



Neutral Citation Number: [2026] EWCA Civ 1349

Case No: CA-2025-001643

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
Mr Justice Robin Knowles CBE
[2025] EWHC 1481 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 21/10/2026

Before :

LORD JUSTICE MALES
LADY JUSTICE WHIPPLE
and
LORD JUSTICE MILES

Between :

THE REPUBLIC OF MOZAMBIQUE

**Claimant/
Respondent**

- and -

PRIVINVEST SHIPBUILDING SAL (HOLDING) & ORS

Defendants

- and -

(1) MS CLARA MARTINEZ THEDY DE SAFA
(2) MR AKRAM ISKANDAR SAFA
(3) MR ALEJANDRO SAFA

**Respondents/
Appellants**

Robert Howe KC and Andrew Holden (instructed by Forsters LLP) for the Appellants
Ciaran Keller KC, Jordan Holland and Akash Sonecha (instructed by Peters & Peters
Solicitors LLP) for the Respondent
Hearing date: 30 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Miles:

Introduction

1. This is an appeal against the order of Robin Knowles J dated 16 June 2025. The order was made in long-running proceedings by the respondent (the Republic) against Mr Iskandar Safa (Mr Safa) and a number of companies which he was alleged to have founded and controlled, known as the Privinvest Group. The essence of the claims was that Mr Safa and the Privinvest (PI) companies had bribed officers of the Republic to enter into a series of long-term contracts which were entirely unsuited to the needs of the Republic, and which had caused it substantial losses.
2. Mr Safa gave evidence at the trial of the proceedings but died on 29 January 2024 before the judge had given his judgment. By the order of 16 June 2025 the judge gave the Republic permission to amend its Particulars of Claim to make claims against Mr Safa's widow, Mrs Clara Martinez Thedy de Safa (Mrs Safa), and her sons, Akram Iskandar Safa and Alejandro Safa (the Sons); to join them as parties to the proceedings; and to serve them out of the jurisdiction pursuant to Practice Direction 6B (PD6B).
3. Mrs Safa and the Sons were joined on the basis that, under Lebanese law, they were Mr Safa's heirs. It was common ground that Lebanon was Mr Safa's domicile at the time of his death.
4. The judge decided that under Lebanese law the next of kin of a deceased automatically succeed to both the assets and debts of the deceased, the extent of liability for such debts depending on the value of the inherited assets and the share of the relevant inheriting party. An heir may disclaim his or her inheritance. On 2 June 2026, after the judge's order but before the hearing of this appeal, the Lebanese court made an order confirming that the Sons had disclaimed their inheritance. The parties agreed that the Sons' appeal should be allowed and this was reflected in a consent order. Mrs Safa is therefore the only remaining appellant.

Procedural Background

5. In 2019 the Republic issued a number of claims in the English Commercial Court against, among others, Mr Safa and the PI companies. The PI companies were primarily engaged in shipbuilding. Mr Safa was one of the founders of the group and was at the material times either the chief executive or chairman. The claims related to three projects for the provision by the PI companies of a fleet of fishing vessels and related facilities for the Republic to exploit the economic zone off its coast, an area rich in tuna. The Republic alleged that these projects were procured by the corruption of its officials and that as a result it had entered into contracts with the PI companies which were wholly unsuited to its needs and were loss-making.
6. The claims were consolidated and case managed together by the judge. The lead trial took place between October and December 2023. Mr Safa, though seriously ill, gave evidence. The judge reserved judgment. Mr Safa died in January 2024, before the judge had given judgment.
7. There was then correspondence between the solicitors for the existing parties concerning the impact of Mr Safa's death on the proceedings.

8. On 24 May 2024 the PI companies issued an application for the appointment of Mr Akram Azoury as representative of the estate of Mr Safa for the purposes of the proceedings.
9. On 7 June 2024 the Republic applied for the joinder of Mrs Safa and her Sons as parties to the proceedings.
10. By letter of 11 June 2024 the PI companies asked the court to hear the applications before the court had delivered its judgment on the main trial to ensure that Mr Safa was represented at the point of judgment. The Republic wrote to the court on 12 June 2024 making a similar request.
11. On 14 June 2024 the judge sent an email to the parties' solicitors stating that he was intending to deliver his main judgment in July 2024. He also stated that there would then have to be a consequential hearing, after which a substantive order would be made. The judge suggested that the substantive order was likely to be important for the purposes of the issues that had arisen as a result of the death of Mr Safa. He explained that if the issues arising from the death of Mr Safa required it, he would consider issuing a revised or supplementary judgment. He indicated that his preferred course was that the hearing of the applications concerning the issues arising from Mr Safa's death should be heard at the same time as the consequential hearing for the main judgment.
12. The solicitors acting for the Republic, for the PI companies, and for Mrs Safa and the Sons, made written submissions. The judge made an order on 28 June 2024 which provided that:

“1. The following matters will not be determined in or by the Judgment:

a. All questions as to the consequences of the death of the Twelfth Defendant. These are reserved for subsequent consideration, and are to be determined together with the Applications (“the Reserved Issues”).

b. In relation to claims against and made by the Twelfth Defendant (“the Safa Claims”), the Judgment will state only what the outcome of the determination of the Safa Claims would have been had the Twelfth Defendant not died prior to the Judgment.

c. The Judgment will not determine which person or persons shall be representatives and/or party to the determination of the Safa Claims.

d. For the avoidance of doubt, the Reserved Issues include all questions as to the participation or otherwise of Mr Akram Azoury, Mr Akram Safa, Ms Clara Martinez Thedy de Safa and Mr Alejandro Safa in these proceedings (whether as joined parties, or as representatives pursuant to CPR, r.19.12).

2. Pursuant to CPR r 19.12(1)(b), Mr Akram Azoury shall be appointed to represent the Twelfth Defendant's estate in the Republic Proceedings, pro tem and until further Order, for the Applications only and the Consequential Hearing (referred to below).

3. The appointment in paragraph 2 above:

(a) is without prejudice to all questions as to the Court's jurisdiction over Mr Akram Azoury, Mr Akram Safa, Ms Clara Martinez Thedy de Safa and Mr Alejandro Safa. No participation by them in the hearing and determination of the Reserved Issues shall amount to a submission to the jurisdiction of the Court;

(b) does not finally determine the Applications and is without prejudice to any further Order made on the Applications."

13. It was common ground that paragraph 2 of the order was made to ensure that there was a living person to represent Mr Safa and that it did not determine any issues as between the Republic and Mrs Safa. In the discussion below, references to Mr Safa are to be read as including a reference to Mr Azoury in his representative capacity.
14. On 29 July 2024 the judge handed down his judgment in the main proceedings, [2024] EWHC 1957 (Comm) (the Main Judgment). At [33] and [34] he repeated what was contained in the 28 June 2024 order. At [570] the judge stated that the Republic was entitled as against Mr Safa and the Prininvest companies to certain sums and to certain indemnities. At [600] he held that certain sums were to be credited against the amounts payable by Mr Safa and the PI companies. Mr Safa's liability was therefore co-extensive with that of the PI companies.
15. The two outstanding applications of the PI companies and the Republic arising from the death of Mr Safa were heard in October 2024. The judge reserved judgment.
16. On 23 December 2024 the judge made an order giving effect to the Main Judgment as against the PI companies. They were ordered to pay the Republic US\$534 million odd and interest of US\$40 million odd, and to indemnify it in respect of certain other matters. The PI companies were also held liable for 85% of the Republic's costs on the indemnity basis. Nothing was said in that order about the liability of Mr Safa. That was because the Reserved Matters referred to in the order of 28 June 2024 remained unresolved.
17. The judge gave judgment on the two outstanding applications on 16 June 2025 and made an order on the same date. As noted, he permitted the joinder of Mrs Safa and the Sons as parties, gave permission to the Republic to amend its statements of case, and permitted the Republic to serve the proceedings out of the jurisdiction on the newly joined parties. The order recorded that Mr Safa was represented pro tem by Mr Azoury.
18. The amendments that the judge permitted were contained in a document called the Joinder Particulars of Claim dated 27 June 2025 (the JPC). This referred to Mrs Safa and the Sons as the Safa Heirs. The JPC contended that on the evidence currently available, Mr Safa had died domiciled in Lebanon and that issues of succession to his

assets and liabilities were governed by Lebanese law. It contended that as a matter of Lebanese law, the deceased's legal identity ceased to exist and that his assets, debts and liabilities automatically and immediately transferred to his legal heirs (subject to the limitations that heirs are liable only in respect of and up to their respective shares, and that the total financial liability of each heir is limited to the value of the assets which they inherit from the deceased). Paragraph 10 of the JPC stated:

