

Neutral Citation Number: **[2026] EWHC 1850 (Comm)**

Case No: CL-2019-000125

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 July 2026

Before:

MR JUSTICE PICKEN

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BETWEEN:

SOPRIM CONSTRUCTION SARL	**Claimant Applicant (CO Application)**
- and -	
THE REPUBLIC OF DJIBOUTI	**Defendant Respondent (CO Application)**
- and -	
(1) DP WORLD DJIBOUTI FZCO	
(2) DORALEH CONTAINER TERMINAL SA	**Objecting Parties Respondent (CO Application)**

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Mr Tim Akkouh KC, Mr Edward Mordaunt and Ms Ellen Tims (instructed by **Harcus Parker Ltd**) for the **Claimant**.
Mr Niranjan Venkatesan KC and Mr Jamil Mustafa (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Objecting Parties**.

Hearing dates: 15-22 June 2026
Judgment provided in draft: 16 July 2026.

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APPROVED JUDGMENT

Introduction

1. This judgment concerns a number of applications brought by the Claimant, Soprim Construction SARL ('Soprim'), to enforce arbitral awards against the Defendant, the Republic of Djibouti (the 'Republic'), by reference to funds held in London bank accounts in the name of Doraleh Container Terminal SA ('DCT').

2. The judgment also addresses a setting aside application brought by the Objecting Parties, DP World Djibouti FZCO ('DPW') and DCT.

3. Soprim has obtained arbitral awards against the Republic in excess of US$100 million (together with interest and costs), which remain unsatisfied. DPW and DCT have also obtained substantial arbitral awards against the Republic totalling c.US$650 million, likewise unpaid.

4. The present applications are directed at approximately US$41–42 million held in accounts at Standard Chartered Bank in London (the 'SCB Accounts'), which stand in the name of DCT.

5. Soprim does not have any judgment against DCT directly.

6. Soprim's case, in summary, is that the monies in the SCB Accounts are, in truth, beneficially owned by the Republic, such that they are amenable to enforcement. The Objecting Parties dispute that contention and maintain that the funds belong to DCT and are not available to satisfy liabilities of the Republic.

The Doraleh Container Terminal and its structure

7. The dispute arises out of the development and operation of the Doraleh Container Terminal (the 'Terminal') in Djibouti.

8. Djibouti is a small country of just over 1 million people situated on the horn of Africa. It occupies a strategically significant position at the entrance to the Red Sea and the Gulf of Aden, and its port infrastructure has long been of economic importance as this area represents one of the busiest shipping lanes in the world.

9. In the early 2000s, the Republic entered into arrangements with entities within the DP World group to develop a modern container terminal to replace or supplement existing port facilities.

10. On 21 June 2006, DCT was incorporated as the vehicle for the construction and operation of the Terminal.

11. A concession agreement dated 30 October 2006 (the '2006 CA') granted DCT the exclusive right to operate the Terminal for a substantial period. It is important to note that Mr Abdourahman Boreh, who acts as Soprim's General Manager, handled the negotiations for the Republic with DPW and DCT. The 2006 CA is governed by English law and was ratified by the Djiboutian Parliament on 18 December 2006.

12. On 22 May 2007, both DCT's Articles of Association and a joint venture agreement (the 'JVA') were entered into between DCT, DPW and a Djiboutian port entity (initially PAID, later PDSA).

13. Under these arrangements, which were envisaged to operate for 30-50 years, PDSA held approximately two-thirds of the economic interest and DPW held approximately one-third.

14. Notwithstanding this shareholding position, DPW exercised significant management control over DCT pursuant to contractual arrangements, including: the right to appoint a majority of directors to DCT's board (Clause 7.1); determinative voting rights on various matters, identified as *"Reserved Matters"* which included the appointment of an administrator or liquidator over DCT (Clause 11.1); and the exclusive right to manage the Terminal without interference by the Republic (Clause 5.2).

15. The Terminal was financed, in part, by international lenders, who had, as a condition of the funding, a requirement that the Terminal would be under the management and control of DPW, not the Republic.

