Neutral Citation Number: [2014] EWHC 1344 (TCC)

Case No: **HT-12-372**

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice

Rolls Building, London EC4A 1NL

Date: 30 April 2014

Before :

Mr Justice Ramsey

- -

Between :

HONEYWELL INTERNATIONAL MIDDLE EAST LIMITED **Cla**

- and -

MEYDAN GROUP LLC (FORMERLY KNOWN AS MEYDAN LLC) **Defe**

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Tom Montagu-Smith (instructed by **Hogan Lovells International LLP**) for the **Claimant**

Tim Taylor QC and Riaz Hussain (instructed by **King & Wood Mallesons LLP**) for the **Defendant**

Hearing dates: 27 and 28 February 2014

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Judgment

Mr Justice Ramsey:

Introduction

1.
In these proceedings the Claimant ("Honeywell") brings an arbitration claim against the Defendant ("Meydan") to enforce a Dubai arbitration award issued on 1 March 2012 ("the Award") made by an arbitral tribunal ("the Tribunal") in an arbitration ("the Arbitration") under the rules of the Dubai International Arbitration Centre ("DIAC").

2.
Under the Award Honeywell was awarded the sum of AED77,080,272.44, approximately £12.6 million against Meydan.

3.
Honeywell commenced these proceedings on 12 November 2012. It made a without notice application under s.101(2) of the Arbitration Act 1996 ("the Act") and CPR 62.18(1)(b) for leave to enforce the Award in the same manner as a judgment or order of the court to the same effect.

4.

It supported the application with the first witness statement of Anthony Robin Marshall, a partner of Hogan Lovells International LLP dated 8 November 2012 which exhibited the documents which are required to be produced under s.102 of the Act.

5.
By an order made on 12 November 2012 and sealed on 22 November 2012 ("the Order") Mr Justice Akenhead gave leave to enforce the Award in the same manner as a judgment or order of the court to the same effect but he ordered that the Order should not be enforced for 21 days after service of the relevant documents on Meydan or, if Meydan applied within those 21 days to set aside the Order, until after such application had been finally disposed of. The Order gave directions as to service of the documents.

6.
On 11 September 2013 Honeywell made a further without notice application in relation to service of the proceedings out of the jurisdiction supported by the second witness statement of Mr. Marshall, dated 11 September 2013.

7.
On 16 September 2013 Mr Justice Stuart-Smith made an order pursuant to CPR6.15(1) and 6.27 giving permission to serve the relevant documents on Meydan and their Solicitors.

8.
On 14 October 2013 Meydan acknowledged service of the arbitration claim and indicated that it intended to dispute the court's jurisdiction.

9.
Following correspondence between solicitors the parties agreed an extension of time for the service of Meydan's application to set aside the Order and within that extended period, on 29 October 2013, Meydan issued an application seeking a date for a case management conference to consider directions and to hear an application for security for costs and also seeking an order setting aside the Order.

10.
By an order made on 19 December 2013 I gave directions for a hearing to take place on 27 and 28 February 2014, with directions for service of evidence. The purpose of the hearing was to consider whether Meydan's application to set aside the Order could be determined summarily as having no real prospect of success or whether a final hearing was needed in which case further directions would be given leading to a hearing on dates fixed in early April 2014.

11.
The parties served evidence. Honeywell served three witness statements from Mr Marshall and evidence on UAE law from Amjad Ali Khan, the Managing Partner of Afridi & Angell, a firm of legal consultants in the UAE. Meydan served two witness statements from Joanne Elizabeth Strain, a solicitor in SJ Berwin (MENA) LLP, now King & Wood Mallesons SJ Berwin (MENA) LLP ("SJ Berwin"), four witness statements from Bader Sulaiman, a legal consultant to the Chairman of Meydan Group LLC and a witness statement from Mark Conn a director of CKR Consulting Engineers and an affidavit from Peter Richard Evans a chartered quantity surveyor in independent practice. In addition Meydan served evidence on UAE law from Ian David Edge a practising English barrister and lecturer in law at the Centre of Islamic and Middle East Law in the University of London.

12.
The parties exchanged submissions in advance of the hearing on 27 and 28 February 2014 at which both parties made oral submissions.

13.
On 4 March 2014 I informed the parties that I had decided that on the basis of the evidence and submissions I should dismiss Meydan's Application to set aside the Order. In this judgment I set out my reasons for coming to that conclusion.

Background

14.
Honeywell is a company incorporated in Bermuda. It operated in the United Arab Emirates ("UAE") through its branch in Dubai with commercial license number 605319. It is an affiliate of Honeywell International Inc, a diversified international technology and manufacturing company.

15.
Meydan is incorporated in Dubai with commercial license number 590645. It is the owner of the Ned al Sheba racecourse, commonly referred to in Dubai as the Meydan Racecourse where horse races, concerts and exhibitions are hosted.

16.
On 17 September 2007 Meydan entered into a contract ("the Arabtec Contract") with a main contractor Arabtec-WCT JV ("Arabtec") under which Arabtec agreed to carry out certain works at the Meydan Racecourse, including an extra low-voltage ("ELV") system in the hotel, grandstand, boat house and the Dubai Racing Club which were all located there.

17.
The employer's representative under the Arabtec Contract was Teo A Khing Design Consultants Sdn Bhd (Dubai Branch) ("TAK") who were engineering consultants with a head office in Malaysia.

18.
On 19 March 2008 TAK on behalf of Meydan invited Honeywell to submit a tender for the supply, installation, testing and commissioning of the ELV System at the Meydan Racecourse. The tender invitation included the following provisions at clauses 2.2. and 2.3 relating to the collection of tender documents:

"2.2 Tender Documents will only be made available upon our receipt of the following company cheque made payable to Teo A Khing Design Consultants Sdn Bhd (Dubai Br)

(i) The first cheque amounting to United Arab Emirates Dirham: Twenty Six Thousand Only (AED 26,000.00) being the documentation fees which is refundable to tenderers upon submission of completed tender documents and tender drawings.

(ii) The cheque amounting to United Arab Emirates Dirham: One Hundred Thousand Only (AED 100,000.00) being the tender deposit which is refundable to all unsuccessful tenderers.

(iii) The tender deposit of the successful tenderer will be defrayed as total lithography charges for contract documentation.

2.3 For your information, total lithography charges for tender and contract documentation of United Arab Emirates Dirham: Four Hundred Thousand Only (AED 400,000.00) will be borne by the successful tenderer."

19.
The letter said that the tender documents were to be delivered to Meydan, for the attention of the Tender Committee at TAK's offices in Dubai on or before 17 April 2008. The letter indicated that it was copied to Meydan.

20.
On 29 June 2008 Meydan nominated Honeywell as the nominated subcontractor to be appointed by Arabtec under the Arabtec Contract to install the ELV system. Honeywell was subsequently engaged as a sub-contractor by Arabtec although no formal written agreement was entered into. Honeywell commenced work at the site on 19 July 2008.

21.
The Arabtec contract was terminated in January 2009 but Honeywell continued to work at the Meydan Racecourse. In DIAC arbitration case 02/2009 Arabtec commenced proceedings against Meydan.

22.
On 10 March 2009 Meydan sent Honeywell a letter of acceptance informing them that they had been awarded a contract to execute and complete the supply, installation, testing and commissioning of the ELV system at the Racecourse.

23.
On 17 March 2009 Honeywell wrote to Meydan and confirmed their acceptance of the terms and conditions in the letter of acceptance but noted certain points arising out of those provisions. On 17 May 2009 TAK wrote to Honeywell, responding to the comments in Honeywell's letter of 17 March 2009. The letter indicated that it was copied to Meydan.

24.
On 7 June 2009 an agreement was signed between Meydan and Honeywell for the execution and completion of the supply, installation, testing and commissioning of the ELV System at the Racecourse ("the Contract"). The Contract indicated that it was signed by Mr. Fakhri Valikarim above Honeywell's seal or stamp.

25.
The Contract incorporated at Clause 20.6 the following provision in relation to Arbitration:

"Unless settled amicably, any dispute shall be settled by international arbitration. Unless otherwise agreed by both Parties:

(a) the dispute shall be finally settled under the Rules of Commercial Conciliation and Arbitration 1994 of the Dubai International Arbitration Centre

(b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules,

(c) the arbitration shall be conducted in the language for communication defined in Sub-Clause 1.4 [Law and Language], and

(d) the venue of the arbitration shall be Dubai."

26.

Honeywell submitted monthly interim payment applications to TAK and payments were made against certificates until 22 December 2009. A further payment was made on 15 February 2010 but no further payments were made by Meydan after that date. Honeywell contended that payments were overdue, payment certificates had not been issued and sums had been under-certified. As a result Honeywell reduced work on 14 June 2010 and suspended work on 20 July 2010.

27.
As exhibited to the witness statement of Mr. Sulaiman there is a letter from Honeywell to Meydan dated 20 May 2010 in which Honeywell writes as follows:

“This is with reference to submission of Performance Security by the Contractor, in accordance with Letter of Acceptance as stated above, which requires the Contractor to submit the Performance Security as soon as reasonably practicable.

Therefore, please find attached herewith the Performance Security (Performance Bond) with Ref. AEPEB/GTY/1071080/A for the subject Project for your kind perusal.”

28.
The document has on it a transmitted stamp from Honeywell dated 20 May 2010 and a received stamp from Meydan and from TAK, to whom the letter was copied, both dated 20 May 2010. The attachment to that letter is a performance bond in the name of Meydan LLC issued by HSBC Bank Middle East Limited, Abu Dubai Office for AED 6,847,845.56. Meydan disputes that it received that letter and performance bond or the original of those documents.

29.
On 15 July 2010 Honeywell commenced arbitration proceedings against Meydan by submitting a Request for Arbitration to DIAC. DIAC gave the Arbitration the reference Case No 201/2010.

30.
As accepted by Mr. Taylor at the hearing, Mr. Sulaiman of Meydan was aware, as a result of without prejudice communications that, as at 4 August 2010 Honeywell was saying that there were current arbitration proceedings with the Case No 201/2010.

31.
On 1 September 2010 DIAC wrote to Honeywell, represented by Hogan Lovells Middle East LLP (“Hogan Lovells”) and to Meydan in relation to the Arbitration. It referred to a letter dated 22 July 2010 by which DIAC had sent the Request for Arbitration to Meydan and stated as follows:

“The Respondent has failed to submit its Answer within 30 days as required in accordance with Article 5.1 of the Rules.

Failure of the Respondent to file an Answer does not prevent the arbitration from proceeding, in accordance with Article 5.6 of the Rules.

“Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules. However, if the Arbitration Agreement calls for party nomination of arbitrators, failure to send an Answer or to nominate an arbitrator within the time provided or at all will constitute an irrevocable waiver of that party’s right to nominate an arbitrator.”

32.
On 6 October 2010 DIAC wrote to Hogan Lovells and Meydan referring to the payment of the advance on costs noting that AED 528,500 had been paid by Honeywell and continued:

“Referring to the Centre’s letter dated 1 September 2010, we note that the time limit granted to the parties for payment of their shares of the advance on costs has expired without having been received from the Respondent.

Accordingly, the Centre grants the Respondent a further 10 days upon receipt of this letter to pay its share of the advance on costs, i.e. AED 528,500.

We look forward to receiving the requested payment within the above-mentioned time limit.

Should the Respondent fail to fulfil its payment within the additional time limit granted, the Centre will invite the Claimant to substitute for Respondent in paying the balance of the advance on costs in order for this matter to proceed.

Constitution of the Tribunal

The Executive Committee will be shortly invited to appoint a co-arbitrator on the Respondent’s behalf in accordance with Article 9.4 of the Rules.”

33.
On 24 October 2010 DIAC wrote to Honeywell and Meydan in the following terms:

“The Centre informs you of the Executive Committee’s decision of today. The Executive Committee decided to appoint Dr Karim Hafez as co-arbitrator upon nomination of the Claimant and took the necessary steps for the appointment of the co-arbitrator on behalf of the Respondent.”

34.
On 24 October 2010 DIAC wrote to Mr. Hamish Macdonald asking him whether he would be willing to accept appointment as co-arbitrator in the Arbitration.

35.
On 27 October 2010 Clifford Chance LLP wrote to DIAC, copied to Honeywell in the following terms:

We refer to your letters dated 6 October 2010 and 24 October 2010, addressed to Meydan LLC.

We have recently been instructed in this matter by Meydan Group LLC (after service of your letter dated 6 October). We understand that a Request for Arbitration has purportedly been served on “Meydan LLC” on 25 July 2010.

