

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
BETWEEN**

HERA INVESTMENT LTD
First Claimant

HEROD HOLDINGS LIMITED
Second Claimant

BALTIC PARTICIPATIONS S.A.S.
Third Claimant

MICHAEL PETER SCHULHOF
Fourth Claimant

VIOLETTA SUPPES
(on behalf of Vesta Foundation in her capacity as a beneficiary of Vesta Foundation)
Fifth Claimant

and

ATHENA HOLDING LIMITED
First Defendant

VESTA FOUNDATION
Second Defendant

HASHEEM INVESTMENTS HOLDING LIMITED
Third Defendant

SAINT JAMES LUXEMBOURG S.A.R.L.
Fourth Defendant

FINANCIERE SEBASTIEN AUGETTANT
Fifth Defendant

HANS PETER BAUMANN
Sixth Defendant



WALTER FRANZ EGGER

Seventh Defendant

CHRISTOPH ANDREAS OSCHWALD

Eighth Defendant

BRICE JAKUBOWICZ

Ninth Defendant

DANIEL BERDUGO

Tenth Defendant

PASCAL GEORGES RIALLAND

Eleventh Defendant

JONATHAN DAVID LAHYANI

Twelfth Defendant

ATHENA SECURITY SERVICES DWC-LLC

Thirteenth Defendant

HESTIA DWC-LLC

Fourteenth Defendant

ARTEMIS FS INVEST DWC-LLC

Fifteenth Defendant

ARTEMIS SG INVEST DWC-LLC

Sixteenth Defendant

CERES INVEST DWC-LLC

Seventeenth Defendant

JUDGMENT OF JUSTICE KENNETH HAYNE AC



Neutral Citation:	[2025] ADGMCFI 0028
Before:	Justice Kenneth Hayne AC
Decision Date:	12 November 2025
Decision:	Injunction granted. Parties to exchange further material in relation to Applicants' undertakings as to damages and fortification.
Hearing Date:	12 November 2025
Date of Order:	12 November 2025
Catchwords:	Interim Injunction Application. Delay in making the application. Fortification.
Legislation Cited:	<i>ADGM Companies Regulations 2020</i>
Case Numbers:	ADGMCFI-2025-370
Parties and representation:	First, Second, Third, Fourth and Fifth Claimants Mr Steven Thompson KC and Mr Tom Stewart Coats - XXIV Old Buildings, instructed by Trowers & Hamlin LLP First Defendant Mr Tariq Khan of M&CO Legal Third Defendant Mr Patrick Dillon-Malone SC of Clyde & Co LLP

JUDGMENT

Introduction

1. The first four Claimants in these proceedings, Hera Investments Limited ("**Hera**") and others (the "**Applicants**"), seek injunctions until judgment or further order: (a) restraining the First Defendant, Athena Holding Limited ("**Athena Holding**"), from taking steps to implement resolutions reportedly passed at an extraordinary general meeting of shareholders of Athena Holding on 22 August 2025 (the "**EGM**"); and (b) restraining the Third Defendant, Hasheem Investments Holding Limited ("**Hasheem**"), from taking steps to carry out transactions in furtherance of the offer the subject of one of the impugned resolutions, or dealing with or disposing of assets it has received under an agreement made pursuant to that resolution.