“10. In the premises:

10.1 The Safa Heirs are the heirs of Mr Safa under Lebanese law.

10.2 Upon Mr Safa's death, the Safa Heirs together succeeded to the assets and liabilities of Mr Safa and they are each liable (i) in respect of and up to their respective share of the hereditary liabilities and (ii) up to the value of the assets they inherit from Mr Safa.

10.3 Mr Safa is liable to the Republic for the reasons and in the amounts pleaded in the POC.

10.4 In the further premises, the Safa Heirs have succeeded to Mr Safa's liabilities to the Republic and are liable to the Republic in the same manner and to the same extent as Mr Safa, subject to the limits pleaded in paragraphs 9.5.1-2 above.”

The judgment

19. In the judgment Mrs Safa and the Sons were referred to as “the Respondents” and it is convenient to adopt that term in summarising and citing from the judgment.
20. The judge noted that for the purposes of his decision it was agreed that Mr Safa's domicile at death was Lebanon. It appeared that he had died intestate. There had been no order for the administration of his estate in England. Lebanon did not have the concept of “an intermediated administration via a personal representative”. Any enforcement proceedings that would follow any findings of liabilities would be international, including in London.
21. The judge noted that the Respondents contended that the English court was being asked to take jurisdiction and determine a claim that the Respondents had the status of heirs under Lebanese law, that the burden of Mr Safa's debts worldwide were transferred to the Respondents, and that this was contrary to the principle of private international law which restricted the court's jurisdiction in matters relating to the administration of estates.
22. Having considered the Lebanese law evidence, the judge concluded that the evidence of all of the experts, including that served by the Respondents, established, first, that the assets and liabilities of the deceased transfer by operation of law to his heirs on his death; second, that the deceased ceases to have legal personality and it is his heirs that are to be sued in his place; and, third, that the heirs of a deceased may be entitled to renounce the transfer to them of assets and liabilities.
23. The judge accepted the accuracy of the principle stated in Dicey, Morris and Collins (16th edn.) (*Dicey*), Rule 160, that a foreign personal representative is not, as such, under

any liability in England and cannot, as a foreign personal representative, be sued in England. He held however that the Republic did not seek to impose liability on the Respondents in any capacity as personal representatives. The evidence of foreign law showed that there was no foreign administration and that the concept of an estate was unknown to Lebanese law. The Respondents were being sued as heirs, not as personal representatives (see [24]). Nor did the claim of the Republic involve the collection of assets or payment of liabilities of the deceased; rather the Republic relied on the succession by heirs to the assets and liabilities ([25]). Since English law will allow a person who has an absolute title to a deceased's property in accordance with the law of their domicile to enforce a claim in this country in a personal and not a representative capacity, there is no reason why the approach should be different for liabilities ([26]). There was no dispute as to who were the heirs ([30]).

24. At [31] and [32] the judge said this:

“31. ... I see the English court involved in completing the task it has long been embarked on. That is, of deciding what liability arises from the matters it was responsible for deciding in the proceedings by reason of the conduct of Mr Safa. It is not determining “what are the liabilities” in what would be understood in English law as a comprehensive exercise of administration across a deceased's estate. I am not at this point considering whether, and how, and where, any judgment against the Respondents might be enforced, or how it might be dealt with under Lebanese law and what else Lebanese law provides or requires to be done in light of Mr Safa's death.

32. If, contrary to the above, the English Court was to insist that there is an estate with legal identity, that this matter involves the administration of that estate, that succession has not been reached, and that in these circumstances the heirs should not be added as Defendants, then the English Court risks leaving matters, and its decision from the trial, unrecognisable in a relevant foreign jurisdiction. That would not be an outcome to be accepted lightly. For the reasons given it is not, in my judgment, a result that English law requires.”

25. At [33] the judge concluded that there was a serious issue to be tried. At [34] he acknowledged that there might be an issue between the experts on Lebanese law as to whether an uncrystallised liability in tort could pass to the heirs on death. This point was not debated at the hearing. However, there was a serious issue on that point. The requirements for joinder under CPR 19.2(2) were satisfied ([36]).

26. The judge held that the Republic had established a good arguable case that the claim fell within paragraphs 3.1(3), (4A), (6), (9) and (16) of PD6B. The judge held that the Republic was entitled to rely on the same gateways as the Republic had relied on to obtain permission to serve Mr Safa out of the jurisdiction. The judge stated that the claim against the Respondents was the same as the claim against Mr Safa and for that reason the same gateways apply. This was because the Respondents were successors to his liabilities, including the liabilities that were the subject of the claim.

27. As to gateway (3), the judge noted the Respondents' submission that there were no issues between the Republic and Mr Safa which it was reasonable for the court to try because all the issues between them had already been tried ([45]). He rejected this submission on the basis that although the trial had concluded there remained issues to be determined, and there was as yet no judgment against Mr Safa ([48]). The judge also rejected the Respondents' contention that they were not necessary or proper parties to the claims against Mr Safa ([48]). The claims against the Respondents depended on whether Mr Safa committed wrongdoing against the Republic and was under a liability to compensate it: that was a "fundamental and integral part of the claim against these Respondents" ([50]).
28. At [51] the judge referred to the decision of Jacobs J in *The Public Institution for Social Security v Al-Wazzan (as representative of Al Rajaan)* [2024] EWHC 3321 (Comm) (*PIFSS FI*) in which the heirs of Mr Al Rajaan had been joined to ensure that they were bound by the court's decision concerning the deceased's liability to the claimant. The judge noted that "[t]here was, as here, the potential as between the claimant and heirs that if the heirs were not made defendants, they would take the point that liability had not been determined". At [53] the judge said that he agreed with the decision of Jacobs J.
29. At [56] the judge addressed an argument that the joinder and service out was being sought simply to assist in the enforcement of a judgment. Part of his reason for rejecting that argument was that in the present case the court had expressly not given judgment against Mr Safa or determined any of the Reserved Issues set out in paragraph 34 of the Main Judgment.
30. The judge finally addressed the appropriate forum. He noted the Respondents' arguments that the law of Lebanon would be the governing law. At [59] he noted that there did not appear to be any significant issue over the matters pleaded in the JPC. He did not consider that there were any substantial issues about identity of the heirs of Mr Safa. He considered that there was force in the submission of the Republic that, without joinder and service of the Respondents, there might be no relevant judgment in Lebanon or elsewhere because under Lebanese law a dead person has no legal personality. At [63] he held that on the evidence available to the court unless the heirs were parties any judgment which was obtained might not be enforceable in Lebanon. He noted at [64] that there was a risk that the English court would give a judgment holding Mr Safa to be liable to the Republic only for the heirs to seek to resist judgment in Lebanon or elsewhere on the basis that he was not, so that there would be inconsistent judgments on that issue. At [65] he concluded that it was in accordance with the overriding objective for the English court to continue to provide a forum for the proceedings even if the latest stage involved considerations of Lebanese law. He concluded that England was clearly and distinctly the most appropriate forum in the particular and defined circumstances that existed ([66]).

