IN THE COURT OF APPEAL (CIVIL DIVISION) **Claim no. CL-2025-000361**

ON APPEAL FROM THE HIGH COURT
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Henshaw J [2025] EWHC 3111 (Comm)

BETWEEN:

FH HOLDING MOSCOW LIMITED
(a company incorporated in the Republic of Cyprus)

Appellant/Claimant

-and-

(1) AO UNICREDIT BANK
(a company incorporated in the Russian Federation)
(2) UNICREDIT SPA
(a company incorporated in the Italian Republic)

Respondents/Defendants

APPELLANT'S APPEAL SKELETON ARGUMENT
Dated 25 February 2026

INTRODUCTION

1. The Appellant ("**FHM**") appeals against §§1-7 of the Order of Henshaw J of 22.12.2025, which followed his judgment of 25.11.2025 (the "**Judgment**"), based on Grounds 1-4 below. Permission to appeal was granted by Males LJ by order of 11.2.2026 [**CB/125**].

2. FHM also applied to admit a short expert report on a point of translation [**SB/312-321**]. Males LJ ordered this application be determined at the hearing. FHM's reasons in support thereof are set out in a separate 7-page skeleton argument dated 23.1.26.

ESSENTIAL BACKGROUND

The Parties

3. FHM is a Cyprus company whose business operations are solely in Russia. It is part of the "Fashion House Group" that owns other European operations.

4. The First Respondent ("**AO**"), is a Russian bank, and a wholly owned subsidiary of the Second Respondent ("**SPA**"), a major Italian bank.

The Facility Agreement and the Mortgage Agreement

5. FHM is the borrower under a facility agreement dated 2.11.18 (the "**FA**"). The loan comprised: (i) a EUR facility of: (a) EUR 4,300,000 lent by AO; and (b) EUR 21,600,000 lent by SPA (the "**EUR Facility**"); and (ii) a RUB loan facility of RUB 1,260,000,000 lent by AO (the "**RUB Facility**"). AO is the Security Agent under the FA.

6. The FA is governed by English law (FA cl. 41). FA cl. 42 contains an arbitration agreement (the "**AA**") which provides for arbitration under the rules of the of the Vienna International Arbitral Centre ("**VIAC Arbitration**"), as follows:

> "42.1 Any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute") shall be referred to and finally resolved by arbitration under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (the "Rules"). […]
>
> 42.2.2 The seat of arbitration shall be Vienna, Austria".

7. The FA was entered into alongside a suite of security agreements, defined as the "Security Documents" (FA cl. 1.1). These included a Mortgage Agreement (the "**MA**") executed on 6.11.18, between FHM (mortgagor) and AO (mortgagee), by which various real-estate assets in or near Moscow, all of which are fashion retail outlets (the "**Assets**") owned by FHM were granted as security for the loans provided under the EUR and RUB Facilities. The value of the Assets was c. EUR 42m, as at 31.12.24. The MA is governed by Russian law (MA cl. 20). MA cl. 21 provides (inter alia) as follows:

> "21.1 Any dispute arising out of or in connection with this Agreement (including regarding the entry into, validity, interpretation, breach or termination of this Agreement of the consequences of its nullity (the Dispute) shall be referred to and finally settled by the Commercial Court of Moscow (the Court) in accordance with the laws of the Russian Federation".

Payments by FHM under the FA

8. FHM made all required payments under the FA until the start of the war in Ukraine and later into 2022 until Russian counter-sanctions made it unlawful for it to make further EUR payments to SPA. Thereafter FHM continued to service the EUR debt to AO by paying the equivalent in RUB until its EUR debt to AO was fully repaid in December 2023 (leaving only the EUR debt to SPA that it was prohibited by Russian counter-sanctions

from paying). As to the RUB Facility FHM's case is that repayment was re-scheduled in June 2023, and again in July 2024. FHM continued to make, or attempt to make, payments under the RUB Facility after July 2024 pursuant to that re-scheduled agreement.

The Moscow Proceedings

9. On 24.3.25 AO filed a claim in the *Arbitrazh* (i.e. Arbitration) Court of the Moscow Region (the "**Moscow Proceedings**"), seeking foreclosure of the Assets. This is a different court to the "Commercial Court of Moscow" mentioned at MA cl. 21 (also an *arbitrazh* court - see expert report of Victor Prokofiev §7 [**SB/317**]).[1]

10. On 28.5.25 SPA was joined to the Moscow Proceedings by FHM as "a third party".[2]

11. In the Moscow Proceedings, AO claims that there has been an Event of Default *under the FA*; and relies thereon to enforce against the Assets *under the MA*.[3] The debt in respect of which it seeks enforcement is the total of the outstanding EUR and RUB loan facilities.

12. FHM denies that there has been an Event of Default, on the basis that, in summary: (1) repayment of SPA's EUR loan (required to be made in Russia and through AO as Security Agent) is presently unlawful under Russian law due to Russian counter-sanctions, with the effect that FHM's payment obligation in that regard is suspended pursuant to the *English* law principle of foreign law illegality;[4] and (2) repayment of the RUB loan was re-scheduled at the meeting of July 2024; FHM relied on that agreement by continuing to make RUB payments until February 2025 when AO, *at SPA's direction*, refused to accept them. On FHM's case, that refusal amounted to a breach of contract (as varied); or alternatively, AO is estopped from resiling from the agreement reached in July 2024.

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[1] The reason why AO filed in a different court is explained in the 1st statement of Ms Trusova §40 [**SB/252**]). The "Commercial Court of Moscow" can also be translated as "*Commercial (Arbitrazh) Court of the city of Moscow*". That is how it is put in cl. 13.2 of the Direct Debit Agreement executed on 13.12.18 [**SB/382**] (foreshadowed by the FA at cl. 1.1 [**SB/12**]).

[2] A third party in Russian procedural law is one whose interests might be affected by the court judgment, yet is not a claimant or a respondent.

[3] See AO's Statement of Claim in the Moscow Proceedings [**SB/481-491**].

[4] Per Banco San Juan Internacional Inc v Petroleos de Venezuela SA [2020] EWHC 2937 (Comm) [2021] 2 All E.R. (Comm) 590 at [77]: "*The rule in Ralli Bros … provides that an obligation under an English law contract is invalid and unenforceable, or suspended in the case of a payment obligation, insofar as the contract requires performance in a place where it is unlawful under the law of that required place of performance*".

13. In sum, AO's claim in the Moscow Proceedings raises disputes over whether: (1) applying the *English law* principle of foreign law illegality, there has been an Event of Default under the FA in respect of the EUR debt; and applying the *English law* rules on contractual variation and estoppel, there has been an Event of Default under the FA in respect of the RUB debt; and (2) *if so*, the amount of any outstanding debt under the FA (e.g. if the RUB debt were held to be due but not the EUR debt or vice versa), which determines the scope of the Assets against which enforcement would be permissible (the "**Disputed Issues**").