2. In their Amended Claim filed on 6 November 2025, the Claimants allege that the Athena group was founded in December 2019, and that since inception, its business has focused particularly on gold trading and refining, as well as the development of secure facilities for storage of gold and other valuables at Al Maktoum Airport, Dubai.
3. Athena Holding is incorporated under the laws of the Abu Dhabi Global Market (“**ADGM**”). Hera, the First Claimant, is a shareholder in Athena Holding. Hera’s sole shareholder is Minerva Foundation, a foundation registered under the laws of the ADGM. The Second and Third Claimants – who are Applicants with Hera – are corporate shareholders in Athena Holding, whereas the Fourth Claimant is an individual shareholder.
4. The Fifth Claimant in the proceeding seeks to bring her claim as a derivative action on behalf of Vesta Foundation, the largest single shareholder in Athena Holding, holding in August 2025, 47.5% of the shares in the company.
5. Although counsel for the Applicants traced the history of these matters back beyond the point at which I take up that history, it is convenient to begin with the events of 31 July 2025, when Hera asked the directors of Athena Holding to call a general meeting of shareholders to discuss three matters: (a) the removal of the Chief Financial Officer (“**CFO**”) of the Athena group, who was also the general manager of subsidiaries of Athena Holding; (b) appointment of new directors to the board of Athena Holding; and (c) the securing of financing for what was described as the rescue of Athena Holding’s operation. On 1 August 2025, Athena Holding gave notice of the EGM on 22 August 2025, with 10 items on the agenda, including: opening of the meeting, confirmation of proper notice, determination of a quorum, appointment of the Chairman of the meeting, approval of the agenda; (item 6) an ordinary resolution described as acknowledgement, release and replacement of the resigning board members; (item 7) an ordinary resolution described as acknowledgement, release and replacement of the resigning authorised signatory; (item 8) an ordinary resolution described as acknowledgement and release of the group CFO and general manager of the DWC entities, subsidiaries of Athena Holding and his resignation and release as authorised signatory (item 9) discussion of shareholder ability and willingness to inject capital; and finally (item 10) special resolution approving the voluntary liquidation of Athena Holding Limited and subsidiaries. Three forms of ordinary resolution were appended to the notice of meeting and a form a special resolution.
6. The voting form attached to the notice of meeting provided, among other things, under the heading “*Voting Instructions*”:

“The company requires that any vote being passed on behalf of a corporate shareholder signed by its shareholder or shareholders be accompanied by a shareholder resolution approving such a vote.”
7. A form of proxy was also attached to the notice of meeting. It too provided that the proxy be signed and accompanied by a shareholder resolution approving the appointment of the appointing company’s proxy. The form asserted this requirement was made according to Article 52.2 of Athena Holding Articles of Association (the “**Articles**”), which allows Athena Holding to determine the form in which proxies will be delivered.



8. On 8 August 2025, one week after the notice of the EGM had been given, Hasheem proposed an additional agenda item to be voted upon at the EGM. Hasheem attached what it described as an *“insolvency proposal”*; a binding offer for consideration of Athena Holding and its subsidiaries. Hasheem asked the board of Athena Holding to add to the agenda circulated for the EGM the topic entitled *“Discussion and Vote on HIHL offer”*. On 11 August 2025, the (then) directors of Athena Holding circulated to shareholders an amended agenda of the EGM and an amendment to the notice of meeting.
9. The amended agenda was to include as item 10, *“Discussion and Vote on Hasheem Investments Holding Limited offer”*. Attached to the amended notice and amended agenda were the same three draft forms of ordinary resolution dealing with retirement of directors, retirement of authorised signatory, and retirement of the CFO, as had been circulated with the original notice of meeting. In addition, however, there were two draft forms of special resolution.
10. One, a wholly new form of special resolution provided for approval of the offer by Hasheem and the other special resolution approved of what it described as the *“voluntary liquidation of the Company [Athena Holding] and its Subsidiaries”*. Paragraph one of the proposed special resolution provided that Athena Holding shall enter into creditors’/members’ voluntary liquidation in accordance with the relevant provisions of the ADGM Companies Regulations 2020 and all applicable laws.
11. In the events that happened, three forms of proxy were sent to Athena Holding claiming to be a proxy for the First Claimant, Hera.
12. For present purposes, I think it is sufficient to deal only with the two proxies dated 19 August 2025. One was an appointment of Ms Serena Madgwick as proxy, signed by Yann Robert Mrazek, council member of Minerva Foundation on behalf of Hera Investment Limited. The other proxy that was submitted was an appointment by Arnaud Francois Marie Lapierre, as director for and on behalf of Hera Investment Limited. This form appointed Ms Nikita Patel as proxy of Athena Holding. The appointment of Ms Patel attached what appeared to be a shareholder’s resolution of Hera signed on behalf of Minerva by Mr Lapierre, in his capacity as the Founder and authorised signatory of Minerva Foundation.
13. In response to the lodging of these apparently conflicting proxies, by letter dated 21 August 2025 (the day before the EGM) the directors of Athena Holding, noting that conflicting proxies had been lodged, asked for confirmation of *“who shall be the legal representative and proxy for Hera”* at the EGM, and asked for what it described as the supporting legal documents evidencing authority for such claim.
14. Each side of the dispute revealed by the competing proxies responded to this enquiry, asserting, in effect, that it was right to appoint – and that it had the right to appoint – the proxy it had. At the EGM, His Highness Sheikh Rashid Butti Maktoum Juma Al Maktoum (**“HH Sheikh Rashid”**), as Chairman of the EGM, accepted the proxy in favour of Ms Madgwick and required Ms Patel to leave the meeting. In the first of his witness statements filed in this matter, HH Sheikh Rashid described Athena’s requirement that any proxy on behalf of a corporate shareholder be assigned on behalf of its own shareholder and accompanied by a shareholder resolution approving the proxy’s appointment as being



