

MAITLAND

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Welcome to this second edition of Forum: the Maitland Jurisdiction Bulletin.

Jurisdictional issues continue to be one of the key battle grounds in the cross-border cases which we see across our areas of practice in the English courts, offshore and in arbitrations. And the period since the last issue of Forum has been as active as ever. Among many interesting decisions, readers may have seen the judgment of the Supreme Court in *Drelle v Servis Terminal* [2026] UKSC 29, underlining the relevance of the analysis of the Court of Appeal's decision by Promit Chatterjee in our last issue.

In this issue we are pleased to bring you Emily Gailey's invaluable analysis of the current position on the vexed question of service out of post-judgment Chabra injunctions following the recent decision of the Court of Appeal in *Gilbert v Broadoak Private Finance Ltd*; Maria Mulla guides us through the issues which arise when an arbitration agreement, DIFC proceedings and English High Court proceedings collide following the landmark DIFC Court of Appeal proceedings in *Oran & Oaken v Oved* in which she appeared; and Duncan McCombe brings us up to date on the circumstances in which it is possible to fail to establish jurisdiction by service over a defendant who is resident (but not present) in the jurisdiction, as in the recent Court of Appeal decision in *Agrofirma Oniks LLC v Fridman*. James Woolrich concludes the issue with a magisterial review of 26 decisions since the last issue in the courts of England & Wales and offshore.

We hope you enjoy and join us again for the next issue in 2027!

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Service Out of Post-Judgment Chabra Injunctions

By Emily Gailey



The scenario is not uncommon, particularly for fraud practitioners: judgment has been obtained in England and Wales, but the losing party has sequestered their assets overseas in the name of a third party who cannot be served as of right. How does the judgment creditor go about preserving the foreign assets until it can enforce against them? The answer, in the light of two recent cases, *Commercial Bank of Dubai PSC v Al Sari*[1] and *Gilbert v Broadoak Private Finance Limited*[2], may be far from straightforward.

In such circumstances, what the judgment creditor (A) is usually seeking is a freezing injunction against the foreign third party (C), notwithstanding that A has never had a cause of action against C, but only against the judgment debtor (B). This is a post-judgment exercise of the "*Chabra*" jurisdiction, named after the landmark decision in *TSB Private Bank International SA v Chabra*.[3] The justification for such an order - as explained by the Board of the Privy Council in *Convoy Collateral Ltd v Broad Idea International Ltd*[4] - is the 'enforcement principle', namely that "*the third party is in possession or control of an asset against which a judgment could be executed*".

The difficulty that A faces is that, if C has no presence within the jurisdiction, then A will generally have to satisfy the court that permission to serve C out of the jurisdiction should be granted in the normal way under CPR Part 6. But where the underlying claim has already resulted in a judgment against B and no such claim is advanced against C, is there a jurisdictional gateway under paragraph 3.1 of PD 6B which could support such an application?

Commercial Bank of Dubai PSC v Al Sari

In 2024 the issue was considered in detail by Foxton J in his valuable judgment in *Commercial Bank of Dubai PSC v Al Sari*.[5] In that case the focus was on gateway (3) of paragraph 3.1 of PD 6B – the "necessary or proper party" gateway. A foreign judgment had been obtained, English proceedings had been brought (to judgment) to enforce it, and the claimant bank had then sought permission to serve out a post-judgment *Chabra* injunction against a foreign third party, on the basis that they might hold assets falling within the scope of a word-wide freezing order it had obtained against members of the Al Sari family, or against which the bank's judgment against the Al Saris could be enforced.

Gateway (3) provides:

> "A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
>
> (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
>
> (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."

In essence, this gateway requires (i) that a claim is made against a defendant (the 'anchor defendant') on whom a claim form can be served; (ii) that there is a 'real issue' between that claimant and the anchor defendant which can reasonably be determined by the English court, and (iii) that the other person whom the claimant wishes to serve is a necessary and proper party to the claim. There are a number of uncertainties in the wording of the gateway. For example, what is the nature of the 'claim' that needs to be made against the anchor defendant (does it need to be substantive?) and can it survive judgment? Does the 'real issue which it is reasonable for the court to try' have to arise in that 'claim'? Does the new defendant need to be a 'necessary and proper party' to the 'claim' or just to the 'real issue' as identified? And does a 'claim' need to be advanced against them too?

In *Al Sari* Foxton J undertook a careful and detailed review of the authorities and concluded (a) that the gateway does require substantive proceedings to be on foot in England and Wales between the claimant and the anchor defendant. However, he also concluded that (b), in principle, proceedings to enforce a judgment or arbitration award could count as such;[6] and also that (c), provided that such substantive proceedings are on foot, gateway (3) could apply in a situation where *procedural* relief is sought against the anchor defendant and the *Chabra* defendant is a necessary or proper party to such relief.[7] On its face, that makes the gateway considerably more elastic than has in some cases been suggested. But the Judge also identified an important limiting principle which would stop the scope of the gateway becoming too broad: namely, there needs to be some common factual enquiry or determination involving the anchor defendant and the *Chabra* defendant (a feature that will often be absent in the scenario we are considering):

"the principle which best fits with the cases, and best reconciles the application of Part 6B to applications as well as claims and to applications for procedural as well as substantive relief…, while maintaining the spirit of a gateway which allows considerations of efficient dispute management to override the usual requirement for some form of territorial nexus before proceedings can be served out of the jurisdiction, is that there needs to be an issue arising as between the claimant and an anchor defendant, even if in a procedural context, which also arises as between the claimant and the [Chabra defendant] and which will be the subject of investigation and determination for both at the same hearing." [8]

On that basis, in *Al Sari* Foxton J held that permission to serve out on the proposed *Chabra* defendant was not available under gateway (3). In reaching that conclusion he relied (*inter alia*) on the fact that not only had judgment already been entered in the proceedings,[9] there were also no live-post judgment enforcement applications on foot in England and Wales against the anchor defendants, nor had any attempt been made to justify the application for permission to serve out by reference to such an application.[10] It therefore could not be said that there was between the claimant and the anchor defendant a "*real issue which it is reasonable for the court to try*", nor could the proposed Chabra defendant be a "*necessary or proper party*" to such an issue.

The question therefore arises: when will the test proposed by Foxton J in *Al Sari* be met in a post judgment *Chabra* situation? The decision of Aikens J in *C Inc v L*[11] provides an answer – and possibly the only actual example of the gateway working in this context.[12] What made the difference there is that, whilst judgment had been obtained against the party in the position of B, there remained a live dispute between A and B which the court needed to determine (an application to appoint a receiver over B's alleged right of indemnity against C) and C, the intended *Chabra* respondent, could be said to be a necessary or proper party to that.