The current proceedings have been commenced in reliance on the arbitration agreement contained in a contract dated 7 June 2009 (the “Contract”). As is clear from the Contract Agreement, which forms an essential part of the Contract, the Contract was entered into between Honeywell International Middle East Limited (the Claimant) and Meydan Group LLC, not Meydan LLC (the Contract Agreement is enclosed for reference). Accordingly, the arbitration agreement contained in the Contract, on which the current proceedings are based, is between those two parties: there is no arbitration agreement between the Claimant and Meydan LLC. It is therefore denied that any proceedings can be commenced against Meydan LLC in reliance on the arbitration agreement contained in the Contract.

In light of the above, the Executive Committee is hereby requested to consider the existence, validity, scope and applicability of the arbitration agreement relied upon by the Claimant to disputes between the Claimant and Meydan LLC, in accordance with the Executive Committee’s powers under Article 6.2 of the DIAC rules.

The remainder of this letter (including the nomination of an arbitrator, and the request for an extension of time below) is without prejudice to the above application, and/or any arguments concerning the validity of that Request for Arbitration.

We note that in your 6 October letter you state that the Executive Committee "will shortly be invited to appoint a co-arbitrator on the Respondent's behalf in accordance with Article 9.4 of the Rules", and that in your 24 October letter you add that the Executive Committee has taken "the necessary steps for the appointment of the co-arbitrator on behalf of the Respondent". Nonetheless, we respectfully request that the Centre allows the Respondent to nominate an arbitrator. In this regard, the Respondent nominates Hamid Gharavi to act as arbitrator.

…

We also request that you grant the Respondent an extension of time to file an Answer to the Request for Arbitration. We note that in matters not expressly provided for under the Rules, the Centre has the power under Rule 43 to "act in the spirit of [the] Rules". We submit that it is in the spirit of the Rules to grant such a request for an extension of time to serve an Answer as it is to the advantage of both the Respondent and the Claimant to allow the Respondent to set out its preliminary response to the assertions made in the Claimant's Request."

36.
On 1 November 2010 DIAC wrote to Hogan Lovells and to Clifford Chance and said this:

"Answer to the request for Arbitration

The Centre notes that the time limit granted in accordance with Article 5.1 of the Rules expired without having received any Answer to the Request for [Arbitration] or request for extension of time pursuant to Article 5.7 of the Rules.

Accordingly, the Centre cannot grant the Respondent a time extension to file an Answer to the Request.

However, any Answer submitted by the Respondent will be taken into consideration by the Centre and forwarded to the Tribunal

Constitution of the Tribunal

The Centre notes that the Respondent nominated Mr. Hamid Gharavi as co-arbitrator.

However, Article 5.6 of the Rules provides:

"Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules. However, if the Arbitration Agreement calls for party nomination of arbitrators, failure to send an Answer or to nominate an arbitrator within the time provided or at all will constitute an irrevocable waiver of that party's right to nominate an arbitrator".

The Centre informs the parties that the Executive Committee decided on 24 October 2010 to appoint Mr Hamish Macdonald as a co-arbitrator on behalf of the Respondent.

…

Name of the Respondent

The Centre refers to the Respondent's letter pursuant to which "the Contract was entered into between […] the Claimant and Meydan Group LLC and not Meydan LLC". The Claimant states that "Meydan LLC changed its name to Meydan Group LLC [--]All that is required is for the name of the Respondent to be changed on the file to Meydan Group LLC".

The Centre understands that the parties agree to the change of the Respondent's name into Meydan Group LLC."

37.
There followed correspondence between Clifford Chance, Hogan Lovells and DIAC and on 23 November 2010 DIAC wrote to Hogan Lovells and to Meydan in the following terms:

The Centre informs you of the Executive Committee's decision of 13 November 2010. The Executive Committee decided to let the matter proceed against the Respondent (i.e. MEYDAN LLC) in accordance with Article 6.2 of the Rules.

The Respondent's representative

The Centre refers to Clifford Chance's letter dated 27 October 2010 stating that "we have recently been instructed by Meydan Group LLC". The Respondent is invited to confirm whether it is represented by Clifford Chance within 5 days following the receipt of this letter.

Until the Centre receives a confirmation in this regard, all future correspondence will be sent solely to the Respondent."

38.
On 25 November 2010 Clifford Chance responded to DIAC in the following terms:

We refer to your letter dated 23 November 2010. This letter is sent without prejudice to Meydan Group LLC's position that no valid arbitration agreement exists between the Claimant and Meydan LLC, and without prejudice to DIAC's query as to whether Meydan LLC is represented by Clifford Chance LLP (a response to which will be provided in due course following the receipt of DIAC's response to the below).

We note that the Executive Committee has decided to let the current proceedings continue against Meydan LLC. However, the grounds for the Executive Committee's decision are not clear. In particular, it is not clear whether the Executive Committee is (as is required by Article 6.2 of the DIAC Rules) prima facie satisfied that a valid arbitration may exist between the Claimant and Meydan LLC, or whether it is prima facie satisfied simply that a valid arbitration agreement may exist (it is not disputed that a valid arbitration agreement exists between the Claimant and Meydan Group LLC).

You are therefore requested to provide an explanation for the Executive Committee's decision to allow proceedings to continue against Meydan LLC in circumstances where Meydan LLC is clearly not a party to the arbitration agreement relied upon by the Claimant.

Amongst other things, this request is made in order to enable Meydan Group LLC properly to assess the options available to it, including applying to the UAE Courts for relief in relation to the Executive Committee's exercise of its powers under Article 6 2 in this case.

In the meantime, it is noted for the record that, at no stage has Meydan Group LLC denied that it is a party to the arbitration agreement relied upon by the Claimant On the contrary, our letter dated 3

November 2010 expressly suggested that the Claimant serve a Request for Arbitration against Meydan Group LLC."

39.
DIAC responded to Clifford Chance by letter dated 13 November 2010 in which they said as follows:

"The Centre reiterates the content of its letter dated 23 November 2010 informing the parties that the Executive Committee decided to let the matter proceed against the Respondent (i.e. MEYDAN LLC) in accordance with Article 6.2 of the Rules Accordingly the EC is prima facie satisfied that an Arbitration Agreement exists between the parties to the arbitration proceedings and "in such a case, any decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself".

The Centre further informs you that the Executive Committee's deliberations are confidential and that it does not disclose its reasoning to the parties."

40.
On 13 December 2010 Clifford Chance wrote to DIAC to say as follows

"We refer to your letter dated 23 November 2010 in which you invited the named Respondent, Meydan LLC, to confirm whether or not it is represented by Clifford Chance LLP

As we have advised in previous correspondence, we are instructed on behalf of Meydan Group LLC, not Meydan LLC. Our instructions are that Meydan LLC no longer exists as an entity and that even if it was appropriate to do so, Meydan Group LLC is therefore unable to instruct us, or purport to instruct us, on behalf of a non-existent entity."

41.
On 20 December 2010 DIAC notified Hogan Lovells and Meydan of the appointment of the chairman of the Tribunal "upon joint nomination of the co-arbitrators in accordance with Article 9.5 of the Rules."

42.
The file was then transferred to the Arbitral Tribunal who gave directions which led to a ruling under Article 6.2 of the DIAC Rules dated 21 June 2011. The conclusion of the Tribunal was as follows at paragraphs 6.1 and 6.2 of the ruling:

"6.1 The Tribunal therefore concludes that the Claimant should be given leave to amend the description of the Respondent to this Arbitration to "Meydan Group LLC (formerly known as Meydan LLC)"

6.2. The Claimant requests the tribunal to order Meydan Group LLC to produce a series of documents evidencing its status. In the view of the Tribunal the appropriate course is for the newly named Respondent to be given leave to serve a response to the request to Arbitration and thereafter for directions to be given for further pleadings. Questions of disclosure and production of documents will be considered thereafter."

43.
On 27 September 2011 Honeywell issued a "Legal Notice of Termination of Contract" ("the Termination Notice") served by a Court Bailiff of the Dubai Courts. Under that Notice Honeywell notified "Meydan LLC/Meydan Group LLC" that "the Contract shall terminate 14 days after the date of service of this notice, such termination to take effect automatically upon the expiry of the said 14 day period (without the need of further notification)."

44.
On 28 September 2011 the Tribunal gave procedural directions.

45.
On 29 September 2011 Mr Sulaiman wrote to the Tribunal attaching the Termination Notice and stating as follows:

“It is noteworthy, that the Notice intentionally makes no mention whatsoever of these arbitral proceedings, particularly when it purports to cover exactly the same, inter alia, contract, the parties, the issues and the subject matters thereof (albeit disguised as introducing a mere new grounds for relief).

The purported Notice served by the Claimant through the Dubai Courts has taken place over a year after the commencement of these arbitration proceedings in July 2010 and appears to attempt to ‘introduce’ an entirely new claim. In the circumstances, the attempted introduction of this wholly new claim is intended to severely prejudice Meydan Group LLC in circumstances where the same is being attempted deliberately after Meydan Group LLC has put on record its objections to the jurisdiction of this Tribunal and has indicated that it will not participate in these arbitration proceedings. Meydan Group LLC therefore has no opportunity to respond to this further claim, which should be disallowed by the Tribunal in accordance with Article 26.1 of the DIAC Rules given the nature of the claim, the delay in making this claim and the intended prejudice to be suffered by Meydan Group LLC.”

46.
On 1 October 2011 Hogan Lovells responded to Mr. Sulaiman’s email and said as follows:

“Honeywell have asked us to clarify that the Notice to which you refer is a notice of termination of their contract with Meydan pursuant to Clause 16.2 of the General Conditions of the Honeywell-Meydan Contract (FIDIC form).It was served through the court bailiffs’ service in order to ensure that an indisputable record of service would be available. It does not involve any commencement of court proceedings in relation to the said Contract or the making of any claim, although additional claims do accrue to Honeywell as a result of the termination (please see Clause 16.4 of the General Conditions). The formal notice of suspension served in July 2010 was, as you may recall, served via the same procedure.

It was not necessary to draw the Tribunal’s attention to the termination of the Contract, although the fact of the termination would of course have become known at some stage during the proceedings.”

47.
On 13 October 2011 Hogan Lovells wrote to DIAC, referring to the Request for Arbitration, the Tribunal’s ruling under 6.2 of the DIAC rules and an email from the chairman of the Tribunal and stated that they:

“…now write with the Claimant’s Amended Request for Arbitration, reflecting the Tribunal’s decision that the Respondent is properly referred to a “Meydan Group LCC (formerly known as Meydan LLC)”

This Letter constitutes the Amended Request. We repeat the contents of the Request dated 15 July 2010 without alteration, subject only to deletion of the first five words of the fourth paragraph thereof (which read “The Respondent is Meydan LCC”) and substitution therefor of the following: The Respondent is Meydan Group LCC(formerly known as Meydan LLC)””

48.

The letter was sent by email to Mr. Sulaiman and by fax and courier to Mr. Al Tayer at the Meydan Racecourse.

49.
On 2 November 2011 the Tribunal recorded and directed as follows:

“1. The Respondent named in the amended Request for Arbitration has failed to give notice whether it intends to participate in the arbitration, and has failed to provide its Answer to the Request by 30 October.

2. The Claimant should therefore, on or before 29 November, serve its Statement of Claim in accordance with the DIAC Rules.

3. The Claimant is also invited to propose dates for a hearing in Dubai, the hearing presently being estimated as requiring 3 days in February or March 2012.

The Tribunal will give such other directions as may be necessary prior to any hearing.”

50.
On 2 November 2011 SJ Berwin wrote to the Tribunal saying they were instructed on behalf of Meydan Group LLC in relation to the Request for Arbitration of 12 October 2011. The letters referred to the Tribunal’s directions and said as follows:

“We do not accept the Tribunal’s Directions. There is no provision in the DIAC Arbitration Rules for simply amending a Request. Accordingly the Request served on 13 October 2011 constitutes a new Request altogether and our client has 30 days to submit its Answer, along with its comments with regard to the nomination of arbitrators.

Our client will most probably nominate Mr Ali Ghosheh, of Counsel (Abu Dhabi) as its nominated Arbitrator. Please note, our client intends to contest the Claimant’s claims and make its own counterclaims.”

51.
Honeywell served a Statement of Claim on 30 November 2011 as set out in the Tribunal’s directions of 28 September 2011. In that Statement of Claim Honeywell included a termination claim based on the Termination Notice. It made claims for the recovery of retention money, payment for completed works, materials on site and contractor’s equipment left on site. It also requested orders requiring the return of the performance security and advance payment guarantee and prohibiting a call on those documents. The Tribunal’s directions of 28 September 2011 provided for Meydan to serve responses. It did not serve any responses and did not participate further in the Arbitration.