occasioned because Athena Holding was all too aware of the possibility of a dispute between the board of directors and the shareholder for Hera.

15. As I explain further below, it is at least arguable that it is not for the company whose shareholders are meeting to determine what internal steps a shareholder must take to appoint a proxy to attend a meeting of shareholders. It is at least arguable, indeed I would say strongly arguable, that those are matters solely for the internal governance of the member and are not matters which fall within the power to specify a form in which a proxy is submitted. The manner of appointment of a proxy is, in my opinion, strongly arguable to be more than a mere matter of form; it is a matter of substance. However imperfect may be the distinction between matters of form and substance, I would regard this as falling most likely well in the category of substance, rather than form.
16. The EGM minutes record that all three ordinary resolutions were approved with 11 shareholders recorded as voting in favour and three against. Amongst those who voted in favour of those resolutions (and the other resolutions) were Hasheem, and two other companies which the Applicants say were subject to a prohibition on their voting, on account of their having a conflict of interest, thus being barred by the Articles from casting a vote without the prior written consent of all shareholders.
17. The EGM minutes also record that discussion then ensued about whether shareholders were willing to inject more capital into Athena Holding. Reference was made to an offer Hera had made on the previous evening, offering to inject capital into the company. Although one shareholder asked for consideration of this offer, Mr Perrot declared that the board of Athena Holding disregarded the offer since it provided “*no formal insight*” on the potential “*buyer*”. A shareholder suggested that perhaps it would be in the Athena Holding’s best interests to delay the decision for a few days and conduct a due diligence review, requesting the board of directors of Hera to provide further information and to disclose the name of the buyer. But then on behalf of Hasheem, Mr Christian Peter, the appointed proxy for Hasheem, entered the discussion, told shareholders that Hasheem had put tremendous effort into saving the reputation of the group, and that if this second “*last minute*” offer delivered by Mr Lapierre was to be considered by the shareholders, Hasheem would consider withdrawing its offer. Various additional criticisms were made of the offer that Hera had made but it is not necessary to say anything further about the detail of those criticisms.
18. What followed those discussions was recorded as being a vote which the Chairman declared as the shareholders’ decision not to inject further capital into Athena Holding, having been ratified by a majority of the votes of shareholders present and voting. The EGM minutes then record that, after further discussion, it was resolved as a special resolution that Athena Holding would approve Hasheem’s offer in full; that Athena Holding would abide by the conditions precedent; that Athena Holding’s authorised signatory was granted full discretion to sign, organise, coordinate and implement the agreement in a timely manner in compliance with applicable legal and regulatory requirements; and that the shareholders approved and authorised Athena Holding’s directors and officers to cooperate fully with the authorised signatory to execute any documents necessary to enter into the agreement.



