for the Third Circuit, which covers Delaware and whose decisions are binding on the Delaware Court, does not interpret this requirement as only going to the debtor's subjective intention in filing the case, but a filing is considered to be made in bad faith if it is made in order to achieve a purpose that is not within the legitimate scope of the bankruptcy law.

38. This was not disputed, and is indeed apparent from Judge Silverstein's judgment, where she said, "*The Third Circuit explains that if a debtor's case has been filed in bad faith, that is where the filing of the petition is an abuse of the bankruptcy process, the Court does not evaluate whether conversion or dismissal is appropriate*". However, in view of the emphasis that the Respondents put on this point in argument before me, I set out the reasons that Judge Silverstein gave for concluding that in this case the petitions were filed "*in bad faith*":

> "*… I conclude that these cases were filed in bad faith and constitute a two-party dispute. … As with all motions to dismiss for a bad faith filing, my conclusion is fact specific and based on the confluence of facts in this case based on the evidence presented. First, [Respondents' Group Company 1], the Delaware entity, did not exist until 22 days before the petition and had no assets until another debtor transferred its ownership of various non-debtor entities. Prior to then, none of the four debtor entities had any relationship to themselves in the United States. While certain of the non-debtor entities are US entities and there are apparently some operations in Texas, the four debtors have no US connections themselves except for the formation of the US debtor entity. Second, the cases were filed to prevent collection of the*

arbitration award. Third, these cases are essentially a two-party dispute between debtors and [A17]. [A17] has a $250 million award against certain of the debtors. Debtors assert that the larger [Respondents' Group] has claims against [A17] in excess of $700 million for intentional interference with their business and customers and for the misappropriation of intellectual property. No part of either dispute seems to have any United States connection ... Fourth, while I will admit that lack of governance concerns me and gives me some pause about dismissing the cases, it also suggests that debtors may not have had corporate authority to file these cases in the first. While any one of these facts may not amount to a bad faith filing, the combination under the circumstances here do".

39. With regard to A17's motion, the Judge decided that, since the cases should not have been filed in the Court, the question of appointment of a trustee or an examiner did not arise.

40. In these proceedings, Mr D has given evidence that the "*US jurisdiction was grounded on multiple substantial factors, including but not limited to: (i) the presence of significant contracts in with US corporations; (ii) established operations and facilities in Fort Worth, Texas; (iii) having an American Chief Executive Officer; and (iv) the maintenance of US dollar-denominated accounts".* I comment only that I can well understand why these points did not impress Judge Silverstein.

41. The Respondents have argued that A17's conduct of the Bankruptcy Proceedings was unduly aggressive and they conducted them (in Mr D's words) *"as an aggressive competitor intent on putting the Respondents out of business rather than a creditor seeking to recover monies owing".* I have already said that the Judge upheld A17's objection to the CMS Motion (at para 24 above), and I refer to matters of disclosure below. Here, I only say that I am not persuaded of the Respondents' complaint: they, together with Respondents' Group Company 1, filed the Bankruptcy Proceedings, which prevented A17 from enforcing the Award elsewhere, and were designed to do so. They can hardly complain that in these circumstances A17 exercised their rights as Chapter 11 creditors to protect the Petitioners' estate for creditors and to probe how the Respondents had dealt with their assets.

The Law

ADGM's jurisdiction in the strict sense

42. The Respondents challenged the Court's jurisdiction to make worldwide freezing orders against B17 and C17. At the outset, it is necessary to distinguish two senses in which the terms "*jurisdiction"* is used, as was clearly stated by Pickford LJ in his much-cited dictum in *Guarantee Trust Co of New York v Hannay & Co [1915] 2 KB 536, 563: "The first and, in my opinion, only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it was raised. But there is another sense in which it is often used, i.e., that although the court has power to decide the question it will not according to settled practice do so except in a certain way and under certain circumstances".* As I understand his submissions, Mr Dillon-Malone argued that the Court had no jurisdiction to make the WFO on 11 December 2024 in either sense of the expression.

43. I consider first the submission that the Court did not have jurisdiction in the former of Pickford LJ's senses. I reject it.

44. The jurisdiction of ADGM Courts is statutory and is stated in Article 13 of Law No 4 of 2013, as amended by Law No 12 of 2020 (the "**Founding Law**"). Article 13(7) provides as follows:

"*The Court of First Instance and (sic) shall have exclusive jurisdiction to consider and decide on matters according to the following:*

a) Civil or commercial claims and disputes involving the Global Market or any of the Global Market Authorities or any of the Global Market Establishments;

b) Civil or commercial claims and disputes arising out of or relating to a contract entered into, executed or performed in whole or in part in the Global Market, or a transaction entered into or performed in whole or in part in the Global Market, or to an incident that occurred in whole or in part in the Global Market;

c) Any appeal against a decision or a procedure issued by any of the Global Market Authorities according to the Global Market Regulations;

d) Any request, claim or dispute which the Global Market's Courts has the jurisdiction to consider under the Global Market Regulations;

e) Any issues concerning the interpretation of any articles of the Global Market Regulations".

45. Article 13(8) provides that, "*The Global Market's Courts may hear and adjudicate any civil or commercial claim or dispute where the parties agree in writing to file such claim or dispute with them whether before or after the claim or dispute arises*".

46. A17 contends that the Court has jurisdiction to make a WFO under Article 13(7)(d) of the Founding Law, together with the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts etc Regulations**"), which are "*Global Market Regulations"* within the meaning of Article 13(7)(d): see the definition of "*Global Market Regulations*" in Article 1 of the Founding Law.

47. Section 41 of the Courts etc Regulations provides:

"*(1) The Court of First Instance may by order (whether interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.*

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3) The power of the Court of First Instance under subsection (1) to grant an interim injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance or the Emirate, or otherwise dealing with, assets located within that jurisdiction or the Emirate shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction….".

48. Section 16 of the Courts etc Regulations provides:

"*(1) The Court of First Instance shall be a superior court of record.*

(2) Subject to the provisions of these Regulations, there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by – (

a) Articles 13(7) and (8) of the ADGM Founding Law;

(b) an Applicable Abu Dhabi Law;

(c) these Regulations;

(d) any other ADGM enactment; or

(e) any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute.

...

(4) The specific mention elsewhere in these Regulations of any jurisdiction covered by subsection (2) shall not derogate from the generality of that subsection".

49. The term "*ADGM enactment*" is defined in section 227, and it covers the ADGM Court Procedure Rules 2016 ("**CPR**"). Rule 71 of the CPR provides:

"*The Court may grant such interim remedies as are necessary in the interests of justice (whether in the particular case or more generally) including –*

(a) an interim injunction;

...

(f) an order (referred to as a "freezing injunction") restraining a party from removing from a particular jurisdiction assets located within that jurisdiction or from dealing with or removing from ADGM or any other jurisdiction any assets which are located there;

(g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction; ...".

50. In view of these provisions, in *Abu Dhabi Commercial Bank PJSC v Bavaguthu Raghuram Shetty and ors* [2021] ADGM CFI 0004, I concluded that the Court had jurisdiction to make a WFO against Dr Shetty, although he was an Indian national and was not then in the ADGM (although he had a residency permit for the United Arab Emirates ("**UAE**")). I made this observation at para 21 of my judgment: *"... it would be a remarkable gap in the jurisdiction of the Court, and at odds with the general policy adopted by common law courts particularly in cases of what Dicey, Morris & Collins (15th Ed., 2012) at 8-040 calls 'the special case of fraud',* [see now (16th Ed, 2022) at para 10-051] *if there were no power to make a freezing order in respect of assets in its jurisdiction in a case such as this".*

51. In this case, the Respondents submitted that this reasoning and my conclusion were in error, and that the Court has no jurisdiction to make a WFO, being Cypriot companies. There appeared to be two main limbs to the argument: (i) that "*freezing orders operate in personam rather than in rem and that in personam jurisdiction is a necessary condition for the granting of such an order*"; and (ii) the provisions of the Courts etc Regulations and the CPR that are relied upon by A17 are to be interpreted narrowly and on their proper interpretation do not provide for jurisdiction to make a freezing order.

52. Mr Dillon-Malone cited extensive English authority in support of his argument about in personam jurisdiction, but I need refer only to two cases. In *Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24* at paras 101, 102, Lord Leggatt summarised current practice about making freezing orders as follows (emphasis added):

> "*101. In summary, a court with equitable and/or statutory jurisdiction to grant injunctions where it is just and convenient to do so has power - and it accords with principle and good practice - to grant a freezing injunction against a party (the respondent) over whom the court has personal jurisdiction provided that:*
>
> *i) the applicant has already been granted or has a good arguable case for being granted a judgment or order for the payment of a sum of money that is or will be enforceable through the process of the court;*
>
> *ii) the respondent holds assets (or ... is liable to take steps other than in the ordinary course of business which will reduce the value of assets) against which such a judgment could be enforced; and*
>
> *iii) there is a real risk that, unless the injunction is granted, the respondent will deal with such assets (or take steps which make them less valuable) other than in the ordinary course of business with the result that the availability or value of the assets is impaired and the judgment is left unsatisfied.*
>
> *102. Although other factors are potentially relevant to the exercise of the discretion whether to grant a freezing injunction, there are no other relevant restrictions on the availability in principle of the remedy. In particular:*
>
> *i) There is no requirement that the judgment should be a judgment of the domestic court - the principle applies equally to a foreign judgment or other award capable of enforcement in the same way as a judgment of the domestic court using the court's enforcement powers.*
>
> *ii) Although it is the usual situation, there is no requirement that the judgment should be a judgment against the respondent.*
>
> *iii) There is no requirement that proceedings in which the judgment is sought should yet have been commenced nor that a right to bring such proceedings should yet have arisen: it is enough that the court can be satisfied with a sufficient degree of certainty that a right to bring proceedings will arise and that proceedings will be brought (whether in the domestic court or before another court or tribunal)".*

53. The other English authority to which I refer here is the judgment of Popplewell J in *Conocophillips China Inc v Greka Energy (International) BV and anor [2013] EWHC 2733 (Comm),* a judgment which examined the authorities about freezing orders in support of a New York Convention arbitral award obtained abroad, and (at para 41) identified applicable principles, including that orders will *"rarely be appropriate ... where a defendant has no assets here and owes no allegiance to the English court by existence of in personam jurisdiction by domicile, or residence, or for some other reason. Protective measures should normally be left to the courts where the assets are to be found or the defendant resides*". Popplewell J went on to acknowledge, however, that "*in exceptional circumstances*" the Court might make a freezing order extending to foreign assets against a defendant who was not resident within the jurisdiction nor "*someone over whom the court has or*

would assume in personam jurisdiction for some other reason", and he identified what it would be likely that an applicant would need to establish. I return to this case at para 103 below.