Gilbert v Broadoak Private Finance Limited

First instance

Perhaps mindful of the difficulty presented by the judgment in *Al Sari*, when the same issue (i.e. a post-judgment attempt to serve out on a foreign ***Chabra*** defendant) arose in the recent case of *Gilbert v Broadoak Private Finance Limited*[13] the claimants cast the net considerably wider in terms of the gateways that they contended allowed for the necessary service out. They sought to rely not just on gateway (3), but also on gateways (2), (10), (11), and (20).[14] Ultimately, however, none of these routes was successful: permission was initially granted, but this was set aside on the return date. At first instance, the judge held:

Gateway (2) (injunctions)[15]: This was dismissed on the basis that gateway (2) does not apply to freezing injunctions, being interim in nature; the gateway applies only to an injunction sought as final, substantive relief. This had been the conclusion reached by the House of Lords in *The Siskina*.[16]

Gateway (3) (necessary or proper party): This was dismissed for much the same reasons as given in Al Sari, namely that there were no live issues, substantive or procedural, which remained to be tried as between the claimants and the anchor defendant. Final judgment had already been entered and no issues on the pleadings remained to be tried. The possibility that a further issue might arise at some point in the future was insufficient.

Gateway (10) (enforcement of a judgment)[17]: The judge dismissed this (relying on the conclusions of Flaux J in *Linsen International Ltd v Humpuss Sea Transport Pte Ltd*[18]) on the basis that an application for *Chabra* freezing relief is not a claim to enforce any judgment against the principal defendant, but is instead only ancillary relief to assist with that enforcement.

Gateway (11) (property within the jurisdiction)[19]: The claimants had sought to argue that this gateway applied on the basis that the subject matter of the application related to the judgment debt, which was a chose in action payable in England. However, in the absence of specific authority the judge was unwilling to treat an application for *Chabra* relief, even post judgment, as an application that related 'wholly or principally' to the judgment debt. Such an application was instead concerned with the ownership of assets held by the foreign third party, whether they were available to the principal defendant and whether there was a risk of dissipation.

Gateway (20) (enactment)[20]: The claimants sought to argue that this gateway applied on the basis that the application for a world-wide freezing order was made under an enactment, s37(1) of the Senior Courts Act 1981[21]. This argument was dismissed by the judge, following a detailed consideration of the authorities, on the basis that s37(1) is not an enactment that itself 'allows proceedings to be brought', but is instead concerned only with remedies available in proceedings that are

otherwise properly brought[22]. This gateway was therefore also unavailable.

Court of Appeal

The first instance decision in *Gilbert* was subsequently appealed, and the (unanimous) judgment of Court of Appeal was given in September 2026 by the newly elevated Foxton LJ[23] . Importantly - and perhaps frustratingly - the claimants only sought to appeal the decision in relation to gateway (20) (enactment), gateway (11) (property within the jurisdiction) and gateway (2) (injunctions). There was therefore no opportunity for further consideration of gateway (3) (necessary and proper party), the analysis of which still rests with the same judge's first instance decision in *Al Sari*.

In relation to the three gateways that were appealed, the appeal was unsuccessful[24]. The Court of Appeal held:

Gateway (20) (enactment): after a further detailed review of the various authorities, the Court of Appeal endorsed the first instance's judge's conclusion that a claim for a freezing order under s37(1) of the Senior Courts Act 1981 could not be a claim under an enactment for the purposes of this gateway. The Court held that s37(1) lacked any specific "*claim conferring*" language[25] and was instead a general provision aimed at confirming the Court's pre-existing equitable jurisdiction to grant injunctions.[26]

Gateway (11) (property within the jurisdiction): the Court of Appeal concluded that it was not arguable that the subject matter of an application for freezing order relief related wholly or principally to property within the jurisdiction simply because the order was sought to assist enforcement of an English judgment, which was a chose in action payable in England. The freezing order would not itself effect the discharge of the judgment debt, but would simply prevent the dissipation of assets against which some process of execution might subsequently be levied.

Gateway (2) (injunctions): the Court of Appeal endorsed the judge's conclusion based on the *Siskina*, summarised above: the injunction gateway applies only to injunctions sought as final, substantive relief.

The Court of Appeal's conclusions on gateways (20) and (11) are unsurprising and do not call for further comment. As to its conclusion on gateway (2), this is similarly unsurprising – given that the point has been considered by the Privy Council twice since the *Siskina* and the same conclusion reached each time – but it bears note that there is an apparent tension with the view reached by Foxton J (as he then was) in *Al Sari*, namely that gateway (3) could in principle apply in a situation where procedural (and specifically interim injunctive), as opposed to substantive, relief is sought against the proposed *Chabra* defendant. Why, one might ask, should it be possible to obtain permission to serve out an application for purely interim injunctive relief under gateway (3) when the highest court has repeatedly held that the scheme of the gateways generally – and the injunction gateway specifically – is concerned only with claims for substantive relief?[27] That tension is real and can probably only be explained on the basis that the interpretation of the injunction gateway (2) is too entrenched. Foxton LJ emphasised in *Gilbert* the obvious policy reasons for not adopting a different interpretation of a gateway whose scope has long been the subject of settled authority, notwithstanding that the conceptual basis of freezing injunctions has since been significantly reformulated. As he noted, "*The scope of the relevant rule of the CPR has been settled by courts of the highest authority, and subsequent revisions of the CPR have not sought to amend it. Any revision of the kind contended for is a matter for the Rules Committee*".[28]

Conclusion

Where do these decisions leave a claimant seeking to establish jurisdiction to bring an application for a post-judgment *Chabra* injunction? The answer seems to be that:

1. The only realistic possibility is to try and bring your case within the scope of gateway (3), as analysed in *Al Sari.* This is in principle possible, notwithstanding that the action against the anchor defendant has resulted in judgment and notwithstanding that only procedural relief is sought against the *Chabra* defendant. But it seemingly requires that there be live post-judgment enforcement applications on foot in England and Wales against the anchor defendant, which will be determined in a hearing and raise a common issue with one raised by the *Chabra* application. That is not likely to be common; but, as noted above, *C Inc plc v L* is an example.

2. Otherwise, unless the Rules Committee amend the current gateways, there is no applicable gateway and the claimant will need to consider other routes that involve the bringing of a substantive claim against the intended *Chabra* defendant (for example, under s.423 of the Insolvency Act 1986), which could itself be served out and then be used as a basis to seek a freezing order.[29]

Footnotes

[1] [2024] EWHC 3304 (Comm).

[2] [2026] EWHC 153 (KB) and [2026] EWCA Civ 1172.

[3] *TSB Private Bank International SA v Chabra* [1992] 1 W.L.R. 231.

[4] [2021] UKPC 24 at [88].

[5] [2024] EWHC 3304 (Comm).

[6] Ibid, at [267]-[268].

[7] Ibid, at [269(vi)].

[8] Ibid, at [279].

[9] As noted above, in *Al Sari* the relevant judgment was a foreign judgment, on which judgment had then been entered in England and Wales (see, e.g. [281(i)]).

[10] Ibid, at [281].

[11] [2001] CLC 1054.

[12] A similar possibility was considered and apparently endorsed in *JSC BTA Bank v Ablyazov* [2014] EWCA Civ 602, but the Court of Appeal's observations were obiter, as C had submitted to the jurisdiction.

[13] [2026] EWHC 153 (KB)

[14] This was a novel approach in the *Chabra* context, and they were criticised for not bringing its novelty to the judge's attention at the without notice hearing; see [26] of the judgment.

[15] This gateway applies when a "claim is made for an injunction...".