16. The Terminal commenced operations in or around 2008 and by all accounts was commercially successful, generating substantial revenues and profits with turnover of c.US$160 million a year. The Republic has previously accepted that its investment in the Terminal was repaid in just four years.

17. DCT declared very substantial dividends from 2009 onwards, totalling US$ 310,274,920 in the case of PDSA and US$155,184,006 in the case of DPW.

The SCB Accounts

18. It was contemplated from an early stage that revenues generated by the Terminal would be paid into offshore bank accounts (Clause 7.6.1 of the 2006 CA). This was given effect to on 17 December 2007 when DCT's board ratified a mandate confirming that: SCB would act as DCT's bankers in the UK (paragraph 1); SCB could only act on any payment instructions from DCT if signed by certain Authorised Signatories specified in the mandate (paragraphs 2 and 5); and the mandate was (and is) governed by English law (paragraph 9).

19. The SCB Accounts are held in DCT's name at Standard Chartered Bank in London. There are six separate accounts, holding, as previously mentioned, a total of c.US$41.6 million, although most of the funds are held on two fixed deposits (US$29.9 million and US$9.1 million respectively) which matured on 11 June 2026.

20. It is common ground that the funds in the SCB Accounts derive from the operation of the Terminal.

Mr Boreh and Soprim

21. Soprim was incorporated in 2004 in Djibouti and, although it was not a party to the 2006 CA, it became heavily involved in the construction of the Terminal by way of a sub-contract entered into on 13 December 2006.

22. Mr Boreh was at one stage closely associated with the President of Djibouti Mr Ismail Omar Guelleh.

23. The relationship between Mr Boreh and the President deteriorated in or about 2007–2008 after Mr Boreh refused to support the President altering the constitution of Djibouti to allow him to run for a third term as president. Mr Boreh refused to build mansions for three of the President's children and the First Lady.

24. Soprim alleges that this deterioration led to a sustained campaign by the Republic which resulted in the destruction of its business. Sir Gordon Langley, in arbitration proceedings which I describe in the next paragraph, characterised this as "*persecution*", a description which he recognised was "*dramatic*" but which he regarded as being "*fully justified by the evidence*". These included: issuing ever-increasing unjustified tax demands to Soprim and temporarily seizing Soprim's equipment, followed by removing that equipment from the Terminal, taking it to a police facility and, then, selling it at an undervalue without accounting to Soprim for the sale proceeds. Other steps taken involved instituting unjustified legal proceedings against Soprim and those with whom it was doing business; suspending the licence of one of Mr Boreh's businesses on false accusations of smuggling cigarettes; imprisoning and/or deporting three of Mr Boreh's associates (one of whom was Soprim's Chief Accountant); convicting Mr Boreh and an associate on charges of embezzlement of which they were unaware; and convicting Mr Boreh on terrorism charges in his absence and on the basis of evidence that was demonstrably false and concocted.

25. On 10 July 2012, in response to the Republic's actions, Soprim commenced LCIA arbitration proceedings against the Republic (the 'Langley Arbitration'). However, a few months later, the Republic commenced proceedings in this jurisdiction, asserting claims against Mr Boreh alleging that, whilst negotiating the 2006 CA, he had accepted bribes from DPW and DCT in order to give them favourable terms. This resulted in the staying of the Langley Arbitration.

26. Subsequently, on 11 September 2013, the Republic obtained a freezing order and a proprietary injunction against Mr Boreh. This was ultimately discharged by Flaux J (as he then was) in March 2015. He made findings that the Court had been deliberately misled by the Republic's evidence, in particular regarding the terrorism conviction, observing as follows at [245]-[246]:

> *"... Djibouti are not blameless ingenues here. The strategy of concealment from the courts that the conviction was unsafe and the evidence upon which it was based ... was developed at the meeting at Kroll on 27 August 2013 attended by [Djibouti representatives] and ... it is to be inferred that they agreed with this strategy. ... There are other aspects of Djibouti's conduct which can only be described as reprehensible and which inevitably bear upon the question whether it would be appropriate to grant a fresh freezing injunction: (i) their continued use of my judgment internationally notwithstanding that they knew it was based on a misapprehension; (ii) the so-called*

evidence that they have produced of a grenade attack… (iii) the continued reliance upon the unsafe conviction and the unreliable confession in their criminal complaint in Dubai in June 2014, after their extradition request had failed and (iv) the thoroughly improper pressure put upon Mr Boreh by Kroll on behalf of Djibouti to settle the litigation. These are four particularly egregious examples of reprehensible conduct, all of which fall a long way short of the standards of behaviour which the court is entitled to expect of a sovereign state."