54. Mr Dillon-Malone argued that, against the background of the restrictive approach of English law to making freezing orders against persons over whom it has no in personam jurisdiction, the provisions of the Courts etc Regulations and the CPR should be construed restrictively. He cited the judgment of Males J in *Cruz City 1 Mauritius Holdings v Unitech Ltd and ors [2014] EWHC 3704 (Comm)*, a case about whether the claimants should be given permission to serve proceedings out of the jurisdiction: "*...a principle of construction established for over a century is that any doubt as to the correct construction of the jurisdictional gateways ought to be resolved in favour of the foreign defendant"* (at para 15). He argued that neither section 41 of the Courts etc Regulations, nor rule 71 of the CPR expressly referred to the Court's jurisdiction, and that they should not be interpreted to create a jurisdiction which the Court would not otherwise have. Accordingly, he argued that, in the absence of in personam jurisdiction over the defendant, the Court does not have jurisdiction to make a freezing order against him.

55. I need no persuading that the English Courts exercises caution before making a freezing order against a respondent over whom it does not have in personam jurisdiction. However, the first difficulty with the Respondents' argument is that, unlike the English courts, this Court's jurisdiction is not based upon personal jurisdiction over defendants, nor upon service of proceedings upon them. As I said in my judgment in *Abu Dhabi Commercial Bank PJSC v Prasanth Manghat [2024] ADGM CFI 010* at para 16:

> *"Service is not a basis of jurisdiction in the ADGM, unlike in England. As Prof Adrian Briggs explained in relation to the Recast Brussels Regulation (EU Regulation 1215/2012), 'There are ... two kinds of service: service which creates and defines jurisdiction, and service which notifies the pre-existence of jurisdiction. Though each serves an important function, each operates within the confines of a coherent, self-contained, system, and takes its colour from its surroundings': The Hidden Depths of the Law of Jurisdiction [2016] LMCLQ 236, 238. In England service is of the first kind, whereas in the ADGM it is of the second kind. The corollary of this is that, unlike in England, the presence of a defendant within the ADGM has no immediate importance to a claimant's ability to establish the Court's jurisdiction to determine his claim".*

56. The emphasis in English cases on whether the Court has in personam jurisdiction over the defendants cannot be transposed into a restriction on the jurisdiction (in Pickford LJ's first sense) of ADGM Courts.

57. Nor am I impressed by the argument that the term "*jurisdiction*" is not used in the statutory provisions. They refer to the Court's "*power*", a word that has long been used to refer to the Court's jurisdiction in Pickford LJ's first sense. Indeed, it was the term that Pickford LJ used, and its usage has not changed: see, for example, the judgment of Lord Leggatt in the *Broad Idea* case at paras 76, 79 and 101 (cit sup).

The decisions of the DIFC Court of Appeal

58. My conclusion that the Court has jurisdiction in this sense to make WFOs against B17 and C17 is supported by the judgment of Court of Appeal of the Dubai Internation Financial Centre ("**DIFC**") in *Carmon Reestrutura-engenharia E Services Tecnios Especiais, (SU) LDA and anor v Antonio Joao Catetet Lope Cuenda [2024] DIFC CA 003*. In that case, the Court, overturning its previous decision in *Sandra Holding Ltd and anor v Fawzi Musaed Al Saleh and ors [2023] DIFC CA 003,* held that the

DIFC Courts have jurisdiction to grant interim relief in support of foreign proceedings, even if there is no nexus between the case (and the parties to it) and the DIFC.

59. The jurisdiction of the DIFC Court of First Instance is stated in Article 5A(1) of the Judicial Authority Law (No. 12 of 2004) (the "**JAL**") in terms materially similar to those of Article 13(8) of the Founding Law. Article 5A(1)(e) confers jurisdiction to hear and determine "[*a*]*ny claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations*". The thrust of the *Sandra Holding* decision was that the relevant Rules of the DIFC Courts (the "**RDC**") about interim remedies did not, on their proper construction, confer jurisdiction on the DIFC Courts under Article 5A(1)(e) for the Court to make a WFO, and so an applicant had to establish jurisdiction under another of the gateways in Article 5A of the JAL, which generally require a nexus to the DIFC. Thus, it held that the Court does not have freestanding jurisdiction to grant interim relief in support of foreign proceedings.

60. In its *Carmon* decision, the Court of Appeal overturned this interpretation of the Court's jurisdiction, and it held that the Court's jurisdiction to grant interim remedies, including freezing orders, is not so restricted. Under article 5(A)(1)(e) of the JAL, the RDC, being "*DIFC Regulations*", can be a source of the Courts' jurisdiction: that the question whether a particular provision of the RDC gives the Court jurisdiction is one of construction, and the relevant provisions are to be construed to give the Courts of the DIFC jurisdiction to make a freezing order in support of foreign proceedings.

61. I find the reasoning of the judgment in the *Carmon* case entirely persuasive, and I would respectfully adopt it. Mr Dillon-Malone did not suggest that there is any material difference between the relevant DIFC statutory provisions and those of the ADGM. I add only four further observations about this authority.

62. First, the Court of Appeal concluded that the restrictive view of the Court's jurisdiction taken in the *Sandra Holding* case "*can be said to have generated inconvenience in the sense that the absence of the power to issue a freezing order in respect of a prospective foreign judgment may result in the jurisdiction of this Court to recognise the foreign judgment ultimately issued being thwarted".* So too here, the power to make a freezing order is a natural ancillary power to the Court's jurisdiction (and duty) to recognise and enforce New York Convention arbitration awards under the Arbitration Regulations.

63. Secondly, the DIFC Court of Appeal observed (loc cit at para 148) that "*the approach to be taken by this Court in considering the jurisdiction and powers of the DIFC Courts must have regard to the function and purpose of those Courts. They are statutory courts integral to the operation of the DIFC as a Financial Free Zone";* and it went on to cite the statutory objectives of the DIFC. It also said (at para 155) that "*The DIFC Courts are part of a growing network of international commercial courts in a number of jurisdictions around the world. Where their jurisdiction and powers are amenable to constructions supporting the rule of law in transnational trade and commerce, such constructions are to be preferred*". These observations apply equally to the ADGM. The objectives of the ADGM are "*to promote the Emirate as a global financial centre, to develop the economy of the Emirate and make it an attractive environment for financial investments and an effective contributor to the international financial services industry*": see Article (3) of the Founding Law.

64. Next, the relevant DIFC statutory provisions are worded in terms of the "*power*" of the DIFC Courts. The DIFC Court of Appeal held that they conferred jurisdiction.

65. Finally, the decision in the *Carmon* case is a fully reasoned judgment of the Court of Appeal of the DIFC, the other common law Court of a Financial Free Zone of the UAE. In my judgment, for reasons of comity this Court would not differ from it without good reason to do so. (One such reason would,

of course, be that the ADGM's Application of English Law Regulations 2015 require this Court to follow a principle of English law that differs from DIFC law: see para 113 below.)

Jurisdiction under the Arbitration Regulations

66. In his skeleton argument, Mr Dillon-Malone raised a question about whether ADGM Courts has jurisdiction to make a freezing order to support an arbitration award under the Arbitration Regulations, and he rejected the suggestion. A17 did not put its case for a WFO on this basis when I made it. In view of my other conclusions, I do not need to engage with the proper interpretation and effect of the Arbitration Regulations. They are better considered after fuller submissions in another case.

ADGM Court's jurisdiction in the extended sense

67. I therefore come to Pickford LJ's alternative sense in which a court might be said to have no jurisdiction to make an order: that *"settled practice"* prevents the court from doing so. As Lord Scott explained in *Fourie v Le Roux and ors [2007] UKHL 1* (at para 25), this is not a matter of the judge's discretion: "*It involves an examination of the restrictions and limitations which have been placed by a combination of judicial precedent and rules of court on the circumstances in which the injunctive relief in question can properly be granted".* The statutory test in this Court for making in injunction is stated (as it is in section 37 of the English Senior Courts Act 1981) as being whether it is "*just and convenient*" to do so. Before the Court reaches that broad question, however, will consider whether it would be in accordance with settled practice (in the sense that Lord Scott explains) to make a freezing order. Lord Leggatt identified three restrictions on doing so at para 101 of his judgment (loc cit at para 52): I come to them later. (In his submissions, Mr Dillon-Malone also referred to the "*expediency*" requirement: this expression, I think, derives from section 25 of the United Kingdom Civil Jurisdiction and Judgments Act 1982. I shall avoid adding it to the terminology about the granting of freezing orders in this Court.) The applicant for a freezing order must make out a sufficient case, a good arguable case, that these requirements are satisfied.

68. As I said in *Abu Dhabi Commercial Bank v Shetty* (cit sup at para 26), "*this test does not require it to show that its claim is likely to succeed, or more likely to succeed than not. The English Court of Appeal has described the test as "a not particularly onerous one": Lakatamia Shipping v Morimoto, [2019] EWCA Civ 2203 at para 35".* In the *Lakadamia Shipping* case, Haddon-Cave LJ said (loc cit at para 38) that "*The central concept at the heart of the test was 'a plausible evidential basis'*".

69. Mr Dillon-Malone urged me to "*prefer*" the evidence of the Respondents' witnesses to that of A17. The criticisms that I have to make about the accuracy of some of their evidence (see para 179 below) does not assist his argument, but in any case this does not seem to me to reflect the proper approach to questions about whether the requirements are met. The submission reflects the approach of the Court to questions to be determined, generally at trial, on the balance of probabilities. It is not the approach that the Court takes on interim orders and where the question is whether an applicant's case is sufficiently arguable for the purpose of granting an interim remedy.

The Chabra jurisdiction

70. Paragraph 102(ii) of Lord Leggatt's judgment (see para 52 above) confirms that a freezing order may be made against a person against whom the applicant has no claim, judgment or prospective judgment. This is the so-called *Chabra* jurisdiction, which earns its name from the case of *TSB Private Bank International SA v Chabra and anor [1992] 1 WLR 231*, which first recognised the power.

71. In my Ruling, I said that an applicant for a Chabra injunction must establish: (i) that there are grounds for belief or good reason to suppose that the respondent has assets that that would be covered by the order; (ii) that there is good reason to suppose that the respondent has assets that would be amenable to some process, ultimately enforceable by the courts, by which the assets would be available to satisfy a judgment against the respondent to the applicant's substantive case (but the applicant does not have to identify specific assets in the hands of the respondent that would be available); and (iii) that there is a real risk that a judgment in the applicant's favour would go unsatisfied by reason of the respondent disposing of assets, unless restrained by the Court from doing so.

72. It is not in dispute that this formulation is in accordance with the principles of English law established before the judgments in the *Broad Idea* case: see, for example, *PJSC Vseukrainskyi Aktsionernyi Bank v* Sergey *Maksimov and ors [2013] EWHC 422 (Comm)* at para 7. However, Mr Dillon-Malone submitted that I misdirected myself because Lord Leggatt "*reformulated*" the applicable test in his judgment (esp at para 101, cit sup), and that English law, and so ADGM law, requires that A17 must establish that it has "*a good arguable case for enforcing a money judgment against [D17's] assets using some process of the Court … While [C17] may have a shareholding in respect of [D17], any enforcement action against those shares could never amount to an enforcement action against [D17]*".