14. On 28.4.25, FHM filed an application in the Moscow Proceedings challenging the jurisdiction of the Moscow Court over the Disputed Issues on the basis that they fall within the AA and, therefore, can only be determined by a VIAC Tribunal. That jurisdiction challenge has yet to be determined.

Order of HHJ Pelling KC for service out of the jurisdiction on AO

15. On 7.8.25 FHM issued an application for an anti-suit injunction ("**ASI**") to restrain the Respondents from: (1) pursuing the Moscow Proceedings; and/or (2) commencing any other proceedings in relation to the Disputed Issues other than a VIAC arbitration.

16. Following an *ex parte* hearing on 11.8.25 HHJ Pelling KC granted permission to serve FHM's ASI application out of the jurisdiction on AO inter alia on the basis that there was a good arguable case that:[5] (1) under PD6B, para. 3.1.(3) AO is a necessary or proper party to FHM's ASI claim against SPA, over which the Court has jurisdiction because it has a branch in London; and (2) under PD6B, para. 3.1.(6)(c), FHM's ASI claim is made *in respect of* a contract (the FA) governed by English law.

Ruling of Henshaw J of 25 November 2025

17. FHM's ASI Claim was heard on 13.11.25, alongside applications: (1) by SPA for summary judgment; (2) by AO challenging jurisdiction (Judgment §1). Henshaw J (Judgment §3): dismissed FHM's ASI application, holding, inter alia, that the Moscow Proceedings were not brought in breach of the AA; and allowed AO's jurisdiction challenge and SPA's summary judgment application.

[5] Per the threshold set out in VTB Capital plc v Nutritek International Corp [2013] UKSC 5, at [164].

GROUND 1

18. Ground 1 is that the learned Judge was wrong in law to hold (Judgment §§54-62) that the Moscow Proceedings are not in breach of the AA. In particular, the Judge erred in holding that the parties to the FA and the MA had in MA cl. 9 "legislated" for disputes relating to Events of Default to be subject to the AA and MA cl. 21 (Judgment §55).

19. It is common ground that the Disputed Issues in the Moscow Proceedings fall within the AA; and that, therefore, FHM is entitled to initiate a VIAC Arbitration under the AA to determine whether an Event of Default has occurred.

20. The AA is worded in familiar mandatory (and, therefore, exclusive) terms: "*Any dispute arising out of or in connection*" therewith "***shall*** *be referred to and finally resolved by*" VIAC Arbitration (emphasis added). Therefore, on its plain and natural meaning a VIAC Tribunal has exclusive jurisdiction over the Disputed Issues in the Moscow Proceedings.

21. The issue before the Judge was whether, notwithstanding that plain and natural meaning, the Disputed Issues *also* fell within the scope of MA cl. 21, so as to: (i) confer parallel jurisdiction over the Disputed Issues on the Arbitration Court of the Moscow Region (i.e. the court in which AO brought the Moscow Proceedings, though different from the City of Moscow Arbitrazh Court referred to in MA cl. 21); and (ii) render the AA non-exclusive.

22. In addressing this issue, the Judge recognised (Judgment §29) the following legal principles identified by the Court of Appeal in BNP Paribas SA v Trattamento Rifiuti Metropolitani SPA [2019] EWCA Civ 768, [2019] 2 Lloyd's Rep. 1 at [68] (the "**BNP Principles**"):

> "(1) Where the parties' overall contractual arrangements contain two competing jurisdiction clauses, the starting point is that a jurisdiction clause in one contract was probably not intended to capture disputes more naturally seen as arising under a related contract ….
>
> (2) A broad, purposive and commercially-minded approach is to be followed ….
>
> (3) Where the jurisdiction clauses are part of a series of agreements they should be interpreted in the light of the transaction as a whole, taking into account the overall scheme of the agreements and reading sentences and phrases in the context of that overall scheme ….

> (4) It is recognised that sensible business people are unlikely to intend that similar claims should be the subject of inconsistent jurisdiction clauses ….
>
> (5) The starting presumption will therefore be that competing jurisdiction clauses are to be interpreted on the basis that each deals exclusively with its own subject matter and they are not overlapping, provided the language and surrounding circumstances so allow ….
>
> (6) The language and surrounding circumstances may, however, make it clear that a dispute falls within the ambit of both clauses. In that event the result may be that either clause can apply rather than one clause to the exclusion of the other …".

23. The Judge concluded that notwithstanding the presumption against the competing jurisdiction clauses at BNP Principle 5, a dispute about whether an Event of Default has occurred nevertheless falls within both MA cl. 21 and the AA "*because the parties* ***have legislated*** *for the position*" in MA cl. 9 (emphasis added; Judgment §56) based on his interpretation of MA cls. 9.1.1, 9.1.2, 9.1.3, and 9.1.5 (Judgment §§57-60). The Judge's interpretation of the AA and MA cl. 9 was incorrect for the following reasons.[6]

24. The Judge's first error is that the *"the parties"* to the FA and the AA did not legislate for anything in relation to the FA or the AA by what is said in the MA for the simple reason that the parties to these agreements are different: (i) FHM, AO and SPA are the parties to the FA and the AA; (ii) but only FHM and AO are the parties to the MA.[7]

25. Further, the Judge was wrong in his analysis of the following sub-clauses of MA cl. 9:

MA cls. 9.1 and 9.2

26. MA cls. 9.1 and 9.2 provide (relevantly) as follows:

> "Clause 9.1: Right to Enforce
>
> 9.1.1: Subject to any other provisions of this Agreement and/or the Facility Agreement, the Parties agree that the occurrence of any Event of Default shall constitute a material breach of the Secured Obligations giving rise to the Mortgagee's entitlement to levy execution of the Mortgaged Property.

[6] The legal principles applicable to interpreting these clauses are set out in Arnold v Britton [2015] UKSC 36 [2015] A.C. 1619 at [14-23], and Wood v Capita Insurance Services Ltd [2017] UKSC 24 [2017] AC 1173, at [8-15].
[7] Similarly, Judgment §57 describes MA cl. 9.1.2 as indicating that "***the lenders*** *can commence the execution procedure immediately, ...*" The lenders are AO and SPA, but only AO can commence execution proceedings under the MA.

9.1.2: … the Mortgagee may levy execution on the Mortgaged Property immediately after the occurrence of the Event of Default in accordance with the terms and conditions of this Agreement and subject to Clause 21 (Dispute Resolution)".

27. The purpose of MA cl. 9.1.1 is to identify the point at which the right to levy execution under the MA comes into existence: upon the occurrence of an Event of Default (as defined in *the FA*). This is the plain meaning of the provision that an Event of Default is a material breach ***giving rise*** *to the* ***entitlement*** *to levy execution*: there is no **right** (i.e. entitlement) to enforce until then. MA cl. 9.1.1 says nothing about the prior issue of how a dispute over *whether* an Event of Default has occurred is to be determined.