19. The last substantive matter dealt with in the EGM minutes concerned the proposal to wind up Athena Holding. Five resolutions were passed as special resolutions in that regard, of which only the first need be noted. It was resolved as a special resolution that *“the company shall enter into creditors’/members’ voluntary liquidation in accordance with the relevant provisions of the ADGM companies’ regulations and all applicable laws”*. I note that the minutes do not record, and there is no evidence of there then having been in existence or presented to the EGM, any declaration of solvency executed by the directors of Athena Holding. There was, of course, no meeting of creditors to commence a creditors’ winding up without a declaration of solvency. The resolutions recorded in the minutes did not include one appointing a named liquidator. It is at least strongly arguable that there has not been commenced any members’ voluntary winding up. The exact effect of the special resolution may be open to more than a little doubt.
20. The Claimants allege that the EGM was affected by a number of irregularities, including first, what Hera alleges is denial of its right to attend the EGM, effected by the Chairman’s acceptance of the proxy provided by Hera’s shareholder, contrary to the proxy produced by the director of Hera, and second, the counting of votes of three shareholders, including Hasheem, when, as Hera alleges, conflicts of interest disabled them from voting. In their Amended Particulars of Claim, the Claimants make other allegations of irregularity about the EGM, but for the purposes of this application, the Claimants relied only on those two grounds which I have mentioned, and I say nothing at all about other grounds that are referred to in the Amended Particulars of Claim.
21. I have said something already about the proxy point that Hera relies on. In my view, there is a serious question to be tried about whether the Chairman was right to reject the proxy he did on the basis that he gave. It is at least arguable, I would say strongly arguable, that he rejected it on the basis that it was unaccompanied by a sufficient shareholders’ resolution appointing the proxy whom the director appointed. Equally, there is, in my view, a serious question to be tried about whether Article 53.2 of the Articles permitted Athena Holding to specify as the form of a proxy notice matters which obliged the member company submitting the proxy to appoint the proxy in a particular fashion. That conclusion that there is a serious question to be tried may rest on either or both of two foundations.
22. The first foundation is the constituent documents of Hera, the member, in particular, Articles 14 to 17 of that company’s Articles of Association and the governing law of that entity here, the relevant company law of the Emirate of Ras Al Khaimah. Or, it may rest on the law governing the EGM in issue – here, the ADGM Companies Regulations 2020 – and, in particular, the provisions of Section 341 of those regulations.
23. As to the issue of conflict of interest, there appeared to be little resistance offered to the proposition that Hasheem was a party interested in the outcome of the resolution that was put about acceptance of the offer it had made.
24. It is necessary to recognise that the Articles of Athena Holding, and, in particular, Article 14(5), provide that:

“An Interested Shareholder may not:



(a) *vote on the Shareholder Conflict at any General Meeting... and any decision, approval or resolution in respect of any such Shareholder Conflict which would otherwise require the consent of the Interested Shareholder... shall be deemed not to require such consent... and the Security holding of the Interested Shareholder shall be disregarded in calculating the votes required in favour of a resolution to pass it; and*

(b) *for the purposes of a General Meeting to discuss the Shareholder Conflict, be counted in the quorum in respect of any such meeting and the quorum requirements in Articles 45 and 48.1 shall be adjusted as necessary so as not to require the presence of the Interested Shareholder,*

in each case, without the prior written approval of all of the other Shareholders. In considering giving such prior written approval the relevant Shareholder shall act in its sole discretion."