27. A trial, then, took place between October and December 2015, again before Flaux J, who, on 23 November 2015, queried and made criticism of the fact that Mr Boreh's terrorism had not yet been quashed, saying this:

"But the fact of the matter is … being blunt about it, that [the Republic] is ultimately controlled by one man, and that one man could actually have this conviction for terrorism overturned tomorrow if he wished to. I don't have any doubt about that. And the fact that that has not happened and that we are still having prevarication on the topic is unimpressive, to say the least …".

28. Shortly afterwards and plainly in response to Flaux J's remarks, the conviction was quashed on 5 December 2015.

29. Some months after that, on 2 March 2016, the Republic's claims against Mr Boreh were dismissed, with the Republic being ordered to pay indemnity costs. In his judgment Flaux J, made a number of criticisms of the actions undertaken by the Republic (at [9], [25]-[27] and [859]):

"…All important decisions to do with the new port facilities were clearly taken by the President personally. This is only to be expected, since it is he who is the sole effective ruler of the Republic and who dictates Government policy. It was quite clear that all the witnesses called by the Republic at trial, all of whom were present or former Government ministers or high-ranking civil servants, were in fear of the President and were not prepared to say anything in their oral evidence which might contradict the position which the President has adopted towards Mr Boreh in this litigation, of which the President is clearly in ultimate control.

… thirteen claims in all … were abandoned either during the claimants' opening or during the trial or in the claimants' closing submissions. In so far as those claims were ever quantified, they exceeded U.S. $35 million. … Like counsel, I cannot recollect a case in which so many claims (let alone ones involving allegations of dishonesty) have been pursued with such vigour and then abandoned at trial. … I am left with the distinct impression that the Republic was intent on pursuing a scattergun approach against Mr Boreh of throwing as much mud as it could in the hope that something would stick. …

There is no legitimate explanation for the way in which the Government has conducted itself. The most likely explanation is that this was all politically motivated and designed to ruin Mr Boreh."

30. In early 2017, the Langley Arbitration resumed, and a peremptory order was made in Soprim's favour in relation to a £750,000 costs award on 27 February 2017. At the same time, the Republic was ordered to provide security for Soprim's claim in the

amount of US$20 million. This obligation was made subject to a peremptory order on 9 June 2017, but neither sum was paid.

31. On 31 July 2017, the Republic's solicitors informed the arbitrator that they were no longer instructed and that the Republic did not intend to participate further in the Langley Arbitration.

32. Between 22–28 March 2018, a hearing was held to determine Soprim's claim with a number of factual witnesses and valuation experts called and detailed opening and closing submissions being made.

33. On 17 May 2018, the Partial Final Award was published. The Republic was found liable to pay Soprim US$56 million for the value of its destroyed business, plus interest.

34. On 6 July 2018, in a further Partial Final Award, the Republic was required to pay c.US$28 million in interest (and continuing interest at the rate of 1% over US Prime) and c.£4.15 million in costs.

35. There has been no attempt to challenge these Awards, nor has any sum been paid in satisfaction of them.

Deterioration of relations with DPW

36. From around 2012 onwards, relations between the Republic and DPW deteriorated.

37. On 30 December 2012, it was announced that the Republic had entered into a Share Purchase Arrangement with China Merchants Holdings (Djibouti) FZE, a subsidiary of China Merchants Holdings (International) Company Limited ('China Merchants'), a Hong Kong based competitor of DPW. These arrangements provided that PAID would be converted into a private company limited by shares named PDSA and that China Merchants would have a 23.5% stake in it - in effect, acquiring an indirect stake of c.15% in DCT, in exchange for US$185 million.