28. An indication of the Judge's error in interpreting MA cl. 9.1.1 is his finding in Judgment §57 that: "*clause 9.1.1 provides that execution can be levied, by a judicial procedure,* ***as soon*** *[sic.] an Event of Default has* ***in fact*** *occurred, as distinct from after a separate arbitral process has confirmed that to be the case*" (emphasis added). In fact, the words "as soon [as]" and "in fact" do not appear in MA cl. 9.1.1.

29. The Judge's use of these phrases demonstrates that he treated an Event of Default as a relatively simple factual issue that justified an immediate resort to execution at AO's discretion. This was a fundamental flaw that infected the Judge's overall approach to the interpretation of MA cl. 9. The correct position is as follows:

29.1. An Event of Default is not a factual concept, let alone an easily discernible one. It is a *definition* used in FA cl. 23 to refer to each of 22 different scenarios. A dispute over whether an Event of Default has *occurred* involves determining whether any of these contractual definitions has materialised. Thus, "an Event of Default" is a legal concept involving the application of facts to the legal thresholds set out in the 22 scenarios set out at FA cl. 23.

29.2. Indeed, several of the 22 "Events of Default" listed in FA cl. 23 are quintessentially legal concepts (see, e.g. Misrepresentation (cl. 23.4); Insolvency (cl. 23.6); Unlawfulness and inability (cl. 23.11); Repudiation and rescission of agreements (cl. 23.12); and Convertibility/Transferability (cl. 23.19)).[8]

[8] The remainder involve complex factual situations.

29.3. The most significant legal concept defined as an Event of Default is the one in dispute in this case: Non-Payment on the *due* date of any amount *payable* pursuant to a Finance Agreement (FA cl. 23.1): FHM's case being that there has been no failure to pay an amount *payable* for the English law reasons of foreign illegality and/or contractual variation/estoppel summarised at §12 above.

29.4. Critically, as a legal concept, whether an Event of Default "**has occurred**" (noting the perfect tense, which is conclusory i.e. a completed event) is an issue that can only be determined (i) by agreement of the parties; or (ii) by legal determination; but (iii) not unilaterally by AO.

29.5. The potential complexity of determining whether an Event of Default "has occurred" – and the reason why it is illogical to deem this to be an issue that can be resolved by AO unliterally as satisfying the cl.9.1.1 enforcement gateway – it is also evident from the *factually* complex nature of some of these examples e.g. Major damage (cl. 23.14); Expropriation (cl. 23.18); Political and economic risk (cl. 23.21); and Material adverse change (cl. 23.22).

30. As to MA cl. 9.1.2, the Judge held at Judgment §57 that this sub-clause: *"emphatically, provides that execution can be levied "immediately **after** the occurrence of the Event of Default", though "subject to Clause 21 (Dispute Resolution)" i.e. subject to the dispute resolution procedure in the Mortgage Agreement itself"* (emphasis added). That is correct as far as it goes. However, MA cl. 9.1.2 says nothing about how a dispute over the occurrence of an Event of Default is to be resolved. While it does refer to MA cl. 21, that is only to state that a *levy of execution* is "subject to Clause 21". Tellingly, MA cl. 9.1.2 *could* have, but does not, state that a dispute over the occurrence of an Event of Default is similarly "subject to Clause 21". The natural reading of MA cl. 9.1.2 is that *after* an Event of Default has occurred, the levying of execution (set out in the scheme at MA cl. 9.1.3-9.1.6) – and only the levying of execution is subject to MA cl. 21.

31. Accordingly, the Judge was wrong in his subsequent conclusion in Judgment §57 that: "*Read as a whole, clause 9.1.2 indicates that the lenders can commence the execution procedure **immediately**, with any dispute about entitlement* [i.e. as to whether there has been an Event of Default] *being resolved, under clause 21, by the Moscow Commercial Court* ..." (emphasis added). The word "immediately" on which the Judge placed significant weight further emphasises

how (only) *after* an Event of Default has occurred (which in the event of a dispute requires legal determination by a VIAC Tribunal) there are no further procedural or contractual steps that need to be taken to enforce the mortgage. This aligns with MA cl. 9.1.5 (discussed below).

32. In summary, the language of MA cl. 9.1.2 could hardly be clearer: (i) the Moscow Commercial Court under MA cl. 21 has jurisdiction over the **enforcement** of the mortgage under MA cl. 9.1.3-9.1.6, which is the stage **after** an Event of Default has occurred; but implicitly (ii) it has no jurisdiction to determine whether the gateway of an Event of Default created by MA cl. 9.1.1. has been triggered (or, therefore, to determine the amount outstanding in respect of a disputed Event of Default).

MA cl. 9.1.3

33. MA cl. 9.1.3 states that: *"The Mortgagee may levy execution under Agreement only in a judicial procedure"*. Again, this says nothing about the process for resolving a dispute about the prior issue of whether an Event of Default has occurred – the *precondition* to levying execution.

34. Notwithstanding the limited scope of MA cl. 9.1.3, the Judge found in Judgment §58 that it supported the jurisdiction of the "Moscow court"[9] to determine a dispute about an Event of Default. In doing so, he derived comfort from his assessment that "*There is ... no real question of a valuable right being removed*".[10] That is wrong as:

    34.1. The AA grants the parties *the right* to have issues arising out of and in connection with the FA referred to and finally resolved (only) by a VIAC Tribunal. That is in *per se* a valuable right. It is for the parties, through their contractual agreement, to determine what is valuable to them by what they agree to include in their agreement. That is central to the principle of party autonomy. The Court's role is only to give effect to their agreed rights not to second-guess their value.

[9] When the Judge uses "Moscow court", here and elsewhere in the Judgment, it is necessarily a reference to both the Moscow Commercial Court, being the court referred to in MA cl. 21, and the Arbitration Court of the Moscow Region, in which AO brought the Moscow Proceedings.

[10] A recognition of the presumption of contractual interpretation that parties are unlikely to forego valuable rights without clear words (RTI Ltd v MUR Shipping BV [2025] AC 675 at [43]-[46]).

34.2. In any event, the *value* of the right conferred under the AA is self-evident.[11] It provides an opportunity for the parties to select *English law* arbitrators to adjudicate on rights, obligations and breaches relating to a complex *English law* FA. The effect of the Judge's approach is to deprive the parties of that opportunity.

34.3. As matters stand, the Arbitration Court of the Moscow Region is being asked to decide not only whether an Event of Default has occurred (Disputed Issue 1), but also, if so, the amount of debt due (Disputed Issue 2)[12], by reference to the complex (and alien) *English law* principles of foreign law illegality and contractual variation/estoppel. This problem – i.e. of having potentially technical English law defences determined in a forum which is not familiar with them – is a further reason why the right to VIAC Arbitration is of particular value to FHM and why, objectively, the parties would have intended disputes relating to the occurrence of an Event of Default as defined in the FA to be adjudicated *only* in accordance in the dispute resolution procedure provided for in the FA – a VIAC Arbitration.