73. I reject that argument: there is no indication in Lord Leggatt's judgment that he intended to make the test for making a Chabra injunction more demanding: on the contrary, Mr Dillon-Malone's interpretation of the judgment seems to me inconsistent with Lord Leggatt's "*enforcement principle",* which is key to his reasoning (loc cit at paras 84ff). I cannot accept that paragraph 101 of his judgment bears the interpretation that Mr Dillon-Malone sought to put on it. My view is, I think, confirmed by the judgment of Lords Reed, Briggs and Kitchen in *Wolverhampton City Council and ors v London Gypsies and Travellers and ors [2023] UKSC 47*, in that, when explaining the Chabra jurisdiction (at para 43), they cite the *TSB Private Bank International SA* case itself and other cases, without reference to the *Broad Idea* case. I add, however, even if I had accepted Mr Dillon-Malone's argument on this point, it would not have affected any of the decisions that I have reached.

The Respondents' Subsidiaries

74. The WFO included a provision in these terms: that

> "*the Respondents must not …*
>
> c. *in respect of bodies corporate which are directly or indirectly owned and/or controlled by a Respondent:*
>
> (i) *procure any of those bodies corporate to dispose of, deal with or diminish the value of any of their respective assets whether in or outside the ADGM up to the value of USD 250,000,000; or*
>
> (ii) *permit any of those bodies corporate to dispose of, deal with or diminish the value of any of their respective assets whether in or outside the ADGM up to the value of USD 250,000,000, save that this paragraph 5(c)(ii) does not prohibit any such entity from dealing with assets that it owns beneficially in the ordinary and proper course of its business*".

75. I explained in my Ruling why I had included this provision and its wording:

> "*Mr Koozehkanani submitted that this provision is required in order to give proper protection to [A17]. He drew my attention to the [CMS Motion]: 'The value of the debtors' estates, which is intrinsically tied to the value of the entire Company [that is to say. the [Respondents' Group] including 'affiliates' of the Petitioners] and in particular the [Petitioners'] operating subsidiaries would be negatively impacted if the [Petitioners] are required to move their bank accounts to another banking institution'. Mr Koozehkanani also pointed out that some of the impugned transactions had the effect of moving Respondents' assets to subsidiaries.*
>
> *I see considerable force in this argument, and I also recognise that the proposed prohibition is directed on its terms to the Respondents and not the operating companies. Against that, however, as I see it, realistically the provision would come close to piercing the corporate veil of the subsidiaries, and I am concerned about the risk that a provision in these terms might impermissibly interfere with the ordinary business of the subsidiaries. This is particularly so because the proposed order would not only prohibit the Respondents from procuring conduct on the part of other subsidiaries but also from permitting it, which, given the Respondents' controlling interest over the subsidiaries, would allow the order to impact on their ordinary business. I shall there refuse an order in the proposed terms insofar as it would prohibit the Respondents from permitting subsidiaries from dealing with their assets in the ordinary course of businesses provided that the subsidiary beneficially owns such asset"*.

76. Nevertheless, the Respondents, as it appears from Mr Dillon-Malone's submissions, have interpreted this provision of the WFO as making an order against subsidiary companies of the Respondents. On this basis, he argued that "*the shareholders of a company must be distinguished from the company itself*". This submission is based on a misinterpretation. I made no order against subsidiaries of the Respondents. The term cited above is an order against the Respondents, prohibiting them from arranging for their subsidiaries to dispose of their (the Respondents') assets that would otherwise be available to satisfy the Award, or reduce the value of such assets. It does not, contrary to Mr Dillon-Malone's submission, pierce the corporate veil, although, as I acknowledged, realistically it perhaps comes close to doing so.

77. A term of this kind is not, of course, routinely included in freezing orders, but really it does little more than spell out what is implicit in the more general wording of an order of this kind. It seems to me justified in this case in view of: (i) the evidence that the Respondents have transferred shareholdings in order to prevent payment of the Award; and (ii) the risk of D17 taking steps to dispose of subsidiaries and reduce the value of its shares so as to prevent the Award being satisfied by enforcement of the Charge. I am prepared to hear submissions about the exact wording of this provision when I have issued this judgment.

Has A17 satisfied the Requirements for a WFO?

Introduction

78. As I have said, Lord Leggatt set out three requirements for a freezing order in his *Broad Idea* judgment at para 101: see para 52 above. Has A17 established a good arguable case that they are satisfied?

79. I have no difficulty in holding that the first requirement is met: that A17 "*has already been granted or has a good arguable case for being granted a judgment or order for the payment of a sum of money that is or will be enforceable through the process of the court*". The Award in its favour has not been challenged and has not been paid.

80. The other two requirements need fuller consideration. It is convenient to deal next with the third requirement.

Is there a real risk that, unless the injunction is granted, the Respondents will deal with assets (or take steps which make them less valuable) so that the Award is not satisfied?

81. In my Ruling, I said that I was "*satisfied that [A17] has shown a sufficient case to satisfy the …requirement, which is often (perhaps slightly inaccurately) stated as being a requirement to show a risk of "dissipation" of assets*. I commented that the term "*dissipation*" might be misleading, in so far as it connotes assets being wasted or frittered away, or being scattered or dispersed. Lord Leggatt avoided the term when formulating the requirement for a freezing order as a real risk that, without an order, the Respondent "*will deal with [assets against which the Award could be enforced] (or take steps which make them less valuable) other than in the ordinary course of business with the result that the availability or value of the assets is impaired and the judgment is left unsatisfied*". Nevertheless, dissipation is a familiar and useful label, and (rather reluctantly) I shall use it and refer to the "**risk of dissipation**".

82. Between the hearing in the arbitration (on 20 and 24 May 2024) and the issue of the Award (on 15 August 2024) the Respondents transferred assets from B17 and from D17 (over shares in which A17 has a charge) to other entities in the Respondents' Group:

    a. On 1 June 2024, B17 transferred the shares in its subsidiary Respondents' Group Company 3 to the Respondents' Parent Trust. The consideration was nominal, being only US $1,000;

    b. On 14 June 2024, D17 transferred the shares in its subsidiary, Respondents' Group Company 4, to Respondents' Group Company 5. In the Delaware Proceedings, the consideration was said to be "*ZAR 11,820,000.00 (Nav) + 66.5% of Royalty Fee on sale of* [Respondent Group] *Products*"; and

    c. On 22 July 2024, the day of Respondents' Group Company 1's incorporation as D17's subsidiary, D17 transferred to it its shares in five operating subsidiaries, Respondents' Group Company 6, Respondents' Group Company 7, Respondents' Group Company 9, Respondents' Group Company 2, and Respondents' Group Company 8.

83. I shall consider these three transfers in reverse order.

84. At the meeting of creditors on 18 September 2024, Mr G said that Respondents' Group Company 1 was formed in order for the Group to raise capital in the USA. In his affidavit on these applications dated 10 January 2025, Mr D said that Respondents' Group Company 1 was established as a holding company based in the USA for companies in the Group that own intellectual property, to support the Group's transition to the intellectual property owning entity, to consolidate the ownership of operating companies that own intellectual property, and to "*facilitate capital raising*" in the USA. In his affidavit of 21 January 2025, Mr D also said that "*[Respondents' Group Company 1], as a Delaware company (i) ensured the integrity of the bankruptcy process as it applied to the [Respondents' Group's] operating companies, (ii) allowed orders of the US Bankruptcy Court to be upheld throughout the operating companies and (iii) ensured that the Applicant would not receive preference over other creditors*".

85. I do not consider that this evidence satisfactorily explains the transfers of the operating companies to Respondents' Group Company 1. In its Statement of Financial Affairs in the Delaware Proceedings, D17 listed these transfers as made "*other than properly … in the ordinary course of business or financial affairs*". The explanations for them have developed since the meeting on 18

September 2024, but they have not become more convincing. The Respondents have produced no documentary evidence to support them. It is not explained how the "*integrity*" of the Bankruptcy Proceedings was enhanced by the operating subsidiaries being owned indirectly by D17, though its subsidiary Respondents' Group Company 1, rather than directly by D17. Nor do I understand how it might assist the Respondents' Group to raise capital in the USA to have operating subsidiaries owned by a company that was incorporated there but immediately passed a resolution to enter into bankruptcy proceedings.

86. *As* for the transfer of the shares in Respondents' Group Company 4, Mr C, the Petitioners' proposed Chief Restructuring Officer, told the Delaware Court when the Trustee's Motion was heard on 22 November 2024 that the transfer was made "*to ensure that this business was compliant with the BEE Regime [sc Black Economic Empowerment Regime] in South Africa …*". The evidence of Mr D in his affidavit of 10 January 2025 was different: that it was one of the transactions designed *to "restructure the [Respondents' Group] and raise funds in the [USA] …*". He referred to Mr C's explanation for the transaction only in his affidavit of 21 January 2025. Again, no relevant documentary evidence has been produced. Mr D said that the transaction was "*contemplated long before the US Bankruptcy Proceedings were commenced*", but he does not explain why it was effected when the Award was pending.

87. Mr D also said that, similarly, the transfer of the shares in Respondents' Group Company 3 was contemplated long before the Bankruptcy Proceedings. At the meeting on 18 September 2024, Mr G said that he did not know the purpose of the transfer: as Mr Koozehkanani observed, that would be surprising if it was part of an initiative to raise capital in the USA for which he was responsible. At the hearing on 22 November 2024, Mr C said that he understood that the purpose was to assist the Respondents' Parent Trust "*to have a bank account in Abu Dhabi*". Mr D referred to this explanation in his affidavit of 21 January 2025. In his affidavit of 10 January 2025, he had said that the transaction was part of the reorganisation of the Respondents' Group, "*designed properly to delineate defence and non-defence assets within the group structure*" and to raise funds in the USA. He did not explain how the transfer of the shares to a parent trust (which is not shown on the organisation chart of the Respondents' Group that is in evidence) would help with raising American funding. As with the other share transfers, the explanations are not supported by documentary evidence, are inconsistent, and do not explain the timing in relation to the arbitration and pending Award.

88. Neither in the Delaware Proceedings nor on these applications have the Respondents satisfactorily explained either the reasons for these transfers nor, significantly, the timing of them between the hearing of the arbitral reference and the Award. I therefore consider that they provide significant support for A17's case that there is a real risk of dissipation. A17 has also shown a sufficient case for present purposes for the inference that Respondents' Group Company 1 was formed in Delaware in order for the Respondents' Group to have a front for bringing the abusive proceedings to hamper enforcement of the Award.

89. What then of the Delaware petitions and the Delaware Proceedings? Of course, the fact that a respondent to an application for a freezing order has filed for Chapter 11 Bankruptcy Proceedings in the USA is not in itself evidence that it is improperly seeking to evade payment of its obligations. However, as the Delaware Court held for the reasons set out in para 38 above, the Respondents' petitions were filed, if not in subjective bad faith, then in abuse of the bankruptcy process, and it was expressly held that their purpose was "*to prevent collection of the arbitration award"* and the cases were "*essentially a two-party dispute between the debtors and [A17]",* rather than to protect the interests of a body of creditors.