38. In July 2014, the Republic commenced an LCIA arbitration (the 'Aikens Arbitration') against DPW and DCT seeking to rescind the 2006 CA on the basis that, so it was alleged, it was only concluded due to the bribery of Mr Boreh.

39. In February 2017, the Aikens Arbitration issued an award dismissing the Republic's claim and awarding DPW indemnity costs.

The Soprim worldwide freezing order

40. In May 2017, Mr Boreh received information that c.US$200 million of profits from the Terminal had been accumulated in the SCB Accounts, that a block on the payment of dividends by DCT had recently been lifted, and that it was possible that sums would be paid directly to a Djibouti-based account in the name of the Republic.

41. On 28 June 2017, Soprim obtained a worldwide freezing order against the Republic from Leggatt J (as he then was) for the purpose of supporting the (then still ongoing) Langley Arbitration.

42. The order related to the Republic's assets up to the value of US$39 million and extended to the SCB Accounts to the extent that "*the [Republic] has the right to deal with those funds or any part of those funds as if they were its own*". Additionally, the order required the Republic to give disclosure of its assets in standard form augmented to require, *inter alia*, the provision of information "*about any dividend royalty or other sum due from DCT SA or any other person where the source of any such payment is the SCB Accounts, or any other account in England and Wales*". The Republic has never complied with these disclosure obligations.

43. Soprim's reason for extending the worldwide freezing order to the SCB Accounts was that they contained funds from the Terminal's operations representing unpaid dividends and that a dividend was due to PDSA which, if paid, would ultimately be received by the Republic.

44. The return date for the injunction was 29 August 2017. The hearing took place before Knowles J. Neither the Republic nor PDSA were in attendance; instead, it was DCT that opposed the application.

45. Knowles J upheld the injunction (with some minor alterations) stating at [21] of his judgment that the arguments for lifting it presented by DCT were "*for PDSA first and foremost to argue rather than DCT*" and at [25] that "*I do propose to control what I see as the possible movement of funds towards the Republic*".

46. The injunction has remained in force ever since.

Seizure of the Terminal

47. On 8 November 2017, the Republic enacted Law No. 202, enabling it to renegotiate or terminate contracts relating to strategic infrastructure which it deemed to be against the "*fundamental interests*" of the Republic.

48. The Republic, then, used this legislation to demand the renegotiation of the 2006 CA, which is the only contract in respect of which Law No. 202 has ever been invoked.

49. Neither DPW nor DCT agreed to renegotiation of the 2006 CA and, on 18 February 2018, DCT resolved to commence legal proceedings to enforce its rights under the 2006 CA. DPW's nominated directors voted in favour of such action, whilst PDSA's representative, Mr Aboubaker Omar Hadi, voted against.

50. On 20 February 2018, DPW and DCT, represented by Quinn Emanuel Urquhart & Sullivan UK LLP ('Quinn Emanuel'), commenced an LCIA arbitration (the 'Douglas Arbitration') to secure confirmation that the original 2006 CA was fully in effect despite the Republic's threats to terminate it.

51. On 22 February 2018, the Republic responded by physically assuming control of the Terminal, expelling DPW's expatriate personnel from Djibouti and cancelling their work permits.

52. The President also issued a number of decrees which purported to terminate the concession agreements and to transfer DCT's assets and the management of the

Terminal to a new State-owned company called Société de Gestion du Terminal à Conteneur de Doraleh ('SGTD').

53. Specifically, the decrees were Decree 85 and Decree 87. Art 4 of Decree 85 provided that "*In order to preserve the continuity of public service … the management of the Doraleh container terminal is taken over by the State and transferred to the [SGTD]. Consequently all of the company's assets, contracts and personnel required to operate the … terminal, … are automatically transferred to this new State company as of the [the date of signature]*." Contravention of Decree 85 was enforced by penal sanctions: see Art 5.

54. As for Decree 87, Art 4 provided that "*All of the corporate assets of the mixed economy company Doraleh Container Terminal are transferred by the State to the [SGTD]*"

55. On 1 March 2018, a further Presidential decree was issued (Decree 97), by which the President purported to transfer the land that comprises the Terminal "*to the State*".