The appeal in *PIFSS*

31. For clarity of exposition, it is helpful at this stage to mention the appeal in *PIFSS*, as the reasoning of the Court of Appeal in that case has shaped the arguments on this appeal.

32. The claimant brought proceedings against the late Mr Al Rajaan, its former director general, for corrupt schemes. The claimant alleged that Mr Al Rajaan had abused his position at PIFSS to secure payment of secret commissions to himself and third parties who assisted him. Mr Al Rajaan submitted to the jurisdiction and defended the claim until his death in September 2022. Mr Al Rajaan's wife, Ms Al Wazzan, was an existing defendant to the proceedings at the time of her husband's death. In June 2024 PIFSS obtained permission to serve the claim form on Mr Al Rajaan's children. They were joined on the basis that they were Mr Al Rajaan's heirs and with a view to enforcement of any judgment that the claimant might obtain against Mr Al Rajaan's estate. The Al Rajaan children applied to challenge jurisdiction and set aside service. The matter proceeded on the basis that Mr Al Rajaan was domiciled in Switzerland when he died. There was Swiss law evidence which established, first, that under Swiss law there was no concept of administration of the estate of a deceased person. Instead, it followed the principle of universal succession, though on a group basis. The heirs as a group jointly assume the deceased's legal position pertaining to assets and liabilities. This happens automatically. All heirs are jointly and severally liable for the debts. If the debts exceed the assets, or indeed for any other reason, the heirs may disclaim their inheritance. Secondly, in order to enforce a judgment against estate assets in Switzerland the judgment must be binding on all the individuals who own the estate. This arises from the principle of joint ownership of estate assets. The estate does not have legal personality and cannot be sued as such. Ms Al Wazzan had been appointed for the purposes of the litigation as the representative of Mr Al Rajaan, but she was not an administrator of his estate as a whole.
33. Jacobs J permitted service out on the Al Rajaan children under PD6B paragraph 3.1(3) (gateway (3)). In *PIFSS FI* he refused to set aside service. The Al Rajaan children appealed. The Court of Appeal ([2025] EWCA Civ 1505 (*PIFSS CA*)) dismissed the appeal.
34. The lead judgment was given by Arnold LJ. He explained in [12] and [13] that the pleading on the basis of which joinder had been ordered set out two alternative bases for the contention that the heirs were proper parties to the claim. The "Substantive Basis", was that, as Mr Al Rajaan's heirs under Swiss law, they were jointly and severally liable for torts committed by him as successors to his liabilities. The "Enforcement Basis" was that, in order to enable PIFSS to enforce any judgment that it obtained against Mr Rajaan's estate against Swiss assets to which the children may have succeeded, they should be bound by the judgment. The difference was that the Substantive Basis would lead to substantive relief being granted against the children, whereas the Enforcement Basis was properly to be regarded as a claim for declaratory relief against them as to the liability of Mr Al Rajaan. Its purpose was to obtain a binding judgment in proceedings to which they were parties, not to obtain a determination by the English court as to any liability of the children to satisfy a judgment against Mr Al Rajaan's inheritance.
35. Arnold LJ explained that Jacobs J had decided to permit service out on the Enforcement Basis but had concluded that the Substantive Basis was not straightforward. At [22] he recorded that PIFSS had served a respondent's notice contending that the judge should have held that PIFSS had a good arguable case on the Substantive Basis also.
36. Arnold LJ addressed an argument advanced by the Al Rajaan children which ran as follows: (a) English law draws a distinction between the administration of estates and

succession; (b) matters relating to the collection of a deceased's assets and the payment of their debts are considered as matters relating to the administration of estates rather than succession; (c) an English grant of administration only extends to property of the deceased locally situated in England at the time of their death (*Dicey* Rule 156), and the administration of the English estate is governed by English law; and, (d) a grant of representation or other authority to represent a deceased person under the law of a foreign country has no operation in England (*Dicey* Rule 159), and a foreign personal representative is not, as such, under any liability in England and cannot, as a foreign personal representative, be sued in England (*Dicey* Rule 160). The Al Rajaan children submitted, based on these steps, that they could not be made parties to the proceedings merely because they were the deceased's successors under Swiss law.

37. Arnold LJ rejected this argument. At [32] he said that the same issue arises between PIFSS and the children as it did between PIFSS and Mr Al Rajaan's estate, namely whether Mr Al Rajaan was liable to PIFSS as alleged. That issue should only have to be determined once. Given that it was to be determined by the English court in proceedings properly instituted for that purpose, it should also be determined as between PIFSS and the children in the same proceedings. This was not to collapse the distinction between administration and succession in English law ([33]). If the children had been present here, it would have been proper to join them as necessary or proper parties under rule 19.2(2)(b) in order to enable the issue of Mr Al Rajaan's liability to be determined between PIFSS and the children as well as between PIFSS and Mr Al Rajaan's estate. Otherwise, there was the risk of a second set of proceedings on the same point ([34]). It followed that they were proper parties for the purposes of gateway (3) ([36]).
38. Arnold LJ said that it was not necessary to deal with the respondent's notice and the Substantive Basis though he said that the submissions on that point might have had more traction because that basis involved PIFSS claiming substantive relief against the children.
39. It is convenient to address at this stage a difference between the parties to this appeal about the orders actually made in *PIFSS FI*. Jacobs J said in [44] that the claim which has now become known as the Substantive Basis (and which he called "the first route") was by no means straightforward. He then addressed the Enforcement Basis (which he called "the second route") and decided in favour of the claimant. At [57] he said that it would be open to the claimants to say in due course that the first route was nevertheless available as well and that the court should therefore be imposing joint and several liability at the trial on the heirs. He said that that would be a matter to be argued in due course.
40. The Republic submitted that [57] of *PIFSS FI* showed that Jacobs J had in fact permitted service out on the Substantive Basis as well as the Enforcement Basis. I am unable to accept this reading. In *PIFSS CA*, Arnold LJ explained that Jacobs J had decided to permit service out on the Enforcement Basis but had concluded that the Substantive Basis was not straightforward. In [22] he recorded that PIFSS had served a respondent's notice contending that the judge should have held that PIFSS had a good arguable case on the Substantive Basis also. Arnold LJ decided that it was unnecessary to determine the respondent's notice. On my reading of the decisions, the claimant in the *PIFSS* case only obtained permission to serve out on the Enforcement Basis and not on the Substantive Basis.

General requirements for permission to serve proceedings out of the jurisdiction

41. These were stated by Lord Collins of Mapesbury in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 (*Altimo*): (i) the claimant must satisfy the court that in relation to the foreign defendant there is a serious issue to be tried on the merits; (ii) the claimant must satisfy the court that there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given; and (iii) the claimant must satisfy the court that in all the circumstances, England and Wales is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction.
42. The test for what constitutes a good arguable case under the second heading was explained by this court in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA* [2019] EWCA Civ 10, [2019] 1 WLR 3514 at [70] to [80]. Nothing in this appeal turns on the nuances of the good arguable case test.