MA cl. 9.1.5

35. The Judge held (Judgment §§59-60) that his analysis of MA cl. 9.1.2 was bolstered by MA cl. 9.1.5(a) – which provides that: "*9.1.5 The Mortgagee shall not be obliged before exercising its right to levy execution on the Mortgaged Property in a judicial procedure to: (a) take any action or obtain a decision of any court,* ***arbitration court*** *or state authority against the Mortgagor*" (emphasis added).

36. The Judge's reasoning was that: (1) that "arbitration court" means "arbitral tribunal", which covers a VIAC tribunal; (2) therefore, MA cl. 9.1.5(a) lends support to the view that by MA cl. 9.1.1-9.1.3 the parties intended that execution proceedings could start immediately, with any disputes being resolved within those proceedings; and (iii) that the purpose of MA cl. 9.1.5(a) would otherwise be unclear because no permission for execution was needed from another Russian court.

[11] See FA cl. 42.2.1, which entitles the claimant(s) and respondent(s) to each nominate one arbitrator.
[12] See AO's Statement of Claim in the Moscow Proceedings at AG1/Exhibits pp.942-949 [**SB/481-488**].

37. The Judge was wrong to conclude that the phrase *"arbitration court"* in MA cl. 9.1.5(a) means "*arbitral tribunal*". It means "*arbitrazh commercial court"*, as is clear from the Russian language version of MA cl. 9.1.5(a) (the Russian version being authoritative per MA cl. 13.5).

38. The Judge refused to accept this argument when raised by FHM in oral submission because it had not been raised before (Judgment §59). However, the *Respondents* were the parties relying on MA cl. 9.1.5(a) in support of their case, not the Claimant. As such, the burden was on them to state clearly in the evidence of their Russian Counsel, Ms Trusova, that they relied on the (translated) phrase "arbitration court" in MA cl. 9.1.5(a) as meaning "arbitration tribunal". They did not do so for the simple reason that it would have been obvious to any Russian lawyer that "arbitration court" is synonymous with "arbitrazh [i.e. commercial] court" in the Russian legal system. This interpretation of "arbitration court" was first flagged by the Respondents in their skeleton argument. As a result, FHM's first opportunity to deal with the point was in oral submissions.

39. Further, as was pointed out to the Judge in oral submissions, the English translation of the Respondents' filings in the Moscow Proceedings that were before the Court refer to the "Arbitration Court of the Moscow Region" (emphasis added);[13] and the Commercial Procedural Code of the Russian Federation, which is exhibited in the English translation to Ms Trusova's first statement (Ms Trusova being AO's Russian counsel in the Moscow Proceedings) also refers to the "*commercial arbitration courts"*.[14]

40. The Judge's interpretation of "arbitration court" in MA cl. 9.1.5(a) as meaning "arbitration tribunal" was also wrong for these reasons:

41. First, in the Judge's view, if "arbitrazh court" meant the Russian arbitrazh/commercial court because if it were otherwise, that would duplicate the immediately preceding

[13] This translation was undertaken by FHM's Russian counsel's firm in the Moscow Proceedings using machine translation; it has not been challenged by the Respondents. In oral submissions before Henshaw J (Transcript p. 62, lines 1-2 [**SB/304**]) Counsel for FHM referred for example to AO's statement of claim in the Moscow Proceedings at [**SB/486-487**] (which in the Transcript is referred to as HB/829-830) which states that "*According to Art. 38 of the Arbitration Procedure Code of the Russian Federation, claims concerning rights to real property* ***shall be brought before the Arbitration court*** *at the location of such property ... Accordingly, this Statement of Claim is to be filed with and considered by the Arbitration Court of the Moscow Region"* (emphasis added).

[14] Per Art. 3.4: "*Proceedings in* ***commercial arbitration courts*** *shall be conducted in accordance with federal laws in effect at the time of dispute resolution and case consideration (hereinafter referred to as case consideration), performance of a separate procedural action, or execution of a judicial act"* (emphasis added) [**SB/512**]. This translation was exhibited by the Respondents; FHM does not know how, or by whom, the document was translated.

reference to "*courts"*. There is no such duplication, because (i) not all Russian courts are arbitrazh/commercial courts; therefore (ii) the reference to "courts" simply means "non-arbitrazh/commercial courts". That the intent was for MA cl. 9.1.5(a) to cover all Russian state organs (i.e. including non-arbitrazh/commercial courts) is clear in the last (catch-all) reference to "state authority".

42. Second, the Judge found that the exclusion of arbitrazh courts in MA cl. 9.1.5(a) would be "particularly odd" given that MA cl. 21 requires execution proceedings to be commenced in an arbitrazh court (Judgment §59). There is no such oddity: the reference to "arbitrazh court" makes clear that (*once* the enforcement gateway/right has been triggered – i.e. an occurrence of an Event of Default has been *legally established* by agreement, or by a VIAC Tribunal) – AO is not required to take any action in any arbitrazh court *to get permission* to start enforcement proceedings i.e. it is a cumbersome way of saying that once the gateway condition is satisfied, AO can simply start enforcement proceedings – that fits with the rest of MA cl. 9.1.5(a), and the remainder of MA cl. 9.1.5, all of which deal with pre-conditions / permissions that might otherwise be said to be needed, and makes clear they are not.

43. Third, the Judge opined that *"it is unclear on the Claimant's approach what purpose clause 9.1.5 would really serve, and Ms Trusova's evidence on behalf of the Respondents was that she is unaware of any relevant permission that might be needed from another Russian court"*[15] (Judgment §60). On Ms Trusova's analysis it is equally unclear what purpose the reference to "courts" and "state authority" would serve either, because she was unable to identify any relevant permission that might otherwise be required as a matter of Russian law from any other Russian (or other) court or state authority, before proceeding to enforcement. In this context, there is no justification for striving to find a purpose for the words *"arbitration court"*. The purpose of MA cl. 9.1.5 as a whole is to make clear (in a belt-and braces-sense) that no further steps are needed before enforcement once the gateway conditions at MA cl. 9.1.1 have been satisfied. In short, MA cl. 9.1.5(a) is surplusage, as is not uncommon in detailed contracts.

[15] Ms Trusova's evidence in her 2nd witness statement at §11 was that "*as a matter of Russian procedural law, I am not aware of* ***any*** *'permission' a mortgagee may require before exercising its right to levy execution in the Russian courts."* (emphasis added).

44. Taking the above points together, there was sufficient evidence before the Court as to the correct meaning of "arbitration court" in MA cl. 9.1.5(a). The Judge erred in not giving any weight thereto.

45. However, to put the linguistic position in relation to the words "arbitration court" in MA cl. 9.1.5(a) beyond doubt, as set out at §2 above, FHM has applied to rely on the short expert report of Victor Prokofiev (an expert linguist) dated 22.1.26 [**SB/312-321**] on a Ladd v Marshall basis.

