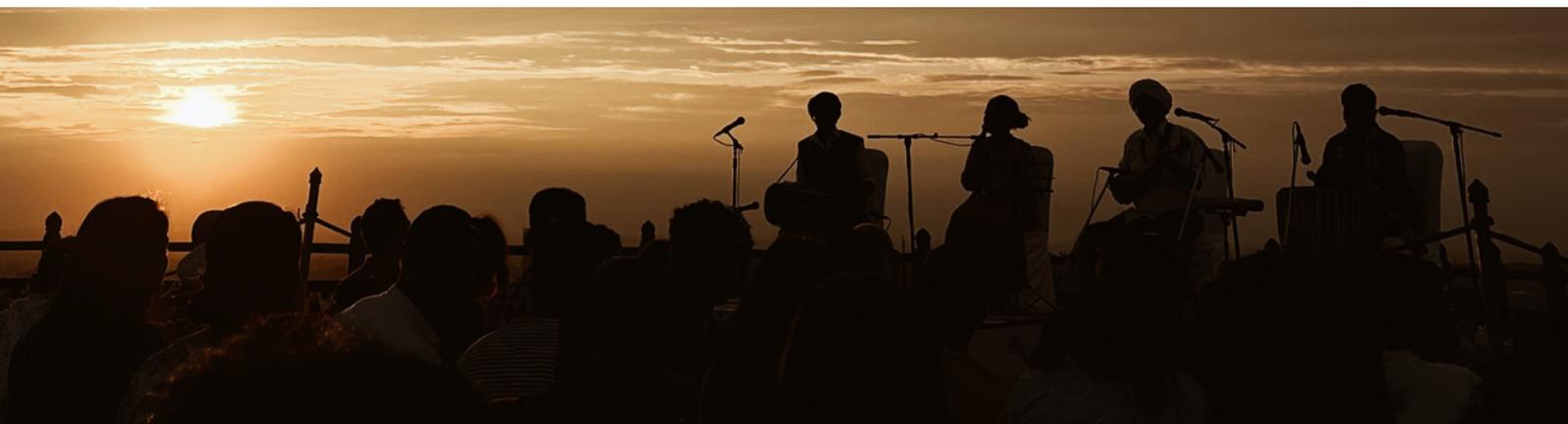


ALLEN & OVERY



SEMI-FINAL PROPOSITION
CONSONANCE DISSONANCE

ALLEN & OVERY - NLU JODHPUR
INTERNATIONAL DEAL
NEGOTIATION COMPETITION
10TH - 12TH MARCH, 2023

SUPPORTING PARTNERS



**Swiss Arbitration
Centre**



WIPO | ADR
Arbitration
and Mediation
Center



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

BACKGROUND OF THE PARTIES

International Music Centre Limited:

Started by Ash and Andy in their high school parking lot in the early 2000s, the A's was a quintessential boy band. Like every other music venture, the A's initially struggled to build a fan base, however, owing to their commitment to their music niche and their engaging live performances, the A's music soon became the staple for millions of people, with their videos and performances being given prime-time slots on channels like MTV and VH1.

The A's realized that they needed to expand their business in order to ensure their long-term success in the industry. With this in mind, the A's founded International Music Centre Ltd. ["IMC"], a private limited company incorporated in Madrid, Spain in 2014. IMC's goal was to offer theme-based music events in La Palma, an island city in Spain. IMC's events were well-received by tourists, so much so that by 2011, the A's launched IMC's first music festival. The festival was spread over two consecutive weekends in La Palma and called "*Fiesta en La Palma*". Although Ash was initially skeptical of the expanded scope of Andy's ambitions, he agreed to the plan for expansion of IMC's event on the condition that they would continue working on their music careers.