[16] *Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera* SA [1979] AC 210. This aspect of the decision in *Siskina* was not overturned by the Privy Council in *Broad Idea*; in fact the Board endorsed it and applied it to the similarly worded gateway in the BVI CPR.

[17] This gateway applies when a claim is made "to enforce any judgment or arbitral award".

[18] [2011] EWHC 2339 (Comm).

[19] This gateway applies when the subject matter of the claim "relates wholly or principally to property within the jurisdiction".

[20] This gateway applies when a claim is made "under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to [in paragraph 3.1]".

[21] N.B. this was a suggestion floated by Foxton J in the course of the hearing in *Al Sari* (referred to [243-244] of his judgment) but not argued before him.

[22] It is also relevant that, as subsequent commentators have noted, s.37(1) does not itself empower the court to grant injunctive relief - it simply confirms a pre-existing power (see, e.g., *Fourie v La Roux* [2007] UKHL 1 at [25]).

[23] [2026] EWCA Civ 1172

[24] Following the hearing the Court of Appeal refused to grant the claimants permission to appeal in relation to gateways (2) and (11), and rejected the appeal in relation to gateway (20), see [4-6] and [88].

[25] Ibid, at [82].

[26] Ibid, at [85-88].

[27] Another curious feature of the rules - as Foxton LJ noted in *Gilbert* - is that there is a gateway which effectively permits service out for a freezing order intended to assist in the enforcement of a foreign judgment (Gateway (5)), which would extend to *Chabra* relief, but no equivalent gateway for domestic judgments.

[28] [2026] EWCA Civ 1172, at [104]

[29] As was the case in *Gilbert*, see [2026] EWCA Civ 1172, at [123].

Stopped in Your Tracks: When Proceedings Abroad Halt Litigation in the High Court in England - Lessons from the DIFC Court of Appeal - *Oran & Oaken v Oved* [2025] DIFC CA 004

By Maria Mulla



Imagine preparing for an expedited application on a stay pursuant to *s.9 Arbitration Act 1996* ("s.9 stay application") concerning the validity and enforceability of an arbitration agreement, and an anti-arbitration injunction ("AAI"). The applications have been listed. Counsel have been instructed. The parties are preparing for the s. 9 stay application and the anti-arbitration injunction hearing.

Then without warning – and just one day before the AAI is due to take place, an anti-suit injunction ("ASI") obtained in another jurisdiction (the DIFC Court of First Instance), brings the English proceedings to an abrupt halt.

That was the practical effect of the proceedings considered by the DIFC Court of Appeal in *Oran and Oaken v Oved* [2025] DIFC CA 004.

Although the Court of Appeal ultimately held that the DIFC Courts lacked jurisdiction to grant the anti-suit injunction in question, the injunction had already had a profound impact upon the High Court proceedings. The imminent hearing of the s.9 stay application was vacated, and the High Court proceedings were stayed for approximately 9 months whilst the Appellants challenged the grant of the ASI all the way to the DIFC Court of Appeal.

The Facts

Oved is a company incorporated in England with no known assets in Dubai or the DIFC and only limited assets in the UK. Oved engages in the provision of emergency air ambulance services.

The late Mr. Oran engaged Oved to provide an air ambulance service for his wife, who required chemotherapy treatment in Switzerland. Substantial fees were paid to Oved; however, no air ambulance was ever provided pursuant to the contract. Proceedings were issued in the High Court seeking repayment of the sums paid. Sadly, Mr. Oran passed away, and his Estate wished to continue the litigation and were substituted as a party.

Although the contract between the parties did not specify the governing law, it contained the following dispute resolution clause:

"Either party may by written notice to the other require that the dispute be referred to arbitration under the DIFC London Court of International Arbitration (DIFC -LCIA) Rules which are deemed to be incorporated by reference into this clause…the seat, or legal place, of arbitration shall be Dubai, United Arab Emirates. All proceedings in any such arbitration shall be conducted in English."

Of particular significance was the fact that the Agreement contained the above dispute resolution clause despite Dubai Decree No. 34 of 2021 ("Decree 34"), having abolished the DIFC-LCIA as an arbitral institution several years earlier.

The enforceability of arbitration clauses referring to the former DIFC-LCIA Rules has been the subject of considerable judicial scrutiny internationally. For instance, the United States District Court for the Eastern District of Louisiana, and the Singapore High Court[1] have previously held that defaulting an arbitration to the Dubai International Arbitration Centre ("DIAC") forum in compliance with Decree 34 may violate party autonomy and render the arbitration agreements invalid.

Accordingly, proceedings were issued in the High Court in January 2024 seeking repayment of the sums owed. Oved filed an acknowledgement of service and indicated that it intended to dispute the jurisdiction of the High Court.

In February 2024 Oved applied for an order staying the proceedings in favour of arbitration pursuant to *s.9 of the Arbitration Act 1996*.

Without warning, Oved filed a Request for Arbitration in DIAC. In response, the Estate then applied for an Anti-Arbitration Injunction ("AAI") which was listed to be heard in the High Court in January 2025.

On the eve of that hearing, Oved commenced proceedings in the DIFC seeking an ASI restraining the Estate from prosecuting the High Court proceedings in any form or matter.

As a consequence of the ASI the s.9 stay application was halted. The English proceedings were quite literally brought to a standstill as a result of the DIFC's Court ASI order.

The Appeal

One of the key grounds before the DIFC Court of Appeal was that the DIFC Court erred in granting the ASI when the arbitration agreement and the underlying dispute had no connection at all to Dubai, or the DIFC.

Significantly the Judge at first instance had already concluded that the arbitration was not seated in the DIFC. In those circumstances the obvious question arose: what was the jurisdictional basis upon which the DIFC Courts could grant an ASI in the terms that it did?

The DIFC Court of Appeal answered that question unequivocally. In cases concerning arbitration agreements unless the case otherwise falls within a head of jurisdiction specifically identified in the Court Law, the only source of jurisdiction is the DIFC Arbitration Law.

Another successful ground of appeal concerned the principles of *forum non conveniens*. The Court placed great weight on considerations such as the advanced stage of the proceedings in the High Court together with the fact that the dispute involved a claim against a company incorporated in England.

When the DIFC Court was considering the ASI application the s. 9 stay Application had already been listed for a two day hearing before the English High Court later that month.

The DIFC Court of Appeal held that the English Court was plainly the appropriate Court to determine the substantive dispute and all ancillary issues arising from it, given that Oved was incorporated in England.

By contrast, the DIFC Courts had no jurisdiction to restrain the parties from pursuing proceedings before the High Court, which had an undisputed jurisdiction over the matter.

At paragraph 102 of the judgment the DIFC Court of Appeal concluded that the only reasonable conclusion was that the High Court was clearly the most appropriate forum in which to determine issues pertaining to the existence and enforceability of the arbitration agreement. That conclusion ultimately proved fatal to the continuation of the ASI, and it was discharged immediately at the DIFC Court of Appeal hearing.

Conclusion

The decision is a landmark judgment dealing with many important issues. It also serves as a powerful reminder that in cross-border litigation steps taken in one jurisdiction can have far reaching consequences in another.