90. Further, in the G Declaration it was expressly stated that the purpose of the Delaware Proceedings was to prevent A17 from enforcing the Award so as to allow the Respondents' Group to pursue

elsewhere the complaints against A17 that were rejected in the arbitral reference: "*The Debtors commenced these Chapter 11 Cases to avoid what could have been a chaotic and value destructive action by [A17] following the issuance of the arbitration award. Furthermore, the Debtors needed the breathing space provided by chapter 11 to allow them the opportunity to fully litigate the Company's affirmative causes of action and counterclaims against [A17] and [A17's Indirect Parent], among others, which were not permitted to be heard as part of the Arbitration Proceeding*". The Respondents have not, as I understand, brought any claims against A17. Mr D says that "*very serious criminal investigations [are] being undertaken by the South African Government for misappropriating defence assets*", and that "*the [Respondents' Group] is awaiting the outcome of these investigations before pursuing its own civil claims*". While Mr D has given evidence of what he describes as a "*more nuanced explanation of the Chapter 11 filing's purpose*", he does not dispute that it was made with the purpose, if not of preventing execution of the Award altogether, at least of delaying it into the indefinite future. In my judgment, A17 is entitled to contend that the Delaware Court's understanding of the primary purpose of proceedings before it was correct.

91. What of the Petitioners' disclosure in the Delaware Proceedings? In his affidavit in support of the ex parte application, Mr Odejayi said that on 8 October 2024 the Delaware Court "*ordered the Bankruptcy Petitioners to produce certain discovery requested by [A17] regarding transfers between the Bankruptcy Petitioners and other entities in the [Respondents' Group]*", that the Petitioners, while producing some documents, responded with inadequate disclosure; and that, having said on 4 November 2024 that they would produce further documents, they did not do so.

92. Among the documents of which A17 sought disclosure were documents relating to transfers by the Petitioners of money and other assets in the three years before the Petitions were filed. At the hearing on 8 October 2024, the Petitioners representative said that they "*would be willing to give debt documents and transfers of money and of assets for the debtors during the last three years*", and these were covered by Judge Silverstein's order for disclosure of documents. These documents, which included documents about the share transfers made by D17, were never disclosed: at the hearing on 15 November 2024, the Petitioners' representative said, "*We won't be explaining those transfers*".

93. Mr Dillon-Malone criticised Mr Odejayi's evidence about disclosure in the Delaware Proceedings. First, he said that on 8 October 2024, the Delaware Court gave only "*informal directions about the type of disclosure that might ultimately be ordered, bearing in mind the [A17] is a competitor*". A transcript of the hearing is in evidence, and I cannot accept this submission: as I read the transcript, A17 requested disclosure of the Petitioners, and the request in respect of some documents was resisted on the grounds that they were commercially confidential. The Judge said that the submission about commercial confidentiality needed to be supported by evidence, but did not immediately order production of the documents in question. However, she said that the other documents "*should be provided*" and "*should be produced*". She clearly meant that they should be disclosed pending the determination of the argument about the documents said to be commercially confidential. Her words were not understood by those involved in the Delaware Proceedings to be no more than an informal indication of what might later be ordered: the Respondents' representatives did not demur when, in their email of 8 November 2024, A17's representatives referred to the "*Court's order to produce documents at the October 8, 2024 hearing …*". At the hearing on 15 November 2024, when A17's representative said that on 8 October 2024 the Judge had "*directed the discovery go forward*" and that the Judge had "*ordered the debtors to start producing documents and for [Mr G] to attend a deposition*", neither the Respondents' representative nor the Judge demurred. I reject this criticism of Mr Odejayi's evidence, and I do not accept that he misrepresented the true position when he said that the Court had made an order for disclosure.

94. Mr Dillon-Malone's other response to this part of A17's case was that the Petitioners had made disclosure in accordance with the Judge's "*informal indication*", but when they filed their motion consenting to the Bankruptcy Proceedings being dismissed, it ceased to do so because the costs of doing so would be wasteful. Certainly, this was the Petitioners' explanation to the Delaware Court at the Case Management Conference on 15 November 2024 for not complying further with the Court's direction of 8 October 2024: see para 35 above. Further, Mr D has given evidence that they supported the Trustee's Motion when the costs turned out more than they had expected because of A17's "*[t]actics"* and they could not operate the CMS while they were pursuing the Delaware Proceedings. However, the Respondents have not explained why on 4 November 2024 they promised more disclosure would be made the next day, but they failed to make it.

95. Further, on 8 October 2024:

    a. the Judge said that the Petitioners would need to provide evidence to support their claim that considerations of commercial confidentiality justified them in withholding documents from disclosure but, as far as appears from the evidence before me and as I infer, they never produced such evidence; and

    b. the Judge ordered Mr G's deposition, but he resigned shortly thereafter and could not be served with a summons to execute the deposition order.

96. In all the circumstances, I consider that A17 has shown a strong case that the Petitioners in the Delaware Proceedings conducted themselves so as to give as little information as they could about the transactions that A17 challenges, and that this purpose motivated their decision to support the Trustee's Motion.

97. A17 has three other arguments in support of its case that this Dissipation Requirement is met. First, A17 has identified 64 transactions in the year before the Award whereby D17 transferred some US$18 million to other companies in the Respondents' Group. Mr D explains in his affidavit of 21 January 2025 that these payments were made in the ordinary course of business, and were payments made under the CMS, the operation of which I examine further below at paras 114ff. There is no real reason to doubt that explanation and I see here no support for A17's case.

98. Next, after the Delaware Proceedings were brought, payments were made by or on behalf of C17 and D17 to a total of some US$1,950,000. At least for the most part, they were unauthorised by United States bankruptcy law, and they constituted the so-called "*Inadvertent Payments"* to which I referred at para 23 above. Mr D explained in his affidavit of 21 January 2025 that the payments were made in error, and that some US$1.5 million has been recovered from the payees, attempts to recover a further sum of US$376,589 being unsuccessful. The payments were brought to the attention of the Delaware Court in the CMS Motion. He does, however, not engage with the complaint of the US Trustee that the Petitioners had provided no explanation for the transfers in the Delaware Proceedings or said who authorised them. Mr Koozehkanani understandably complains that the Respondents' explanation for the payments is inadequate and that it is not supported by documentation.

99. Finally, between 6 December 2024, when the Bankruptcy Proceedings were dismissed, and 11 December 2024, when I made the WFO, D17 made payments of some US $5.8 million from its accounts with FAB. These payments have apparently almost entirely depleted the funds in those accounts: in his affidavit of 17 December 2024, Mr D said that there remained some US$671,000 in D17's US dollar account with First Abu Dhabi Bank ("**FAB**"), and that their other accounts have balances below US$50,000. The payments have been said by Clydes in correspondence to have been "*in the ordinary and proper course of business*" including payment of legal fees, that were

"*pent-up*" because A17 had objected to payments by the Petitioners while the Chapter 11 proceedings were in progress. (As I have explained, after the CMS Motion was rejected, the Petitioners dd not transfer their funds to an authorised depository.) They have declined to give more information about these payments. In my judgment, they require further explanation.

100. In themselves, these three complaints would not make out a case that there is a risk of dissipation. However, taken with A17's other points, their arguments about the Inadvertent Payments and the transfers after 6 December 2024 provide some additional support for A17's case of the risk of dissipation.

101. Mr Dillon-Malone emphasised one other consideration: the Respondents' Group operates in the defence industry, which, in Ms B's words, is "*subject to a high level of regulatory scrutiny"* and therefore *"collecting payments from customers often presents regulatory challenges as certain financial institutions do not want defence companies as clients".* That evidence is not disputed, but it does not seem to me to bear significantly on what I have to decide,

102. I conclude that A17 has satisfied the dissipation requirement for a freezing order.

The *Conocophillips* case

Popplewell J's principles

103. Before I consider Lord Leggatt's other requirement for a freezing order (that *"the respondent holds assets (or … is liable to take steps other than in the ordinary course of business which will reduce the value of assets) against which such a judgment could be enforced")*, it is convenient to return to Popplewell J's decision in the *Conocophillips* case (cit sup). He said that where "*the defendant is neither resident within the jurisdiction nor someone over whom the court has or would assume in personam jurisdiction for some other reason, the court will only grant a freezing order extending to foreign assets in exceptional circumstances*"; and that an applicant is likely to have "*to establish at least three things:*

> *(a) That there is a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the English court, in the sense referred to in Van Uden.*
>
> *(b) That the case is one where it is appropriate within the limits of comity for the English court to act as the international policeman in relation to assets abroad. That role will not be appropriate unless it is practical for an order to be made, and unless the order can be enforced in practice if it is disobeyed. The court will not make an order, even if within the limits of comity, if there is no effective sanction it could apply if the order were disobeyed. That may often be the case if the defendant has no presence or assets within the jurisdiction.*
>
> *(c) The court will only grant worldwide relief if it is just and expedient to do so …".*

104. These principles do not readily transpose to a legal system, such as the ADGM, whose jurisdiction is not based on the Court having, or assuming, jurisdiction over a particular defendant, by service of proceedings or otherwise. However that might be, the English courts will on occasion make worldwide freezing orders notwithstanding there is no relevant property in England and the defendant is not present in England. In Dicey, Morris & Collins, The Conflict of Laws (16th Ed, 2022) it is explained that, apart from those two cases, "*there may exceptionally be other cases in which there is a sufficient connection with England to justify the making of an order in relation to the*

defendant's worldwide assets. The English courts have been astute to ensure that this possibility is left open, particularly in cases of international fraud": at para 10-051.

Connections with ADGM

105. I note that, as Jacobs J observed in *ArcelorMittal USA LLC v Essar Steel Services (UK) Ltd and ors [2019] EWHC 724* at para 73, the requirement for a "*real connecting link*" between the subject matter of the measures sought and the jurisdiction of the Court, and the case of the European Court in *Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line (case c-391/95),* do not apply directly to cases that are not covered by the UK Civil Jurisdiction and Judgments Act 1982. In any case, however, this case has real connections with the ADGM. I consider below that evidence that the Respondents have assets in the ADGM, but for other reasons too the Court is not, in this case, being asked to involve itself officiously in a dispute that is nothing to do with the ADGM.

106. First, according to the G Declaration, the Respondents' Group is "*headquartered in Abu Dhabi".* The evidence, in particular the incorporation of D17 on Al Reem, points to the headquarters being in the ADGM. The only indication of a connection with "on-shore" Abu Dhabi is that D17 has bank accounts at an "on-shore" branch of the FAB.

107. Secondly, the Respondents' Group has conducted its financial operations through the CMS managed by D17 in ADGM. Although the CMS Motion was rejected by the Delaware Court, it appears from the Trustee's Motion that this did not lead the Respondents' Group to change the organisation of its cash management. Mr D gave evidence that the CMS could not be operated while the Delaware Proceedings were still being pursued, but there is no evidence that it is still inoperative now that they have been dismissed.