Fiesta en La Palma was designed to provide the partygoers and tourists an immersive and engaging experience, covering concerts, accommodation, dining, and various other social and cultural activities. Due to Ash's connections in the music industry, IMC was able to enter into technical riders with artists and bands including Ed Sheeran, One Direction and Coldplay, who all agreed to perform at the festival. Such a lineup gave the festival a huge head start in its inaugural edition, witnessing a whopping attendance of over 21,000 people. Chatter in the market was that Fiesta en La Palma was set to compete with festivals like Coachella, Tomorrowland and Sziget in the coming years.

Within a couple of years, Fiesta en La Palma became the main tourist attractions of La Palma. When the festival started, La Palma was a small village island, however, Fiesta en La Palma's presence substantially contributed to the growth of the local community, who were able to gain employment from IMC and receive assistance in the development of their island. IMC developed a great relationship with the locals and the government. In 2019, it was estimated that nearly 60% of all tourists visiting La Palma in the month of September attended the festival.

For years, Andy and Ash operated like a well-oiled machine—Andy’s expertise lay in business management, while Ash acted more as the face of IMC, instrumental due to his ability to recognize and sign talented artists early on. In 2016, IMC established a subsidiary, IMC House Ltd. [**“IMC House”**], an artist management company. IMC House focused on identifying new talent and helping artists find gigs. IMC House was able to provide career changing breaks for some of its artists, who went on to become famous artists in their genre.

78,000 people attended the 2019 edition of Fiesta en La Palma. However, due to the

COVID-19 pandemic, the festival was suspended for two years which led to heavy losses for IMC. Prior to the pandemic, IMC reported that the festival’s accounts at the end of March 2019 showed a post-tax profit of £90.5 million, cash reserves of £10.6 million, and charitable donations of £2.1 million.

Andy is the Chief Executive Officer of IMC and Ash is the Chief Operating Officer of IMC. Andy currently holds 55% equity shareholding in IMC, while Ash holds the remaining 45%.

Fusion Plc

Initially established by Max Vron and Jack Vron in 1945 as a distillery in the UK, Fusion Plc [**“Fusion”**] is a multinational company headquartered in the UK. Fusion is listed on the London Stock Exchange [**“LSE”**] and has a market capitalisation of approximately £20 billion, with over 30,000 employees worldwide and operations in more than 35 countries. The Vron family is still the majority shareholder in Fusion, although 24% of the equity shares in Fusion are freely traded on the LSE. The Vron family has been one of the most influential families in the UK for decades. The family is responsible for running the business, with a majority of the seats on the board being occupied by family members.

Fusion earns a majority of its profits from two core businesses: (i) the manufacturing and sale of premium gin and tonics; and (ii) owning and running a chain of exotic resorts across several countries. Fusion has invested a significant amount of money into research and development [**“R&D”**] over the past several years. The company has established several R&D centers globally and employs a team of highly skilled and experienced chemists, flavour scientists and marketing experts to develop and promote new flavours of gin and tonics. These flavours are Fusion’s trade secrets and constitute an intangible part of the value of

Fusion’s business. Confidentiality regarding such information is always a high priority for Fusion. Overall, the company’s investment in R&D has been instrumental in its success and growth. By continually striving for innovation and development, the company has been able to cater to the ever changing taste and preferences of its customers.

Fusion launched its hotel chain in 1965, in order to capitalise on the boom in the leisure and tourism sector in the UK. Since its launch, the hotel business has been doing extremely well, having recently won the prize for best luxury hotel worldwide. Initially, Fusion focused on building a strong reputation for providing luxury accommodations and exceptional service. As the business grew, Fusion continued to innovate and expand, developing new hotel concepts and exploring new markets and geographies. Their properties are known for their unique and memorable design, as well as for their commitment to sustainability and eco-friendliness.

The Vron family believes that hospitality is not just about providing a place to stay – it’s about creating experiences that leave lasting memories. Their vision is to bring the unique Fusion experience to even more guests around the world. With their

signature blend of modern design, innovative amenities, and personalized service, they wish to become a beloved part of new communities. The post-pandemic world presents a unique opportunity for growth and innovation in the hospitality industry. By expanding to new locations, Fusion aims to be a part of this new era and to continue delivering exceptional experiences to their guests.