Although the DIFC Court of Appeal ultimately concluded that the ASI should never have been granted, the practical disruption had already occurred. The High Court proceedings had been delayed for many months, and the Estate were forced to litigate in three separate sets of proceedings (the High Court, the DIFC, and DIAC). Unfortunately, these proceedings have remained stayed for a considerable period of time.

This is clearly an exceptional case and the Estate was determined to pursue the matter to the DIFC Court of Appeal, not merely because of its significance to the parties, but because it raised an important point of principle requiring authoritative determination.

Maria Mulla leading Sajid Suleman (Outer Temple Chambers) appeared in all proceedings in the High Court, the DIFC, and DIAC.

Read the judgment of the DIFC Court of Appeal here.

[1] United States District Court of Eastern District of Louisiana Baker Hughes v Dynamic Industries Inc and DFL v DFM [2024] SGHC 71

When is Residence Not Presence and Why Does this Matter?

By Duncan McCombe



In *Agrofirma Oniks LLC v Fridman* [2026] EWCA Civ 139, the Court of Appeal has decided that, even if a defendant meets all the requirements of CPR 6.9 (the provision that allows service of a claim on the defendant's usual or last known residence), there is still a common law requirement (found nowhere in the CPR themselves) that the Defendant must be present within the jurisdiction before the Claimant can serve pursuant to CPR 6.9. In doing so, the Court of Appeal chose between conflicting Court of Appeal authorities on the point.

The facts

The Defendant, Mr Fridman, is (as the Court of Appeal described him) "*an immensely wealthy 'Russian oligarch*', with dual Russian and Israeli nationality". In 2013 Mr Fridman moved to London and he acquired Athlone House in Hampstead as a residence for himself and his family in 2016. He was granted indefinite leave to remain in the UK in 2019.

However, in 2022 Mr Fridman was subjected to UK sanctions and became an "*excluded person*" such that his leave to remain was cancelled and he was not permitted to enter the UK. Consequently, since leaving the UK on 27 September 2023 for medical treatment, he has not been able to return. His whereabouts, however, is unknown. Accordingly, the claimants served Mr Fridman at Athlone House.

The decision at first instance

Where a claimant is not obliged and does not wish to serve a claim form personally, and a defendant has not provided an address (whether their own or that of a solicitor) for service, CPR 6.9 provides that an individual defendant must be served at their "*usual or last known residence*".

At first instance, Bryan J held that Athlone House was indeed Mr Fridman's "*usual or last known residence*", and that he had been served in accordance with CPR 6.9. No permission was given to appeal that finding. Bryan J also found that this finding as to residence was sufficient to satisfy any requirement of presence within the jurisdiction at common law.

The arguments on appeal

Mr Fridman appealed the finding that the common law requirement of presence within the jurisdiction was met. The Claimants disputed this but also brought an appeal via respondent's notice that there was no separate common law requirement of presence within the jurisdiction at all.

Both parties agreed that there had once been a common law requirement that defendants needed to be present in the jurisdiction before they could be said to have been served within the jurisdiction. However, the Claimants argued that, while this had understandably been the rule when personal service had been required, the presence requirement had been removed by rules of court allowing for methods of service beyond personal service, for example by post and then later electronic means. This was supported, the Claimants argued, by the wording of the rules themselves which contain no reference to, let alone any requirement of, presence. In this submission, the Claimants were supported by the Court of Appeal decision of *Kamali v City & Country Properties Ltd* [2006] EWCA Civ 1879, which itself relied upon an earlier Court of Appeal decision in *Rolph v Zolan* [1993] 1 WLR 1305 concerning service under the old County Court Rules.

The Defendants argued that the common law presence requirement was too important to have been impliedly overridden by the CPR. In this regard, they relied on a Court of Appeal decision in *SSL International Plc v TTK LIG Ltd* [2012] 1 WLR 1842, which had held that the common law presence requirement survived, subject to a qualification that temporary absence (for example on holiday) did not negate presence.

The decision of the Court of Appeal

The Court of Appeal decided that there was indeed a common law requirement of presence which was not satisfied with respect to Mr Fridman because he was excluded from the jurisdiction by law in a way that was more than merely temporary. Accordingly, the Court of Appeal set aside service on the basis that, for CPR 6.9 to be applicable, there was a common law requirement that the defendant must be present within the jurisdiction, which was not satisfied with respect to Mr Fridman. As a result, the claimants needed permission to serve him out of the jurisdiction (and if necessary an order allowing alternative service on Mr Fridman at Athlone House).

In so deciding, the Court preferred *SSL International Plc* (above) over *Kamali* (above), which it found were in conflict. This was said to be on the basis that the requirement of presence was a "*substantive jurisdictional requirement*" which, due to the presumption against extra-territoriality in interpreting legislation (including the CPR), should not be taken to be overridden without clear words.

Analysis

The central plank of the Court of Appeal's reasoning was that the presence requirement was a "*substantive jurisdictional requirement*". That was on the basis of the House of Lords authority of *Barclays Bank of Swaziland Ltd v Hahn* [1989] 1 WLR 506. However, the phrase "*substantive jurisdictional requirement*" was only found in Lord Brightman's description of the submissions of the appellant in that case. While Lord Brightman did go on to say that he accepted "*the appellant's proposition that the defendant must be within the jurisdiction at the time when the writ was served*", none of his reasons endorsed the "*substantive jurisdictional requirement*" approach. Lord Brightman's decision was based on his interpretation of the Rules of the Supreme Court at the time (as the Court of Appeal in the *Fridman* case accepted). This would suggest that, if the rules change, then so might the presence requirement.

That was precisely why the Court of Appeal in *Rolph v Zolan* (above) and *Kamali* (above) later found that the differently worded County Court Rules and then the CPR had done away with the presence requirement. Those rules contain no trace of a presence requirement which does not fit well with modern rules allowing service by post and electronic means.

Consequences

Given the conflicting Court of Appeal authorities on the point, this important question could do with resolution by the Supreme Court. Beyond that, the question of what presence means in this context will need to be worked out on a case by case basis. The precise contours of this requirement as to presence remain unclear. The Court confirmed that actual physical presence within the jurisdiction at the time of service is not required. This could lead to the sort of absurd results referred to by Lord Brightman in *Barclays Bank of Swaziland* (above):

> *"if one had a defendant living in the northern part of Cumbria, who was regularly in the habit of crossing the border for his lunch, it appears to me to make a complete nonsense of the whole matter if he were able to say that service had been bad because at the time when the letter had been put through the letter box or at the time when it had been posted he had happened to be in the southern part of Scotland for no more than an hour."*

Therefore, the Court of Appeal said, "*temporary absence will not negate presence within the jurisdiction*". Other than the fact that presence and residence are not the same thing, no further guidance was given.

The decision also throws up practical difficulties for claimants who face defendants who have not given an address for service and whose whereabouts is unknown. If a claimant cannot be sure that a defendant is present within the jurisdiction, it now seems that they will need to make a protective application to serve out of the jurisdiction coupled with an application for alternative service.

George Hayman KC and Duncan McCombe appeared for the Respondent before the Court of Appeal.