The challenges to the decision on this appeal

43. Mr Howe KC, representing Mrs Safa, accepted that there was an attraction in the consideration that, if she were not to be joined as a party, the Republic might find it difficult to enforce any judgment concerning the liability of Mr Safa in Lebanon, and possibly elsewhere. He said, however, that hard cases make bad law, and noted that there was no suggestion that Mrs Safa had any knowledge or involvement in any of the wrongdoing which was found by the judge against Mr Safa. Mrs Safa has no connection with the jurisdiction, and she can only be properly served out if the requirements set out in *Altimo* are satisfied. Mr Howe divided his submissions by reference to the two bases of claim analysed in *PIFSS CA*.
44. As for the Enforcement Basis, Mr Howe submitted in outline that the requirements of gateway (3) were not met. First, there was no properly pleaded case seeking relief on that basis. Second, at the date on which permission to serve out was granted (16 June 2025) there were no extant real issues between the Republic and Mr Safa which it was reasonable for the court to try. The case is therefore distinguishable from *PIFSS*. The trial has already taken place, and the judge has made findings about Mr Safa's conduct and liability. Any order against Mr Safa will be in the same form as that made against the PI companies. All the Republic must do is apply for an order in essentially the same terms against Mr Safa. The fact that a formal order has not yet been made does not mean that there is an extant real issue which it is reasonable for the court to try. Moreover, if she were to be joined now, Mrs Safa would have no realistic opportunity or ability to challenge the findings already recorded in the Main Judgment concerning the issues which she is being joined to address.
45. In relation to the Substantive Basis, Mr Howe submitted in outline that the judge erred in relation to each *Altimo* requirement. First, there is no serious issue to be tried because the proposed claim is not properly subject to the jurisdiction of the English court in accordance with longstanding principles of private international law; secondly, there is no good arguable case that the claim falls within any of the gateways; and, thirdly, England is plainly not the appropriate forum for the trial of the claims against Mrs Safa.

46. As to the first of these points, Mr Howe argued that there was a knock-out blow to the claim. The English court will not accept jurisdiction over claims against a person acting as the administrator of a foreign estate in that capacity, and such claims are exclusively for the courts of the place of the foreign administration: see *Dicey* Rule 160 and the case law cited in it. The claim for a judgment against Mrs Safa falls within the scope of that jurisdictional bar.
47. On the second point, Mr Howe argued that the Republic and the judge had failed to provide any proper analysis as to how Mrs Safa fell within any of the gateways in PD6B. Gateway (3) did not apply as the principal additional issues now sought to be raised against Mrs Safa were entirely different from those that had arisen in the proceedings against Mr Safa. There was no common thread or similarity of subject matter. As to the other gateways there was no suggestion that Mrs Safa was liable in tort or in respect of any contracts or that anything she had done gave rise to a liability in restitution. There was no good arguable case that the claims fell within the gateways.
48. Mr Holden argued the third point. He contended that there was no proper analysis in the judgment to support the conclusion that the English court was clearly or distinctly the appropriate forum for the determination of the issues that arose on the Substantive Basis. There were potential issues of Lebanese law, including as to the issue whether a liability in tort was capable of binding the successor of an alleged wrongdoer who died before the amount of the liability had been crystallised in a judgment. There was also a potential issue as to whether an heir would succeed to the liability which arose out of criminal conduct of a deceased person. These issues fell far more appropriately to the courts of Lebanon. Mrs Safa had no real connection with this jurisdiction and there were no other persuasive reasons for this court to address the issues that arose on the Substantive Basis.
49. Mr Keller KC for the Republic supported the judge's reasoning and conclusions. Where appropriate I shall address the details of his argument in the discussion below.

Analysis and conclusions: the Enforcement Basis

Gateway (3)

50. The issue between the parties concerns gateway (3). This provides as follows:
- “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 and proper party to that claim.”
51. In what follows I shall refer to the anchor defendant as “D1” or “the anchor defendant”, and the other person(s) on whom the claimant wishes to serve the claim form as “D2”.
52. In *Lungowe v Vedanta Resources plc* [2019] UKSC 20, [2020] AC 1045, Lord Briggs said at [20]:

“It is common ground that, by reference to those terms and well-settled authority, the claimant must demonstrate as follows: (i) that the claims against the anchor defendant involve a real issue to be tried; (ii) if so, that it is reasonable for the court to try that issue; (iii) that the foreign defendant is a necessary or proper party to the claims against the anchor defendant; (iv) that the claims against the foreign defendant have a real prospect of success; that, either England is the proper place in which to bring the combined claims or that there is a real risk that the claimants will not obtain substantial justice in the alternative foreign jurisdiction, even if it would otherwise have been the proper place, or the convenient or natural forum. ”

The pleadings

53. The first challenge was that there was no properly pleaded case capable of supporting joinder on the Enforcement Basis. The point does not appear to have been taken before the judge. But in any event, paragraph 10.3 of the JPC alleges that “Mr Safa is liable to the Republic for the reasons and in the amounts pleaded in the POC”. This provides the pleaded basis for the court to make a declaration of Mr Safa’s liability which, if Mrs Safa were to be joined as a party, would be binding on her. That suffices. Mr Howe argued that there was no pleading of the alleged need to join the heirs to ensure the enforceability of the judgment against them. I do not think there is anything in this. There is generally no need for a party to explain in a pleading why it is seeking to join a party, and, secondly, it was common ground on the evidence that if the heirs were not joined the Republic might face difficulties in enforcing any judgment in respect of Mr Safa’s liabilities in Lebanon or elsewhere.

Real issue which it is reasonable for the court to try?

54. The principal challenge to the Enforcement Basis was that at the time of the hearing before the judge there were no extant real issues between the Republic and Mr Safa as the anchor defendant which it was reasonable for the court to try. Mr Howe emphasised that the judge had already made findings against Mr Safa and the PI companies in the Main Judgment and that it was obvious that the amount of the final judgment against Mr Safa would be the same as that already ordered against the PI companies. All that remained was the perfection of the order. That did not involve any further trial of issues.
55. The decision of this court in *Erste Group Bank AG v JSC ‘VMZ Red October’ & Ors* [2015] EWCA 379, [2015] 1 CLC (*Erste*) establishes that the court must examine, viewed in isolation, whether there is a real issue to be tried between the claimant and the anchor defendant on the merits and whether it is reasonable for the English court to try that issue: see [38]. The question whether it is reasonable for the English court to try the claim between the claimant and the anchor defendant is a nuanced one: the question is not whether it was reasonable for the claimant to start proceedings against that defendant within the jurisdiction, but rather whether it is reasonable for the English court to try the issue, whether in summary judgment proceedings or otherwise: see [48].
56. Mr Howe relied on *Erste* to submit that where a party is not participating in proceedings, such as by not contesting them or failing to acknowledge service, there is no real issue which it is reasonable for the court to try (see e.g. [78(ii)]). I am not

persuaded that the court intended to lay down such a bright-line rule. Though the lack of participation by a party may be material it is not conclusive. In [48] the court described the test as nuanced, which is another way of saying that its application is highly sensitive to the particular facts.