Summary

46. In summary, applying the BNP Principles:

46.1. It is necessary to adopt a broad, purposive and commercially-minded approach to the interpretation of the AA and MA cl. 21 (BNP Principle 1).

46.2. That approach involves recognising that FHM, SPA and AO (as sensible businesses) are unlikely to have intended that the same dispute should be the subject of both clauses/different fora (particularly as the likely consequence would be that they were also the subject of the jurisdiction clauses in the other Security Documents, which include two in favour of the Cypriot Courts; and one in favour of the Polish Court) (BNP Principle 4).

46.3. Therefore, the presumption is that the AA and MA cl. 21 should be interpreted on the basis that each deals exclusively with its own subject matter and do not overlap (BNP Principle 5).

46.4. The subject matter of the FA is: (1) the provision of the EUR and RUB loans to FHM by SPA and AO; and (2) their repayment by FHM, *including on an accelerated basis on the occurrence of an Event of Default,* pursuant to FA cl. 23.23. As noted above, the FA identifies (in detail over 4 pages) 22 Events of Default in FA cl. 23.

46.5. By contrast, the MA does not identify Events of Default. It merely adopts their definition in the FA (in Schedule 2). The MA's subject matter is (only) to set out AO's enforcement rights *after the occurrence of an Event of Default* (MA cl. 9.1.1).

46.6. It follows that, per BNP Principle 5, a dispute over the occurrence of an Event of Default is the subject matter of the AA and not MA cl. 21.

46.7. There is nothing in the language of MA cl. 9, read in context, that justifies displacing the presumption in BNP Principles 3-5. That is all the more so, given the requirement in BNP Principle 6 for *clear* language that the parties intended overlapping jurisdiction clauses.

47. As part of the unitary interpretive exercise (cf. Wood v Capita at [11]), it is also necessary to step back and consider the commercial implications of the Judge's finding under Ground 1 and whether, this could (objectively) have been what the parties intended. Those implications are as follows:

47.1. It being common ground that even if an ASI is not granted, FHM has the right to initiate a VIAC Arbitration under the AA to determine whether an Event of Default has occurred: (1) there might be conflicting decisions between the Moscow Proceeding and VIAC Arbitration giving rise to complex *res judicata*/issue estoppel issues and attendant uncertainty and/or 'a race to judgment'; and (2) the parties would incur substantial duplicative costs and delay in the resolution of their dispute. The potential chaos arising from this is self-evident, stark and commercially irrational.

47.2. As the parties (experienced businesses) would have recognised at the time the FA was executed, disputes about an Event of Default with enforcement consequences are, by far, the most likely type of dispute to "arise out of or in connection with" the FA. Permitting such disputes to be determined by the Commercial Court of Moscow would, therefore, strip the AA of its primary function (including providing an *efficient* form of dispute resolution).

47.3. Interpreting the AA and MA cl. 21 as permitting the Commercial Court of Moscow to take precedence over (or, at least compete with) a VIAC Tribunal in determining disputes over the occurrence of an Event of Default also ignores the respective primacy and subsidiary roles that the FA and MA play within the suite of agreements of which they play part. The Judge's approach of allowing MA cl. 21 to (in effect) take precedence over the AA results in the tail wagging the dog.

47.4. Finally, permitting a dispute over an Event of Default to be referred to the Arbitration Court of the Moscow *Region*[16] results in a *Russian* judge determining alien concepts of *English law*, including (now) the principle of foreign law illegality, and variation/estoppel, and also, potentially in other scenarios: misrepresentation (FA, cl. 23.4); unlawfulness and invalidity (FA, cl. 23.11); and repudiation and rescission (FA, cl. 23.12). It is unlikely that the parties intended this.

47.5. FHM respectfully submits that the parties cannot (objectively and as sensible businesses) have intended these to be the consequences of what is set out in MA cl. 9 (*a fortiori* by implication). The Judge was wrong to have held that they did so intend.

GROUND 2

48. Ground 2 is that the Judge was wrong to hold (Judgment §§80-81) that the Court did not have jurisdiction against AO under CPR PD6B, para. 3.1(6)(c): *"[a] claim is made in respect of a contract where the contract … is governed by the law of England and Wales"* (emphasis added).[17]

49. The issue raised by Ground 2 is the meaning of the phrase "*in respect of a contract"* in CPR PD6B, para. 3.1(6)(c), particularly in the context of an ASI application.

50. PD6B, para. 3.1(6)(c) was preceded by CPR r.6.20(5)(c), which was in materially identical terms. CPR r.6.20(5)(c) was itself preceded by RSC Order 11(1)(d)(iii), which provided that: *"a claim form may be served out of the jurisdiction with the permission of the Court if … (d) the claim is brought to … enforce, rescind, dissolve, annul or* ***otherwise affect*** *a contract …."* (emphasis added).

51. In Albon Motors v Naza Motors [2007] EWHC 1879 (Ch), (cited in Judgment §36),[18] Lightman J (at [20]) construed CPR r.6.20(5)(c) by reference to the language of RSC Order 11(1)(d)(iii). He held, citing Youell v Kara Mara Shipping [2000] 2 Lloyd's Rep 102 – "**Youell**" – which concerned RSC Order 11(1)(d)(iii)) that: "*If the claim is one which* ***affects***

[16] Not even the Court stipulated under MA cl. 21.
[17] CPR r.6.36 form part of a statutory instrument. Therefore, the text of PD6B, para. 3.1(6)(c) is (for the purpose of its interpretation) to be treated as a rule of law (not a rule of practice).
[18] CPR r.6.20(5)(c) provided that: "… *a claim form may be served out of the jurisdiction with the permission of the court if … a claim is made in respect of a contract where the contract …is governed by English law*".

such a contract [within the meaning of RSC Order 11(1)(d)(iii)] *, **there can be no doubt** that it is a claim which is made "**in respect of**" such a contract"* (emphasis added).

52. As the above-cited passage recognises, RSC Order 11(1)(d)(iii) is narrower than its successor, meaning that a claim that would have met that gateway would *necessarily* satisfy the gateway in CPR r.6.20(5)(c). Logically that extends to its materially identical successor: PD6B, para. 3.1(6)(c).

53. Lightman J's analysis flows from his earlier ruling in the same proceedings ([2007] EWHC 9 (Ch)) [26-27] (cited at Judgment §36)) that:

    53.1. The gateway in CPR r.6.20(5)(c) is not confined to claims arising **under** a contract and extends to claims made "in respect of a contract", which is *wider* than "under a contract" [26].

    53.2. It requires only that the claim relates to or is connected with the contract, this being the "***clear and unambiguous***" meaning of the words used (emphasis added) [27].