56. The legality of those steps has been vigorously contested, with findings adverse to the Republic. On 31 July 2018, the Douglas Arbitration concluded with an award confirming that the 2006 CA was valid and binding notwithstanding these attempts to undermine it.

Further English injunction proceedings

57. On 28 July 2018, PDSA purported to terminate the JVA on the alleged basis that DPW had failed to act in the best interests of DCT.

58. Shortly afterwards, on 8 August 2018, PDSA notified DPW that it had called for a shareholders' meeting of DCT on 9 September 2018, indicating an intention to remove the two DCT directors appointed by DPW and to appoint two directors nominated by PDSA in their place, despite this being in contravention of the JVA.

59. On 28 August 2018, DPW applied *ex parte* to the Court under section 44 of the Arbitration Act 1996 for an interim injunction to preserve the JVA and DPW's control of DCT.

60. On 31 August 2018, Bryan J granted the injunction sought. Specifically, the injunction restrained PDSA from: acting as though the JVA was terminated; acting on *"Reserved Matters"* as defined in the JVA; voting to remove DPW's nominated directors from DCT's board; and giving instructions to SCB in relation to the SCB Account other than through "*the instructions of the presently authorised signatories"*.

61. On 5 September 2018, DPW commenced another arbitration against PDSA under the JVA (the 'Scherer Arbitration'), challenging its purported termination and the removal of the DPW directors from DCT's board.

62. On 9 September 2018, the President issued an ordinance, which purported to transfer of all of PDSA's shares in DCT to the Republic with the decree stating:

"*The ownership of the shares held by … (PDSA) in the capital of … DCT … is transferred to the State to ensure the protection of the fundamental interests of the nation*".

63. Then, on 14 September 2018, Teare J expanded Bryan J's injunction to PDSA's *"Affiliates"* as defined in the JVA and Articles of Association. He also gave a further injunction restraining the transfer of PDSA's shares in DCT unless the transferee signed a deed of adherence as required by Article 11.7 of DCT's Articles.

64. The Objecting Parties contend that subsequent actions taken by the Republic were in breach of those injunctions; Soprim disputes the legal consequences of that contention.

Appointment of an administrator

65. On 26 September 2018, the Republic applied to the Djiboutian Court of First Instance (the 'Djibouti CFI') for the appointment of an interim administrator over DCT, citing *"tensions"* between the shareholders that required the appointment of an interim administrator.

66. This resulted in the appointment of Ms Chantal Tadoral as DCT's administrator on 27 September 2018. Ms Tadoral has close links to the Government of Djibouti and a close relationship with the First Lady. The appointment was made without notice to DPW or DCT's management.

67. On 4 October 2018, DCT challenged Ms Tadoral's appointment in the Djibouti CFI at an *inter partes* hearing, a challenge which was dismissed on 15 November 2018.

68. On 19 November 2018, Ms Tadoral wrote to the Aikens Tribunal, purportedly on behalf of DCT, requesting a *"stay of the arbitration pending a final and binding decision in Djibouti regarding the governance and control of DCT"*. The Tribunal refused this request.

69. Following this, several arbitration awards were made in DPW and DCT's favour. Thus, on 19 November 2018 the Douglas Tribunal ordered the Republic not to take any steps that interfere with DCT's ability to pursue its claims in the Douglas Arbitration; on 29 March 2019 and 1 July 2019, respectively, the Aikens Tribunal issued further awards awarding DCT c.US$485.7 million plus interest; on 10 January 2020, the Douglas Tribunal found that the Republic was in breach of the 2006 CA, ordering it to perform its obligations and restore DPW and DCT's rights and benefits under that agreement; on 7 July 2021, the Scherer Tribunal found that the JVA remained valid and binding and that the Republic's purported transfer of PDSA's shares breached the JVA; and, on 20 January 2022, the Douglas Tribunal issued a Partial Final Award holding that the Republic had failed to restore DCT and DPW's rights under the 2006 CA and awarding damages in the sum of US$200.8 million.