108. Thirdly, much of the complaint that the Respondents have attempted to protect assets from the enforcement measures available to A17 is centred on the ADGM. Specifically. A17 complains that to this end B17 and D17 disposed of subsidiaries, including Respondents' Group Company 3, an ADGM company, and "*Inadvertent Payments*" were made thought the ADGM-based CMS by or on behalf of D17.

109. Fourthly, in the Delaware Proceedings, Mr D's address was said to be on Al Maryah Island, and he gave the same address in his affidavit of 17 December 2024 in response to the Information Order. Although he has given English addresses in his later affidavits, there is no reason to believe that he no longer works from the ADGM office. As well as being Vice-President of D17, Mr D was named in the Delaware Proceedings in the case of C17 and D17 as a person who "*audited, compiled or reviewed Debtor's books of account and records or prepared a financial statement within 2 years before filing"* the Delaware Proceedings. Further, after the Delaware Proceedings were brought, many of the Respondents' directors have been replaced by Respondents' Affiliated Company 2, an English company which was incorporated on 13 August 2024, two days before the Delaware Proceedings were filed, and whose sole director is Mr D.

110. Finally, the Charge had a jurisdiction clause which provided that it, and any non-contractual obligations arising out of or in connection with it, should be governed by ADGM law; that the Courts of the ADGM should have jurisdiction to "*settle any disputes arising out of, relating to or having any connection with*" it; and that the Courts of the ADGM "*are the most appropriate and convenient courts to settle any such dispute in connection with"* the Charge. These provisions were stated to be for the benefit of A17 only. I do not say that the jurisdiction clause covers these proceedings: it has wide wording, but that would interpret it too expansively. But it is a distinct connection, acknowledged by C17, that the dealings between A17 and the Respondents' Group have with the ADGM.

Cases of international fraud

111. As was explained by Jacobs J in his judgment in the *ArcelorMittal* case (cit sup), "*it is clear from cases such as Republic of Haiti v Duvalier* [the reference to which is [1990] 1 QB 202] *that in cases of international fraud, the English court may be more willing to intervene. In Mobil Cerro Negro Ltd v Petroleos de Venezuela SA* [the reference to which is [2008] EWHC 532 (Comm)] *Walker J indicated that in cases of international fraud, the court would not look for such strong connecting factor with England as it would in other cases …*" (at para 73). (It has been said that in the *Republic of Haiti* case the Court acted under an "*assumed*" in personam jurisdiction: see *Motorola Credit Corpn v Uzan and ors (No 2) [2003] EWCA Civ 752* at para 114 per Potter LJ.)

112. The Respondents argued that this is not a case of international fraud: that the applications arise from a "*commercial dispute*". That is not controversial in so far as it describes the underlying dispute determined in the arbitral reference. However, Jacobs J explained in the *ArcelorMittal* case (loc cit at para 75): "*There is no precise definition of what is meant by the phrase 'international fraud' found in the case-law, but I do not consider that it is confined to cases where the underlying cause of action is a claim in deceit or a proprietary claim relating to the theft of assets*"; and he held that, in the circumstances of that case, he would regard the "*attempted dissipation of Essar Steel's US$1.5 billion asset, in face of the commencement of arbitration proceedings, as sufficient in itself potentially to warrant intervention under the 'international fraud' exception, or as constituting 'exceptional circumstances'*". Similarly in this case, A17 persuasively argues that the Respondents' Group has sought artificially and illegitimately to re-arrange its affairs in order to evade meeting its liabilities when anticipating or facing an adverse arbitral award, including filing and pursuing abusive proceedings in the United States to that end.

113. In the *Sandra Holdings* case (loc cit at para 80), the DIFC Court of Appeal referred to this part of the decision of Jacobs J in the *ArcelorMittal* case, and it rejected the suggestion that the Court should assume jurisdiction more readily when an element of fraud was present. Mr Dillon-Malone argued that this part of the *Sandra Holdings* judgment was not overruled by the *Carmon* case. This point does not assist the Respondents, for two reasons. First, the Court of Appeal in the *Sandra Holdings* case was considering whether the DIFC Courts had jurisdiction in Pickford LJ's strict sense: it was in that context that it said "*even if the element of fraud is present that will not be sufficient to trigger the Court's jurisdiction because of its qualified statutory nature*" Secondly, as Dicey, Morris & Collins confirms, Jacobs J's reasoning reflects recognised principles of English law, and this Court will therefore apply it in accordance with the ADGM's Application of English Law Regulations 2015: see *AC Network Holding Ltd and ors v. Polymath Ekar SPV1 and ors [2023] ADGM CA 0002*.

Do the Respondents hold assets (or .. are liable to take steps other than in the ordinary course of business which will reduce the value of assets) against which the Award could be enforced?

The Cash Management System

114. Coming to Lord Leggatt's available assets requirement, I need first to examine the evidence about the CMS in more detail. In my Ruling, I said this: "*[A17] contends that all the Respondents in this case have assets in the ADGM. I accept that [A17] has here made out a sufficient case for the purposes of their ex parte application. In particular, the Respondents have said that [D17] maintains and operates an integrated cash management system for [B17], [C17], [Respondents' Group Company 1] and itself*".

115. In his affidavit in support of the ex parte application, Mr Odejayi referred to statements made in the Bankruptcy Proceedings about the CMS, which, he said, indicate that "*[B17] or [C17] may have legal or beneficial interests in assets held by [D17] …, including in the ADGM or Abu Dhabi*".

116. D17 has eight bank accounts: three at FAB, an AED account, a Euro account and a US dollar account; two accounts at Standard Chartered Bank in Ghana; and three at Fidelity Bank Ghana Ltd. The Respondents' case is that no money paid into them is beneficially or legally owned by B17 or C17. I accept that is almost certainly right, but this merely shows that the focus of this debate on legal or beneficial ownership is misplaced. Under English law, it is well established that, absent special circumstances, money paid into a bank account is the property of the bank. A payment into an account creates a chose in action that the account holder has against the bank. There is nothing before me, and it was not suggested by Mr Koozehkanani or Mr Dillon-Malone, that the law(s) governing the bank accounts materially differ(s) from English law. The real question, as it seems to me, is whether the operation of the CMS creates claims that B17 and C17 have against D17 in respect of payments that it has received or otherwise arising under the arrangement between the companies of the Respondents' Group for the operation of the CMS.

117. Ms B gave evidence about the operation of the CMS in her affidavit of 10 January 2025. She said that D17 is not an "*operational entity*", and it has no employees (although it has had in the past), and does not directly provide goods or services to customers: its bank accounts are not used for payroll or other operational expenses. However, while it does not provide goods or services to customers, it does enter into contracts with them, the goods and services being provided by operational subsidiaries in the Group. Alternatively, the customer's counterparty is an operating subsidiary, but D17 receives money that is payable to the subsidiary. This arrangement is said to be "*for regulatory reasons*" but this explanation is not developed further, except that the defence industry is subject to a high level of regulatory scrutiny. It is also said that the *"precise payment mechanics"* are set out in the "*underlying contract*", but it is unclear to me whether here Ms B is referring to a contract between the customer and its counterparty in the Respondents' Group or to a contract between D17 and the subsidiary.

118. Further, Ms B said that at present B17 has no bank account and no operational contracts with customers of D17; and that likewise C17, which has a limited number of contracts with African clients, does not have its own bank account, money owing under its contracts being paid into an on-shore account of a Ras Al Khaimah company, Respondents' Group Company 9. Nevertheless, Ms B also said that that funds from the CMS are paid to subcontractors and vendors who are "*essential to the Respondents' operations*".

119. Mr D gives evidence about the CMS that is materially similar, although less detailed, to that of Ms B.

120. A17 submits that this evidence is inconsistent with what was said in the CMS Motion. I agree: for example, it was said in the CMS Motion that the Petitioners "*do not utilize separate accounts for collection and disbursements. All accounts and receivables go to one of the Bank Accounts based on the funding or payment sources and type of currency used in the transaction, with the Bank Accounts at FAB being the Debtors' primary Bank Accounts with regard to operations"*. It was also said that "*[a]s of the date hereof* [sc 4 September 2024]*, the Debtors have approximately $449,383 of cash on hand in the Bank Accounts*". The term "*Debtors*" is defined in the CMS Motion to mean B17 and C17, as well as D17 and Respondents' Group Company 1.

121. Ms B explained the Schematic exhibited to the CMS Motion. It comprises two cashflow diagrams: one (the "**D17 diagram")** shows cashflows through D17 relating to four customer contracts, which is said to illustrate that, when D17 receives contract payments from customers, it keeps some 5% to 7.5% of the funds for operational expenses, and it transfers the rest to operating subsidiaries or other related entities or to contractual counterparties and third party suppliers. The other diagram (the "**C17 diagram**") relates to two customer contracts under which C17 is shown as entitled to receive payments**.** This (unlike the D17 diagram) shows separately: (i) "*actual cashflows/payment*", indicating money passing to C17 from customers and from C17 to subsidiaries and suppliers; and

(ii) *"legal/anticipated cashflows/payments"*, which indicates payments to Respondents' Group Company 9 from customers and from Respondents' Group Company 9 to subsidiaries and suppliers. Thus, the difference between the diagrams illustrates that, where D17 is the customer's counterparty, the actual route of payments accords with the contractual right to receive payments, whereas, if C17 is the customer's counterparty, C17 is contractually entitled to receive payment, but in fact payment is made to Respondents' Group Company 9, and while C17 is legally obligated to ensure payments to operating subsidiaries and suppliers, in fact the obligations are discharged by Respondents' Group Company 9.

122. Ms B said that the Schematic reflects that funds are not remitted to B17 or C17; and that D17 retains only the funds for its operating expenses that funds received by D17 and Respondents' Group Company 9 are "*quickly transferred (usually within 48 hours) to the relevant operating entities*". The timing is not apparent from the Schematic itself.

123. A17 submits that it is to be inferred that the Schematic does not provide a comprehensive record of all transactions involving D17 bank accounts. When it was exhibited to the CMS Motion, it was presented as a "*diagram depicting the [CMS], including the flow of funds between Bank accounts"* (see para 22 above), rather than as a complete record. Further,

a. The D17 diagram illustrates cashflows relating to four customers and the C17 diagram shows cash flows relating to two customers: Mr G told the meeting of creditors on 18 September 2024 that D17 had "*seven contracts in it*", which are "*run*" by another company in the Respondents' Group.

b. As Mr Odejayi points out, the Schematic shows no intercompany credits to D17's accounts, although D17's Statements of Cash Receipts and Disbursements filed in the Delaware Proceedings show credits described as "*Intercompany Cash Transfer"* or "*Intercompany Transfer – Prepetition Reimburser*".

c. While the Schematic shows C17 operating through Respondents' Group Company 9 in respect of its contracts, the CMS Motion itself, as A17 submits, suggests that it also operates through D17: it states that D17 operates as a "*cash collection hub*" for the Respondents' Group, inter alia to channel funds to "*contractual counterparties and third-party suppliers essential to the Respondents' operations",* and explains that "*[a]dditionally*", because it does not have a bank account, in the ordinary course of business a "*Non-debtor Affiliate"* (sc, Respondents' Group Company 9) collects amounts due to C17 and distributes funds on C17's behalf.

d. The D17 diagram has a note relating to one of the four contracts that reads as follows: "*On completion of the project, in the event of any profit, 20% goes to [D17] … and 80% goes to [Respondents' Affiliated Company 3]. In the event of any overruns, risk falls within [Respondents' Affiliated Company 3]. Therefore, the final % may increase from* [sic] *the final amount due to Debtor estates may be higher than the initial % retained".* The expression "*debtor estates*" means the estates of B17, C17, D17 and Respondents' Group Company 1, although it is difficult to understand how the newly incorporated Respondents' Group Company 1 would be entitled to income of this kind. The note was not explained in the Respondents' evidence or in their submissions. On the face of it, it appears to indicate that B17 or C17 might have some (actual or contingent) entitlement to such funds.