After the recent demise of Max Vron, the management of the company was taken over

by his son Peter. Max was a music fanatic and had a deep appreciation for the power of music to bring people together. It was his dream to do business in the entertainment industry and Peter is also looking at an opportunity to pay tribute to his father's legacy. Facing increasing market competition, Fusion has also been looking to expand its footprint among the Gen Z generation. To this end, Fusion has decided to diversify and is planning to introduce economical gins for the younger population.

GENERAL INFORMATION

Fiesta en La Palma is organized annually on the Island of La Palma, and has become a popular event for music lovers in the region. The festival format is primarily music-based, with various musicians and artists performing across multiple stages. The festival is scheduled over two consecutive weekends, with performances starting in the early afternoon and continuing until late at night. The festival is funded through ticket sales, sponsorships, and partnerships with various organizations.

IMC takes care of the logistics of the festival (including stage design, sound equipment, lighting, and security) and works with local authorities to ensure the smooth running of the festival and the safety of all attendees. In the past, the festival has partnered with multinational brands (such as Budweiser and Proper 12, along with an agreement for broadcasting rights with YouTube), local businesses, hotels and restaurants to provide services to festival-goers. It is marketed through a variety of channels, including social media, email marketing and print advertising. The festival organizers work to build hype around the festival by announcing the lineup of performers in advance, offering early bird ticket sales and hosting contests and giveaways on social media.

Post-Covid-19 attempts made to revitalise the festival in 2022 proved unsuccessful. Ticket sales for the festival were down by 90%, compelling IMC to use its limited financial reserves to inject additional marketing expenses into the festival and subsidize ticket prices. Despite this setback, IMC is certain that, with some assistance, they will be able to rebrand the festival, bring back the magic of the event, and host the festival at the same scale as they previously have. Thus, they have been looking for partners to host the event.

When Fusion heard of IMC's plans, they envisioned a festival as the perfect plan for expansion and to meet their goals. In January 2023, Fusion and IMC met to discuss the idea of a joint venture ["JV"] for a new festival: *Nueva Fiesta en Habana*. Having agreed on the preliminary idea behind the festival, both parties signed a confidentiality agreement and shared with each other documents in a data room for preliminary due diligence.

The following points are to be discussed in further negotiations:

1. Purpose of the JV

Both parties have agreed for the immediate goal of the JV to be the conduct of *Nueva Fiesta en Habana*. The parties have

provisionally discussed the idea of conducting other similar festivals around the world, however, no details have been agreed upon yet.

2. Assets to be contributed to the JV

Both parties have only had a preliminary discussion regarding the assets they will be transferring to the JV.

Assets to be contributed by IMC:

- Artist contracts – IMC has pre-existing and strong relationships with many artists, who may be potential performers at the festival.
- Production & Operations team – A festival of this scale requires inputs from a team of engineers, sound and light technicians, and architects. IMC has many existing contracts with such experienced personnel.

Assets to be contributed by Fusion:

- Real estate in La Palma – Fusion holds 70 acres of land in La Palma, which is the area both parties have mutually mapped out to host the festival. The total valuation of the land is £8 million.
- Exclusive Products – Fusion has a very strong reputation for developing new and exclusive gin and tonics, which may help attract festivalgoers.

3. Ownership & Financing of the JV

The initial capital outlay for the JV is estimated to be £70 million. This expenditure is to cover initial operating costs until income from the sale of tickets, merchandise, and stalls begins to come in. Fusion has committed to funding around 60% of the amount, but in return will expect outsized economic returns (in the form of special dividends, preference share rights, or otherwise), especially in light of its capital contributions to start the project. Fusion has stated that it should own a majority shareholding of the JV because it is making a higher value contribution than IMC. IMC contests Fusion's valuation and has argued strongly that it will not be a minority participant.