52.
On 16 December 2011 the Tribunal wrote to the parties as follows:

“The Respondent is, as usual, invited to send any comments both to the Tribunal and to the Claimant for its response. If the Respondent intends to maintain its previous stance that it will not participate in the hearing, it should please note the following

(i)
The Tribunal will continue to afford the Respondent the opportunity to be heard up to and including the hearing itself. However, any application the Respondent may choose to make must be made in a

timely manner. Any application which would affect the hearing date is unlikely to be entertained once the hearing date is fixed.

(ii)
The Respondent is discouraged from repeating the grounds previously expressed for its decision so far not to participate. Those grounds are familiar to the Tribunal and are not accepted."

53.
On 10 January 2012 the Tribunal gave directions for the service of witness statements and documents and for the provision of written openings and hearing bundles. The substantive hearing was arranged to take place in Dubai on 28 and 29 February 2012. Honeywell was represented at the hearing but Meydan did not appear and was not represented. All the documents produced by the Tribunal and Honeywell were served on Meydan who also received copies of a daily transcript of the hearing.

54.
On 19 January 2012 Meydan Group LLC commenced an Arbitration against Honeywell. DIAC gave that arbitration the reference of Case No 18/2012.

55.
On 1 March 2012 the Tribunal made the Award in which it awarded Honeywell AED 73,323,272.44 together with costs of AED 3,757,000.00.

56.
On 3 March 2012 Mr Sulaiman wrote to the Tribunal setting out a number of observations by reference to the matters dealt with in the daily transcripts.

57.
On 26 August 2013 the arbitral tribunal in DIAC Case No 18/2012 made an Interim Award and in paragraphs 101 and 102 of that award it held as follows:

"101. The Tribunal has before it, as R-2, the formal legal opinion dated 20 October 2012 issued by Dr. Louay Belhoul, the Director-General of the Dubai Government's Legal Affairs Department in response to a request directed to him by the Dubai Courts on 16 September 2012 to advise them on the legal nature of Meydan Group LLC. In his capacity as the Government's senior legal officer acting pursuant to the functions of his office, Dr. Belhoul stated, as part of the factual background recited for the purposes of the opinion, "on 8/12/2008 the company's name was changed from Meydan LLC to Meydan Group LLC." This explains the continuing use of the same commercial licence and commercial register numbers for Meydan LLC and Meydan Group LLC on the commercial licence documentation, submitted as R-26. The Tribunal concludes that the entity called Meydan LLC and then Meydan Group LLC has at all material times been one and the same legal person.

102. On this basis, the Tribunal finds that the parties in the First Arbitration and in the present arbitration are the same."

58.
The arbitral tribunal in DIAC Case No 18/2012 also found that, apart from losses and damages occurring after the date of the Award in DIAC Case No 201/2010, the claims raised by Meydan were barred by res judicata and could not be considered by that tribunal on the basis of the Award in DIAC Case 201/2010.

59.

On 12 November 2013 Meydan submitted a memorial to the arbitral tribunal in Case No 18/2012 attaching two documents. The first was a copy of a bribery complaint dated 8 October 2013 made to the Public Prosecutor of the Government of Dubai against Honeywell and the second was a copy of a letter dated 11 November 2013 from the head of the Dubai Public Funds Prosecution Department to the Head of Bur Dubai Police Station requesting that investigations be conducted pursuant to the first option in Article 209(2) of the UAE Federal Civil Procedures Law No 11 of 1992 ("the CPL").

60.
In DIAC Case No 02/2009 between Arabtec and Meydan, Meydan obtained an opinion dated 16 December 2012 from an English Queen's Counsel as to whether the subject matter of the arbitration raised serious issues concerning corruption, fraud and money laundering. He concluded that there were serious concerns that TAK and Arabtec had engaged in criminal acts of corruption. He said that further evidence would need to be gathered to substantiate such matters but, in the light of the serious indicators of corruption which he identified, his view was that such matters plainly warranted further criminal investigation.

61.
On 17 May 2012 Honeywell commenced proceedings before the Dubai Courts for ratification of the Award in DIAC Case No 201/2010 in order to enforce the Award.

62.
On 26 July 2012 Meydan issued a submission setting out the grounds for claiming that the Award should be held void and/or invalid and should not be enforced by the Dubai Courts. It raised eight grounds of objection. In those proceedings the Award was recognised and its enforcement ordered by the Dubai Court of First Instance on 21 February 2013.

63.
Meydan filed an appeal against that judgment and the appeal proceedings began on 21 March 2013 when Meydan served its appeal submissions. There have been a number of hearings and further submissions in those proceedings.

64.
On 9 October 2013 the Court of Appeal adjourned a hearing to 27 November 2013. In the meantime in November 2013 the Dubai Courts stayed the execution proceedings. On 17 November 2013 Honeywell appealed the decision staying the execution proceedings. At the hearing in these proceedings on 29 February 2014 a document was submitted by Amal Advocates and Legal Consultants attaching a copy of a Dubai Court Document in Appeal No 179/2013 of the Commercial Execution Dubai Courts and stated as follows

"With reference to the above mentioned appeal, we would like to inform you that the attached decision for the Appeal court (Issued on February 26, 2014) states that the appeal from "Honeywell International Middle East Limited" against the order (Issued on November 12, 2013) for suspending the execution ordered by the court of First Instance (In relation to the Award arising from DIAC case No. 201/2010) was refused, mandating "Honeywell International Middle East Limited" to pay the expenses and AED 1000 for attorney fees."

Approach to applications to enforce New York Convention awards

65.

Section 103 of the Act deals with refusal of recognition or enforcement of a New York Convention award and is based on the Grounds set out in Article V of the New York Convention. It provides as follows:

103
. Refusal of recognition or enforcement

(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves —

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;

(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(d). that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));

(e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;

(f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award."

66.
In accordance with s.103(1) the court must order enforcement unless the grounds are made out. The opening words of s.103(2) indicate that if one of the grounds under that sub-section are made out then recognition or enforcement of the award "may be refused". That introduces a discretion which, as stated in Dicey, Morris and Collins on the Conflict of Laws(15th Edition) at para 16-137, is not open-ended and the court would be unlikely to exercise its discretion to enforce an award which is subject to a fundamental or structural defect. This means that where one of the grounds stated under s103 (2) or (3) of the Act has been made out, the Court would normally only enforce the award if the right to rely upon one of the stated grounds had been lost, for example by another agreement or estoppel, or on some other recognisable legal principle: see Dardana Ltd v Yukos Oil Co[2002] EWCA (Civ) 543, Kanoria v Guinness[2006] EWCA (Civ) 222 and Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan[2009] EWCA (Civ) 755, affirmed [2010] UKSC 45.

67.

As stated in Dicey, Morris and Collins at para 16-150 English law recognises an important public policy in the enforcement of arbitral awards and the courts will only refuse to do so under s.103 in a clear case. Equally as stated in Redfern and Hunter on International Arbitration at para 11.60 “the intention of the New York Convention …. is that the grounds for refusing recognition and enforcement of arbitral awards should be applied restrictively.” They then cite Van den Berg, the New York Arbitration Convention of 1958 at pages 267 and 268 where he said “As far as the grounds for refusal for enforcement of the Award as enumerated in Article V are concerned it means that they have to be construed narrowly.” As made clear in Rosseel NV v Oriental Commercial Shipping Co (UK) Limited [1991] 2 Lloyd’s Rep 625 at 629 enforcement may only be refused on the grounds set out in s.103 of the Act and are therefore exhaustive. The burden of establishing the grounds under s.103(2) is upon Meydan, although the court can raise matters under s.103(3) of its own motion.

68.
On an application to enforce an award issues may arise, such as those which arose in Sovarex SA v Romero Alvarez SA[2011] EWHC 1661 (Comm) in which it is necessary for the court to decide an issue based on disclosure and cross-examination of evidence. However, in my judgment, the court should be cautious about taking that approach and will generally be able to come to a decision on whether the grounds are made out without the necessity for holding a full hearing but will be able to deal with them on the basis of the usual test on summary judgment that is whether there is a real prospect of successfully establishing a ground under s.103 or whether there is some compelling reason why the issue should be disposed of at a trial.

69.
I was referred to the well-known principles to be applied on an application for summary judgment or to strike out a claim which were conveniently set out by Lewison J, as he then was, in Easy Air Limited (T/A Openair) v Opal Telecom Limited2009 EWHC 339 (Ch) at 15, approved by the Court of Appeal in AC Ward & Sons Limited v Catlin (Five) Limited[2009] EWCA Civ 1098 at [24] in the following terms:

“(i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: Swain v Hillman[2001]1 All ER 91;

(ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: [ED & F Man Liquid Products Ltd v Patel[2003] EWCA Civ 472 at [8], [2003] All ER (D) 75 (Apr) at [8]]

(iii) In reaching its conclusion the court must not conduct a “mini-trial”: Swain v Hillman

(iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products Ltd v Patel at [101]

(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: [Royal Brompton Hospital NHS Trust v Hammond (No 5)[2001] EWCA Civ 550, 76 Con LR 621;

(vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even

where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: [Bolton Pharmaceutical Co 100 Ltd v Doncaster Pharmaceuticals Group Ltd[2006] EWCA Civ 661, [2007] FSR 631;

(vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: [ICI Chemicals and Polymers Ltd v TTE Training Ltd[2007] EWCA Civ 725, [2007] All ER (D) 115 (Jun)."

70.
In Seaton v Seddon[2012] EWHC 735 (Ch), Roth J added to those principles what was said by Lord Woolf MR in Swain v Hillman at 94 as follows:

"It is important that a judge in appropriate cases should make use of the powers contained in Pt 24. In doing so he or she gives effect to the overriding objectives contained in Pt 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible."

71.
Given the limited grounds upon which the court may refuse to enforce a New York Convention award then, in applying the principles relevant to summary judgment and striking out, the court needs to assess what is put before it with a critical eye. In particular where a party has not raised a matter which they could have raised before the arbitral tribunal or where they have taken inconsistent positions to those they now urge upon the court, the court should not lightly accede to a submission that the matter needs to be determined at a trial where the underlying reason is often to cause further delay and costs in the hope that something may turn up either to strengthen an existing ground or to establish a new ground.

72.
With those observations I now turn to consider the individual grounds.

Bribery and s.103(2)(b).

Ground (a): The Award was not valid under UAE law (to which it is subject) because it resulted from a contract procured by the Claimant bribing public servants in Dubai (the Defendant being a public body and/or a body administering public funds under applicable law).

73.
Meydan contends that the Contract was procured by bribery and that this invalidates the Contract and the Arbitration Agreement.

74.
So far as an allegation of bribery against Honeywell is concerned, Meydan relies on the terms of the Invitation to Tender dated 19 March 2008 issued by TAK. That document, cited above, says that tender documents would only be made available upon receipt of a cheque made payable to TAK in the sum of AED 26,000 "being the documentation fees which is refundable to tenderers upon submission of completed tender documents and tender drawings" and a cheque for AED 100,000 "being the tender deposit which is refundable to all unsuccessful tenderers" but that "the deferred deposit of successful tenderer will be defrayed as total lithography charges for contract documentation." There is then a statement that "total lithography charges for tender and contract documentation of AED 400,000 will be borne by the successful tenderer."

75.
Meydan says that the tender invitation is evidence of an agreement between Honeywell and TAK for Honeywell to pay a bribe under the false cover of "lithography", "Tender" and "document fees". Meydan relies on the evidence of engineering consultants, Mr Peter Evans and Mr Mark Conn that payments for lithography charges and tender fees are neither normal nor usual. Meydan submits that, as a matter of English law, the payment of such sums would amount to bribery and it refers to the summary of the principles by Andrew Smith J in Fiona Trust v Yuri Privalov[2010] EWHC 3199 (Comm) where he said that a bribe or secret commission or surreptitious payment is paid where:

"(i) ... the person making the payment makes it to the agent of another person with whom he is dealing; (ii) ... he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) ... he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent: Industries & General Mortgage Co Ltd. v Lewis[1949] 2 All ER 573 at p. 575G. Thus, a bribe is "a commission or other inducement which is given by a third party to an agent as such, and which is secret from his principal": Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries Company Limited [1990] 1 Lloyd's LR 166 at p. 169...."