57. In [78] the court set out its conclusions based on the full, complex, facts of the case. The case concerned the attempt to join and serve various defendants to claims against two existing defendants to claims in debt and contract, which had been pursued for many years. The new claims were for conspiracy, including against the existing defendants. The reasons given by the Court of Appeal for concluding that there was no real issue which it was reasonable for the court to try included that, by the date of the order for service out, there was no real issue as to the Bank's debt and contractual claims against the first defendant, which was insolvent in Russia. By then the Bank had been admitted to the first defendant's list of creditors. The Bank had also participated in the insolvency, including creditors meetings and challenging the claims of other creditors. There were no debt or contract claims that it was reasonable for the court to try. The first and second defendants had failed to acknowledge service and the Bank was entitled to judgment. There was no evidence of any assets outside Russia against which the Bank could execute judgment against the first defendant and in the light of the first defendant's insolvency, "there was no utility at all in the English court trying the Bank's debt and contractual claims as against [the first defendant]": see ([78. iv]).
58. As to the guarantee claims against the second defendant, the Bank would have to take any English judgment it obtained against the second defendant back to Russia, in order to prove in respect of the judgment in the second defendant's insolvency: see [78.v]). But it was common ground that this would be of no utility because the Russian courts had held that the Guarantee was invalid. There was therefore no issue that it was reasonable for the court to try. Moreover, the second defendant had not served an acknowledgement of service. As to the conspiracy claims against the first defendant and the second defendant, it was difficult to see how, viewed in isolation against those defendants alone, "there could be any utility in the court trying such claims". In quantum terms they duplicated the debt, contractual and guarantee claims and would not lead to any greater recovery. In [79] the Court also made the connection between the question whether it would be reasonable for the court to try the claims, the overriding objective, and the principle that the court will not engage with pointless and wasteful litigation.
59. *Erste* therefore establishes that the test contained in the first part of gateway (3) is nuanced and highly fact-sensitive. The utility of proceeding against the anchor defendant is likely to be an important factor.
60. The fact that the anchor defendant has not acknowledged service or shown any intention to defend may be material but is not conclusive or determinative. As Morgan J explained in *Satfinance Investment Ltd v Athena Art Finance Corp* [2020] EWHC 3527 (Ch) there may be some cases where it is reasonable for the court to try the anchor claim even where the anchor defendant lacks an intention to defend. In that case the claimant sought declaratory relief concerning the beneficial ownership in a painting it had allegedly acquired from the anchor defendant. Morgan J said that there would be utility in the court giving judgment against the anchor defendant who had absconded and who had no intention of defending the claims. He explained in [91] that such a declaration would require a judicial act and would only be made if persuaded that it was useful and

appropriate. In [92] he distinguished such a judicial act from default judgments pursuant to an administrative act. I agree with Morgan J's reasoning and approach.

61. Returning to the present case, I accept the submissions of the Republic that at the time of the joinder order there remained steps in the proceedings between the Republic and Mr Safa as the anchor defendant which required further adjudicative acts. As the judge explained in the Main Judgment the proceedings against Mr Safa have not been completed. The court directed that there would be a further hearing to settle the terms of the order against Mr Safa (or more accurately, his representative). That was reflected in the case management decisions made by the judge. Settling the terms of the judgment cannot be achieved administratively. Though the judge has made findings in his Main Judgment that the liability of Mr Safa is co-extensive with that of the PI companies, he has not finally given judgment for that amount, or indeed for interest or costs. The further procedural steps needed to generate a final judgment would also have obvious utility. Indeed, they are required before any enforcement action can be taken. Nor is this a case where Mr Safa (or his representative, Mr Azoury) has failed to participate. Indeed, under the judge's case management directions, Mr Azoury has continued to take part in the continuing proceedings and is entitled to make submissions before any order is made concerning Mr Safa's liabilities to the Republic.
62. Mr Howe contended that Mrs Safa would not have any opportunity to influence the outcome of the case and that this was contrary to fairness. As to this, the touchstone under the first limb of gateway (3) is whether there is a real issue which it is reasonable for the court to try. The rule does not require any particular level of participation by the newly joined defendant. But in any event, the Republic accepted before the judge and has repeated on this appeal that it will be open to Mrs Safa and Mr Azoury to make submissions about the terms of the order.
63. For these reasons I am satisfied that there is a real issue between the parties which it is reasonable for the court to try within the meaning of gateway (3).
64. Mr Howe accepted that if the Republic can establish that, as between itself and Mr Safa, there was a real issue which it was reasonable to try, there was no challenge to the other requirements listed by Lord Briggs in *Lungowe*. Nor is there any challenge based on the other *Altimo* requirements. I would therefore dismiss the appeal relating to the Enforcement Basis.

Analysis and conclusions: the Substantive Basis

Serious issue to be tried?

65. Mrs Safa challenges the judge's decision under each of the three requirements identified in *Altimo*. The first challenge was to the judge's conclusion that there was a serious issue to be tried on the merits.
66. Mrs Safa contended that the claim was doomed to fail, as the Republic was claiming against Mrs Safa in her position as a representative in the administration of his estate and that the English court will not take jurisdiction over such a claim. Mrs Safa relied on *Dicey* Rule 160 which states that "A foreign personal representative is not, as such, under any liability in England and cannot, as foreign personal representative, be sued in England."

67. At 27-024 *Dicey* comments that: “[a] foreign personal representative cannot be made liable in England for property held or acts done by him or her in his or her character of foreign administrator. This is so even if he or she acknowledges service and submits to the jurisdiction, for he or she has no power to submit the assets he or she holds to the judgment of the English court.”
68. Stated broadly, the rule derives from the principle that the administration of estates operates on a territorial basis, with the administration of a deceased person’s estate being conducted principally in the jurisdiction of the deceased’s domicile, with ancillary administrations in the other jurisdictions where the deceased’s affairs are required to be administered. The principle of territorial administration gives rise to a jurisdictional restriction or bar: the English court will not take jurisdiction over a person in their capacity as administrator of an estate under foreign law. This is illustrated by *Nova v Grove* [1982] 22 Alta LR (2d) 262, where the Court of Appeal of Alberta dismissed a tort claim against the deceased’s executory under a Texan grant of probate which had not been resealed within the jurisdiction; and *Degazon v Barclays Bank International* [1987] EWCA Civ , [1988] 1 FTLR 17, in which the Court of Appeal struck out an action in England against a UK-based bank in its capacity as the executor of the estate of a deceased person who died domiciled in Dominica under a Dominican grant of probate. The Court referred to what is now *Dicey* Rule 160 as a jurisdictional bar to the claim “or at any rate the settled practice under the rules of private international law, that a personal representative who had obtained probate or letters of administration in a foreign county could not be sued in that capacity in our courts”.
69. Mr Howe stated that in characterising the relevant issue or matter the court must adopt an internationalist approach not a mechanistic application with no regard to the purposes of the characterisation process: see *Raiffeisen Zentralbank Österreich AG v Five Star Trading LLC* [2001] QB 825 per Mance LJ at [26].
70. Mr Howe also relied on the decision of the Court of Appeal in *Viegas v Cutrale* [2025] 1 WLR 1467. He particularly drew attention to [118] and [120] where Newey LJ (with whom the rest of the court agreed) said:

“118. There is no doubt that, for the purposes of characterisation, the law of England and Wales distinguishes between, on the one hand, the administration of an estate and, on the other, succession [...]

120. In broad terms, it seems to me that, under the law of England and Wales, matters relating to the collection of a deceased person’s assets and the payment of debts are considered to relate to the “administration of estates” and the distribution of assets after that is considered to relate to “succession”. As Warrington LJ said in *In re Lorillard* [1922] 2 Ch 638, “it is only when the administration is over that the law of his domicile comes in”. Likewise, Henderson J said in *High Comr for Pakistan* [2015] EWHC 3052 (Ch) at [28] that “It is only when one gets on to the question of succession and who is entitled beneficially to share in the estate that one looks to the law of the domicile of the deceased.”