124. The Respondents have not provided documentary evidence about the purpose and operation of the CMS. Rather they have concentrated on criticising A17's evidence about its operation, a matter to

which I return when I come to their allegation that A17 did not comply with its duty of full and frank disclosure.

125. The evidence and submissions on this point, as it seems to me, have been obscured by the question, arising originally from Mr Odejayi's affidavit in support of the ex parte application, about ownership of funds in D17's bank accounts. That was a distraction. However, on the evidence before me and in particular what was said in the CMS Motion, I accept that there is a good arguable case that the CMS gives rise to claims by B17 and C17 against D17.

B17's and C17's Assets in the ADGM

126. It is not an invariable requirement for this Court to make a WFO that the Respondent has assets in the ADGM, but it is a material consideration, particularly when, as in the case of B17 and C17, the Respondents are not ADGM entities. In my Ruling, I said that A17 had "*made out a sufficient case ... for the purposes of [the] ex parte application"* that B17 and C17 have assets in the ADGM.

127. I have explained that, despite the Respondents' denials, in my judgment A17 has made out a sufficient case for present purposes that B17 and C17 might have a chose in action against D17 arising from the operation of the CMS. Prima facie, D17 being an ADGM company, under ADGM law the *situs* of a chose in action against D17 would be the ADGM, and there was no evidence that, if a different law governs a chose in action, the position would be different.

128. A17 submits that B17 and C17 have, or are likely to have, other assets in the ADGM. I do not understand this to be disputed in the case of C17. Certainly, C17 has a 74% shareholding in D17, an ADGM company. Further, the Respondents acknowledge that there is an inter-company balance of US$7,859,178.47 owing to C17 by D17: this is said by the Respondents to result from C17 operating a bank account until March 2023 and making payments on D17's behalf to operating subsidiaries in the Respondents' Group. However, according to Ms B "*there is no understanding between [C17] and [D17] that the sum will ever be repaid*", and Mr D states that "*it is not due and payable until there is agreement to do so between the companies and there are sufficient funds to do so*". The Respondents provide no documentary support or proper explanation about why a sum which is shown as a receivable from D17 in the list of C17's assets that Ms B provided in response to the Information Order, is now said to be payable only with D17's agreement. Moreover, in the Delaware Proceedings, the filings of C17 and D17 stated that C17 was a creditor of D17 in the sum of US$7,859,178.47 and that one of C17's assets was a receivable from D17 in the sum of US$7,859,178.00. In my judgment, A17 has a good arguable case that the intercompany balance is an asset against which it might enforce the Award.

129. It is convenient here to deal with another argument advanced by Mr Dillon-Malone: that an "*intangible asset*" cannot be dissipated and so there is no point in making a freezing order covering the inter-company balance, and it is inappropriate to do so. I reject that submission: I was given no reason that C17 could not, for example, assign or charge the chose in action, or compromise the debt for inadequate consideration.

130. There is no evidence that B17 has any assets by way of inter-company balances. A17 submits, however, that there is evidence that, after B17 transferred its shares in Respondents' Group Company 3, there continued to be transactions between them: that Respondents' Group Company 3 appears to have made payments on its behalf in July 2024, and that Respondents' Group Company 3 is a creditor of B17. Mr D gives evidence that the payments in July 2024 arose from "*administrative error",* and that the monies were recovered. He also said that the transactions were recorded on the Respondents' Operating Reports in the Delaware Proceedings, but when this evidence was challenged by Mr Odejayi in his affidavit of 18 January 2025, Mr D did not identify where they are

recorded in his responsive evidence. The evidence about the transfer by B17 of its shares in Respondents' Group Company 3 and its subsequent relationship with Respondents' Group Company 3 has not been properly explained by the Respondents. However that might be, I have concluded that A17 has a good arguable case that B17 has an asset in the ADGM arising from the operation of the CMS.

Article 13.14 of the Founding Law

131. Does D17 have assets that would be amenable to satisfy the Award (or an enforcement order)? The position is explained by Gee on Commercial Injunctions (7th ed, 2021) as follows (at paras 13-013 and 13-014): "*The jurisdiction is not limited to cases in which the non-party may hold assets of the defendant … It is not limited to where the enjoined party may be using a third party as pockets or wallets of that respondent. It can apply where the third party may have some liability to the defendant or owe a debt, assets in his control may be reached under s. 423 of the [UK] Insolvency Act 1986 or through some other way of setting aside a transaction, or by any means through which the assets may become, through some compulsory process, available for satisfying the claim or a judgment founded on it*".

132. It is to be observed that, under English law, it is not necessary that the "*compulsory process*" be through proceedings in England. There is no reason that the Chabra jurisdiction cannot, in an appropriate English case, be exercised in order to preserve assets against which there might be enforcement proceedings in another jurisdiction. However, Mr Dillon-Malone submitted that the position is different in the ADGM because of Article 13.14 of the Founding Law.

133. Article 13.14 was introduced into the Founding Law by Law No 12 of 2020. Article 13.13 provides as follows: "*Judgments and orders rendered by the Global Market's Courts and arbitral awards recognised by the Global Market's Courts shall be enforced by the competent entities outside the Global Market in accordance with the procedures and rules adopted by such entities, as well as any memoranda of understanding between the Board of Directors or the Global Market's Courts and those entities*". Before Law No 12 of 2020, the enforcement of ADGM Court judgments and ADGM seated arbitral awards in onshore Abu Dhabi (and vice versa) was based upon the non-binding terms of a memorandum of understanding dated 11 February 2018 between the ADGM and the Abu Dhabi Judicial Department. Article 13.13 enacts the reciprocal enforcement principles enshrined in the memorandum of understanding, including the principle that the enforcing court does not undertake any review of the merits.

134. Article 13.14 provides for an exception to Article 13.13: "*Paragraph 13 of this Article shall not apply to a judgment or order rendered by the Global Market's Courts in respect of the recognition or enforcement of: a) a judgment or order issued by a court outside the Emirate; or b) any arbitral award rendered by a tribunal where the seat is outside the Global Market*". The effect of this provision is explained in the ADGM's "*Guide to Amendments to Article 13 of Abu Dhabi Law No. 4 of 2013*" as follows (at paras 11 to 13):

> *"11. Article 13(14) of the Amended Founding Law deals with what some members of the legal profession refer to as the "conduit route" for the enforcement of judgments and orders ("judgments") that originated outside the Emirate and awards made outside ADGM. Put simply, parties cannot use ADGM for the enforcement of non-ADGM judgments and awards in other jurisdictions – the limited exception being where the originating judgment comes from another court within the Emirate.*
>
> *12. As a matter of principle, it has always been ADGM Courts' position that parties should go to the place where the relevant assets are located for the purpose of*

enforcement.[5] *This principle has now been given effect through the amendments to the Founding Law.*

13. What that means is that if parties wish to take advantage of the favourable enforcement framework that ADGM Courts have in place with other jurisdictions (including with Abu Dhabi Judicial Department), they must submit their original dispute for determination by ADGM Courts or by arbitration in ADGM. If parties do not do this, and execution against debtor assets is to take place in a jurisdiction other than ADGM, then the judgment or award creditor must bring an enforcement application in that other jurisdiction".

135. The Respondents acknowledge that D17 has assets outside the ADGM. It argues, however, that "*given the Article 13.14 ban on conduit enforcement of foreign arbitration awards, …there is no possibility of the … Award being enforced against these assets*". Mr Dillon-Malone submitted that, given that the Award is a foreign one, it would violate article 13.14 for the ADGM to exercise its Chabra jurisdiction in aid of proceedings elsewhere, and that "*[g]iven that the arbitral award recognised by the ADGM Courts … cannot be enforced outside of the ADGM, there is no basis on which a worldwide freezing order in support of such proceedings can be made"* (emphasis in original). I reject that argument: to my mind, if it would otherwise be just and convenient for this Court to exercise its Chabra jurisdiction to make a WFO against D17, it would not be contrary to either the letter or the spirit of Article 13.14 to do so. The Court would be supporting proceedings to recognise and enforce the Award in another jurisdiction. This does not mean that this Court assumes that the Courts of that other jurisdiction are bound by the decision here to recognises and enforce the Award: the WFO would be issued in support of enforcing the Award itself, not in support of the Recognition and Enforcement Order.

Does D17 have assets against which the Award might be enforced?

136. With this introduction, I come to the question whether D17 has assets (in or outside the ADGM) against *which* the Award might be enforced through some compulsory process. Mr Dillon-Malone criticised A17 for not identifying the "*mechanism*" through which judgment might be obtained against D17, and he cited the speeches of Lord Bingham and Lord Scott in the *Fourie v Le Roux* case (cit sup), where they emphasised that an applicant for a freezing order must identify the prospective judgment that it might support. For example, Lord Scott said (at para 33), "*Whenever an interlocutory injunction is applied for, the judge, if otherwise minded to make the order, should, as a matter of good practice, pay careful attention to the substantial relief that is, or will be sought*". Here there is no uncertainty about the basis and nature of A17's claim nor that the purpose of the application is to enforce the Award. Therefore, I cannot accept that this observation of Lord Scott, or the remarks of Lord Bingham, assist D17. Mr Dillon-Malone sought to reinforce his complaint by arguing that, because "*there are no actual or putative underlying proceedings"* against D17, it cannot successfully defend them so as to vacate the injunction: it is in the nature of an order under the Chabra jurisdiction that there are not proceedings against the respondent, and that, where a freezing order is made in support of a judgment, there are not underlying proceedings to defend, and where made in support of an arbitration award, only limited grounds for resisting its enforcement.