76.
Meydan says that this test applies in this case and that it has established a claim which has real prospects of success or one where there is a compelling reason why the issue of bribery should be disposed of at trial. Honeywell refers to Dicey, Morris and Collins at para 16-150 and 16-151 and to Westacre Investments Inc v Jogo Import-SPDR Holding Co Limited[2000] QB 288 at 309 and to Gater Assets Limited v NAK Naftogaz Ukriniy[2008] EWHC 237 (Comm).

77.
Honeywell submits that where a party seeks to resist enforcement on the basis of fresh evidence it must satisfy the test applied for it to English Appeals by the Court of Appeal in Ladd v Marshall[1954] 1 WLR 1489 and it relies on the judgment of Burton J in Nomihold Securities Inc v Mobile Telesystems Finance SA[2011] EWHC 2143 (Comm).

78.
Honeywell refers to the first witness statement of Mr Sulaiman where he sets out the matters which prompted him to investigate allegations of bribery in the following terms:

“4.74 Given the large sum requested for payment, the timing of the request in relation to Honeywell’s appointment, and the knowledge I now have of TAK’s corrupt practices, I have since sought advice on the matter.”

79.
Honeywell submits that the size of the sum and its timing first came to light, according to Mr Sulaiman at paragraph 4.72 of his first witness statement, when the Invitation to Tender was served during the course of the Arbitration on 10 March 2011. So far as Mr Sulaiman’s knowledge of TAK’s corrupt practices is concerned he says at paragraph 4.93 that in or around July and August 2011 he personally had reason for concern as to corrupt practices within the project and he sets out the relevant matters. In addition as Mr Sulaiman says in paragraph 7.1 of his first witness statement, on the basis of the discoveries of TAK’s corrupt collusion with contractors, Meydan filed a criminal complaint in the Dubai Courts on 22 November 2011 against TAK, Arabtec and selected senior management individuals in those entities.

80.
Honeywell therefore submits that Meydan could have advanced its current case on bribery at the time of the Arbitration prior to the award being made on 1 March 2012. Honeywell also submits that, in any event, the evidence put forward does not make a cogent basis for an allegation of bribery. It says that the payment was made clear on the face of the Invitation to Tender which was, also on its face, copied to Meydan. Honeywell also refers to the evidence from Mr Conn who was involved in the tender process and says that he was in dialogue with key Meydan personnel about what he saw to be irregularities in TAK’s practices. He refers to the key Meydan personnel and, in particular Mr Wassim Hamwi, who he refers to as Head of Building Management Services for Meydan.

81.
Mr Conn refers to an email exchange with Mr Hamwi in March 2008 between the date of the Invitation to Tender and the date when Honeywell was nominated as a sub-contractor to Arabtec. Mr Conn says that the lithography fees were an example of irregular practice which he felt duty bound to bring to Mr Hamwi’s attention. In that email exchange Mr Conn wrote to Mr Khalid Nazim of Honeywell and said this:

“You had to issue 2 cheques… one non refundable tender collection and the second for approx AED 400,000 which is on award of the project…

Who did the cheques have to be made out to? Meydan… TAK…?”

82.
Mr Nazim responded in the following terms

“There are three cheques to be issued:

Cheque 1- AED 26,000 - refundable on submission of tender

Cheque 2- AED 100,000 - refundable to unsuccessful bidder

Cheque 3- AED 4000,000 - to be paid by the successful bidder to get the documentation-lithographic charges! (this payment will be only 300K as the 100K of check 2 will not be paid back to the successful bidder)

In order to get the tender documents, we had to issue Cheque 1 and 2. Hopefully we will be the one to issue Cheque 3 as well. The cheques are made to TAK.”

83.
Mr Conn then forwarded this email exchange to Mr Hamwi with the comment “for your eyes only…” He says that it was the unusual request for AED 400,000 which immediately caused him concern. He said that he was familiar with amounts of AED10,000 or AED20,000 being demanded as tender collection cheques but AED 400,000 was “curious and particularly high and seemed to me to indicate irregular arrangements.”

84.
He says at paragraph 5.14 of his witness statement that he felt he should send the email chain to Mr Hamwi. He adds that although he did not have details of the arrangements between TAK and Meydan and there might well have been an explanation for the payment arrangements, nonetheless “I thought I should bring these payment arrangements to the attention of Wassim Hamwi with whom I already had a dialogue.”

85.
Honeywell submits that the payment of AED 400,000 was expressed in the Invitation to Tender as being copying charges for the administration of the entire contract and that, in any event, the relevant tendering procedure was conducted in advance of Honeywell being nominated as a sub-contractor and subsequently entering into a sub-contract with Arabtec. It was then after Meydan terminated its contract with Arabtec that Meydan appointed Honeywell directly. Honeywell submits that it is unclear how any such payment could taint the subsequent Contract between Honeywell and Meydan. Honeywell submits that Mr Sulaiman simply asserts at paragraph 4.63 of his first witness statement “that TAK recommended that Honeywell be appointed for the ELV works and they were so appointed” which it says is not sufficient.

86.
For present purposes I proceed on the basis that Honeywell made a payment of AED 400,000 to Meydan’s agent TAK. In order to establish bribery based on a secret commission, which is the basis on which Meydan puts its case, then Honeywell would have to have failed to disclose that payment to Meydan because the essence of a secret commission is that the payment is kept secret from the principal. I accept that, as Meydan submits, a payment may be secret if it is covered up by some form of legitimate tendering arrangement. However, in this case, within days of the letter of invitation being sent out to Honeywell and well before the non-refundable final payment was to be made, Mr Conn had made precisely those suspicions known to Mr Hamwi, who he says was Meydan’s Head of Building Management Services and one of the “key Meydan personnel”.

87.
Meydan refers to Mr Sulaiman’s second witness statement where at section 6 he deals with these matters and relies on the email exchange with Mr Conn as making clear precisely the nature of the allegations which are now relied upon by Meydan. He refers to a conversation with Mr Hamwi who said he had little recollection of the emails and had not realised their significance. He also says that Mr Hamwi was in charge of information technology for Meydan.

88.
As Meydan submits, a payment might be kept secret if its true purpose were concealed despite the fact that the Invitation to Tender was shown as being copied, as would be expected, to Meydan. However when a senior member of Meydan’s staff, whether he is Head of Building Management Services or the person in charge of IT, is made aware both of the payment and of what are now alleged to be the suspicious circumstances of that payment, I do not consider that there are real

prospects of Meydan successfully establishing that the payment of AED 400,000 by Honeywell was a secret payment made by Honeywell to TAK.

89.
Even if I had not come to that conclusion or if I had found that the allegation of bribery was one which should be dealt with by hearing oral evidence, it is clear that the relevant evidence of bribery was available to Meydan at the time of the arbitration. However at that stage Meydan decided not to participate in the Arbitration or raise the allegations in that Arbitration. As stated in Westacre at 309, the condition to be fulfilled before a party can rely on evidence of fraud in an application to set aside leave to enforce an award will be "that the evidence to establish the fraud was not available to the party alleging the fraud at the time of the hearing before the arbitrators". In this case I consider that that this condition was not fulfilled because the evidence to establish the alleged bribery was available to and could have been deployed by Meydan before the arbitrators made their award and the fact that Meydan did not participate in the arbitration does not, in my judgment, affect that position.

90.
However there is yet a further point in relation to the allegation of bribery. As Honeywell points out, the alleged bribe was made in the context of a tender under which Meydan was going to nominate a sub-contractor for the ELV system under the contract between Meydan and Arabtec. That led to Honeywell being a sub-contractor to Arabtec. However it is not alleged that the sum was paid in order for Honeywell to be engaged directly by Meydan under the Contract entered into in June 2009 after Meydan had terminated the contract with Arabtec. It is therefore difficult to see how the bribe could affect the Contract between Meydan and Honeywell or the arbitration clause within that Contract.

91.
Even if it could be shown that there was some causative link between the bribe allegedly paid in relation to the Invitation to Tender as a nominated sub-contractor and a later recommendation for Honeywell to be employed directly by Meydan, it would have to be shown that as a matter of UAE law the arbitration agreement contained within the contract was itself procured by bribery. That is not alleged.

92.
The relevant provisions of UAE law which apply to a DIAC arbitration are set out in a 2009 statute, referred to by Meydan. Article 4 of that statute states that DIAC shall apply the Arbitration Rules that are in effect to all disputes. As I have held below, the 2007 Rules apply to DIAC arbitration Case No 201/2010. Article 6.1 of the DIAC Rules deal with the separability of the Arbitration Agreement and provides:

"6.1 Unless otherwise agreed by the parties, an Arbitration Agreement which forms or was intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the Arbitration Agreement shall for that purpose be treated as a distinct agreement."

93.
In this case there is an issue between the experts as to whether bribery makes the underlying contract void or voidable. Mr Edge considers that a contract entered into by bribery or forgery is prima facie a void contract (paragraph 89 of his opinion) whereas Mr Khan considers it is likely to be viewed as voidable (paragraph 67 of his report). Whatever the position on whether the underlying contract is void or voidable, the provision in Article 6.1 of the 2007 Rules means, as Honeywell submits, that even if the allegation of bribery were made out and the bribery did in some way affect

the Contract entered into directly between Meydan and Honeywell that would not, because of the principle of separability, have any effect on the arbitration agreement in Clause 20.6 of the Contract which is treated as a distinct agreement.

94.
As a result, for the reasons set out above, I do not consider that Meydan has real prospect of successfully contending that the arbitration agreement was not valid because of its allegations of bribery so as to amount to a ground for refusing recognition or enforcement of the award under Section 103(2)(b).

Appointment of the Tribunal and Sections 103(2)(a), (b), (c) and (e)

Ground (b): The Award was not valid because the Defendant was deprived of the opportunity to nominate an arbitrator such that the arbitral procedure and composition of the tribunal which purported to render the Award was not in accordance with the agreement of the parties and/or the Defendant was otherwise unable to present its case. The Award was obtained in an arbitration commenced by serving a Request for Arbitration which named as Respondent Meydan LLC (a predecessor entity) and did not name Meydan Group LLC. Alternatively the Defendant was under an incapacity under applicable law as it could not cause public funds to be expended to defend a claim addressed to Meydan LLC.

95.
The second ground on which Meydan relies is that it was wrongly prevented from nominating an arbitrator and as a result recognition and enforcement of the award should be refused under s.103(2)(a), (b), (c) and (e). Meydan contends that the Arbitration was wrongly commenced by a Request for Arbitration against Meydan LLC, a predecessor entity of Meydan Group LLC, instead of Meydan Group LLC; that this meant that Meydan Group LLC could not expend public funds to defend a claim against Meydan LLC and that, because of this and in any event, Meydan Group LLC was deprived of the opportunity to nominate an arbitrator and present its case in accordance with the arbitration agreement.

96.
By an amendment to this ground Meydan also contends that, in any event, the arbitration agreement was subject to the Rules of Commercial Conciliation and Arbitration 1994 of DIAC but that the DIAC Rules 2007 were wrongly applied.

97.
Meydan relies on the terms of Clause 20.6 of the Contract, cited above, which provides that “the dispute shall be finally settled under the Rules of Commercial Conciliation and Arbitration 1994 of the Dubai International Arbitration Centre”. As a result Meydan says that the Contract refers specifically to the 1994 DIAC Rules and not to the Rules as at the date of the Contract or as maybe amended from time to time. It submits that there are material differences between the 1994 Rules and the 2007 Rules.

98.
First, Meydan refers to Rule 5.6 of the 2007 Rules which is in the following terms.

“5.6 Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules. However, if the Arbitration Agreement calls for party nomination of arbitrators,

failure to send an Answer or to nominate an arbitrator within the time provided or at all will constitute an irrevocable waiver of that party's right to nominate an arbitrator."

99.
It says that there is no "irrevocable waiver" under the 1994 Rules and it refers to Article 26 of the 1994 Rules.

100.
Secondly, Meydan refers to the provision at Rule 9.5(b) of the 2007 Rules which provides as follows:

"9.5 (b) In the absence of any agreed procedure, the two party nominated arbitrators shall agree upon the third arbitrator who shall act as Chairman, subject to confirmation and appointment by the Centre, as prescribed in this article."

101.
Meydan submits that this is different from Article 18(4) of the 1994 Rules which gives the parties the opportunity to choose a chairman as set out in that rule which provides as follows:

"18.4 The parties shall directly choose a chairman for the Arbitral Tribunal or shall ask the arbitrators to choose him, but if the parties or the arbitrators do not agree thereon, then the Committee shall appoint the chairman of the Tribunal."