Case-Law Digest

By James Woolrich



Jurisdictional Gateways

FH Holding Moscow Ltd v AO Unicredit Bank [2026] EWCA Civ 468 (single judgment by Males LJ). Applying English law principles (as agreed: [1]-[5], [37]) to competing dispute resolution clauses in a facility agreement and a mortgage agreement, the Court found no breach of the facility agreement's Vienna-seated arbitration clause (and therefore no ground for an anti-suit injunction) ([34]-[40]). Obiter: (1) if the English court had jurisdiction over D1 because C's claim was 'in respect of' a facility agreement governed by English law (i.e. under gateway (6)(c) – a point left open by *UniCredit v RusChemAlliance* [2025] AC 1177 and by this case – that would constitute a significant widening of the gateway ([42]-[44]); and (2) the Rules Committee might usefully consider whether CPR r.62.5 is the sole basis for seeking permission to serve out an arbitration claim form or if the PD 6B gateways also apply (as assumed to be the case in *UniCredit* and *AES* [2013] 1 WLR 1889), and in what circumstances such service should be permitted in the case of *foreign-seated* arbitrations ([51]).

Westbase Technology Ltd v Vuzix [2026] EWHC 138 (Ch). C sued Ds in England for breach of an alleged oral settlement agreement (said to have replaced a New York law governed distributor agreement with an asymmetrical New York court jurisdiction clause at D's option) and in tort for negligent misrepresentation/misstatement. In relation to the breach of contract claim and gateways 6(a) or (c), the third limb of the test set out in *Brownlie v Four Seasons Inc* [2018] 1 WLR 192, 199B (plausible (albeit contested) evidential basis for the gateway) was particularly appropriate where, as here, the objection to jurisdiction was also a principal objection to the substance of the claim, i.e. non-existence of the settlement agreement, and given a mini-trial should be avoided at permission stage ([39]-[47]). C reached the standard.

Gilbert v Broadoak Private Finance Limited [2026] EWCA Civ 1172. See Emily Gailey's article above.

Durnont Enterprises Limited v Fazita Investment Ltd [2026] EWHC 405 (Ch). D1-5 sought to challenge jurisdiction in respect of proceedings alleging a complex fraud (misappropriation of €100m from a Polish commercial real estate investment fund). D1 was said to have breached a share subscription agreement (claim 1) with an exclusive English jurisdiction clause. Claim 1 could be served on D1 without permission[1] and provided an anchor for claim 2 (which passed through gateway (4A) for D1 (same or closely connected facts) and through gateway (3) for D2-5, and (apparently[2]) for claims 3-4 against D2-3 and D2-4 too ([130], [132]): the same core facts, witnesses and contemporaneous documents underpinned all the claims [129]-[130]. Obiter, D4's submission to the English court's jurisdiction by bringing a claim there involved submission to C's application to set aside the resulting default judgment for fraud, despite the latter being made by separate action ([134], [137]). Thus, D4 could also serve as an anchor in respect of claims 2-4 against D2 and D3. G Hayman KC and J Kinman of Maitland for D2/3.

Jurisdiction and Arbitration Agreements

Tyson International Company Ltd v GIC Re, India, Corporate Member Ltd [2026] EWCA Civ 40 (single judgment by Nugee LJ). Considered the effect of a 'confusion clause' which provided that contract form 1 (which contained an English exclusive jurisdiction clause) was to take precedence over contract form 2 (which provided for New York-seated arbitration) "*in case of confusion*". Held: (1) the confusion clause was applicable in case of inconsistency between the two contract forms; it therefore applied to the competing dispute resolution clauses ([30]-[60]); and (2) those clauses could not be construed to mean the English court had a residual, supervisory jurisdiction over the New York arbitration; to do so would invert the parties' bargain ([74]-[75]).

Clyde & Co v Jalan [2026] EWHC 403 (Comm). C applied for an anti-suit injunction to stop D from pursuing a bonus dispute in the Dubai Labour Court. D's employment terms were set out in a suite of documents, including: a terms letter containing an arbitration clause which (curiously) provided for London-seated arbitration and the application of UAE labour law (which renders arbitration clauses void); an Annex to the terms letter which provided for London-seated arbitration and English law; and regularly-signed MOHRE contracts (mandatory for onshore employment contracts), which provided for UAE labour law and for any condition in the employment contract that violated that law to be null and void ([30]). Held: the question was one of construction, not validity under competing laws ([66], [74]); this was a rare occasion post-*Fiona Trust* in which an arbitration agreement could be given no effect whatsoever; *either* there was too much conflict such that there was serious doubt whether the agreement was intended to be binding, *or* the subsequent entry into the MOHRE contracts meant that the parties could be taken to have agreed the arbitration agreement was inoperative ([76]).

Statutory Jurisdiction in Consumer Matters

Alesayi v Bank Audi SAL [2026] EWCA Civ 551; [2026] I.L.Pr. 19 (single judgment by Popplewell LJ). The previous edition of Forum briefly noted the first instance decision [2025] EWHC 1033 (KB), which was affirmed on appeal. The issue was whether a new contract had been concluded between C and D for the purposes of the consumer provisions in s.15B-E of the Civil Jurisdiction and Judgments Act 1982 (which adopted arts.17-19 of the Recast Regulation and which are to be interpreted in the same manner: see s.15E(2) CJJA 1982 ([17])). Applying autonomous EU law (and having regard to both Recast and Rome I Regulation cases: [38]), in particular *Greece v Nikiforidis* (C-135/15), the test was whether the variation agreed was of such magnitude that it gave rise not to the mere updating/amendment of the contract but to the creation of a new legal relationship between the parties, so that the initial contract should be regarded as having been replaced by a new contract ([40]). The test was met ([45]-[46]); the Bank's jurisdiction challenge therefore failed.

Forum (non) Conveniens

Investec Bank Plc v Protopapa [2025] EWHC 3202 (Comm). Where there was a non-exclusive or exclusive jurisdiction clause, the test on a *forum non conveniens* application was more rigorous than simply applying Spiliada: it required strong/very strong reasons to depart from the clause and the only factors of convenience that could be taken into account were those not foreseeable by the parties at the time of contract entry: ([55]-[65]). For the purposes of the application, the Judge treated an asymmetrical English court exclusive jurisdiction clause (at C's option) as non-exclusive, without confirming this to be the correct approach ([65]). On the facts, the application failed: the existence of related agreements with Swiss court clauses and the prospect of parallel rather than unified proceedings were not 'strong' or 'sufficiently strong' factors ([68]-[75]). Obiter: (1) a clause which recorded that (a) England was the *forum conveniens* and (b) a statement that neither party would argue England was not the *forum conveniens* created a contractual estoppel subject to no exceptions (cf. the authorities on clauses containing (b) wording only) ([92]-[94][3]); and (2) ticking the wrong box in an Acknowledgment of Service and seeking an extension of time to file a defence did not, when considered against the full background, constitute submission to the jurisdiction; and in any event submission by a party would not prevent it from making a *forum non conveniens* application ([102]-[108]).