137. I am not impressed by D17's argument that it is incumbent on A17 to set out the exact enforcement process that it might adopt against D17. It seems to me to conflict with authorities (such as *Yukong Line Ltd v Rendsburg Investments Corp. [2000] EWCA Civ 358* at para 44 per Potter LJ) that the applicant for Chabra relief does not have to identify specific assets against which the judgment might be enforced. Understandably, as Mr Koozehkanani explained, "*[A17] needed information [from the Respondents] in order to determine what exact assets were there and what mechanisms could be deployed".*

138. In any case, to my mind Mr Koozehkanani sufficiently explained the steps that might be taken in the ADGM. First, he said (as the Respondents were surely aware) that A17 could seek a third party debt order under part 31 of the CPR. Secondly, he referred to C17's control of D17 through its majority shareholding. Thirdly, he said that A17 could put D17 into an insolvency process in order to recover sums due to it. Further, the Charge provides that, after an Event of Default, A17 might "*receive and retain all dividends, interest or other money or assts accruing on or in respect of"* C17's shares in D17.

139. There is a further point: as I said in my Ruling, there is another reason for making the WFO against D17. The fundamental question is whether an order is just and convenient, and, as Gee on Commercial Injunctions says at para 13-020, "*Where the circumstances show collusion between the defendant and a third party or impropriety involved the third party or some participation, on the part of the third party, in attempts by the defendant or judgment debtor to render itself judgment-proof or a risk of dissipation of the assets of the third party which might otherwise be breach of satisfaction of the judgment, then it may be appropriate for a freezing order to be granted against the third party itself*". The evidence about D17 transferring shares in its subsidiaries when the Award was pending provides sufficient basis for a good arguable case that D17 was party to dissipating its own assets, and so reducing the value of its shares, in order to obstruct and prevent enforcement of the Award, whether through enforcement of the Charge or otherwise.

Is the WFO Just and Convenient?

140. I therefore conclude that the WFO against all the Respondents satisfies the requirements identified by Lord Leggatt, and it is consistent with the principles established by precedent in English law to make it. It remains to consider whether it is just and convenient to do so.

Interference with Other Jurisdictions

141. First, I consider whether the WFO might improperly interfere with other jurisdictions?

142. There is no suggestion that it might offend the jurisdiction of England, the legal place of the arbitration with supervisory jurisdiction in respect of the reference and the Award.

143. Nor was it argued that a WFO would offend the jurisdiction of Cyprus, where B17 and C17 are incorporated. In his affidavit of 10 January 2025, Mr D said that he was "*surprised*" that A17 has not sought to enforce the Award in Cyprus. However, he produced an opinion from Cypriot lawyers, who said that an unsatisfied arbitral award cannot be used to wind up a debtor unless it has been recognised in Cyprus, and that under Cypriot law recognition may be stayed pending adjudication on a counterclaim. If this is so, it does not seem to me surprising that A17 has not brought proceedings in Cyprus. More importantly, however, there is no evidence, and it was not submitted, that the WFO interferes with the jurisdiction of Cyprus.

144. The Delaware Court has dismissed the Delaware Proceedings on the basis that the Respondents and their affairs had no real connection with the USA.

145. I have referred to proceedings that Respondents' Group Company 2 brought in South Africa on 12 November 2024. In his affidavit in support of the ex parte injunction, Mr Odejayi said that A17 "*is concerned that … the south African Business Rescue Proceedings will be … abused by the [Respondents' Group] to undermine [A17's] ability to enforce the …Award*", and it was suggested that this supports the case for the WFO. I reject the suggestion: it is for the South African Courts to prevent the proceedings before it from being abused, and not for this Court to suppose that it will not do so.

146. Equally, I reject the Respondents' submission that the WFO "*directly interferes with the ongoing business rescue proceedings commenced by [Respondents' Group Company 2] under the South African Companies Act 2008*". This submission was based on the misunderstanding that the WFO includes an order made against Respondents' Group Company 2 and other subsidiaries, and it is asserted that it has "*divested [Respondents' Group Company 2's] business rescue practitioners of control of [Respondents' Group Company 2's] property*" and that it has "*circumvented the moratorium*". There is no evidential basis for these assertions.

The Respondents' other arguments

147. The Respondents made other points about the exercise of the Court's discretion:

a. They submit that the ADGM has no connection with the underlying dispute. I do not accept that: see paras 105ff above.

b. I also reject their submission that this is not a case of international fraud, in the sense that the term is used in the English authorities: see paras 111ff above.

c. It is said that the WFO must ensure that it does not infringe Article 13.14 of the Founding Law. It does not do so: see paras 131ff above.

d. Next, the Respondents submit that there are more straightforward and appropriate routes to enforcement against assets in the ADGM, such as a stop order in respect of C17's shares in D17 or proceedings pursuant to the Charge. The WFO does not prevent A17 taking other steps to enforce the Award, but this is no reason for the Court to refuse A17 more immediate and broader protection in the face of a real risk of dissipation of assets preventing it from enforcing the Award.

e. The Respondents contend that the WFO is having "*surprising results*", and they refer to D17's bank accounts with FAB (or one of them) being "*frozen*". At the time of the hearing, there was no specific application by the Respondents about this, although they have subsequently issued one. I do not comment on the new application in this judgment, but any matter of this kind is properly dealt with discretely and is not a reason to discharge the WFO.

f. The Respondents complain that they "*have no visibility as to the adequacy of [A17's] cross undertaking as to damages*". The Respondents did not argue that the cross-undertaking should be reinforced.

g. Finally, the Respondents said that the WFO "*stifles [their] ability to bring its substantial claim for business interference against*" A17. The evidence of Mr D is that the Respondents' Group is awaiting the outcome of an investigation of the South African Government before bringing its own claims. It was not explained how the WFO interferes with this strategy.

148. I am not impressed by any of these points of the Respondents.

Exercise of Discretion

149. Mr Dillon-Malone rightly emphasised that the power to make a freezing order must be exercised with care, and the Court will not exercise it merely to give a creditor leverage over a debtor. The Court is particularly cautious about making a WFO. Nevertheless, given A17's undoubted right to have the Award satisfied, its good arguable cases about assets that might go towards satisfying it, and the

evidence of a real risk of dissipation, I accept its submission that in this case a WFO is just and convenient.

Non-disclosure

The Legal Principles

150. It is the duty of an applicant who applies for an ex parte order to make full disclosure of all material facts and to draw to the Court's attention factual, legal and procedural considerations which are significant. That said, and without detracting from the importance of compliance with the duty, there are degrees of relevance, and a due sense of proportion must be kept. These principles are well-established and, if authority for them is required, I would cite the judgment of Carr J in *Alexander Tugushev v Vitaly Orlov and ors [2019] EWHC 2031 (Comm)* at para 7. Carr J also said this (at para 7):

a. "*The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect*"; and

b. *"In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily be established ..."*.

151. I would add that, while it has been emphasised that it is not sufficient for material matters to be buried in a large exhibit, again this should not be taken too far. When, as in this case, the papers were filed comfortably before the ex parte hearing, unless told otherwise, an applicant is entitled to proceed on the basis that the Judge has read them with reasonable care and understanding.

152. With regard to the consequences of a failure to comply with the duty of disclosure. Carr J said this in the *Tugushev* case (at para 7 ix to xiii):

> "(*ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;*
>
> *(x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;*
>
> *(xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;*
>
> *(xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to*

the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;

(xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure".

Initial Observations

153. Before I come to the specific complaints of non-disclosure made by the Respondents about the presentation of the CMS on the ex parte application, I shall make four more general points.

154. First, A17 and A&O Shearman were aware of the duty when A17 made the ex parte application in this case. In his witness statement in support of it, Mr Odejayi referred to the duty and properly drew several points to my attention.

155. Secondly, not all of the Respondents' complaints were distinctly made in the evidence that they originally filed in support of their applications, and therefore they were not answered by A17 in its responsive evidence. Allegations of this kind should not be held back until evidence in reply or skeleton arguments.

156. Next, Mr Dillon-Malone did not develop an argument in his skeleton or in his oral submissions in respect of any of the complaints that there was deliberate non-disclosure or that the Court was deliberately misled by Mr Odejayi, although this allegation had been made by Mr D in his evidence.

157. Finally, as will become apparent, the Respondents have made many and varied complaints of non-disclosure or misrepresentation, some of which seem to me far-fetched: important as it is to make proper disclosure when applying for ex parte relief, litigants should be aware that a "scatter-gun" approach of this kind can invite a suspicion that a respondent has ingeniously cast round for every possible complaint regardless of its real significance.

The Complaints about the Evidence about the CMS

158. The first major area of complaint is about the presentation of the CMS. Here the Respondents, as it seems to me, make two main points. Mr Dillon-Malone complained that, when explaining the CMS at the meeting of creditors on 18 September 2024, at which A17 was represented by A&O Shearman, Mr G had made statements that are said to support the contention that B17 and C17 had no material assets: for example, that B17 is a "*pure holding company and has no revenues at all*" and "*has no assets"*; that C17 had only two *"legacy contracts",* where C17's claims were disputed or where the customer has long been in default; that Respondents' Group Company 1 was a "*pure holding company with no contracts at all";* and that D17's only assets were *"the receivables and the loans owed to the company"*. These statements were not in evidence or otherwise mentioned at the hearing on 10 December 2024. Mr Odejayi's evidence about how the CMS operated comprised statements from the CMS Motion.

159. As I have explained, it is difficult to reconcile some of what Mr G told the meeting of creditors on 18 September 2024 with what the Petitioners said in the CMS Motion. The facts about its operation are not, in the words of Carr J (see para 150b above) "*truly so plain that they can be readily and*

summarily established ". Given that Mr Odejayi was relying on the Respondents' own statements formally presented to the Delaware Court, and given that there was no compelling reason to think them untrue, in my judgment it would push the principle of full and frank disclosure too far to hold that A17 was in breach of duty in not putting before the Court on the ex parte application other statements made on behalf of the Respondents that, on one view, cast doubt upon them.

160. The Respondents' other complaint about the evidence about the CMS on the ex parte application is that the Schematic was not in evidence. Mr Odejayi exhibited to his affidavit a version of the CMS Motion that did not include the Schematic although it did include the other exhibit to the CMS Motion, a list of D17's bank accounts. That is so, although it is fair to add that the exhibit to the affidavit did not otherwise exhibit the whole of the CMS Motion (or indeed of other documents from the Delaware Proceedings): the index expressly stated when only extracts were exhibited.

161. Mr D said in his affidavit of 10 January 2025 that the Schematic "*clearly shows that no funds are paid and owing to [B17] in the course of [D17's] operations*", and so refutes Mr Odejayi's evidence about this; and Mr D contends that it would have been "*abundantly clear*" from the Schematic that B17 does not trade, is not an operating company, does not have any direct relationship to the operation of the CMS and is not a "*beneficiary*" of it. This, Mr D said, "*suggests a deliberate intention to conceal from the Court [the Schematic's] existence and its impact on the merits of [A17's] application*". In his affidavit of 21 January 2025, Mr D widened his complaint of non-disclosure of the Schematic: he said that it shows that C17 does not use the CMS operated by D17, but it uses Respondents' Group Company 9's bank account.