102.
Meydan says that, as a result of applying the 2007 Rules instead of the 1994 Rules, DIAC fell into error. It says that DIAC was not entitled to treat Meydan's failure to nominate an arbitrator as being an irrevocable waiver so as to preclude Meydan from appointing an arbitrator and the arbitrators were not entitled to agree upon a chairman. Meydan therefore submits that the failure to apply the terms of the arbitration agreement invalidated the appointment of the Tribunal and renders the Award invalid.

103.
As I have mentioned, this ground was not one which was raised in Meydan's application to set aside the Order. However I gave permission to Meydan to amend their grounds to add this and I heard oral submissions on this issue at the hearing. Honeywell submits, first, that whilst Clause 20.6 of the Contract refers to the 1994 Rules, properly construed it must be understood as referring to the 1994 Rules or any later revision of those Rules.

104.
I was referred to the decision of Longmore J, as he then was, in China Agribusiness Development Corporation v Balli Trading [1998] 2 Lloyd's Rep 76. In that case there was an arbitration clause which referred to the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade ("FETAC") and to provisional rules of procedure of that body. Disputes arose and the defendant contended that those provisional rules applied but the plaintiffs contended that the relevant body was now the China International Economic and Trade Arbitration Commission ("CIETAC") and not FETAC and that the current CIETAC arbitration rules applied. Longmore J, as he then was, held that as a matter of construction the CIETAC arbitration rules applied. He concluded as follows at 79:

"For my own part, as a matter of construction I conclude that the parties in the present case agreed that there would be arbitration if required in China, and that such arbitration would be held under the rules of the relevant institution at the time when arbitration was invoked. In other words the parties

have not used clear enough words to contract out of the prima facie construction of such clauses as laid down by the English cases to which I have referred."

105.
Honeywell also relies on the following passage at page 80 which it says is similar to the position in this case:

"It is also relevant to observe that the argument that the arbitration could only proceed under the provisional rules has been raised at a very late stage. When the plaintiffs invoked arbitration the new CIETAC rules were sent to Balli. Balli did not at that stage say that they had only agreed arbitration under the FETAC provisional rules. They never gave any reason for refusing to participate in the arbitration. They waited until the award had been made and proceedings were brought to enforce that award. The plaintiffs were never given any opportunity to consider what action, e.g. an ad hoc arbitration or litigation in England, might be appropriate in the light of an argument that any arbitration had to take place under the old FETAC provisional rules and in no other way.

…

A party who, only at the door of the enforcing Court, dreams up a reason for suggesting that a convention award should not be enforced is unlikely to have the Court's sympathy exercised in his favour, and for this reason also I would not on the facts of this case be prepared to refuse the enforcement of the award."

106.
In relation to the difference in the Rules and the appointment of a chairman Honeywell refers to Article 27 of the 1994 Rules which provides as follows:

"The Committee grants the parties a maximum period of 21 days to appoint a chairman of the Tribunal; otherwise it shall do so by itself in accordance with the provisions of Article 18 of these Rules."

107.
Honeywell also refers to correspondence from first Clifford Chance and then SJ Berwin. In its letter of 27 October 2010 Clifford Chance requested DIAC to consider the arbitration agreement in accordance with DIAC's powers under Article 6.2 of the DIAC Rules, which is a reference to the 2007 Rules.

108.
Further, when SJ Berwin subsequently submitted the Request for Arbitration in Case No 18/2012 they referred at paragraph 6.3 of the Request to Clause 20.6 of the Contract and said that, by this clause, the parties had agreed that "the procedural rules for the arbitration are the Dubai International Arbitration Centre's Arbitration Rules 2007." They gave this further explanation by way of a footnote:

"Clause 20.6 of the FIDIC Conditions (as modified by the Particular Conditions of Contract) provides that the rules of the dispute shall be the Rules of Commercial Conciliation and Arbitration 1994 of the Dubai International Arbitration Centre ('DIAC'). As of 7 May 2007, new DIAC arbitration rules came into effect, issued by Decree no. 11 2007. The DIAC Arbitration Rules 2007 now replace the once applicable Rules of Commercial Conciliation and Arbitration of Dubai Chamber of Commerce and Industry No. (2) of 1994."

109.
In its authorities Meydan refers to the DIAC 2009 Statute at Article 4 which provides that

“a. The Centre shall apply the arbitration rules that are in effect to all disputes. The same shall apply when the parties’ agreement refer to the application of the conciliation and Arbitration Rules of the Dubai Chamber of Commerce and Industry Number (12) of 1994.”

110.
This is also reflected in Article 2.1 of the DIAC 2007 Rules which provides as follows:

“2.1 Where the parties have agreed in writing to submit their future or existing disputes to arbitration under DIAC Rules they shall be deemed to have submitted to arbitration in accordance with the following rules (“the Rules”) being those in effect on the date of commencement of the arbitration proceedings or such amended rules as may have been adopted hereafter, unless they have expressly agreed to submit to the Rules in effect on the date of their arbitration agreement.”

111.
Meydan’s contention that the 1994 Rules applied to this arbitration was a late afterthought shortly before the hearing. The terms of the DIAC Statute make it plain that the DIAC Rules are applied to all disputes and expressly applies them when the parties’ agreement refers to the 1994 Rules. As a matter of construction of Clause 20.6 of the Contract I consider that that would be the effect of the arbitration agreement in any event. A reference to a particular set of rules which have been superseded is, generally as a matter of construction, a reference to arbitration under the rules of the relevant institution at the time when the arbitration was invoked, as Longmore J said in China Agribusiness. It would only be in cases where the parties have used clear words to contract out of that prima facie construction that a previous set of superseded rules would apply. In this case there is no such language in Clause 20.6 of the Contract.

112.
Whilst the views expressed by the parties or their lawyers subsequent to the Contract cannot affect the meaning of the Contract, it is of note that both Clifford Chance and SJ Berwin, when they came to consider the applicable rules both came to the view that the DIAC 2007 Rules applied and SJ Berwin even set out a detailed explanation consistent with what I find to be the correct construction of the arbitration agreement.

113.
As Longmore J observed in China Agribusiness a party who, at the door of the court, “dreams up” a reason for suggesting that a Convention Award should not be enforced is unlikely to have the court’s sympathy. That is especially the case here where Meydan itself has pursued an arbitration against Honeywell in which Meydan has itself relied on the DIAC 2007 Rules as applying to the arbitration agreement in Clause 20.6 of the Contract.

114.
It follows that, for those reasons, I do not consider that Meydan’s argument that the DIAC 2007 Rules were wrongly applied by DIAC has real prospects of success. On that basis, Meydan does not have real prospects of successfully contending that either DIAC’s appointment of an arbitrator when Meydan failed to do so or the arbitrators then agreeing a chairman should lead to recognition or enforcement of the Award being refused. Under Section 103(2)(e) it cannot be contended that the composition of the arbitral tribunal was not in accordance with the agreement of the parties or that under Section 103(2)(c) Meydan was not given proper notice of the appointment of the arbitrator.

115.

Meydan makes an alternative submission that, even if the 2007 Rules do apply, then as the Contract was with Meydan Group LLC, the Request for Arbitration filed by Honeywell wrongly named Meydan LLC as the relevant Respondent to the Arbitration. Meydan submits that this gives rise to a defence to enforcement under Sections 103(2)(b) and/or (d) of the Act. Meydan submits that the Request for Arbitration wrongly deprived Meydan Group LLC of the right to nominate an arbitrator.

116.
Meydan refers to Mr Sulaiman's evidence in which he describes the initial entity, Meydan LLC, and says that in 2008 Meydan Group LLC was established and that Meydan LLC became Meydan Group LLC by official "change of name" pursuant to a memorandum notarised on 8 September 2008. He then describes how subsequently the shares in Meydan Group LLC have been dealt with and Meydan Group LLC has been restructured.

117.
Meydan also refers to the position in UAE law and what Mr Edge says in paragraphs 38 and 65 of his report. At paragraph 65 Mr Edge provides a tentative statement of the attitude of the UAE courts but he does not express an opinion on what UAE law is or, indeed, say that it is more likely that the court would come to one conclusion rather than the opposite conclusion. He merely says:

"Where a major reconstruction takes place, as it did with the companies involved in the Meydan City Project, with a change of name, objects, assets and ownership, then it is quite likely that the courts in the UAE would accept an argument that the pre reconstruction and the post reconstruction entities are different legal entities."

118.
That has to be read with what he says in paragraph 38 in respect of UAE company law. He says:

"It must not be too closely assimilated to western company law as Middle East legal systems, and particularly those in the Arabian Peninsula, do not regard companies and their juristic personality with quite the same rigidity as western company law."

119.
Meydan also poses the question of whether Meydan Group LLC actually received the Request for Arbitration even though it was addressed to Meydan LLC. It relies on the evidence of Mr Sulaiman but that now has to be considered in the light of the acceptance by Mr Taylor that Meydan was aware of the Arbitration by 4 August 2010. At paragraph 8.6 of his first witness statement Mr Sulaiman says that, upon reviewing the fax of 1 September 2010 sent by DIAC to Meydan and the July 2010 Request for Arbitration, he noticed that the Request for Arbitration named Meydan LLC as the relevant respondent. It was then on 27 October 2010 that Clifford Chance, instructed on behalf of Meydan Group LLC, sought to nominate an arbitrator.

120.
Honeywell say that, as is apparent from Mr Sulaiman's evidence, Meydan LLC had simply changed its name to Meydan Group LLC on 8 September 2008 and that the evidence on UAE law in this case by Mr Khan, unlike that of Mr Edge, sets out with detailed reasons why, as a matter of UAE law, Meydan LLC is unambiguously the same legal entity as Meydan Group LLC. He supports his view by reference to the Diwan opinion in which the Legal Affairs Department of the Dubai Government has set out its opinion on the status of Meydan Group LLC having reviewed copies of the company's Memorandum of Association and amendments. That opinion was that the company's name was amended from Meydan LLC to Meydan Group LLC. Mr Khan also refers to a Dubai Court of Cassation Petition No. 47 of 2003.

In addition, unlike Mr Edge's view, he sets out the position of the UAE courts on the name change by referring to the decision of the Dubai Court of first instance ratifying the Award. That court considered Meydan's argument that Meydan LLC and Meydan Group LLC were different entities and rejected it referring to the fact that the same commercial licence number was maintained and there was an amendment of the Memorandum of Association.

121.
Honeywell also refers to the fact that in the Request for Arbitration Meydan was identified by naming its chairman, by stating its address and contact details, by referring to the Contract and to the work done under it and by reference to the dispute between the parties. It submits that from that it is clear that if Meydan LLC ceased to exist or became a different entity then the reference within the Request for Arbitration was to Meydan Group LLC. Honeywell also refers to various English authorities which have accepted that a misnomer in an arbitration request will not render an award unenforceable if the document would be understood to identify the correct respondent.

122.
In any event, Honeywell submits that Meydan was given every opportunity to appoint an arbitrator. It says that Meydan received the Request for Arbitration; that it was aware of the arbitration on 4 August 2010; that Mr Sulaiman saw the Request for Arbitration on 1 September 2010 and that Meydan was warned on 6 October 2010 that an arbitrator would be appointed but did not select one. Meydan then appointed Clifford Chance to act but by the time they acted on 27 October 2010 DIAC had already taken steps to appoint an arbitrator.

123.
The evidence of Mr Sulaiman shows that on 8 September 2008 Meydan LLC changed its name to Meydan Group LLC. The question is whether on the basis of Mr Edge's tentative evidence I should hear further evidence when the evidence in this case is overwhelming in showing that Meydan LLC and Meydan Group LLC are the same legal entity, not only in Mr Khan's opinion but in the form of the decision of the Dubai Court of Cassation and, in particular, the first instance judgment in the courts of Dubai ratifying the Award which contradicts Mr Edge's tentative opinion. In the light of this I do not consider that Meydan has any real prospects of successfully establishing that Meydan LLC was not the same entity that became Meydan Group LLC by change of name.

124.
In addition, the issue of the relationship between Meydan LLC and Meydan Group LLC was raised both in the Arbitration and in DIAC arbitration Case No 18/2012 commenced by Meydan. In the Arbitration, as Meydan correctly points out, the Tribunal did not come to a concluded view on the issue at paragraphs 3.2 to 3.4 of the Award. However in DIAC arbitration Case No 18/2012 the Tribunal at paragraphs 98 to 102 of the interim award came to the conclusion, for the reasons set out in the award, that the entity called Meydan LLC and then Meydan Group LLC was at all material times one and the same legal person. I gain limited further assistance from this.