Amazon.com Inc v Interdigital VC Holdings Inc [2025] EWHC 3334 (Pat). In a wide-ranging dispute with parallel foreign proceedings, Ds challenged jurisdiction in respect of a collection of patent, RAND and competition claims, arguing (among other things) for a *forum non conveniens* or case management stay based on the availability of other fora, including arbitration. Unencumbered by authority, and applying basic principles ([118]), the Court held that Ds' offer of arbitration could not be treated as an alternative available forum; to hold otherwise would effectively compel a party to accept an arbitration offer which would be wrong ([120]). The Judge also found (obiter), having analysed a multitude of connecting factors ([143]-[173]), that arbitration would be less suitable than English litigation, in particular because of concerns about open justice and shortcomings in the proposed procedure ([93], [174]).

Spec I Limited et al v The Export-Import Bank of China [2026] EWHC 1162 (Comm). D sought a *forum non conveniens* and/or case management stay of English proceedings seeking rescission of refinancing documents, in respect of which there was an asymmetrical English court exclusive jurisdiction clause at D's option, in favour of proceedings in Singapore. Following a close textual analysis of the clause ([93]-[127]), and a review of the authorities which noted that Protopapa (above) had applied the 'strong reasons' requirement to the case of an asymmetric exclusive jurisdiction clause ([71]-[72]), the Judge concluded there were no strong reasons for a stay from the designated jurisdiction ([143]). In particular, parallel proceedings were foreseen by the clause, and the risk of irreconcilable judgments could be managed ([131]-[137]). In the absence of sufficient procedural or substantive differences between London and Singapore, an "*ounce of commonsense*" and a "*sprinkling of willingness to cooperate*" – said to be sadly lacking in the present case – would have led to an agreement to litigate in one place or another ([6]).

Insolvency, the Insolvency Act and Jurisdiction

Drelle v Servis-Terminal LLC (in liq in Russia) [2026] UKSC 29 (Lord Briggs and Lord Hamblen jointly giving the Court's judgment). The Supreme Court considered whether an unrecognised and unregistrable foreign judgment for a debt or definite sum of money constituted a 'debt' for the purposes of presenting a bankruptcy petition under s.267 IA 1986, in particular s.267(2)(b)[4] (i.e. judgment that had not yet been recognised by the English court pursuant to the common law rules, and *in casu*, was (i) given by a court of competent jurisdiction, (ii) final and conclusive and (iii) (as matters stood before the Supreme Court) unimpeachable: [35]). Overturning the Court of Appeal (see the previous edition of Forum; Newey LJ's leading judgment is summarised at [30]), the Supreme Court held that it did. In particular: (1) considering Dicey & Morris (D&M) Rules 45, 46 and 51, the Supreme Court placed specific reliance on the 'obligation principle': that the legal effect of such a foreign judgment is that it gives rise to an obligation to pay the judgment sum ([56]); (2) it was contrary to principle to hold (as the Court of Appeal did) that such a foreign judgment has no legal effect until it is recognised (and can only be used as a 'shield' [65]). For example, the lack of 'direct operation' in D&M r.45 means (only) that the judgment cannot be enforced by execution [59]-[61], and the revenue rule (that the courts of one country will not enforce the penal and revenue laws of another country) did not compel a different conclusion: ([69], [71]); (3) properly construed, the obligation to pay under the foreign judgment - an immediate legal obligation enforceable by an action on the foreign judgment in an English court - is a 'debt'

for the purposes of s.267 ([89]), noting (among other points) that the lack of symmetry with s.6 of the Foreign Judgments (Reciprocal Enforcement) Act 1933, which has been held[5] to bar bankruptcy proceedings on a yet-to-be registered registrable judgment, is explained by the new scheme for bankruptcy petitions under the 1986 Act ([88]). The issue of whether the Bankruptcy Order should be set aside on the ground the ICC Judge has erred in concluding the debt was not impeachable (i.e. was not disputed on bona fide and substantial grounds) would be remitted to the Court of Appeal ([95]-[96]).

Allen v Leach [2026] EWHC 481 (Ch); [2026] BPIR 633. The Court granted an *in personam* interim injunction against a Bankrupt and his wife restraining them from taking any further steps in relation to a pending transfer of property in Spain registered in the name of the Bankrupt. Doing so did not breach the immovables rule[6]; the Court had a general power to make orders affecting a bankrupt within the jurisdiction in relation to that bankrupt's conduct regarding foreign property (citing *Kireeva v Bedzhamof* [2024] 3 WLR 1010 and, to support an order being made against the wife of the Bankrupt, *Ashurst v Pollard* [2001] Ch 595) ([7]). Darragh O'Connell of Maitland for the applicant.

SOCAR & Ors v (1) Mr Mansimov, (2) Palmali Holding Company Ltd & Ors [2026] EWHC 2102 (Comm). English-seated arbitration award creditors sought relief under s.423 IA 1986 (among other causes of action) in respect of pre-award foreign 'restructurings' within the Palmali Group allegedly undertaken to put assets beyond the reach of creditors. The Defendants applied to set aside permission to serve out. Of particular interest is the Court's discussion of the requirement, where an extra-territorial s.423 IA 1986 order is sought, for there to be a sufficient connection to England (relevant both to the 'serious issue to be tried' limb and whether England and Wales is the natural forum) – in relation to which the Court must be 'scrupulous' given the section's potential scope ([37], citing *Orexim Trading Ltd v Mahavir Port and Terminal Pte Ltd* [2018] 1 WLR 4847). Having conducted a review of the authorities ([36]-[45]), the Court held a sufficient connection existed. In particular, having considered all the circumstances of the case: (i) the English law, English seated arbitration agreements were entered into substantially before the transfers which were sought to be impugned, (ii) the restructurings took place shortly before and during the currency of the English arbitrations, thus (iii) to the extent the restructurings were made to put assets beyond the claimants' reach, they were done to frustrate *English* awards ultimately to be reflected in an *English* judgment. The Court applied the conventional general rule that conduct following the service out order is irrelevant (except insofar as it evidences matters as they stood at the date of the original application for permission) ([52]).

Procedural Aspects of Jurisdiction and Service

Bellway Homes Ltd v Occupiers of Samual Garside House [2025] EWCA Civ 1347 (Coulson LJ giving the leading judgment). If D, having been invalidly served, does not accept the Court's jurisdiction, is it obliged to file an Acknowledgment of Service (AoS) and/or challenge jurisdiction? After a careful review of authority, including *Robertson v Google LLC* [2025] EWCA Civ 1262 (handed down the day before the Court of Appeal hearing in *Bellway*) ([36]-[50]), the Court of Appeal summarised the relevant principles (at [51]) which included: (a) the CPR operates on the basis that D's obligations under CPR Parts 9 & 11 are triggered by the valid service of the claim form; and (b) an application under Part 11 is unnecessary if the claimant has (as here) already unsuccessfully raised with the court the question of service (and therefore jurisdiction) (distinguishing *Hoddinott v Persimmon Homes* [2008] 1 WLR 806 and *R (Koro) v County Court at Central London* [2024] EWCA). These conclusions were reinforced by common sense ([62]-[65]).[7] T Calland of Maitland for the defendant/appellant.