71. Mr Howe contended that paragraph 10.4 of the JPC is concerned with the payment of Mr Safa's debts and therefore falls within the category of "administration of estates" rather than "succession". He said that where a person is alleged to have succeeded to liabilities under the foreign law, they cannot be said to have done so until after the administration of the foreign estate has concluded, and that liability has become absolute. He argued that the JPC, which concern the ascertainment and payment of Mr Safa's debts and liabilities out of his assets pursuant to Lebanese estate law, is clearly concerned with, or includes and depends on, issues of administration, as opposed to succession. He said that because the assets, if any, can only be passed by succession after any liabilities have been settled and the process of administration has been completed, it necessarily follows that the ascertainment and payment of liabilities will always be part of the administration of the foreign estate, to which the jurisdictional restriction applies.
72. Mr Howe accepted that, while under the law of Lebanon there was no concept of an estate as such, there was in substance a process of administration of estates and, in particular, he relied on a Lebanese principle of "no inheritance before the settling of the debt" (or "no inheritance before the payment of debts"). He argued that, under Lebanese law, an inheriting heir could not fully enjoy the assets before they had paid the creditors. Hence there are restrictions on the ability and extent to which the heirs are able to deal with inherited assets before the payment of the debts of the deceased. Since there is no inheritance before payment of creditors, a process which amounts in substance to the administration has to take place before it can be known how much each heir is to inherit.
73. He also submitted that the application of Rule 160 could not depend on whether the relevant foreign law contained processes similar to those under English law. That would involve an inadmissibly parochial approach. He also relied on *Re Achilopoulos* [1928] 1 Ch 433 for the proposition that the English court draws no distinction between an executor properly so called and a person who, under a foreign law, is not an executor but is a person who by virtue of his interest, is charged by the law of the domicile with the same duties as would be imposed on an executor under our law.
74. For the Republic, Mr Keller did not take issue with the accuracy of *Dicey* Rule 160 or with the approach to characterisation set out in *Raiffeisen* at [27]. Rather, he contended that the judge was correct that paragraph 10.4 of the JPC did not engage Rule 160. The Republic relied on the judge's findings on the basis of the agreed and uncontested parts of the expert evidence that there is no concept of an estate in Lebanon, that inheritance occurs immediately and automatically on the death of a person, and that the inheriting heirs thereupon become entitled to their share of the deceased's assets and fall under a personal liability to his creditors, subject to the limits of the extent of inherited share and the value of the inheritance. Not only is there no concept of an estate, there is no process akin to the administration of an estate. It also follows, as the judge found, that nobody has to be appointed to represent the estate. The Republic submitted that there was therefore no claim against Mrs Safa in her capacity as personal representative. Rather the claim was against her in her capacity as the successor to Mr Safa's liabilities to the Republic.
75. The Republic contended that *Viegas* was of marginal relevance. It was not concerned with standing by foreign heirs to pursue claims in this jurisdiction (and was therefore concerned with the collection of assets). It did not refer to or concern itself with the jurisdictional bar summarised in *Dicey* Rule 160.

76. In light of the arguments advanced to us, it is necessary to examine in more detail the Lebanese law evidence. Having reviewed it I am satisfied that the uncontested parts of the evidence are entirely consistent with the judge's summary. I am also satisfied that the references in that body of law to the maxim of no inheritance before settlement of the debts does not carry the weight Mr Howe sought to place on them.
77. The uncontested evidence establishes that there is no concept of an estate and no mandatory procedure under Lebanese law similar to administration of an estate. The inheritance by an heir of the assets is automatic and immediate on death (subject to any disclaimer by a person who would otherwise be an heir). Likewise, succession to liabilities is automatic and immediate, subject to the limits already noted. This happens before the settlement of liabilities; there is no requirement to pay liabilities before the assets vest in the heirs. The deceased's creditors are exposed to the risk that the deceased's assets may be mixed up with the heir's own assets; there is no ringfenced pot, and the heir is not prohibited from disposing of inherited assets before the settlement of debts. While some of the Lebanese sources refer to the maxim of "no inheritance before the payment of debts" it was accepted by both experts that this phrase was not to be read literally. Instead it indicates that the heir is personally liable for the deceased's debts within the limits of what he/she has received by way of inheritance. It does not (as might have been thought) refer to a sequential process of payment of debts followed by the distribution of assets. On the contrary, the inheritance is automatic and immediate upon death. There is thus no process for the payment of the debts before the inheritance vests in the heirs, and the heirs have full ownership rights in respect of the shares received by them immediately, and therefore before the debts have been paid.
78. Against this background, in my judgment, the judge was correct to conclude that the claims made in the JPC were not barred by Rule 160. Rule 160 is a jurisdictional rule directed to claims brought against a person in their character as a foreign administrator. The rationale of the rule is that the English court will not exercise a supervisory power over a foreign personal representative in respect of the duties arising out of his office. No claim is made against Mrs Safa in her capacity as a personal representative of Mr Safa. There is no relevant administration process taking place, and therefore there is no office or role of personal representative. There is nobody who has been appointed under a grant of probate or its equivalent in Lebanon. There is no person charged with the responsibility of ascertaining and paying the debts of Mr Safa in Lebanon or with then passing the assets to those entitled on inheritance. The succession to those assets has already occurred. Mrs Safa has been unconditionally entitled to the inheritance since her husband's death, and she has fallen under no obligation to ring-fence any assets or ascertain Mr Safa's creditors before she can enjoy them fully. Any claim against her is being made in her personal capacity, not a representative one.
79. Furthermore, the broadly-drawn distinction between administration and succession described by Newey LJ in *Viegas* (a case concerning choice of law) presupposes a sequence, under which assets are collected in and debts paid (administration) and "the distribution of assets after that" (succession). The distinction cannot readily be mapped on to a legal system under which succession to the assets and liabilities of the deceased is immediate and automatic upon death. If it makes sense to speak of administration at all in such a case, the process of administration was automatic and instantaneous, with succession having already occurred.

80. But the more basic issue with Mrs Safa's challenge under the jurisdictional rule contained in Rule 160 is that there is no claim against her in her capacity as a personal representative; the claim against her is personal and against her in her own capacity. There is therefore no risk of interference with an administrative process properly subject to the jurisdiction of another supervising court or interference with the principles of comity.
81. I also agree with Mr Keller's submission that *Achilopoulos* does not assist. It was not concerned with jurisdiction. In that case there was an ancillary administration here in relation to English assets. The question was what should happen to those assets. On the evidence before the court the judge concluded that the deceased's heirs were fixed with rights and duties corresponding to those of an executor or administrator under English law, including the payment of the debts. The evidence in the present case is not to the same effect.
82. For these reasons I consider that the judge was correct to reject the challenge based on *Dicey* Rule 160. There is a serious issue to be tried.

The gateways

83. The Republic relied first on gateway (3). For the reasons already given I am satisfied that there is a real issue between the Republic and Mr Safa which it is reasonable for the court to try, namely his underlying liability to the Republic. The question is therefore whether Mrs Safa "is a necessary or proper party to that claim".
84. In *Altimo* at [87] Lord Collins said that:
- "... the question whether D2 is a proper party is answered by asking: "Supposing both parties had been within the jurisdiction would they both have been proper parties to the action?": *Massey v Heynes & Co* (1888) 21 QBD 330 at 338, per Lord Esher MR. D2 will be a proper party if the claims against D1 and D2 involve one investigation: *Massey v Heynes & Co* at 338, per Lindley LJ; applied in *Petroleo Brasileiro SA v Mellitus Shipping Inc (The Baltic Flame)* [2001] EWCA Civ 418, [2001] 1 Lloyd's Rep 203, at [33] and in *Carvill America Inc v Camperdown UK Ltd* [2005] EWCA Civ 645, [2005] 2 Lloyd's Rep 457, at [48], where Clarke LJ also used, or approved, in this connection the expressions "closely bound up" and "a common thread": at [46], [49].
85. Mr Howe emphasised the words "that claim". He argued that the claim against Mr Safa was different from that now sought to be raised against Mrs Safa in the JPC. The existing claim was concerned with Mr Safa's historic conduct. The claims in the JPC arose from the death of Mr Safa and the alleged succession of Mrs Safa to his liabilities. There is no suggestion that Mrs Safa had any involvement in any of Mr Safa's conduct. There is no common thread or single investigation and the elements of the claim are not closely bound up with the existing claims.
86. Mr Howe also relied on *Eurasia Sports Ltd v Tsai* [2018] EWCA Civ 1742; [2018] 1 WLR 6089 at [46], where Floyd LJ, in comparing the gateways at (3) and (4A) observed that:

“The necessary or proper party gateway is concerned with adding additional parties to a given action, whereas the 4A gateway is concerned with adding additional claims to a claim against a given party.”