    53.3. "*The provision in the CPR is in this regard **deliberately wider** than the provision in its predecessor RSC Ord 11* " – which per Rule 1(1)(d) had provided that: *"a claim form may be served out of the jurisdiction with the permission of the Court if … (d) the claim is brought to … enforce, rescind, dissolve, annul or **otherwise affect** a contract …."* (emphasis added) [26].

    53.4. Citing Australian appellate authority: *"The words **in respect of** are difficult of definition, but they have **the widest possible meaning** of any expression intended to convey some connection or relation between the two subject matters to which the words refer"* (emphasis added) [27].

54. Likewise, in Alliance Bank JSC v Aquanta Corporation [2012] EWCA Civ 1588 ("**Aquanta**") Tomlinson LJ (at [63]) characterised the language of PD6B, para. 3.1(6)(c) as "*simple and broad*"; and that "*The new formulation* [in respect of a contract] *is **undoubtedly more broad** than its predecessor* [RSC Order 11(1)(d)(iii)]*"* (emphasis added).

55. In Youell (cited in Judgment §36 and in Albon, as noted above) Aikens J (at [49]) considered the jurisdictional gateway at RSC Order 11(1)(d)(iii) (i.e. the *narrower* (indirect)

predecessor of CPR PD6B, para. 3.1(6)(c)) in the context (*obiter*) of (as here) an ASI claim where the arbitration agreement was (as here re the AA) not governed by English law but (as here) "*is in connection with a contract that is expressly governed by English law"* (the FA). He concluded that "*in principle the "claim" for an anti-suit injunction will be one "brought to … otherwise affect a contract which by its terms, or by implication is governed by English law"*. Aikens J's conclusion rested on the proposition he adopted from Hobhouse J in Gulf Bank K.S.C. v Mitsubishi Heavy Industries Ltd that RSC Order 11(1)(d) "*was intended to cover every possible category of contractual claim*"(Youell [49]).[19] Implicit to Aikens J's analysis is that, even if an ASI does not involve the enforcement of contractual rights under the main contract, it still "affects" the main contract, because it determines a legal relationship between the parties thereto i.e. how disputes thereunder are to be determined.

56. Aikens J also noted at Youell [49] that a claim for a negative declaration (that a claimant is not bound by a contract) is one that "affects a contract" for the purpose of RSC Order 11(1)(d), even though it is not a claim *to enforce* the contract (rather the converse). That analysis provided further fortification for this conclusion in Youell [49] that "*a claim for an anti-suit injunction which is made in connection with a contract that is governed by English law, is a claim "which affects a contract"* because it determines a legal relationship between the parties arising from the English law contract – i.e. how and where related disputes arising out of or in relation to it are to be determined.[20]

57. These propositions provide direct support for FHM's case that its ASI claim falls within PD6B, para. 3.1(6)(c) because it **affects** – in the sense of RSC Order 11(1)(d) – the FA, which is governed by English law; and therefore, it must fall within PD6B, para. 3.1(6)(c). That the ASI claim affects the FA (significantly and not just tangentially) is obvious, in that its purpose is to direct that a dispute that has "arisen out of and in connection with" the FA (whether an Event of Default within the meaning of FA cl. 23.1 (non-payment)) has

[19] Including for example a negative declaration (e.g. that a party is not bound by a contract), being "*the converse*" of a claim to enforce a contract. The case of Hobhouse J referred to is Gulf Bank K.S.C. v. Mitsubishi Heavy Industries Ltd., [1994] 1 Lloyd's Rep. 323.

[20] Further, Youell makes clear that an ASI claimant must meet further requirements, including *"[per RSC] r. 11.4(2) that it has been made "sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order"* i.e. the proper forum criterion. This approach was followed in the PD6B, para. 3.1(6)(c) context in Aquanta at [63], following the earlier case of Greene Wood & McLean LLP v Templeton Insurance Ltd [2009] EWCA Civ 65, [2009] 1 WLR 2013 ("**Greene Wood**"): *"… as both Teare J and Longmore LJ observed in [Greene Wood at [19]], the* ***remoteness of the connection*** *with the contract upon which reliance is placed is something which can be dealt with when the court considers whether England is the proper place for the claim to be brought"* (emphasis added).

occurred; and what (if any) sums are currently due and owing under the FA be determined only in a VIAC arbitration i.e. it determines a legal relationship between the parties to the FA, here a relationship that governs rights to dispute resolution.

58. The Judge's reasoning to the contrary at Judgment §81 was:[21] (1) that PD6B, para. 3.1(6)(c) cannot apply to a "two contract case" i.e. where a claim is brought under a contract not governed by English law that relates to another contract that is governed by English; and (2) this is a two-contract case because of the doctrine of separability that applies to arbitration agreements.

59. This analysis is, with respect, wrong because: (1) the *language* of PD6B, para. 3.1(6)(c) (which is the start point) says nothing about the gateway not applying to a claim brought under a non-English law contract that relates to a separate English law contract; and (2) it ignores the wide ambit of the phrase "in respect of a contract" recognised in the above cited authorities.

60. The Judge's approach to "two contract cases" was based on Rix LJ's *obiter* comments thereon in Global 5000 Ltd v Wadhawan [2012] EWCA Civ 13 [40-64] ("**Global 5000**").

61. Global 5000 concerned a Jersey company (claimant) that was a party to an English law contract ("ELC") with an Indian company. The Jersey company requested permission to serve the defendant (the managing director of the Indian Company) out of the jurisdiction on the basis of a guarantee he had allegedly given for the performance of the ELC. The defendant was not a party to the ELC. The court held that the guarantee did not exist. However, Rix LJ proceeded (*obiter*) to analyse the jurisdiction position had it existed and held that in *those* circumstances there would be only a "collateral connection" between it and the ELC, which did not suffice to found jurisdiction under PD6B, para. 3.1(6)(c) [64].

62. The context which Rix LJ identified (at [58]) as informing his *obiter* analysis was as follows:

[21] The Judge also held Judgment §80: "*The authorities proceed on the basis that, in a claim for an ASI, the relevant law is that governing the arbitration agreement, as distinct from the law governing the main or "matrix" contract*" (Judgment §80), citing the lower courts in the proceedings culminating in UniCredit Bank v RusChemAlliance [2024] UKSC 30. If by "relevant law" the Judge here means relevant for the purpose of PD6B, para. 3.1(6)(c) (which is not clear), that would be incorrect, since (as noted at Judgment §37) until those proceedings reached the Supreme Court, UniCredit only relied on the arbitration agreement for the purpose of the gateway at PD6B, para. 3.1(6)(c), so the lower courts were simply stating UniCredit's case, not making a finding of principle.

62.1. Longmore LJ in Greene Wood had identified the test under (materially identical) CPR 6.20(5)(c) as being whether the claim being brought had a connection with the English law contract being relied on to found jurisdiction.

62.2. Did that test apply: (1) to a "two contract case"; *and* (2) where the English law contract relied on to found jurisdiction is not one to which the defendant is a party.