Fridman v Agrofirma Oniks LLC [2026] EWCA Civ 139 (single judgment by Lewison LJ). Noted above. In brief summary, the Court held: (1) there was a *substantive* common law principle that physical presence is required for service within the jurisdiction (subject to a temporary absence exception); (2) that principle survived introduction of the CPR; and (3) Mr Fridman was not present at the time of purported service; Russian sanctions meant he was not permitted to be in UK (the fact he had expressed an intention to return was not enough) ([76]-[77], [94]). The Court concluded that it would be legally incoherent for the State to claim jurisdiction over Mr Fridman on the ground of his presence in England and Wales, while denying him the right to be present there ([79]-[81]). G Hayman KC and D McCombe of Maitland for the respondents.

Deutsche Bank AG v Vik [2026] EWCA Civ 581; [2026] BCC 716 (Andrews LJ giving the main judgment). At issue was the court's inherent jurisdiction to enforce an order made under CPR Part 71 (which required an officer of a corporate judgment debtor to (truthfully) answer questions regarding its assets), by ordering a further examination on oath. Overturning Cockerill J at first instance, the Court of Appeal held the court retained personal jurisdiction over Mr Vik following the technical conclusion of the first Part 71 examination ([47]-[51]) to make further orders to enforce compliance, including the power to repeat some or all of the requirements of the earlier order ([66], [70]). This was despite Mr Vik no longer being a director of SHI or being present within the jurisdiction ([71]) (which made a fresh application under Part 71 impossible). As for the power's exercise, insufficient weight had been given at first instance to the strong public interest in upholding the Court's authority; in addition, there was still a prospect of compliance ([83]-[93]). Obiter, considered (1) that CPR r.6.23 (address for service to be given after proceedings are started) did *not* apply to an officer of a judgment debtor once an order has been served under CPR r.71.2(1)(b) ([127]) (cf. the position

of Mr Vik who – fortuitously – had been joined to the main proceedings [113]); and (2) whether a specific provision for the service of application notices within the process begun under Part 71 should be considered by the Rules Committee ([129]). Popplewell LJ preferred not to express even a provisional view on these points ([134]).

Malik v Malik [2025] EWHC 2485 (Ch). In a byzantine family dispute, a defendant sought to challenge the English court's jurisdiction in respect of a partnership claim. One of the grounds for doing so was failure to serve him. On that issue, the Judge applied 'the better of the argument on the material available' standard rather than the balance of probabilities (relying on *Tseitline v Mikhelson* [2015] EWHC 3065 (Comm) (where the point was common ground) and *Gorbachev v Guriev* [2019] EWHC 2684 (Comm) at [27](ix) (which cited *Tseitline*). The Judge recorded his doubts about the correctness of that approach but was content to follow it in a case where it made no difference to the result [68]-[69]. Even if service *had* taken place (he held it had not), it would have been set aside because of C's serious failures to comply with procedural requirements attached to the *ex parte* orders granting permission to serve out ([75]). As for the respondent's fallback arguments on service, the Court held that providing a copy of the freshly-issued claim form to the applicant at a court hearing was not intended to be, and did not count as, service (noting ancient authority that serving process in the sight of the court is a contempt) ([77]). In the absence of valid service, time never started running to file an Acknowledgment of Service, but having filed one the 14 days for making a Part 11 challenge had run. The applicant's in-time application for an extension of time to make that challenge was granted [84]. Permission to appeal is being sought. J Kinman of Maitland for the successful applicant.

Standish v Hill [2025] EWHC 2954 (Ch). Applying *Hoddinott v Persimmon Homes* [2008] 1 WLR 8060 (and referring to the summary of principles in *Bellway* (above)), the Court held that a defendant who files an Acknowledgement of Service (AoS) must comply with CPR Part 11 if it wished to contest jurisdiction (here, on the basis that service was ineffective). Failure to do so (and failure to seek an extension of time to do so, even retrospectively) is taken as *prima facie* acceptance of jurisdiction, which had not been displaced on the facts ([37]). Obiter, D had waived his right to object to the Court's jurisdiction by indicating in the AoS that he would defend the claim and by requesting an extension of time to file his defence ([25], [42]). Service in Florida had, in any event, been effective ([56]). M Collings KC of Maitland for the applicant.

Maxamcorp International SL v Eurotel LLC [2026] EWHC 666 (Comm); [2026] 1 Lloyd's Rep 393. At the return date hearing for interim anti-suit and anti-enforcement injunctions, C sought leave for alternative service on D's new Russian lawyers. Since Russia is a party to the Hague Service Convention and has made an art.10 reservation which (*inter alia*) prohibits service by post from abroad, an applicant must show a 'good reason' for alternative service (CPR r.6.15/6.27) notwithstanding the reservation ([101]). Following a substantial line of first instance authority, including *Google LLC v NAO Tsargrad Media* [2024] EWHC 2212 (Comm), 'good reason' was established where the return date order, which engaged the coercive jurisdiction of the Court, needed to be served on the respondents at the first opportunity so they were fully aware of their position ([104]-[105]).

Zhuravleva v Kamalova [2026] EWHC 1041 (Ch). C served D by post at two addresses in Spain (which, because of a transcription error, differed slightly from the addresses contained in the service order ([4])), without response. C then applied for summary disposal of the claim (serving that application at the same addresses), at which point D applied for an order under CPR Part 11 that the Court lacked jurisdiction. Held (among other things): (1) the Part 11 application could be heard notwithstanding D's failure to file an Acknowledgement of Service ([22])[8]; (2) CPR r.6.45 does not make provision of translations a requirement for service under r.6.40(3), and D had supplied no authority that to do so was contrary to Spanish procedural law ([46]); (3) there had been an immaterial deviation from the terms of the order; if there was any irregularity the Court would waive it ([49]); and (4) service was validly affected under Spanish law, but in any event (obiter) C's application for alternative service under CPR r.6.15 would have succeeded ([54]-[58]).

Recognition and Enforcement of Foreign Judgments

Motorola Solutions Inc v Hytera Communications Corpn Ltd [2025] EWCA Civ 1667; [2026] 1 WLR 2080 (joint judgment by the Master of the Rolls and Popplewell LJ). The first appeal concerned the proper construction of s.5 of the Protection of Trading Interests Act 1980 which precludes enforcement of foreign judgments "*for multiple damages*" (i.e. amounts arrived at by multiplying a sum assessed as compensation for the loss/damage sustained). Held: the clear and unambiguous language of s.5 precluded enforcement of the whole of a multiple damages claim including its compensatory part ([56]) (and associated awards of fees and costs ([75])), an interpretation which was supported by the wording of s.6(2) ([57]-[58]), the statutory purpose ([59]) and numerous obiter dicta in the authorities [60]. The second appeal concerned the proper route by which an English judgment granted to enforce a foreign judgment could be revoked in circumstances where the foreign judgment had been successfully appealed. The answer, which was "*close to*" common ground by the time of the appeal, was under CPR r.40.8A rather than CPR r.3.1(2)/(7) ([110]-[113])), powers which were not interchangeable [120]. Remaking the first instance Judge's decision (who had exercised the wrong power), the Court of Appeal stayed under the English judgment pending C's entitlements under the US judgments becoming clear, giving the parties liberty to apply to revoke the English judgment and to lift or vary the stay ([127]-[131]).