25. The expressions "Shareholder Conflict", "Transaction Conflict" and "Litigation Conflict" are all defined in the Articles. "Transaction Conflict" means:

"In relation to any Shareholder, a direct or indirect interest of that Shareholder or any of its Affiliates in any contract or transaction or proposed contract or transaction or other arrangement or relationship with any Group Company including where that Shareholder and/or any of its or their Affiliates has or may have financial or material interest in the outcome of a decision on any matter other than interest as a Shareholder in common with other Shareholders."

26. In my view, there is a serious question to be tried not only about whether the effect of these Articles was to disqualify Hasheem from voting as it did at the EGM, but also whether the Articles had the effect of disqualifying as well the Fourth and Fifth Defendants from voting as they did. The only answer that I understood the Respondents made to the Applicants' complaint about voting by interested shareholders was, in effect, that no one objected at the time.
27. In my view, that may be accurate as a matter of fact, but it is, I think strongly arguably, not to the point. The Articles operate according to their terms and mere silence is not to be treated as the equivalent of prior written consent of all shareholders which is what the relevant Article requires. Accordingly, the two matters on which the Claimants rely present serious issues to be tried in these proceedings.
28. Whether an injunction should be granted depends on what significance is to be attached to the delay that elapsed between the holding of the EGM on 22 August 2025 and Hera and its fellow Claimants commencing proceedings in this Court only on 4 November 2025. In round terms, a period of 10 weeks elapsed between the EGM and the commencement of action.
29. Several matters bear upon those more general questions of what consequences or significance attach to this lapse of time. In the course of argument, I raised with counsel whether the defects which Hera and its fellow Applicants alleged occurred at the EGM could be remedied if a new meeting were called, and attention paid to those matters. That is, I asked whether it would be possible in the space of three weeks (or thereabouts) to hold



another EGM, avoiding difficulties of the kind to which Hera points, and obtain an expression of will about the future of Athena Holding.

30. I did not understand there to be any significant dissent from the proposition that this was an available course of action. Rather, the central point made by the Respondents in answer to whether an injunction should be granted was that their counsel had been instructed that Hasheem would walk away from its proposal if the Applicants' injunction was granted. This was not a matter of evidence. I do not doubt that counsel have these instructions. But it means that I am left with a bare assertion of outcome, without explanation of the basis on which that decision would be made, given that 10 weeks ago what was said to be a sound commercial judgement by Hasheem, a judgment which it assessed as being in its interests, should no longer be so simply by reason of the elapse of time.
31. There are some aspects of the evidence which bear upon that question to which I should make specific reference.
32. First, the evidence of Mr Perrot, under the heading "*Balance of Convenience*" set out at paragraph 50 to his witness statement filed on 10 November 2025, referred to the witness statement of HH Sheikh Rashid and stated that he agreed with what he described as:

"...the wholly understandable perspective of his highness and his family... namely, the resources and commitment that he and his family are prepared to continue providing towards this venture are finite and conditional [so] that the only realistic path to saving the operational business is by implementing the resolutions without delay."

33. Further, Mr Perrot said, at paragraph 54:

"...I believe that in the particular circumstances of this case, the preservation of the status quo (in the sense of an order preventing the resolutions from being implemented) is not the course that is fairest or least likely to irredeemably prejudice any party. Contrary to paragraphs 41 and 42 of Mr Smith's witness statement [dated 4 November 2025 filed on behalf of the Applicants in support of the Injunction Application] ...[granting an injunction] would not just result in a delay, but would almost certainly lead to the winding up of Athena [Holding] by a different route and the termination of the concession and leases and the permanent loss of the value of the construction and fit out invested on the land, to the detriment of all shareholders. By contrast, should the injunction be refused, and the resolutions duly implemented, the orderly winding up of Athena [Holding] pursuant to the existing resolution will allow the settlement of practically all liabilities of Athena Group, the transfer of the assets and liabilities associated with the concession and leases to Hasheem rather than [being] wasted, and the will of the majority of the shareholders of Athena [Holding] to be implemented."

