



ORDR-2977551223-2070

Claim No. CFI 041/2021

**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE COURT OF FIRST INSTANCE**

BETWEEN

**(1) ABRAAJ INVESTMENT MANAGEMENT LIMITED (IN OFFICIAL LIQUIDATION)**

**(2) ABRAAJ CAPITAL LIMITED (IN OFFICIAL LIQUIDATION)**

Claimants/Respondents

and

**(1) KPMG LOWER GULF LIMITED**

**(2) KPMG (A FIRM)**

**(3) KPMG LLP**

Defendants/Applicants

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**ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI**

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**UPON** the Part 7 Claim Form dated 29 March 2021

**AND UPON** the Order with Reasons of Justice Wayne Martin dated 3 November 2021 (the "Order")

**AND UPON** the First Defendant's (the "First Defendant" or "KPMG") Appeal Notice dated 24 November 2021 seeking permission to appeal the Order (the "First Permission Application")

**AND UPON** the Consent Order dated 19 January 2022 staying these proceedings (the “Consent Order”)

**AND UPON** the Order of Justice of Justice Wayne Martin dated 8 September 2023 in furtherance to the Consent Order

**AND UPON** the Order with Reasons of Justice Wayne Martin dated 2 November 2023 dismissing the First Permission Application

**AND UPON** the First Defendant’s renewed Appeal Notice dated 16 November 2023 against the Order (the “Renewed Permission Application”)

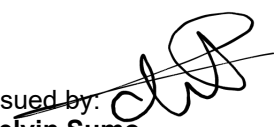
**AND UPON** reviewing all relevant material added onto the Court file

**AND UPON** reviewing the Rules of the DIFC Courts (the “RDC”)

**AND UPON** reviewing the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the “JAL”)

**IT IS HEREBY ORDERED THAT:**

1. The Renewed Permission Application is dismissed.
2. Costs shall be assessed by the Registrar unless the parties agree otherwise.

Issued by:   
**Delvin Sumo**  
Assistant Registrar  
Date of issue: 19 December 2023  
Time: 12pm

## **SCHEDULE OF REASONS**

1. The learned Judge at the Court of First Instance refused the First Permission Application made pursuant to Part 12 of the Rules of the DIFC Courts (the “RDC”) for an order that the Court has no jurisdiction to entertain the Claim of the First Claimant (“Abraaj Investment”) against KPMG, or in the alternative for an order that the court decline to exercise jurisdiction in relation to the Claim.
2. The First Claimant was incorporated in the Cayman Islands while the Second Claimant was incorporated in the DIFC and is therefore a DIFC Establishment for the purpose of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the “JAL”). On the other hand, the Third Defendant (“KPMG LLP”) is a limited liability partnership registered in the DIFC.
3. I have gone through the Order thoroughly and suffice for me to say that the Judge had analysed the pleadings, the witness statements as well as the law in great detail. I cannot find in flaws in his analysis and finding of facts. I also find that he has considered all the relevant laws, particularly all the cases he cited relating to jurisdiction and applied them correctly. He had also discussed Article 44 of the Engagement Letters deeply. In my opinion, Article 44 could have been better drafted to express the intentions of the parties. Be as it may, the Court has to accept it as it is drafted and do its best to interpret it to determine the mutual intentions of the parties expressed in that Article. I have also considered in great detail the submissions by the Applicants as well as the Respondents.
4. I agree with the learned Judge in concluding that the threshold in determining that the DIFC Courts has jurisdiction in any matter or disputes is rather low as with opt out clauses must also be made pursuant to specific, clear and express provisions. The way Article 44 is worded is insufficient to hold that it is an opt out clause. The Court should exercise its discretion to refuse to enforce an opt out agreement if there is a strong reason not to do so. In this particular instance, the learned Judge decided that Article 44 was not an opt out clause. Having read through his lengthy discussion on the Article and his reasoning in arriving at his conclusion, I agree with him.
5. The learned Judge, in his Order, also considered the facts before him, he found, and I agree with him, that there is sufficient strong connection between the parties, the agreements they entered as well as the transaction taken by them in entering into the

agreements that these claims are connected to the DIFC. This includes acts by the parties that engagement letters for example are required by the Claimant to be confirmed and accepted by signing and returning the enclosed copy. Since these acknowledgements are done within the DIFC, it must necessarily be concluded that it clearly falls within the gateway of JAL. The Judge also concluded that letters of engagements relating to AIML were partly concluded or finalised within the DIFC.

6. I do not need to go into the requirements of RDC 44.19 where permission to appeal will only be given if the court is satisfied that there is a real prospect of success if permission to appeal is allowed or if there are compelling reasons for the appeal to be heard. I therefore dismiss this Renewed Permission Application and the costs will be assessed by the Registrar unless parties agree.