70. The Republic has paid nothing to DPW and DCT under any of these awards.

Appointment of a liquidator

71. On 16 October 2023, Ms Tadoral applied to the Djibouti CFI for the dissolution of DCT for 'just cause' and for the appointment of a liquidator.

72. On 20 December 2023, the Djibouti CFI handed down judgment (the 'Dissolution Judgment'), placing DCT into liquidation and appointing Mr Youssouf as its liquidator.

73. Neither DPW nor DCT's board of directors were notified of this hearing or the Dissolution Judgment. They only became aware of it when, on 11 March 2024, China Merchants, who became aware of it in circumstances which are unexplained, sought to amend its Authority Summons to rely upon it.

74. Again, DCT and DPW appealed, lodging an appeal to the Djibouti Court of Appeal on 24 April 2024. In that appeal, Ms Tadoral and the Republic alleged that the Dissolution Judgment was served on DPW on 27 December 2023 and, therefore, the time limit for appeal had expired on 28 March 2024.

75. On 11 December 2024, DPW filed its reply.

76. On the same date, the Djibouti Court of Appeal 'closed' the proceedings and said that it would, on 15 January 2025, deliver judgment.

77. On 18 December 2024, DPW's Djiboutian lawyers objected to this and sought an oral hearing.

78. On 15 January 2025, the Djibouti Court of Appeal reconvened and, without hearing DPW, listed the case on 22 January 2025 for judgment to be handed down.

79. On that date, the Djibouti Court of Appeal decided that there would be a hearing and ordered DPW's counsel to make submissions immediately. He declined to do so as he had no instructions from DPW and was not prepared to make oral submissions, the Djibouti Court of Appeal rejecting his request to set a date for oral proceedings and, instead 'closing' the proceedings once again, stating that judgment would be delivered on 5 February 2025.

80. Upon reconvening on this date, the Djibouti Court of Appeal did not hand down judgment, but instead allowed the Public Prosecutor to intervene.

81. This was done on 12 February 2025, the Public Prosecutor adopting the Republic and Ms Tadoral's position that the Dissolution Judgment had been served on DPW on 27 December 2023.

82. On 19 February 2025, DPW responded, maintaining its position that it had never been validly served.

83. The Djibouti Court of Appeal adjourned the case until 26 February 2025.

84. On 24 February 2025, without warning, the Public Prosecutor submitted new evidence in the form of correspondence from certain Djiboutian public entities (including the Ministry of Justice) relating to the service of the Dissolution Judgment.

85. On 26 February 2025, the Djibouti Court of Appeal dismissed DPW's appeal on the basis that it had been filed one day late, relying on the new evidence from the Public

Prosecutor to conclude that the service was effected on DPW on 23 January 2024. This contradicted both the Certificate of Non-Appeal and the position previously adopted by the Republic, Ms Tadoral and the Public Prosecutor themselves that the judgment had been served on 27 December 2023.

Proceedings in other jurisdictions

86. Questions concerning the authority of Quinn Emanuel to act on behalf of DCT have arisen in proceedings in the United States and Hong Kong.

87. On 14 September 2020, DCT filed a petition in the US (District of Columbia) to enforce the awards given in the Aikens Arbitration against the Republic,

88. On 27 January 2022, Ms Tadoral filed a declaration claiming that she *"was fully and exclusively authorized to direct DCT's affairs and exercise the former authority of DCT's board of directors"* and requesting the case be dismissed as the petition was filed in DCT's name without authority.

89. Ms Tadoral's request was rejected at first instance. The awards were, accordingly, confirmed. However, the Republic appealed and this decision was set aside, only for those proceedings subsequently to be settled.

90. On 20 August 2018, in Hong Kong, DCT (along with DPW) brought a claim against China Merchants on the basis that it had induced the Republic to breach the 2006 CA.

91. On 28 February 2023, China Merchants responded with a strike-out application, contending that DCT's solicitors, Deacons, had no authority to act following Ms Tadoral's appointment.