162. Mr D's suggestion that there was a deliberate attempt to conceal the "*existence*" of the Schematic is exaggerated: Mr Odejayi exhibited to his affidavit the page of the CMS Motion that describes it. Further, the Respondents did not identify what specific information was available from the Schematic which was not otherwise available to the Court on the ex parte application. The force of this complaint, as it seems to me, largely depends upon whether the Schematic is to be understood as a comprehensive statement of the use of the CMS at the time of the CMS Motion, or whether it was a diagram designed only to illustrate how it operates; and the argument that the Court was deliberately misled depends on A17 or its representatives appreciating that it is comprehensive and not illustrative. I cannot resolve on this application whether the Schematic is exhaustive or illustrative, but, as I have said, it was presented in the CMS Motion as the latter and other evidence appear to corroborate that. While I am persuaded that, with the benefit of hindsight, it would have been better to have included the Schematic in the evidence on the ex parte application, I cannot accept that A17 was in breach of its duty in this regard, and I certainly reject the allegation of a deliberate breach

The Complaints about A17's evidence about disclosure in the Delaware Proceedings

163. The Respondents' second major area of complaint concerns Mr Odejayi's evidence about disclosure in the Delaware Proceedings, He said that the Respondents "*failed to produce discovery ordered in the US proceedings …*". The main focus of this complaint appears to be that he said that disclosure had been "*ordered*" on 8 October 2024. I have already explained that I reject that complaint: see para 93 above.

The Respondents' other Complaints of Non-Disclosure

164. Mr Dillon-Malone had eight other points:

a. It was said that I was "*left with the false impression that the Respondents had been dissipating assets and … that they consented to the dismissal of the [Delaware] proceedings to avoid*

having to explain certain transactions". Certainly, A17 submitted that I should find a risk of dissipation and that the Petitioners supported the Trustee's Motion because they did not want to explain some of their dealings, but it did not present that submission unfairly or improperly.

b. Mr Dillon-Maone complains that I was persuaded that the Respondents' conduct was analogous to international fraud. I have dealt with that point at paras 111ff above. It never was suggested that the underlying claim in the arbitration involved allegations by A17 of fraud, dishonesty or comparable impropriety.

c. Next, it was said that the Court was not told that A17 is a "*direct competitor*" of the Respondents' Group. I do not know exactly what is meant by "*direct",* but it would have been clear from even a cursory reading of the papers presented on the ex parte hearing (for example the ruling of Judge Silverstein about disclosure on 8 October 2024) that A17 and the Respondents' Group are competitors.

d. As to the law, it was said that, misleadingly, A17 persuaded the Court that in personam jurisdiction is not a necessary condition of granting a WFO. I have rejected the argument that in personam jurisdiction is a requirement in the ADGM: see par 56 above.

e. Another complaint is that the "*distinction between in personam jurisdiction in the ADGM and England was not clearly explained".* Mr Dillon-Malone did not identify the distinction in question, but A17's presentation of the law was quite adequate.

f. Next, it was said A17 did not cite to the Court the English decision in the *Cruz City 1 Mauritius Holding* case (cit sup) where it was said, on an application for service out of the jurisdiction against the subsidiaries of a party to an arbitral award, that the agreement of the parent to English supervisory jurisdiction over the arbitral process does not mean that its subsidiaries had submitted to it. I would not have been assisted by citation of this case, and in any event, in *A v C [2020] EWCA Civ 409*, at paras 35 and 44, the English Court of Appeal has left open whether the reasoning in the *Cruz City 1 Mauritius Holding* case was correct.

g. Mr Dillon-Malone argued that A17 failed to present the ex parte application properly because it did not refer to Article 13(14) of the Founding Law. He submitted that the restriction on the "*conduit"* enforcement of foreign arbitral awards is "*highly relevant when the Court is considering whether to grant a worldwide freezing order" (*emphasis in original). I have explained that I do not consider it relevant. In any case, an applicant is entitled to assume that a Judge in this Court is familiar with the Founding Law.

h. Finally, Mr Dillon-Malone complained that A17 "*failed to identify the mechanism by which it will enforce a money judgment against [D17] and in doing so, failed to cite the decision of the House of Lords in Fourie and Le Roux*" (cit sup). I have explained why I reject that complaint at para 136 above.

165. I add for completeness, although it was not included by Mr Dillon-Malone as a matter of non-disclosure on the part of A17, that Mr D complained in his affidavit of 10 January 2025 that on the ex parte application the "*treatment [of the Respondents' Group's potential claims against A17 was] notably perfunctory and dismissive"*. I disagree: the information that A17 presented to me on this was quite sufficient.

Conclusion about non-disclosure

166. I reject the complaints that A17 did not make a proper presentation of the ex parte application. Even if I had accepted that it was deficient in some way, I would have rejected any argument that the failing was deliberate, or that it affected my decision, and I would not have discharged the WFO.

The Recognition and Enforcement Set Aside Application

167. I come to the Recognition and Enforcement Set Aside Application. The Award is a New York Convention Award and part 4 of the Arbitration Regulations applies to it: see section 60(1). Section 62 of the Regulations sets out circumstances in which the Court may refuse recognition or enforcement of an Award covered by subsection 60(1). Unless one of the specified exceptions applies, recognition and enforcement of the award is mandatory: the Court has not residuary discretion to refuse recognition and enforcement.

168. Under section 62(2)(b) the Court may refuse recognition or enforcement of an award if it finds that to do so "*would be contrary to the public policy of the UAE*". However, there are two important principles governing this exception to the recognition and enforcement regime. First, it is reserved for exceptional circumstances: for example, the DIFC case of *Lachesis v Lacrosse [2021] DIFC CA 005* at para 37(iv). Secondly, as I said *in A4 v B4 [2019] ADGM CFI 0007,* "*Where a party wishes to rely on considerations of public policy to resist the recognition and enforcement of an arbitral award, the burden of making good the factual basis for the objection is upon that party*" (at para 22).

169. Nevertheless, Mr Dillon-Malone submitted that section 62(2)(b) applies in this case, and that the Recognition and Enforcement Order is tainted by A17's failure to make full and frank disclosure.

170. I accept that, on an ex parte application for recognition or enforcement of an arbitration award, as on other *ex* parte applications, the applicant is under a duty to make full and frank disclosure: see *General Dynamics United Kingdom Limited v the State of Libya [2022] EWHC 501 (Comm)*. Even if a failure to comply with the duty does not engage public policy considerations, there might be scope for an argument that the Court has the power to set aside a recognition or enforcement order: that the restrictive regime in section 62 of the Arbitration Regulations is about when recognition or enforcement may be "*refused*", and does not limit the Court's jurisdiction to set aside an order that was improperly obtained, allowing the applicant to make a fresh application.

171. However that might be, in this case, I only need to decide, and I only decide, that: (i) since I have rejected the complaint against A17 of non-disclosure, I also reject the Respondents' argument that section 62(2)(b) of the Arbitration Regulations applies; and (ii) even if I had upheld the Respondents' arguments that A17 failed to make proper disclosure of matters material to the application for the WFO, I would not have accepted that the complaints are about matters that are material to the application for recognition and enforcement of the Award. I need not decide, and do not decide, whether in other circumstances the Court might set aside a recognition or enforcement order to which the applicant was otherwise entitled on the grounds of non-disclosure.

The Information Application

172. A17 complains that the information provided by Mr D's affidavit of 17 December 2024 and Ms B's witness statement of 17 December 2024 is an inadequate response to the Information Order. By the Information Application, A17 seeks an order that the Respondents provide: (i) further information about their assets in response to nine requests; and (ii) an explanation about why the responsive evidence of 17 December 2024 omitted reference to three assets.

173. In Ms B's affidavit of 17 January 2025 and their skeleton argument for the hearing on 29 January 2025, the Respondents advanced these arguments in response to the Information Application:

    a. that the Court has no jurisdiction to order that the information be provided;

    b. that the Respondents have already complied with the Information Order;

    c. that information that A17 now seeks is not properly required by the Information Order; and

    d. that information that A17 now seeks is "*commercially sensitive*".

174. As for jurisdiction, the Respondents accept that a Court with jurisdiction to make a freezing order may make an order for the respondent to provide information reasonably required to make the freezing order effective. Their jurisdiction argument is that in this case there was no jurisdiction to make a freezing order. I have rejected that contention. Accordingly, I also reject the jurisdiction argument about the Information Application.

175. As for the argument that information is commercially sensitive, like Judge Silverstein (see para 27 above) I decline to entertain it without evidence that the information in question is sensitive. There is none. Moreover, the Information Order is not qualified so as to excuse the disclosure of commercially sensitive matters. If the information which the Respondents seek to withhold is covered by the Information Order, they should have applied for a variation of the Information Order, and they have not done so. I therefore reject that argument.

176. In her affidavit of 17 January 2025, Ms B said in relation to three requests for information that "*the information has been provided and no update is required*". The three requests are these:

    a. "*up-to-date details of each of the Respondent's assets worldwide exceeding USD 50,000 in value ....*"

    b. "*where such an asset is located in the [UAE], details of the relevant Emirate and, where applicable, the corresponding freezone in which such asset is located";*

    c. *"where such an asset is located in Africa, details of the relevant African state in which such asset is located*".

177. With regard to the other six requests for further information, Ms B gave evidence "*this information is not properly required"* and/or *"falls beyond the scope of*" the Information Order. (She added a further point in relation to one request, but I do not need to consider that separately.)

178. As for A17's inquiry about other assets said to be omitted from the evidence of 17 December 2024, Ms B said that they "*do not properly fall within the terms of the [Information] Order*".

179. When the Information Application was considered on 29 January 2025, it soon became clear that some of Ms B's evidence in response to it (for example, about at least two of the requests set out in para 176 above) was patently inaccurate, and more generally Mr Dillon-Malone was constrained to rely on matters about which he had been instructed but which were not in evidence. In those unsatisfactory circumstances, I allowed the Respondents a short time to file and serve further affidavit evidence in response to the Information Application.

180. On 5 February 2025, the Respondents filed and served a further affidavit of Ms B in relation to some of A17's requests. In it, she acknowledged that assets had been omitted from the disclosure of 17

December 2024, attributing this to "*inadvertent oversight[s] that arose due to the urgency with which the Asset List was compiled*". Even if this explains (albeit unsatisfactorily) the original error, it does not explain why this was not corrected in her affidavit of 17 January 2025, when the omissions had been raised by A17. Nor did she explain (or apologise for) other errors in her earlier affidavit.

181. A17 accepts that the further information answers one of their requests in the Information Application, but it contends that the others are not satisfactorily answered.

182. I have sympathy with A17's position. However, the terms of the order that it seeks need detailed consideration in light of the further evidence and the exchanges since the hearing. I shall invite further submissions about which of the requests for information I should allow and the terms of my order after I have issued this judgment.

Conclusion

183. I reject the Jurisdiction and Discharge Application and the Recognition and Enforcement Set Aside Application.

184. I shall hear submissions about the exact terms of the WFO.

185. I shall invite further submissions about the Information Application in light of this judgment.

186. I shall also invite submissions about costs and any other matters that arise consequentially upon my judgment.

Re-Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
4 April 2025