87. Mr Keller submitted that since the claim against Mrs Safa as heir depends on establishing the liability of Mr Safa to the Republic, the claim against Mrs Safa is sufficiently closely bound up with the existing claims to justify joinder. He submitted that the Republic had established a good arguable case that the claim fell within gateway (3).
88. In my judgment the Republic’s submissions are to be preferred. The liability of Mr Safa to the Republic is an essential ingredient of the Republic’s claim against Mrs Safa. This is a sufficient common thread or close connection. It is true that the claim against Mrs Safa requires the determination of some independent issues of Lebanese law and will require further evidence. However, it appears to me that these issues are sufficiently bound up with the existing claim to justify the joinder of Mrs Safa as a proper party.
89. This conclusion is supported by revisiting paragraph 10.4 of the JPC. As Mr Keller explained, the Republic is essentially seeking a declaratory judgment that Mrs Safa is liable in principle as the successor of Mr Safa. The Republic is not seeking a judgment against Mrs Safa for a specific sum. That would potentially involve the valuation of the inheritance, since the value of the inheritance is one of the limits on the heir’s personal liability. Equally the Republic is not seeking any order as to the priority of claims against Mrs Safa in respect of her inheritance. Nor is it seeking an order for the payment of any given assets, whether in Lebanon or elsewhere. Had those issues been in play I would have found attraction in the argument that the substance of the new claims against Mrs Safa was removed from the existing ones against Mr Safa such that the common thread of his liability would have been insufficient to justify joinder. As it is, in my judgment the additional issue raised by paragraph 10.4 of the JPC (which is essentially whether an heir has succeeded in principle to the underlying liability alleged in the proceedings) is sufficiently closely related to the existing issue (whether Mr Safa is liable) as to constitute a proper basis for joinder.
90. The Republic also relied on gateways (6), (9) and (16). It appears that it also relied on gateway (4A) but nothing more was said about that on the appeal. Gateway (6) covers claims in respect of a contract. Gateway (9) covers claims in tort. Gateway (16) covers a claim made for restitution. The judge concluded in [42] that the claim against Mrs Safa was the same as the claim against Mr Safa, and for that reason the same gateways apply, on the basis that she was the successor to liabilities of Mr Safa, including any liabilities the subject of the claim.
91. We heard little argument on these additional gateways and the judgment contains little reasoning about them. In the light of my decision concerning gateway (3) I shall express my conclusions on these other gateways briefly.
92. Mr Howe submitted that there was no suggestion in the JPC that Mrs Safa had had any involvement in any of the acts or conduct on which the Republic relied against Mr Safa in the existing action. Taking the contract head, for instance, she had had no involvement in any of the contracts underlying the claims made by the Republic against Mr Safa. He made similar points about the tort and restitution gateways. Mr Howe said

that the gist of the claims raised by the pleading in the JPC was a claim for the application of the laws of Lebanon to Mrs Safa, as heir, for the debts of Mr Safa, and they were not claims in tort, in respect of a contract or for restitution.

93. Mr Keller said that the judge was right. He accepted that the JPC did not make any allegations concerning the conduct or actions of Mrs Safa. He accepted that the underlying claims had not changed. He submitted that since the causes of action against Mr Safa were an essential element of the claims on the Substantive Basis, and that the JPC sought an order that Mrs Safa, as successor, was liable in respect of those causes of action, there was a good arguable case that the relevant gateways were satisfied.
94. As I have said we heard very little argument. However, I consider that the judge was right in relation to gateways (6), (9) and (16). Take gateway (9) as an example. The Republic claims against Mr Safa in tort. The judge held that the tort gateway was satisfied as against Mr Safa; and there was no challenge on this appeal to the judge's conclusion. Under the JPC the Republic pleads (by incorporation of the existing Particulars of Claim) the alleged acts and conduct of Mr Safa giving rise to the tort claim. It also pleads that Mrs Safa is liable as successor to the liabilities of Mr Safa. While there are additional elements to those found in the original pleading (namely the legal basis on which it is said Mrs Safa has succeeded to Mr Safa's liabilities), the underlying claim in tort is an essential element of the pleading. Moreover, there is nothing in gateway (9) which requires that any particular defendant must have committed the acts or conduct of which complaint is made. The criteria in gateway (9) are that damage was or will be sustained within the jurisdiction or damage has resulted from an act committed within the jurisdiction or the claim is governed by English law. These criteria do not require the particular defendant sought to be served out of the jurisdiction to have committed any tortious acts. Since there is a good arguable case that Mrs Safa has indeed succeeded to the liabilities of Mr Safa, I am satisfied that there is a good arguable case that the claim falls within the gateway.
95. Similar points may be made in respect of gateway (6). The criterion is that the claim is made in respect of a contract having certain features. There is nothing in that list of features that requires the relevant defendant to be a party to the contract or to have any involvement in the formation or performance of the contract. Again, in my judgment, on the assumption that the original claim against Mr Safa fell within the gateway, there is a good arguable case that the claim made against Mrs Safa as successor to Mr Safa in the JPC also comes within the gateway. No challenge to that assumption was made on the appeal.
96. The same considerations apply to gateway (16). Again, on the assumption, which was not challenged on the appeal, that there was a good arguable case that the gateway was satisfied for the claim against Mr Safa, in my judgment there is a good arguable case that it is also satisfied for the additional claim against Mrs Safa as his successor.
97. As with gateway (3), the conclusions I have reached concerning gateways (6), (9) and (16) have been strongly influenced by the nature of the issues raised by paragraph 10.4 of the JPC (see [88] above). The Republic is not seeking a judgment against Mrs Safa for a specific sum (which would potentially require a valuation of the inheritance) or any order as to the priority of claims against Mrs Safa, or the payment of any given assets, whether in Lebanon or elsewhere. In my judgment this is a significant feature of the present case. In my judgment, paragraph 10.4 concerns the identification of the

person or persons (if any) who are liable for the acts and conduct (and therefore the liabilities) of Mr Safa in the light of his death, but the claims continue to be in tort, contract and restitution and to be in substance about his liabilities. The extra matter raised by the pleading is in essence the question of who is liable for the alleged torts etc.

98. I would have been more attracted by Mr Howe's arguments if the new claims had raised issues of valuation of assets and/or the priority of claims made by creditors against Mrs Safa arising from her inheritance. In such a case the additional set of issues would have gone well beyond the identification of the persons (if any) who had become liable for the acts and conduct of Mr Safa and would have extended into a new and independent realm of issues concerning the valuation of assets and the relationships between Mrs Safa and the class of creditors against her arising from her inheritance from Mr Safa, including issues of priority. But that is not this case.
99. For these reasons I am satisfied that there is a good arguable case that the claim on the Substantive Basis falls within one or more of the gateways.