BG Atlantic Inc v Hay Hill Investments Ltd [2026] EWHC 226 (KB). C successfully sought summary judgment in respect of D's defence to common law recognition and enforcement of a US judgment.[9] As to D's allegation of fraud, the issue was whether the type alleged (that the funds C provided to D under a loan agreement were the product of fraud) fell within the scope of the defence. Held: without attempting to offer an exhaustive definition of the parameters, the consistent elements across the authorities (reviewed at [85]-[104]) were: (1) the fraud must be practised on the foreign court; (2) it may consist of either advancing a fraudulent case or dishonestly interfering with the court's process; (3) the fraud must be conscious and deliberate; and (4) the fraud must be one which has an operative effect on the foreign court. In principle, the defence might apply to fraudulent non-disclosure, but this would (at least on the present facts) require a duty of disclosure in the foreign court with which the claimant deliberately failed to comply ([111]). No obligation had been shown ([114]). As to public policy, it concerns the implications of enforcement of the relevant foreign judgment, not of the underlying transaction to which the judgment relates ([119]), but (per *Lenkor Energy Trading DMCC v Puri* [2022] 2 CLC 173) the Court would still have regard to the circumstances in which the illegality said to underlie the foreign judgment had arisen and its degree of connection to it ([122]). On the facts, D had simply sought to repackage its fraud defence under the rubric of public policy; it was doomed to fail [124]. In any event, there was only a slight degree of connection between the fraud alleged and the foreign judgment, it was not obvious that had the English court been seised of the underlying dispute it would have declined to enforce the loan agreement, and it would be unjust to permit D to retain the sums loaned to it ([126]-[137]).

Qing Li v Fan Yuan [2026] EWHC 242 (Comm). Examined the requirement for common law recognition/enforcement that the foreign (here PRC) courts must have had jurisdiction over the Ds as a matter of English private international law. In particular, (1) whether there had been an (actual) agreement between C and Ds to submit to the jurisdiction, and (2) whether Ds were 'present' (to use the language of D&M's Rule 47, First Case) in the PRC at the time the proceedings were instituted. As for (1), applying *Vizcaya Partners Ltd v Picard* [2016] 3 All ER 181, where there was a written contract, the question may (and here did) turn on its construction, to be carried out using the applicable law (here, Chinese law). As for (2), going further than D&M's Rule 47/First Case, the Judge considered that *Emanuel v Symon* [1908] 1 KB 302 had decided that *residence* in the foreign country when the action began sufficed to ground jurisdiction, and was persuaded by an obiter of Sir Christopher Slade in *State Bank of India v Mrjani Marketing Group Ltd* (unreported, 27 March 1991) (approved of by Cooke J in *Motorola Credit Corp v Uzan* [2004] EWHC 3169 (Comm)) that residence *without presence* also suffices ([64], [71][10]). 'Residence' is an ordinary English word to be interpreted in accordance with its ordinary and natural meaning (a person's settled or usual place of abode) ([74]-[75]). Thus, the PRC courts had had jurisdiction over the Ds who were resident but not present at the relevant time.[11] Permission to appeal has been sought.

Offshore / European Decisions

IGCF SPV 21 Ltd v Al Jomaih Power Ltd [2025] UKPC 54 (Lord Hamblen giving the Board's judgment). The Privy Council confirmed that the Cayman Islands law on submission to a foreign court's jurisdiction (whether in the context of anti-suit injunction cases or recognition/enforcement cases) reflects English law, as authoritatively stated in *Rubin v Eurofinance* [2012] UKSC 46 at [159]-[161]. The "*ambitious*" attempt to argue that the much-criticised *Henry v Geoprosco International Ltd* [1979] QB 726 (to the effect that a defendant who voluntarily appears before a foreign court to challenge jurisdiction has submitted to the jurisdiction, although Ds sought to restrict that *ratio* on appeal: [49])) should be followed – which had been reversed in England by s.33 CJJA 1982 (but to which there is no Cayman statutory analogue) – was emphatically rejected [52]. Cayman law was thus aligned with the position in England, BVI and Bermuda (among other common law jurisdictions) which had all reversed Geoprosco either by legislation similar to s.33 or by authority [39]-[41].

PJSC National Bank Trust v Shishkhanov [BVIHC (Com) 2023/0087]. Ds sought, unsuccessfully, to challenge the BVI court's jurisdiction on the grounds of (1) lack of available gateways, (2) forum, (3) discretion, and (4) breaches of the duty of full and frank disclosure. As for (1), and in relation to the necessary or proper party gateway (which is framed in near-identical terms to the English equivalent (gateway (3)), there is a detailed discussion of the English (including Privy Council) and BVI authorities on whether an issue is 'reasonable for the court to try' ([117]-[201]). On the facts, which included rejecting Ds' argument that the BVI Ds had been restored for the predominant or sole purpose of satisfying the requirements of the gateway, the Court found the NPP requirements were satisfied.

Cabris Investments v Revetas Capital Advisors (C-540/24) [2026] I.L.Pr.2. In May 2020, during the Brexit transition period, C and D, UK-incorporated companies, entered a consultancy contract containing an exclusive jurisdiction clause in favour of Vienna, Austria. When C sued D in June 2023, D challenged the Austria Court's jurisdiction, arguing that the jurisdiction clause was inoperative because the UK had by then left the EU. The CJEU held otherwise: (1) the choice of court clause is assessed at the date on which legal proceedings are brought ([31]); (2) art.25 of the Recast Regulation applies regardless of the domicile of the parties ([35]; [39], [43]); (3) the necessary international element is present where an agreement confers jurisdiction on a Member State court and the contracting parties are from a third State ([40]-[42]); and (4) the fact the choice of (Member State) court clause was concluded during the transition period and the dispute commenced after the end of that period is irrelevant ([47]-[48]). It was unnecessary to address whether the Brussels Convention was repealed by art.68 of the Recast Regulation ([50]).

Footnotes

[1] Under CPR r.6.33(2B)(a)

[2] The position in respect of D2-3 could have been expressed more clearly by the Judge but this appears to be the conclusion drawn.

[3] The briefly-expressed reasoning at [94] is not entirely satisfactory; why is clause (a) said to be qualitatively different?

[4] s.267(2): "Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—[…] (b)the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured"

[5] In *In re A Judgment Debtor* [1939] Ch 601

[6] D&M Rule 140: "all rights over, or in relation to, an immovable (land) are (subject to the Exception hereinafter mentioned) governed by the law of the country where the immovable is situate …"

[7] The practical lesson to be drawn from cases such as these is not that ignoring purported service is risk-free – quite the opposite, since defects in service can be retrospectively cured.

[8] cf. CPR r.11(2). Strictly, an application should have been made for permission to serve an acknowledgement of service form (indicating an intention to challenge jurisdiction) out of time.

[9] It is unclear why D did not seek a stay of execution in respect of the oreign judgment which was under appeal.

[10] cf. D&M §14-062 which notes that the actual issue in Emanuel was whether possession of property in the foreign country (or entering into a contract of partnership in that country) was sufficient to give the foreign court jurisdiction, and that residence as a head of jurisdiction was not scrutinised.

[11] cf. the result in *Agrofirma* (above) on the English court's in personam jurisdiction, where presence is required, subject to the temporary absence exception.

Next Edition - Issue Three will be available in 2027.

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