62.3. He described this as an open question.

63. He answered *that* question by concluding [64] that it would be anomalous if jurisdiction could be obtained against a defendant not within the jurisdiction where: (i) he was not a party to the English law contract prayed in aid to found jurisdiction; (ii) there was no arguable case about the existence of the non-English law contract *under* which the claim was brought; merely because of a "*collateral connection*" between the two contracts.

64. Thus, the basis of Rix LJ's "two contract" analysis was: (1) two separate (albeit connected) contracts (i.e. in the *ordinary commercial sense*); (2) the first being a (foreign law) contract being sued on (under) whose very existence is disputed; and (3) the second being a contract governed by English law to which the defendant was not a party that is relied on to found a 6PDB, para. 3.1.6(c) gateway.

65. The facts in this case are materially different (and Rix LJ's analysis is distinguishable) as:

65.1. This is not a case in which FHM is suing under one contract and seeking to rely on a separate contract to found jurisdiction. The AA forms part of the *same* contract as the FA, albeit one that is deemed to be a separate *agreement* to the FA for the narrow/specific purpose of promoting the *kompetenz-kompetenz* principle, and with that, the efficiency and effectiveness of international arbitration.[22] There is no purpose to be served in giving any weight to that legal fiction in an ASI context.

65.2. There is no dispute about the validity of the AA (or the FA), as there was in the case before Rix LJ.

[22] Ensuring that an arbitral tribunal has the jurisdiction to determine whether the broader agreement of which the arbitration agreement is a part is valid.

65.3. AO is a party to the AA and the FA, obviously so because they form part of the same contract.

66. Simply put, the rationale of Global 5000 does not apply to ASI claims. ASI claims will inevitably "affect" (and, therefore, relate to) the main contact of which it is part in a manner that is very different two substantively separate contracts. Put another way, an arbitration agreement has much more than a "collateral connection" to the main contract for the obvious reason that is part of that contract and dictates how disputes under that contract will be determined.

67. In any event, FHM respectfully submits that if the analysis in Global 5000 can be said to apply to every "two-contract" case, irrespective of the circumstances (i.e. even where there was no dispute about the validity of the contract being sued under; and the defendant was also a party to the related English law contract), that would be incorrect, for the following reasons:

68. First, in Cecil v Bayat [2010] EWHC 641 (Comm) (a conventional, non-ASI, "two contract" case) Hamblen J (as he was then) expressed this statement of principle: "*at least in respect of contractual claims, some relevant **legal connection** between the claim and the other contract is required"*. Rix LJ in Global 5000 at [53] glossed that statement on the basis that it indicated how: "*the strength of the connection cannot be dealt with, as Longmore LJ [in Green Wood] suggested it could be, entirely within the separate question of the proper forum"*.

69. With respect, Rix LJ's analysis here errs by confusing: (i) the **strength** of connection (i.e. remoteness), which on authority (cf. Greene Wood, Aquanta) stands to be assessed solely through the proper forum criterion; with (ii) the **nature** of the connection i.e. legal or factual. Hamblen J's statement in Cecil v Bayat, was re-stating the established requirement that the connection had to be legal.[23]

70. Second, at [58] of Global 5000 Rix LJ **accepted** that in "one contract cases" the principle that "*Remoteness and sufficiency of the connection is a matter for the separate test of "proper place"* was

[23] Hamblen J's statement in Cecil v Bayat, that the connection between the contracts had to be legal, was not reformulating the rationale in Greene Wood (he could not have done, being bound thereby). Rather, he was merely re-stating the well-established requirement that the connection be legal. That itself is evident when reading PD6B, para. 3.1(6)(c) in the light of RSC Order 11(1)(d)(iii) (which again, per Youell at [49] "*was intended to cover every possible category of contractual claim*").

a ratio binding on the Court of Appeal, following Greene Wood. However, in a "two contract case" Rix LJ held at [61] that "*the question arises … just which contract is the contract "in respect of" which the claim is made: is it contract A or contract B?"*; and that the answer was a matter of "legal categorisation" governed by which contract the claim was in respect of ; and (at [63]) "*if it were otherwise, then an application to serve out which could not succeed if reliance were placed on the real contract which founds the claim might be able to succeed if some merely collateral contract were relied on"*. This reasoning is, with respect, erroneous, since:

70.1. The words "in respect of" a contract are (beyond doubt) wider than "under" a contract (see Albon) and there is nothing in their plain wording that justifies excluding their application to "two contract" cases where the two are inextricably linked and manifestly *affect* each other.

70.2. It follows that the premise of Rix LJ's analysis – that in two contract cases "***the question arises*** *… just which contract is the contract "in respect of" which the claim is made: is it contract A or contract B?"* – is incorrect: that question does not arise, because there is no reason (either linguistically or as a matter of policy) why a claim cannot be "in respect of" more than one contract for the purpose of PD6B, para. 3.1(6)(c).

70.3. If applied without limitation/context, Rix LJ's analysis would fail the purposive test: why should there be a principled difference between one and two contract cases if the proper forum criterion deals adequately with the remoteness and sufficiency of the connection in both instances? There is no need artificially to confine the plain language of PD6B, para. 3.1(6)(c) in this way.[24] Any floodgate concern can be addressed at the "proper forum" stage.

GROUND 3

71. Ground 3 is that the Judge was wrong to hold (Judgment §78, cross-referencing Judgment §76) that the Court did not have jurisdiction against AO under CPR PD6B, para. 3.1(3) because there was no real issue between FHM and SPA which it was reasonable for the court to try (i.e. the first limb of the necessary or proper party gateway (para.3.1.3(a)).

[24] cf. Albon – the words "in respect of" have "***the widest possible meaning*** *of any expression intended to convey some connection or relation between the two subject matters to which the words refer".*

72. That conclusion was based on the Judge's finding that: (1) the Moscow Proceedings did not breach the AA; and (2) even if they did, it would not be just and convenient to grant ASI relief against SPA because (i) there was no reason to believe that if an ASI was granted against AO, SPA would continue the Moscow Proceedings itself or AO would ignore the ASI against it on SPA's instructions; (ii) this was an "overwhelmingly Russian case";[25] and (iii) his conclusion that FHM's likely motive in bringing an SPA claim against SPA was to find an anchor defendant for its ASI claim against AO. Those reasons are wrong because:

73. First, the Judge's findings on the merits of the contractual ground were themselves wrong for the reasons addressed in Ground 1.

74. Second, the Judge erred in the exercise of discretion (i.e. just and convenient) for the reasons addressed in Ground 4.

75. Third, the Judge erred in applying a **motive** consideration to the analysis of **jurisdiction** While motive considerations relevant in the context of **discretion**, they are irrelevant in the context of **jurisdiction** (per Erste Group at [43]).[26]

76. In any event, there was no reasonable basis for the Judge's inference of motive, given the established principle (recently endorsed in Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises [2025] EWCA Civ 369 [2025] 1 Lloyd's Rep. 518, at [20]) that a breach of an arbitration agreement in itself justifies the granting of an ASI against the party in breach (here, including SPA).