Forum/discretion

100. The third *Altimo* condition is that the claimant must satisfy the court that, in all the circumstances, England and Wales is clearly or distinctly the appropriate forum for the trial of the dispute, and that the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. The principles about appropriate forum are well-known and need not be repeated (see *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460, [1986] 3 WLR 972).
101. The judge addressed this issue at [57] to [66] of the judgment. He noted Mrs Safa's submission that there would be issues of Lebanese law but said that it was not clear what the issues would be and that much of the Lebanese law appeared reasonably clear. He did not accept the argument that the English court was being asked to carry out the entire administration of the estate. He said at [61] that he saw "the present effort by Mozambique as enabling the English Court in the circumstances described to complete its work in light of the sad development of Mr Safa's death. As things stand, I regard it as unsuitable and unjust that the English Court should leave matters open and unfinished."
102. He noted at [62] that it was not clear how there could be any proceedings in Lebanon to determine in respect of the conduct of Mr Safa and which are addressed in the Main Judgment. He also took account in [63] of the risk that, unless the heirs were parties, any judgment which was obtained may not be enforceable in Lebanon. He also pointed out in [64] that, absent joinder, there was a risk of inconsistent judgments concerning the liability of Mr Safa to the Republic. In [65] he concluded that it was positively important and in accordance with the overriding objective that this court continues as the forum for the proceedings even if this latest stage involves considerations of Lebanese law.
103. Mr Holden for Mrs Safa contended that the judge's decision on forum on the Substantive Basis could not properly stand. He accepted that the decision was an evaluative one but said that judge's conclusion was flawed because it ignored the need for the court to determine potentially complex and disputed issues of Lebanese law.

104. Mr Holden relied on the well-known statement of Lord Mance in *VTB Capital plc v Nutritek International Corp* [2013] UKSC 5, [2013] 2 WLR 398 at [46]:

“... it is generally preferable, other things being equal, that a case should be tried in the country whose law applies. However, that factor is of particular force if issues of law are likely to be important and if there is evidence of relevant differences in the legal principles or rules applicable to such issues in the two countries in contention as the appropriate forum”.

105. We were also referred to *Pescatore v Valentino* [2021] EWHC 1953 (Ch), in which HHJ Matthews said at [47]:

“[w]hat my understanding of the many differences in civil law and common law property and inheritance systems tells me above everything else is the importance of not trying to find analogies, let alone equivalents, in one’s own system for what happens in another, and accordingly the greater value of issues of property and inheritance law being decided by judges in the relevant systems, rather than in foreign ones.”

106. Mr Holden also pointed out that none of the parties to the issues raised by paragraph 10.4 of the JPC were based within the jurisdiction.

107. Mr Keller submitted that the judge had reached an evaluative conclusion that England was clearly or distinctly the appropriate forum. The judge expressly took account of the need for the English court to determine issues governed by the laws of Lebanon. He was aware of where the parties were based. The judge properly concluded that it was natural for this court to consider that it should complete the task it had undertaken. The judge also properly took into account the risk of inconsistent judgments and the possibility that the relevant issues might not be capable of adjudication in Lebanon. Mr Keller said that this court was only entitled to interfere with the judge’s evaluative conclusion on well recognised grounds of taking account of irrelevant factors, ignoring relevant ones or reaching a conclusion outside the range of rationally available ones.

108. As noted above, Mr Keller also confirmed that the issues which the Republic invited the court to determine on the Substantive Basis had a limited scope. The Republic was not seeking any order for the payment of any specific assets to it; nor was it asking the English court to determine the value of Mrs Safa’s inheritance from Mr Safa; nor was it asking the English court to determine any issues of priorities between the Republic and Mr Safa’s other creditors. He explained that the Republic was asking the English court to determine whether Mrs Safa was liable in principle to the Republic in respect of Mr Safa’s liabilities to the Republic.

109. On the basis of this confirmation, in my judgment the appeal against the judge’s conclusions on the issue of forum should be rejected, for the following reasons.

110. The exercise of determining the appropriate forum is an evaluative one on the facts. This court will only interfere with the decision of a judge on issues of forum where it is shown that the judge has ignored relevant factors or taken irrelevant ones into account or has reached a decision outside the rationally available range. The appellate court

should be slow to interfere (see *VTB Capital plc v Nutritek International Corp* [2013] UKSC 5, [2013] 2 AC 337 at [97] and [156]).

111. Mrs Safa's principal argument in relation to forum was that the English court would be required to determine issues of Lebanese law of inheritance. As a general principle the fact that a claim is governed by foreign law is a factor in favour of the relevant foreign forum. That is well-established. Mr Holden, relying on *Pescatore*, said that there was a particular premium on issues of inheritance being determined in the home courts of the relevant foreign law. There is no doubt force in that proposition as generalisation, but the weight to be given to the point will depend on the nature of the issues which have been identified as likely to arise. Suppose for instance that in the present case the English court were to be asked to decide the priorities of claimants in respect of Mr Safa's inheritance. This might involve different categories of claims and issues of valuation. It is easy to see that in such a case the issues would be far better determined in the courts of the law applicable to those issues.
112. However, the Republic confirmed to the judge, and again on this appeal, that it did not seek the resolution of any issues of priority or valuation or indeed payment from any specific assets. Instead, it seeks adjudication of the logically prior issue of whether Mrs Safa is liable by succession for such liabilities as Mr Safa has to the Republic. As the judge explained the parties have already served Lebanese law evidence on this issue and any differences between the parties are comparatively limited. There appear to be two outstanding sub-issues: whether an uncrystallised liability in tort is capable of passing to an heir on the death of an alleged tortfeasor; and whether a debt arising from criminal conduct of a deceased person is capable of passing to the heir.
113. I agree with the judge's conclusions that the resolution of these issues by the English court should not be complex or difficult. The judges of the Commercial Court have considerable experience of determining contested foreign legal issues. The parties have already served expert evidence on the potential issues. The parties' English legal teams have educated themselves about them. The issues appear to be short and self-contained. Furthermore, given the procedural history, the English court, having given the Main Judgment, will have a grounded appreciation of the nature and character of Mr Safa's liability to the Republic, which is likely to assist on the second of the two issues that have been identified. The expert evidence that has been served to date suggests that the issue may turn in part on the characterisation of Mr Safa's conduct as criminal or otherwise, which the English court is well placed, indeed arguably better placed than another court, to undertake.
114. There is a further factor which, on the judge's approach, favoured England as the appropriate forum. Although in his judgment he did not have the advantage of the decision in *PIFSS CA* and the distinction between the two bases on which service out was sought, the judge nonetheless held that it was significant that without service out there would have been a risk that the issue of Mr Safa's liability to the Republic might be at large in further proceedings. This was a factor which, as the judge said, favoured joinder on the Enforcement Basis, and indeed Mrs Safa accepted that England is the appropriate forum on that part of the claim. But once service out is permitted on the Enforcement Basis it follows that Mrs Safa will be party to at least some proceedings here and will doubtless instruct her legal team for that purpose. Conversely, if the further issues which arise on the Substantive Basis were to be tried in Lebanon new

proceedings would be required and the Republic would have to instruct lawyers there. There would therefore be unnecessary duplication of costs and resources.

115. In short, I am not satisfied that the judge gave insufficient weight to the fact that, if the heirs were joined, some issues of Lebanese law would require determination. In any event, the weighing of factors was primarily for the judge, and I am satisfied that his overall conclusion on forum was open to him.

Disposal

116. For these reasons, I would dismiss the appeal.

Lady Justice Whipple:

117. I agree.

Lord Justice Males:

118. I also agree.