

**FMT 21016 -KPMG LLP and MILIND NAVALKAR -v-THE DUBAI
FINANCIAL SERVICES AUTHORITY**

APPLICATION FOR COSTS BY THE DFSA.

1. The background to these two cases (the “References”) can be found in our Decision on privacy dated 14 December 2021.
2. The DFSA seeks its costs from KPMG LLP (“KPMG”) and Mr Navalkar (“the Applicants”) following their decisions to withdraw the References very shortly before the main hearing. The DFSA applied on 22 November 2022, KPMG replied with a submission on 5 December 2022 and Mr Navalkar replied by an email from his solicitors Charles Russell Speechlys LLP on the same day in which he agreed with the submissions made by KPMG. The DFSA responded to those replies, and to two questions from the Tribunal, on 13 December 2022.
3. The FMT has the power under Article 31(9) of the Regulatory Law to order a party to pay costs: “At the conclusion of a proceeding, the FMT may also make an order requiring a party to the proceedings to pay a specified amount, being all or part of the costs of the proceedings, including those of any party.” FMT Rule 75 states: “The FMT may not make an order for costs against a person (the “paying person”) without first: (a) giving that person an opportunity to make representations; and (b) if the paying person is an individual, considering that person’s financial means.”
4. The Applicants do not oppose a costs order in favour of the DFSA in principle. This appears to us to be the right approach where a decision has been taken not to contest the References and so the DFSA is the successful party. It is therefore unnecessary for us to investigate, as we would otherwise have done, the reasons why the References were withdrawn. That

inquiry would have been required because the Tribunal does not always award costs against a party who has been unsuccessful but has acted reasonably in the circumstances.

5. As we put it in Al Masah Capital v the DFSA (FMT 19007), paragraph 430:
“The FMT has been given a broad discretion which does not oblige it to adopt either a traditional ‘costs follow the event’ approach or one set out in a UK or other common law statute. The Tribunal needs to take a flexible approach to deal with the very varied and international range of issues it may have to address. While some cases may merit a ‘costs follow the event’ approach others may not. There may well in the future be cases where no order for costs is made despite an application not being successful.”
6. We will therefore award costs against the Applicants. The issue is then of the amount to be awarded as an order should not simply allow all the legal expense incurred by the successful party. Even the ‘costs follow the event’ jurisdictions limit awards in some way by applying a restrictive standard of some kind. The recoverable costs should be reasonable and proportionate in amount and reasonably incurred.
7. The DFSA seeks payment of AED1,270,715. This comprises fees of counsel of AED552,089.95, of its expert of AED669,239.81 and of Lloyd Michaux for the first hearing of AED12,610.50 and irrecoverable practical costs of the main hearing of AED36,775. We bear in mind the important consideration that the DFSA does not seek to recover the cost of time of its own in-house legal team.
8. The last two items are not disputed by the Applicants and so are awarded as they appear reasonable in amount.
9. KPMG objects to only £1,400 of counsel’s fees. This objection is on the basis that any costs awarded in respect of the DFSA’s counsel’s fees should be restricted to costs incurred following the filing of the References and that the DFSA’s counsel’s fees for the period of 14 July 2021 and 15 July 2021 should not be included.

10. We consider that the costs of £1,400 are reasonable and recoverable. The DFSA has explained in its submissions why it instructed counsel before the References. When counsel was instructed KPMG had indicated that it was going to make a Reference to the FMT and therefore the DFSA was entitled to start making arrangements for the impending reference. We accept that counsel would need to read into the case and there was a substantial number of materials in issue to consider, particularly with the possibility of an application prohibiting the publication of decision notices. Had the costs not been incurred prior to the References, it seems likely that they would have been incurred after the References. We also consider the £1,400 figure in the overall counsel costs is proportionate.
11. KPMG has detailed objections to the DFSA's expert's fee. The DFSA has identified the substantial amount of material that had to be reviewed and considered. We also have detail of the work done together with the expert's timesheets with narratives. We have concluded that the expert's fee is on the high side based on our experience in similar cases. We do not in any way impugn the work done by the expert and the DFSA's decision to incur the fees claimed. However, we have to assess costs for reasonableness and have to consider the situation from a different and more objective perspective. We consider the appropriate figure for these fees is 80%, i.e., AED535,391.
12. We accordingly order the Applicants to pay the DFSA, the sum of AED1,136,867 within 28 days.

David Mackie, Ali Malek and Patrick Storey, 23 December 2022