125.
The impact of the decision of the arbitral tribunal on such matters was considered in Dallah in the judgments of Lord Mance JSC at [31] and Lord Saville JSC at [160] where they adopted the following passage from the defendant's case as correctly setting out the position:

"Under section 103(2)(b) of the 1996 Act/article V(1)(a) of the New York Convention, when the issue is initial consent to arbitration, the court must determine for itself whether or not the objecting party actually consented. The objecting party has the burden of proof, which it may seek to discharge as it

sees fit. In making its determination, the court may have regard to the reasoning and findings of the alleged arbitral tribunal, if they are helpful, but it is neither bound nor restricted by them."

126.
Accordingly, I have come to the clear conclusion that Meydan has no real prospects of successfully contending that the commencement of arbitration proceedings with a Request for Arbitration naming Meydan LLC, rather than Meydan Group LLC, deprived Meydan of being able to nominate an arbitrator. The Request for Arbitration was addressed to Meydan LLC as a party with all the attributes of Meydan Group LLC and this means that the Request for Arbitration would reasonably have and did come to the attention of Meydan Group LLC and did do so by 4 August 2010. Meydan therefore had every opportunity to nominate an arbitrator had it wished to do so.

127.
The fact is that Meydan did nothing despite receiving the communications from DIAC of 1 September and 6 October 2010 until Clifford Chance wrote on 27 October 2010 by which time DIAC had taken steps to appoint an arbitrator. That cannot, in my judgment, form the basis of a ground of challenge which has any real prospects of success.

128.
At one stage Meydan sought to say that Meydan Group LLC was under an incapacity under the applicable law as it could not cause public funds to be expended to defend a claim addressed to Meydan LLC. On this basis it sought to say that the Award should not be recognised or enforced under Section 103(2)(a). That point is no longer at the forefront of Meydan's submissions, it being clear that Mr Sulaiman was able to deal with the matter himself and, in any case, instructed Clifford Chance to deal with the arbitration.

129.
Further, as Honeywell submits and as set out in Merkin on Arbitration Law at paragraph 19.5.1, incapacity under Section 103(2)(a) refers to the parties' legal capacity to enter into the arbitration agreement and not to difficulties that a party may have in appointing legal representatives. Thus Meydan's financial arrangements and its ability to fund legal advice are not matters that go to the issue of whether Meydan was under an incapacity. The point has no real prospects of success.

130.
It follows that I do not consider that Meydan has real prospects of successfully establishing that recognition or enforcement of the award should be refused under s.103(2)(a) or because the arbitration agreement was not valid under s.103(2)(b) or because Meydan was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings under section 103(2)(c) or that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties under s.103(2)(e).

New claims and section 103(2)(d)

Ground (c): The Award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration.

131.
Meydan contends that the Tribunal wrongly considered and awarded relief in relation to new claims subsequent to the Request for Arbitration and, in particular, for claims arising out of the Termination

Notice. Meydan says that this forms a ground, originally put under section 103(2)(d) but in its submissions put under s.103(2)(c).

132.
Honeywell submits that the Tribunal properly dealt with claims put before it and was entitled to permit the introduction of new claims under the DIAC rules.

133.
The Request for Arbitration was served on 15 July 2010. The Tribunal made its ruling under article 6.2 of the DIAC rules on 21 June 2011. Following a letter from the chairman of the Tribunal dated 28 September 2011, Hogan Lovells wrote with the Claimant's amended Request for Arbitration to change the identity of the respondent to "Meydan Group LLC (formerly known as Meydan LLC)". The Tribunal then gave directions and noted that Meydan had failed to give notice of whether it intended to participate in the arbitration and had failed to provide its answer to the amended Request for Arbitration. It directed that Honeywell should therefore serve its Statement of Claim in accordance with the DIAC rules and that there should be a hearing when further directions could be given as necessary.

134.
Honeywell then served a Statement of Claim dated 30 November 2011. In that document it referred to a termination claim based on the Termination Notice being served on 27 September 2011, leading to a termination on 12 October 2011.

135.
Whilst Mr Sulaiman continued to communicate with the Tribunal and to raise objections, it seems that Meydan had decided, by that stage, not to participate in the Arbitration. Meydan therefore does not seem to have properly considered the contents of the Statement of Case and it appears that Meydan even refused to accept service of the document.

136.
Matters then proceeded to a hearing on 28 and 29 February 2012. Meydan were copied with all the documents produced for that hearing including witness statements, submissions and transcripts of the hearing but they took no part in it.

137.
In the Award the Tribunal dealt with the new claims which had been contained in the Statement of Claim and said this at paragraphs 3.7 and 3.8:

"3.7 It is noted that the Statement of Claim includes claims not referred to in the Request for Arbitration, notably the claim based on termination. The facts relevant to this claim arose after the Request was served. Article 26 of the DIAC Rules allows the introduction of new claims "unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature, the delay in making it, the prejudice that may be caused to the other party and any other relevant circumstances".

3.8 The claim based on termination could not have been included in the Request, since it arose more than a year later. The Tribunal is satisfied that the Claimant has not delayed in bringing the claim and further that there is no prejudice to the Respondent, which has not raised any objection to its inclusion in the arbitration. The Tribunal does not consider it inappropriate to allow the new claim and therefore allows the inclusion of the termination claim."

138.

Meydan says that the Tribunal should have highlighted to Meydan the fact that there were new claims in the Statement of Claim so that Meydan could have decided whether or not to participate in the Arbitration. Meydan says that it did take objection to Honeywell bringing termination claims within the arbitration proceedings and it refers to an exchange of emails in September 2011.

139.
On 29 September 2011 Mr Sulaiman wrote to the chairman of the Tribunal attaching a copy of the Termination Notice dated 27 September 2011 and saying that the Notice attempted to introduce new claims into the Arbitration which should be disallowed by the Tribunal in accordance with Rule 26.1 of the DIAC rules. In response on 1 October 2011, Honeywell said that the notice did not involve any commencement of court proceedings or the making of any claim although it said that additional claims did accrue to Honeywell as a result of the termination. Honeywell said that it was not necessary to draw the Tribunal's attention to the termination of the Contract, although the fact of the termination would become known at some stage during the Arbitration.

140.
Honeywell submits that the DIAC rules expressly permit the introduction of new claims and refers to Rules 26.1 and 26.2. It says that the Statement of Claim which included the claims in respect of termination was served on Meydan on 30 November 2011, some three months before the hearing in February 2012, as the Tribunal noted in the Award. It submits that there was nothing unfair about Honeywell relying on those claims. It refers to Mr Sulaiman's evidence at paragraph 9.24 of his first witness statement where he says that Meydan decided not to respond to the Request because, in part, no termination claim had been made.

141.
Under the DIAC Rules the service of the Statement of Claim is dealt with under Rule 24. Rule 26 then deals with new claims and amendments to the Statement of Claim or Defence. Rules 26.1 and 26.2 provide as follows:

"26.1 Subject to any contrary agreement by the parties, either party may amend or supplement its claim, counter-claim, defence during the course of the arbitration, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature, the delay in making it, the prejudice that may be caused to the other party or any other relevant circumstances.

26.2 After the submission of the Statement of Claim and Defence and Counterclaim, no party shall make new claims or counterclaims, unless authorised to do so by the Tribunal, which shall consider the nature of such new claims or counterclaims, the stage of the arbitration and any other relevant circumstances."

142.
It is evident that the Statement of Claim contained the claims based on termination. The Tribunal was entitled to and did allow those claims to be made in the Arbitration. The fact that Meydan had decided not to participate in the Arbitration and therefore did not raise any objections to the inclusion of those termination claims within the Statement of Claim does not, in my judgment, give rise to any ground of complaint by Meydan. It was given every opportunity to participate in the Arbitration and was provided with copies of all relevant documents so as to allow it to consider or reconsider whether it wished to make any submissions in the Arbitration. It decided not to do so. Whilst in September 2011 it raised a general objection, it did not raise any objection when Honeywell sought to include the claims in the Statement of Claim and I do not consider that there was any basis on which the Tribunal

had to highlight matters for Meydan when those matters would have been apparent to a party properly participating in the Arbitration.

143.
On this basis I do not see that there are any real prospects for Meydan to contend that it was not given proper notice of the Arbitration proceedings or was unable to present its case or that the award dealt with a difference not contemplated by or not falling within the terms of the submission to arbitration or that it contained decisions on matters beyond the scope of the submission to arbitration. It follows that there are no real prospects of Meydan succeeding in its contention that recognition or enforcement of the Award should be refused under s.103(2)(c) or (d).

Status of the Award and s.103(2)(f)

Ground (d): The Award is suspended by a competent authority in the country in which and/or under the law of which it is made (i.e. the United Arab Emirates).

144.
Meydan says that there are currently proceedings before the Court of Appeal at the seat of the Arbitration relating to the ratification of the Award in which Meydan is challenging it and that an order for the execution of the Award has been suspended because of those continuing proceedings before the Court of Appeal. Meydan therefore submits that, in the present case, enforcement of the Award is suspended at the seat and under s.103(2)(f) the court should refuse recognition or enforcement of the Award in those circumstances.

145.
Meydan submits that in the absence of ratification by the Court of Appeal or the Court of Cassation in Dubai the Award is neither enforceable nor binding under UAE law and that, as the execution of the Award in Dubai has been stayed pending the decision of the Court of Appeal, the Award is not yet binding. They refer to the opinion of Mr Edge that an arbitral award cannot be enforced in the UAE without first being ratified or approved by the local court in the UAE and that the appeal against the first instance judgment ratifying the Award means that the Award continues to remain incapable of enforcement prior to the decision of the appropriate local Court of Appeal or prior to the effluxion of the time period for referring such appeal to the Court of Appeal.

146.
Meydan relies on other commentaries on enforcement of awards in Dubai and on the evidence of Mr Sulaiman in his third witness statement explaining the current position in relation to the ratification of the Award.

147.
Meydan relies on the dicta of Lord Donaldson MR in Hiscox v Outhwaite[1992] 1 AC 562 at 573 as showing that the court will consider the effect of any application or process rather than its formal terminology.

148.
Honeywell submits that Meydan's assertion that the Award is suspended in Dubai is a misunderstanding of the requirements of s.103(2)(f). Honeywell says it is irrelevant that, in order to enforce the Award in Dubai, ratification by the local court is required and that the local court's decision on the enforcement application cannot be enforced until Meydan's right of appeal is

exhausted. Honeywell refers to Rule 37.2 of the DIAC rules which provides “all awards shall be made in writing and shall be final and binding on the parties.”

149.
Honeywell submits that this provision is sufficient to establish that the Award is binding and refers to the Dowans Holdings v Tanzania Electric Supply Co Ltd[2011] EWHC 1957 (Comm). It also refers to the commentary in Merkin on Arbitration Law at paragraph 19.56 where he says as follows

“In practice, therefore, if the parties have agreed that the award is to be binding, then unless it has actually been set aside under the second part of s.103(2)(f), or an application for stay of enforcement has been made to the English Court under s.103(5) on the ground that the award is under appeal, it has to be enforced.”

.

150.
Honeywell further submits that an application to set aside the Award at its seat is not sufficient to satisfy s.103(2)(f) and that what is required is an order against the Award from the curial court and it relies on the decision in Ipco (Nigeria) Ltd v Nigerian National Petroleum Corp[2005] 2 Lloyd’s Rep 326 at [12] and [21].

151.
As set out above, in order to enforce an award in Dubai it is necessary for the Award to have been ratified by the Dubai Court. Honeywell has brought the necessary proceedings to have the Award ratified in that court. The current position is that Honeywell succeeded in obtaining ratification from the court at first instance but Meydan has appealed to the Court of Appeal and the Award is not enforceable in Dubai until those ratification proceedings have been concluded.

152.
In the present case under Rule 37.2 of the DIAC rules the Award is “final and binding on the parties”. The New York Convention eliminated the “double exequatur” requirement under the earlier Geneva Convention and therefore there is now no requirement for anything to occur in the local courts for an award which is final and binding under the DIAC Rules to be given some further status in terms of its binding nature: see the judgment of Steyn J, as he then was, in Rosseel NV v Oriental Commercial and Supply Co (UK) Ltd [1991] 2 Lloyd’s Rep 625 at 628 and the commentary by Van den Berg in New York Convention of 1958 at 266.