34. This then is to be set with HH Sheikh Rashid's first witness statement dated 10 November 2025, where he said, at paragraph 29:

"I would also like to emphasise the exceptional qualified and time sensitive character of the financial backing my family and I are prepared to continue



giving to this venture (by way of the Hasheem Offer). This is so that Athena's underlying operations are spared from annihilation/complete collapse, given the delicate and perilous balance of interests as referred to in Mr Perrot's witness statement. Granting of the injunction as sought by the Claimants would, in my view, lead almost inevitably to the winding up of Athena [Holding] one way or another by the landlord or other creditors, or, in light of developments and the unwillingness of Hasheem, FSA and SJL to continue funding Athena, by the directors or more likely the shareholders of Athena [Holding] in the proper exercise of their insolvency duties."

35. These statements, on behalf of Hasheem, must also be read, however, in light of the content of the special resolution that was passed at the EGM, providing that Athena Holding should be wound up. As I have pointed out, it may well be that the resolutions for winding up have not effected the commencement of a liquidation of Athena Holding, but the outcome for which the resolutions passed at the EGM provided was an outcome which saw the liquidation of Athena Holding, whether by members' or creditors' voluntary winding up.
36. Throughout the record of the materials that has been put before me, there has been frequent reference to Athena Holding being, and having for some time been, in difficult financial waters.
37. As to whether the lapse of 10 weeks could be regarded as weighing against the grant of injunction, there is no doubt that this delay does not favour the Claimants' case. The explanation proffered for the lapse of time is, if I may respectfully describe it this way, thin. It seems to be saying little more than lawyers taking a long time to prepare the necessary papers.
38. But having regard to the possibility and the availability of there being a fresh meeting called within a matter of a few weeks, the more refined question then becomes whether the delay of 10 weeks has so increased the possibility of third-party creditors taking action to wind up Athena Holding. Whether the Court should decline to grant an injunction because the declared intention of HH Sheikh Rashid on behalf of Hasheem is to walk away from the transaction, is to be weighed against the fact that as best I understand it on the evidence presently available, implementing the Hasheem proposal in accordance with the resolutions were reportedly passed at the EGM will work to the advantage of Hasheem because as Mr Perrot said, it will see underlying assets being put to use *by Hasheem* rather than being wasted.
39. The position of shareholders will not, so far as one can tell, be greatly affected by delaying implementation of the impugned EGM resolutions. The position of external creditors will not be affected unless Hasheem walks away from its proposal. But it is not explained why a delay of a few more weeks before a fresh meeting to decide the matter will cause Hasheem to do that.
40. On balance, I am minded to grant an injunction substantially in the terms proposed by the Claimants, if the Claimants offer an undertaking as to damages. The Claimants suggested that the undertaking might be supported by pledging Hera's shares in Athena Holding as security for performance of the undertaking to pay such damages as may be ordered.



However, that does not appear to be a significant form of security. It is also not clear to me at all on the evidence what kind of loss is said that either Athena Holding or Hasheem would suffer, if there is a grant of an injunction. It seems that Athena Holding is destined for winding up whether or not injunctions are granted. Hasheem may lose the opportunity to benefit from taking over so much of the Athena group's business as it can salvage. If it now does not do that because it walks away, that is on account of its own choice, not on account of the grant of an injunction. If, in the meantime, a third-party creditor moves successfully to wind up Athena Holding, that is an event, which is not immediately apparent to be the consequence of the grant of an injunction, so much as the consequence of the continuing insolvency of Athena Holding, perhaps brought about in part by its refusal to consider the offer Hera made, which included provision of a substantial sum in connection with performance of the agreement.

41. In conclusion, the best immediate course is to grant an injunction for a short time, contingent on the Applicants providing an undertaking as to damages, and allowing the parties a further opportunity to exchange material about possible fortification of that undertaking. I will hear from counsel about the form of the injunction and the directions to be given.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
17 November 2025