GROUND 4

77. Ground 4 is that the Judge was wrong to hold (Judgment §76, and last sentence of §78) that in all the circumstances it was not just and convenient to grant an ASI. His core reason at Judgment §76 – which concerns whether an ASI should be granted against SPA – is that there is no reason to believe that if AO was restrained from pursuing the Moscow proceedings, SPA would attempt to pursue them itself, or that AO would pursue them

[25] Relying on the approach in Erste Group Bank AG (London) v JSC (VMZ Red October) [2015] EWCA Civ 379; [2015] 1 C.L.C. 706, CA at [43] ("**Erste Group**").

[26] Per [43]: "… *the fact that the anchor defendant is sued only for the purpose of bringing in the foreign defendants is not an element in deciding the question whether the gateway requirements of paragraph 3.1(3)(a) or (b) have been satisfied. That factor is only for consideration under the wider discretionary head of Issue 4"*; following AK Investment CJSC v Kyrgyz Mobil Tel Ltd [2011] UKPC 7, [2011] 1 CLC 205 at [79].

itself in breach of an ASI against it if so instructed by SPA. His further reason at Judgment §78 is the Erste Group analogy (i.e. "overwhelmingly Russian case")[27] – see §74 above.

78. First, it was counterintuitive/illogical for the Judge to have found that would not be just and convenient to grant ASI relief against SPA on the basis of what would occur *if* an ASI is granted against AO when he did not intend to grant ASI relief against AO either.

79. Second, if (for the reasons set out in Ground 1) AO and SPA are in breach of the ASI the principled approach (cited by the Judge at Judgment §42) is clear: *"an anti-suit injunction* ***will be granted*** *unless there are strong reasons not to do so"* (emphasis added) per Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises [2025] EWCA Civ 369 [2025] 1 Lloyd's Rep. 518, at [20]. This means that absent strong reasons, *the discretionary stage* is deemed to be satisfied once a breach is established. Put differently, the breach of an arbitration agreement is *per se* a just and convenient reason for granting an ASI against the party in breach.

80. Third, that the breach of the AA by pursuing the Moscow Proceedings would be a breach by SPA as well by AO, is clear from the **unrebutted** evidence that SPA has been directing and controlling the Moscow Proceedings. That evidence, broad in scope, is summarised at Judgment §§70-71.[28] The most compelling evidence is that FHM's solicitor asserted his belief repeatedly in his witness statement (Greaves 1 [**SB/182-219**] – and see in particular §§21-22 [**SB/187**]) that the Moscow Proceedings were brought at the direction of SPA; and this belief was not rebutted in any of the Respondents' four witness statements; or in their skeleton argument; or in their oral submissions. The Respondent's only engagement on this issue was to make the bland point that AO had its own board of directors. Conspicuously, it did not confirm that AO's board had, *in fact*, been making decisions in relation to the Moscow Proceedings independently of SPA and without having been

[27] It is not clear whether the last sentence of Judgment §78 is a reason in relation to AO only, or AO and SPA.
[28] The Judge held at §73 that he was unable to accept the submissions in the sequence of the Judgment within which §70 is housed. FHM does not understand the Judge to have found against FHM on the factual position as to SPA's direction of the Moscow Proceedings summarised at §70. However, if the Judge did find against FHM on the factual assertions at §70, that was perverse as there was no evidence to the contrary adduced by the Respondents. At Transcript pp. 139-141 [**SB/307-308**] Counsel for the Respondents accepted that SPA was involved in the Moscow Proceedings, and that this involvement was "*entirely unsurprising"* (Transcript p. 141, line 24 [**SB/308**]); while Counsel for the Respondents submitted that the evidence on SPA directing AO "*does not go so far as my learned friend puts it*" (Transcript p. 139, lines 16-17 [**SB/307**]), the is no attempt to rebut the specific factual assertions of FHM summarised at Judgment §§70-71.

directed by SPA to bring them. This would have been an obvious point to have addressed directly in response to FHM's repeatedly stated belief to the contrary, if it was the case. SPA's coy approach to this central issue did not entitle it to the "clean bill of health" that Judge *appears* to have afforded it in Judgment §76.[29]

81. Fourth, the Judge was wrong to rely on the proposition (Judgment §76) that "*There is no reason to believe that, if AO is restrained from pursuing the Moscow proceedings, SPA would attempt to pursue them itself*". That reason was based on a submission by counsel for the Respondents, first raised orally at the hearing that "*what's entirely absent is any evidence at all that AO would not comply with an order from this court"* (Transcript p. 143, lines 4-5) [**SB/308**].

82. The Judge erred by approaching this issue as if the burden was on the Respondents to prove that AO would not comply with the order of the Court (in response to a point first raised at the hearing); when the burden should have been on it to demonstrate it would comply, through evidence to that effect (which was absent from its witness statements).

83. In any event, FHM produced evidence which puts into doubt what SPA publicly says about its relations with AO – specifically SPA's assertion on its public website that AO's operations are "ringfenced". This is plainly incorrect because, for example, AO acts as security agent in Russia to enforce the mortgage in part to satisfy *SPA's* EUR debt under the Facility Agreement;[30] the evidence that SPA is directing the Moscow Proceedings is not rebutted, as explained above.

84. Fifth, the analogy to Erste Group on the basis that the ASI claim is an "overwhelmingly Russian case" is wrong because it overlooks how in an ASI claim, there need be little connection with England, since, per Lord Leggatt JSC in Unicredit Bank GmbH v Ruschemalliance LLC, at [68] "*Where the contractually agreed forum is arbitration, the policy of securing compliance with the parties contractual bargain is further reinforced by the strong international policy of giving effect to agreements to arbitrate disputes"*. Thus, in Unicredit, the Supreme Court allowed the grant of an ASI because the policy reasons referred to above were sufficient

[29] Although the Judge noted at §76 that AO had its own board of directors, he did not make any finding about whether that board acted independently in bringing and pursuing the Moscow Proceedings.
[30] See 1st witness statement of Adam Greaves §20 and §105 [**SB/186, 211**].

to make it "just and convenient", notwithstanding the comparably limited connection in that case with England.[31]

CONCLUSION

85. For the reasons outlined above, the Court is invited to allow the appeal, and to award FHM its costs of the appeal and of the hearing below.

25 February 2026[32]

RUPERT D'CRUZ KC
Littleton Chambers
rdc@littletonchambers.co.uk

EMILE SIMPSON
4 New Square Chambers
e.simpson@4newsquare.com

[31] The parties were a German and a Russian company; the main contacts in issue were governed by English law; but the arbitration agreements in each case provided for ICC arbitration in Paris.
[32] References to the CB and SB were updated on 18 March 2026 (and a typographical error in a case citation at §55 was corrected).