153.
In terms of a similar provision in the ICC rules to that in the DIAC rules, Burton J came to the conclusion in Dowans Holding S.A. v Tanzania Electric Supply Co Limited at [24] and [27] that the issue of whether the award has become binding is a question for the enforcing court and that proceedings in the local court are of no relevance to whether the award is binding. I adopt the same reasoning and consider that the question of whether an award is binding is a matter to be determined under the law of the courts in which the award is sought to be enforced. It cannot depend on processes in other courts, including the local Dubai Courts, which under the New York Convention are unnecessary for the Award to become binding.

154.
The process which is currently being followed in the Dubai Courts has not currently led to the award being “set aside or suspended”. Meydan’s reliance of the judgment of Lord Donaldson MR in the

Court of Appeal in Hiscox v Outhwaite does not support an argument that the mere making of an application to the Dubai Courts has the effect that the award has been “set aside or suspended” in those courts. Hiscox v Outhwaite was dealing with a case where there was a Convention award because the award was made in France but the place of enforcement and the curial law was the law of England and Wales. That raised particular issues which are not relevant to this case. As Lord Oliver, with which the other members of the House of Lords agreed, said at 597H to 598A in that case:

“Both the Convention and the Act clearly contemplate that the curial court is or may be invested with and capable of exercising a supervisory power whilst leaving to the enforcing court a discretionary power (a) to permit a pending supervisory process to continue and (b) to refuse enforcement of the award if it results in the award being suspended or set aside.”

155.
Lord Oliver was there referring under (a) to the power of the court now under section 103(5) for the court to adjourn the decision when an application has been made to set aside or suspend the award in which case it may order the other party to give suitable security for the award on the application of the party claiming recognition or enforcement. In this case no application has been made for such an adjournment or therefore no application for the consequent security.

156.
As Lord Oliver made plain under (b) the court has a discretionary power to refuse enforcement of the award if the relevant process “results in the award being suspended or set aside.” That is not the position here.

157.
As set out by Gross J, as he then was in Ipco (Nigeria) Ltd v Nigerian National Petroleum Corporation at [12]:

“…section 103(2)(f) is only applicable when there has been an order or decision suspending the award by the court in the country of origin of the award (“the country of origin”). Section l03(2)(f) is not triggered automatically by a challenge brought before the court in the country of origin. This conclusion flows from the wording of section l03(2)(f) itself, it is supported by leading commentators (Van den Berg, The New York Convention of 1958 (1981), at page 352, Fouchard Gaillard, Goldman on International Commercial Arbitration (1999), at pages 980 - 981) and it is consistent with the provisions of sections 103(5)of the Act - which would be otiose, or at least curious, if an application to the court in the country of origin automatically resulted in the award being suspended.”

158.
As a result I do not consider that Meydan has real prospects of successfully contending that recognition or enforcement of the award should be refused under section 103(2)(f).

Matters not arbitrable and s.103(3)

Ground (e): The Award is in respect of matters which are not capable of settlement by arbitration under applicable law.

159.
Meydan contends that the matters it alleges in terms of bribery in ground (a) above, deceit (or perjury) in ground (f)(iii) below and forgery of a signature in the Contract were not matters which were capable of settlement by arbitration. It submits that the Award has been made in respect of

matters which are not capable of settlement by arbitration on the basis that issues of forgery, perjury and bribery may not be arbitrated.

160.
In relation to bribery, to the extent that Meydan pursued this aspect, Honeywell accepts that if such allegations were made the Tribunal might have been required to suspend proceedings pending resolution of the relevant allegations before the courts under section 209 of the Dubai Civil Procedure Code. However it submits that no such issues were put before the Tribunal and therefore under section 103(3) the award is not "in respect of a matter which is not capable of settlement by arbitration". Honeywell is correct in its submission. The issue of bribery was not raised before the Tribunal although, as set out in ground (a) above, it could have been.

161.
In relation to the allegation of fraud Meydan has alleged that the signature on Honeywell's behalf in the Contract is not the signature of Mr Valikarim whose name appears as the signatory of the Contract. The allegation is based on there being two different signatures by Mr Valikarim, one on the Contract and a different one on the acknowledgement of the letter of acceptance.

162.
So far as can be understood from the evidence of Mr Sulaiman, Meydan seeks to rely on the forgery to say that this course of using a false signature was adopted by Honeywell in order that it could ratify or deny the Contract at will. There is absolutely no support for that contention and it was and is no part of Honeywell's case that the signature was not a proper signature on behalf of Honeywell. The point therefore goes nowhere.

163.
However there is no evidence that there was a forgery. As Mr Valikarim explains in his witness statement exhibiting his passport and other documents signed by him, he used his full signature as it appears on his passport on the Contract but used a short form day-to-day signature on the letter of acknowledgement. Further Meydan has obtained a report from Dr Audrey Giles, a handwriting expert, but she has not been able to reach any conclusion as to whether the signature on the contract was written by Mr Valikarim. There is therefore no basis for the underlying allegation.

164.
Further as Honeywell submits, Meydan's submission is that Honeywell authorised someone to apply a signature to the Contract indicating acceptance of the Contract and that this would, in any event, indicate that the Contract was binding on Honeywell.

165.
I do not consider that there are real prospects of Meydan successfully contending that there was a forgery of the signature on the Contract.

166.
In relation to perjury, Meydan says that the Award was procured by perjury. It alleges that it was falsely asserted that Honeywell had provided Meydan with the relevant performance security under the Contract. Meydan denies that the performance security was provided. It says that, until the performance security was provided, nothing was due under the Contract. It refers to the Statement of Claim in which Honeywell introduced a claim for the return of the performance security and a declaration prohibiting Meydan from calling on the performance security. It submits that under Clause 14.6 of the Contract no payment could be certified under Clause 14.7 in the absence of Meydan

having received the relevant performance security. Meydan says that Honeywell made a deliberately false claim when it said that the original document had been delivered to Meydan on 20 May 2010 because it was not delivered at all. They also say that the document allegedly provided refers to Meydan LLC not Meydan Group LLC.

167.
The relevant documents indicate that they were sent and received. Mr Sulaiman raises some comments on the documentation and says that he had asked some people who have said they did not receive it. He also says that if it had been delivered he would have been notified. He also says that the documents relied upon appear to be copy documents which were likely to have been sent by fax.

168.
As I have set out above Meydan did not participate in the Arbitration and therefore did not but could have raised these matters there so that the Tribunal would have been able to decide whether or not the performance security was sent to Meydan. Meydan did not at the relevant times during the performance of the Contract refuse to make payment to Honeywell on the basis that the relevant performance security had not been provided. Further there do not appear to have been any requests for the performance security which, if it had not been provided and Meydan had been insisting that it should have been provided, would have been expected. It is correct that the document which Honeywell says enclosed the performance security was not sent until May 2010 and that does not appear to have been of concern to Meydan at the time.

169.
As set out in Dicey, Morris and Collins at 16-151 it is necessary to show either that the evidence of fraud was not available to the party alleging it at the time of the arbitration hearing or, if perjury is alleged, that the evidence for it is so strong that it would reasonably be expected to be decisive at the hearing: see Westacre at 309.

170.
In the present case the allegation by Meydan necessarily amounts to an allegation that the letter and the attached performance security were forgeries. That was something which Meydan could evidently have asserted in the Arbitration at the time and it had the evidence available to say that if it had wanted to. The mere assertion by Meydan of alleged perjury based on Mr Sulaiman's evidence does not, in my judgment, amount to evidence that is so strong that it would reasonably have been expected to have been decisive at the hearing. The evidence that the document was sent and that the attached performance security issued by HSBC was genuine is, I consider, very strong evidence that the performance security was obtained from HSBC and that on that basis it is strong evidence that it would have been sent to Meydan at the time. Mr Sulaiman does not give evidence himself that Meydan did not receive, only that he did not see it and he would have expected to have seen it.

171.
On that basis I do not consider that Meydan can now raise a point on fraud or perjury on an application to enforce which they could have but did not raise in the Arbitration. Nor do I consider that the evidence of perjury is so strong that it would reasonably have been expected to be decisive at the Arbitration hearing.

172.
As a result, both on the basis that the matters were not raised in the Arbitration and on the basis of the individual allegations themselves, I do not consider that Meydan has real prospects of successfully

establishing that recognition or enforcement of the award should be refused under section 103(3) on the basis that the Award was in respect of matters which are not arbitrable.

Bribery and public policy

Ground (f)(i): Enforcement of the Award would be contrary to the public policy of the United Kingdom as the state in which recognition and enforcement of the Award is sought (Section 103(3)) because the Award is or represents property obtained through unlawful conduct on the part of the Claimant within the meaning of Part 5 of the Proceeds of Crime Act 2002 and/or because the Award is based upon a contract procured by bribing public officials.

173.
For the reasons set out above I do not consider that Meydan has raised a case on bribery which has real prospects of success.

174.
If contrary to that view, Meydan's case on bribery did have real prospects of success then the question would arise whether it would be contrary to public policy to recognise or enforce the Award.

175.
Meydan submits that English public policy prevents enforcement of awards which would give a person who bribes the fruits of their bribery. Meydan relies on what was said by an arbitral tribunal in a published ICSID arbitral award in October 2006 in World Duty Free Company Limited v The Republic of Kenya.

176.
Meydan also relies upon the Council of Europe Criminal Law Convention which at Article 8(2) provides: "Each party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages."

177.
Meydan also refers to the confiscation regime which applies to the proceeds of criminal conduct in England and Wales under the Proceeds of Crime Act 2002. It submits that where a valuable contract or concession has been procured by bribing a public official, the benefit under that contract can be characterised as a criminal proceed and that, in any event, the public policy in eliminating corruption would be sufficient for the court to refuse enforcement of an award based on a contract which has been induced by bribery.

178.
Honeywell submits that, even if Meydan's allegations of bribery were established, they would not, as a matter of English law, result in enforcement being contrary to public policy. It submits there is no principle of English law to the effect that it is contrary to English public policy to enforce a contract which has been procured by bribery. It submits that a distinction must be drawn between the enforcement of contracts to commit fraud or bribery and contracts which are procured by bribery. It says that whilst contracts to commit fraud or bribery are contrary to public policy and will not be enforced, contracts which have been procured by bribery would be rendered voidable at English law, provided that counter-restitution can be made. Honeywell relies on the decision in Wilson v Hurstanger[2007] 1 WLR 2351. It submits that, unless and until a contract procured by a bribe is avoided, the contract will be valid. Thus, as a matter of English law public policy, the courts will

enforce a contract procured by bribery subject to the innocent party having, in appropriate circumstances, a right to avoid the contract.

179.
Further, Honeywell submits that Meydan should not be entitled to resist enforcement on this ground when Meydan itself has invoked the arbitration clause in the Contract in the second DIAC arbitration, Case No 12/2012. It refers, by analogy, to the decision in Svenska Petroleum Exploration AB v Government of Lithuania[2005] 1 Lloyd's Rep 515.

180.
In considering public policy it is necessary to bear in mind Parke B's dictum in Egerton v Brownlow(1853) 4 HLC 1 at 123 that public policy "is the province of the statesman, and not the lawyer to discuss, and of the legislature to determine, what is best for the public good, and to provide for it by proper enactments"

181.
In Fender v St John-Mildmay[1938] AC 1 at 12 Lord Atkin referred to that dictum and concluded that the doctrine of public policy"should only be invoked in clear cases in which the harm to the public is substantial incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds."

182.
It is therefore necessary to be cautious about applying public policy in areas where there is no established principle of public policy which applies. English public policy will refuse to enforce a contract which is tainted by illegality, in the sense that it is illegal in performance, such as a contract to commit fraud or bribery: see Chitty on Contracts (21st Edition) at 16-007 and Buckley on Illegality and Public Policy (3rd Edition) at 7.25.

183.
As summarised in Wilson v Hurstanger at [38] by Tuckey LJ, with whom the other members of the Court of Appeal agreed, where there is bribery by way of a secret commission to an agent, as alleged in this case, then :

"The principal has alternative remedies against both the briber and the agent for money had and received where he can recover the amount of the bribe or for damages for fraud where he can recover the amount of any actual loss sustained by entering into the transaction in respect of which the bribe was given: Mahesan s/o Thambiah v Malaysia Government Officers' Housing Co-operative Society Ltd[1979] AC 383. Furthermore the transaction is voidable at the election of the principal who can rescind it provided counter-restitution can be made: Panama and South Pacific Telegraph Co v India Rubber, Gutta Percha and Telegraph Works Co(1875) LR 10 Ch App 515,527,532-533."