4. Revenue Sharing

IMC is of the view that it is uniquely equipped to organize and execute large scale festivals, having done so with Fiesta en La Palma and would be very reluctant to change the profit-sharing split which has been used for Fiesta en La Palma: IMC receives at least 90% and its partner receives the remaining 10% of the profits directly generated from ticket and merchandise sales, while the partner receives 100% of the profits generated from the sale of its hotel rooms and beverages during the duration of the festival. Fusion is looking at a 30% profit split from the sale of tickets and

merchandise and to keep 100% of the profits incurred from any hotel bookings and the sale of its beverages.

5. Control & Management

Commercially, the Fusion team values the ability of the IMC team to successfully plan and execute complex and high-quality festivals. It is happy therefore to continue to defer most of the governance rights in the JV to IMC. Given that Andy has been instrumental to IMC's success, they would like to see him commit to the JV and *Nueva Fiesta en Habana* for a minimum of three years.

However, Andy's relationship with IMC appears to be deteriorating. Recently, the media's focus has been towards the alleged growing tensions between Andy and Ash. Andy was recently seen leaving a club in London late at night. He appeared inebriated and a journalist claimed that he overheard Andy claim that: *"I am done with Ash. He's impossible to work with, does not share the same vision as me and does not appreciate everything that I have done and achieved for IMC. Tell him to consider my shares sold if he does not believe in my vision"*.

7. Concerns regarding Fusion's Operations

Fusion requires certainty regarding the management of the JV as it believes that Andy's role can significantly impact the success of the JV.

6. Ownership, Voting & Board Structure

Even if IMC has a minority stake from a financial standpoint, IMC insists upon 50/50 voting rights as a shareholder. Fusion has agreed to discuss IMC's request for equal voting rights. The parties have agreed to discuss if there would be some kind of casting vote to one of them (for example, to the Chairman) and/or if there would be any independent directors. If the JV ends up with full 50/50 voting control at the board, the question of how to deal with a deadlock at board level will need to be agreed.

There are concerns amongst the Fusion shareholders about the level of the risks involved in starting up a new festival in a new part of the world and, accordingly, the shareholders want to ensure that Fusion's permission or written consent is obtained before the JV undertakes any significant or "material decision" regarding the festival. The scope of what these decisions should entail is yet to be confirmed.

IMC's financial and legal advisers have noted certain inconsistencies in Fusion's previous annual accounts and have raised

concerns regarding breach of regulatory compliances by Fusion. Further due diligence has given rise to apprehensions as to the legal basis on which Fusion holds its property in La Palma. The title search reports identified a notification released in 2007 by the local government in La Palma, which provided that certain real estate could only be used for residential purposes. Around 6.5 acres of Fusion's land was hit by this notification. Requests for title deeds and other supporting evidence have been met with delays, incomplete documents and unconvincing reasons for withholding such documentation.

Further, a controversy that has surrounded the Vron family has recently flooded the media. Julia Vron, daughter of Jack Vron has alleged that she was wrongly fired from her position as CEO. In 2006, Julia was given an Employee Stock Option to purchase Fusion's stock at any time within the next 10 years. In 2014, Julia was fired on allegations of fraud. As Julia had not yet

executed her Employee Stock Option, she was denied the right to purchase the shares subsequently. It is reported that Julian is seeking £500 million in unlawfully distributed dividends from Fusion.

8. Transfers

Both sides agree to the right to transfer shares in the JV intra-group to their wholly-owned subsidiaries. Both also accept the principle of pre-emption rights (i.e., if a party wants to exit, the other party should benefit from some kind of priority to buy its shares) but no details have been discussed. Other issues (i.e. prohibitions on transfers of shares for an initial period or to a competitor) have not yet been discussed.

Both parties have scheduled sessions to take negotiations forward. Fusion will be represented by Peter Vron, the current CEO. Peter has specifically requested that Andy represent IMC at the negotiations in an attempt to establish their relationship.