184.
This shows that where a contract has been induced by bribery it is not contrary to English public policy for the contract to be enforced but it gives the innocent party the opportunity to avoid the contract, at its election, provided counter-restitution can be made.

185.
It follows that whilst bribery is clearly contrary to English public policy and contracts to bribe are unenforceable, as a matter of English public policy, contracts which have been procured by bribes are not unenforceable. It follows that I do not consider that Meydan has real prospects of successfully

contending that recognition or enforcement of the Award should be refused on the basis that it would be contrary to public policy, if contrary to my previous conclusion, the Contract had been procured by a bribe.

Substantial injustice and public policy

Ground (f)(ii): Enforcement of the Award would be contrary to the public policy of the United Kingdom as the state in which recognition and enforcement of the Award is sought (Section 103(3)) because the Award together with a further Interim Award dated 26 August 2013 ("the interim Award") has caused substantial injustice to the Defendant, first, by the Award purporting to establish liability of the Defendant to the Claimant, following arbitral proceedings having been commenced (contrary to the procedures agreed between the parties) against Meydan LLC and not against Meydan Group LLC, and secondly by the Interim Award purporting to prohibit the Defendant from making claims against the Claimant, unless such claims arise out of events after the date of the Award.

186.
Meydan says that the effect of the Award, when combined with the interim award in DIAC arbitration Case No 18/2012, causes it substantial injustice and it therefore seeks to say that it would be contrary to public policy to enforce it.

187.
Meydan contends that proceedings in the Arbitration were commenced against Meydan LLC and not against Meydan Group LLC and that the Tribunal in the DIAC arbitration Case No 18/2012 has prohibited Meydan from making claims against Honeywell unless such claims arose out of events after the date of the Award. It contends that it has therefore suffered a substantial injustice.

188.
I have already dealt with the position concerning the identity of the respondent party in the Arbitration and do not consider that there is any aspect of public policy which could affect the recognition or enforcement of the Award arising from that issue.

189.
This is a case where Meydan decided not to participate in the Arbitration which led to the Award. As Colman J said in Minmetals Germany GmbH v Ferco Steel Limited [1999] 1 All ER (Comm) 315, in relation to s.103(2)(c) of the Act, where the party seeking to resist enforcement has, due to matters within its control, not provided itself with the means of taking advantage of an opportunity given to present its case, it cannot then complain. In my judgment there is nothing which gives rise to a separate head of public policy in relation to what Meydan characterises as substantial injustice, based upon the facts of this case. Meydan chose not to participate in the Arbitration and the Tribunal made the Award which the tribunal in DIAC arbitration Case No 18/2012 then held had repercussions in that arbitration commenced by Meydan. This does not form the basis of something which is contrary to public policy.

190.
In those circumstances I do not consider that there is any basis under section 103(3) for Meydan to have real prospects of successfully contending that recognition or enforcement of the award should be refused because to do so would be contrary to public policy.

Perjury and public policy

Ground (f)(iii): Enforcement of the Award would be contrary to the public policy of the United Kingdom as the state in which recognition and enforcement of the Award is sought (Section 103(3)) because the Award was obtained by deceit by the Claimant representing to the tribunal that it had provided a Performance Security to the Defendant (being a condition precedent to any right to payment on the part of the Claimant) knowing the representation to be false and misleading and has obtained an order in the Award for the return of the Performance Security, despite knowing that it had not been delivered in the first place.

191.
I have already dealt with the question of performance security and held that the facts do not justify the court in not enforcing the Award.

192.
Given that the alleged fraud which has led to the alleged perjury could have been put before the Tribunal because the evidence was available to Meydan and given that the evidence of perjury is not so strong as to have been decisive, I do not consider that there is any public policy ground which would mean that if, contrary to what I have held, false evidence was put before the Tribunal then on that basis alone, as a matter of public policy, the Award should not be enforced.

Legitimate interest, failure to disclose and public policy

Ground (g): the Claimant has failed to establish a legitimate interest in enforcing the Award as a judgment of the English Court and has failed to disclose highly material matters, such that the Orders should be set aside upon the basis that permitting an abuse of the process of the English Courts is contrary to public policy and accordingly Articles III and V(2) New York Convention (as implemented by section 103(3) of the Act) permit the refusal of recognition and enforcement of the Award in accordance with applicable domestic rules of procedure, without the requirement for the Defendant to furnish proof of the section 103(2)/ Article V(1) defences. Specifically the Claimant failed to disclose to this Court:

(i) that enforcement of the Award is suspended in the courts at the Seat;

(ii) the Interim Award, including in particular its requirement for notification of Criminal and/or Civil Proceedings to be commenced before the Dubai Authorities, and its purported preclusion of the Defendant making claims against the Claimant unless arising out of events after the date of the Award;

(iii) that the Defendant is a body employing public servants and public funds; or

(iv) a Judgment of the Dubai Court of Appeal dated 8 February 2009 (relied upon by the Defendant in a Civil Evidence Act 1972 notice pursuant to CPR 33.7, served herewith).

193.
So far as the contention that Honeywell has failed to establish a legitimate interest in enforcing the Award as a judgment of the English court, Meydan did not press this point in oral argument. In any event under section 103(1) these courts have a duty to enforce convention awards and, as was stated by Steyn J, as he then was, in Rosseelat 629:

“The English Court is bound by a statute, arising from treaty obligations, to enforce the award. The presence of assets in the jurisdiction is not a precondition under the statute to the enforcement of the award. It ought not to be regarded in the exercise of the Court’s discretion as a pre-requisite to the

granting of leave to serve out of the jurisdiction. A contrary view would in effect introduce into the statute, which carefully reflects our treaty obligations, a precondition which is not to be found in the 1958 New York Convention."

194.
As a result, a party has a right to have an award recognised and enforced unless one of the grounds under section 103 of the Act is made out. There is no requirement for Honeywell to establish that it has a legitimate interest in enforcing the Award as a judgment of the English courts.

195.
In relation to non-disclosure, Meydan contends that, as a matter of public policy, failure to disclose matters should lead to a refusal of recognition or enforcement of the Award. At the hearing, contrary to what had been said previously, Meydan sought to rely on these matters as giving a self-standing basis for setting aside the Order. It contends that there was a failure to disclose matters on the applications made without notice.

196.
Taking the complaints in turn, first, Meydan says that there was a failure to disclose that enforcement of the Award was suspended in the courts at the seat. In his first witness statement made on 8 November 2012 Mr Marshall set out that, at that date, enforcement of the Award was proceeding in Dubai and set out the grounds upon which, at that date, Meydan was contending that the Award should be held to be void and/or invalid or should not be enforced by the Dubai Courts. The burden of Meydan's complaint is that when Mr Marshall put in his second witness statement dated 11 September 2013, seeking an order in relation to service of the proceedings, he failed to inform the court of matters that had developed between November 2012 and September 2013.

197.
As Mr Marshall says in his third witness statement the Dubai Court of first instance recognised the Award and ordered its enforcement on 21 February 2013. By September 2013 Meydan had filed an appeal which had not yet proceeded to judgment and as a result of the appeal Honeywell was not yet able to enforce the Award in Dubai. There was therefore no failure to disclose material matters.

198.
Further, as I have held above, this is not a case where the Award has been set aside or suspended in the Dubai Courts. There has not therefore, in any event, been a failure to disclose a material matter.

199.
Secondly, Meydan says that in his second witness statement Mr Marshall failed to refer to the interim award which had been made in DIAC arbitration Case No 18/2012 and its requirement for notification of criminal and/or civil proceedings commenced before the Dubai authorities or the effect of the Award on that arbitration.

200.
That award in DIAC arbitration Case No 18/2012 was made on 26 August 2013, just over two weeks before Mr Marshall made his second statement. In those proceedings Meydan had raised a number of matters which it now relies upon in its application to set aside the order. However, by that stage, Meydan was not raising those matters as being a ground to resist the enforcement of the Award. It seems that the proceedings in the Dubai Courts were based on the other grounds. I do not therefore consider that Mr Marshall was obliged to disclose to the court the fact that there had been the further arbitration award in DIAC arbitration Case No 18/2012.

201.
The third matter relied upon is that Meydan is a body employing public servants and public funds. Mr Marshall says that he did not regard issues of the funding and the status of the employees of Meydan to be relevant. He notes that it was only in the application to set aside the Order that Meydan put forward an argument that it was being funded by public money and that this was relevant. That contention has not been pressed in oral argument. In any event I do not consider that this was material to the enforcement of the Award and there was therefore no material non-disclosure by Mr Marshall.

202.
The fourth matter relied upon by Meydan is the reference to a judgment of the Dubai Courts dated 8 February 2009, relied upon by Meydan in these proceedings in relation to the fact that Meydan is financed by public funds. Mr Marshall says that he was unaware of that judgment and I do not consider that there was any non-disclosure. In any event such disclosure is not material to the enforcement of the Award.

203.
In its skeleton argument for the hearing, Meydan sought to put forward seven further matters of non-disclosure which differed from those relied upon in its application. When Meydan made its application on 29 October 2013 it evidently gave careful consideration to the matters that were going to form the basis of its allegation of non-disclosure. All the matters which were put forward in its skeleton argument could have been but were not then set out as grounds of non-disclosure.

204.
Given the findings I have made above I do not consider that the new matters are material non-disclosures because they do not amount to defences under s.103(2) to the enforcement of the Award. For the same reason I do not consider that they give independent grounds for setting aside the order.

205.
In any event there are two matters relevant to non-disclosure. There was no failure to give full disclosure in Mr Marshall's first witness statement when he set out in detail the grounds upon which Meydan was alleging that the Award should not be enforced. His second witness statement then necessarily dealt with Honeywell's application for service of the proceedings. On that application the court was not dealing with the merits of the underlying order. Whilst if there had been a major change in the material matters relating to the enforcement of the Award, a party having the benefit of an order made on a without notice application should make disclosure of any further material facts at that stage. However, as shown by Meydan's changing case on non-disclosure, it has not been easy to identify what might be material and Meydan's case has developed even between the issue of the application and the hearing. I consider that it would have been difficult to glean from the various contentions being put forward by Meydan as to what might in the end be material as a s.103(2) defence.

206.
On that basis I do not consider that Meydan has established grounds on which it has real prospects of success in contending that the Award should not be recognised or enforced either as a matter of public policy under s.103(3) of the Act or on the basis that the court should set aside the Order on a separate ground of material non-disclosure.

Ground (h): In addition, the Claimant untruthfully alleged that 'As far as the Claimant was aware, the Defendant's name was "Meydan LLC" and not "Meydan Group LLC" and (inter

alia), suppressed the contents of a letter of 17 May 2009 sent to the Claimant by the Defendant's (and formerly Meydan LLC's) agent TAK.

207.
Meydan make a specific complaint in relation to paragraph 23 of Mr Marshall's first witness statement. In that paragraph he stated as follows:

"As far as the Claimant was aware, the Defendant's name was "Meydan LLC", not "Meydan Group LLC". A large volume of correspondence had passed between the Defendant, TAK and the Claimant in the course of the Contract. Most referred to the Defendant as "Meydan LLC", although there were some occasions on which the terms "Meydan Group LLC", "Meydan" and "Meydan City Corporation" were used. A summary of the relevant correspondence is at ARM1/22. This summary was submitted to the Tribunal in the course of the preliminary phase of the Arbitration and has never been challenged by the Defendant."

208.
Honeywell says that its chronology of correspondence in fact includes the letter of 17 May 2009. It also refers to the fact that the letter has not been referred to in the witness statements of Mr Sulaiman or Miss Strain, in support of Meydan's application to set aside the Order. Having seen the document, which is exhibited to Mr Marshall's third witness statement, I do not see that it has any materiality to the matters with which I am concerned.

209.
Whilst at the hearing Meydan did not pursue the allegation of untruthfulness in ground (h) I consider that there is no basis whatsoever for alleging non-disclosure or suppression of a letter and I consider that the allegation that there was untruthfulness should never have been included in the application settled by Meydan's legal advisors.

210.
For the reasons set out above I do not consider that Meydan has raised any grounds for contending that recognition or enforcement of the Award should be refused under section 103(3) or under grounds (g) or (h).

Conclusion

211.
For the reasons set out above I do not consider that Meydan has raised any ground which has a real prospect of success in relation to their application to set aside the Order by which Honeywell was given leave to enforce the Award in the same manner as a judgment or order of the court to the same effect. It follows that paragraph 2 of the Order will now take effect on the basis that the application has been finally disposed of.

212.
I would ask the parties to prepare a draft order. I will deal with any matters arising from this judgment either when it is handed down or at a later date convenient to the parties.