92. This application was ultimately heard before Mimmie Chan J in August 2025, with judgment being handed down on 17 December 2025. In that judgment, at [110]-[112], [116] and [138], Mimmie Chan J refused to recognise the appointment of Mr Youssouf on the basis that the Dissolution Judgment had been procured in breach of natural justice. Later, at [180], Mimmie Chan J recognised the appointment of Ms Tadoral, but left open the question of whether this was in breach of the injunctions granted by Bryan J and Teare J as this was not a matter to be dealt with by the Hong Kong court. She also, at [195] and [200], concluded that the effect of recognising Ms Tadoral's appointment was that the DPW directors had no authority to take any further step in the proceedings on DCT's behalf. Accordingly, China Merchants succeeded on its application and DCT's case was dismissed.

The interim charging order

93. On 21 March 2019, Soprim obtained permission from Teare J to enforce the Langley Arbitration awards as judgments or orders under section 66(1) of the Arbitration Act 1996.

94. Soprim served that order on the Republic via diplomatic channels on 15 July 2019.

95. On 26 February 2025, Soprim obtained an interim charging order from Dias J following a without notice application.

96. Dias J's order provided for a further hearing before a King's Bench Division Master on 9 June 2025 to decide if the interim charging order should be made final.

97. Aware that the control of DCT and its assets is a disputed point, Soprim gave notice to both DPW and the Republic of this hearing. Only DPW appeared at a hearing that took place on 9 June 2025 before Deputy Master Sabic KC.

98. Given that the Republic did not appear at that hearing, the Deputy Master made an order debarring the Republic from defending the charging order application. As for DPW, its application seeking to have the interim charging order struck out failed.

99. After judgment had been handed down refusing that strike-out application, counsel for DPW informed the Court that DPW's solicitors might, in due course, also be instructed by DCT. Deputy Master Sabic KC gave directions accordingly, with DPW and DCT subsequently, on 28 August 2025, filing a joint Defence and DCT filing its own Grounds of Objection which incorporated those previously lodged by DPW, but adding an extra ground of objection, namely that Soprim breached its duty of full and frank disclosure in the application before Dias J.

Events relating to the SCB Accounts

100. The SCB Accounts have, meanwhile, remained in London and have continued to hold funds derived from the Terminal's operations in the name of DCT.

101. On 13 May 2025, Mr Youssouf wrote to DPW indicating an intention to investigate and potentially repatriate the funds, requesting a voluntary contribution from DPW as a shareholder to cover the costs of steps to preserve DCT's assets, threatening to refer the matter to a judge in Djibouti if he did not receive a response in 72 hours.

102. On 23 May 2025, DPW (through Quinn Emanuel) responded to Mr Youssouf asking for any correspondence with SCB to be provided by return and pointing out that any attempts to interfere with the SCB Accounts would constitute a breach of the injunctions granted by Bryan J and Teare J.

103. On 25 May 2025, Mr Youssouf replied, requesting that both DPW and the Republic contribute to the protection of the interests of DCT since its assets were under threat from a third party (i.e. Soprim). He also emphasised that he had not initially been informed of the existence of the SCB Accounts before 4 April 2025 and that he had written to SCB to confirm the existence of such accounts.

104. In the same letter, he informed DPW that, since neither DPW nor the Republic had contributed, he had referred the matter to the President of the Djibouti CFI on 20 May 2025 subsequently writing to DPW to say that the Djibouti CFI had ordered DPW to contribute financially to defend DCT's interests and enclosing the Djibouti CFI's decision.

The issues

105. The central factual question, which arises against the background set out above, is whether DCT, acting through its administrator or liquidator (Ms Tadoral and/or Mr Youssouf), entered into an arrangement or understanding (the 'Agreement') by which

it agreed to hold the SCB Account funds on trust for the Republic. Soprim contends that such an arrangement is to be inferred from the Republic's control over DCT and the conduct of those acting on its behalf. The Objecting Parties contend that there is no evidence of any such agreement and that the facts are inconsistent with it.

106. There are, however, a considerable number of other issues which arise, including in relation to certain alternative cases that are advanced by Soprim.

107. In what follows, I shall endeavour to address each of these issues, albeit that, in the interests of economy, I will not necessarily cover each and every argument put forward. There were many arguments, often with several sub-strands; and the range of authorities was very considerable. I should, nonetheless, make it clear that I have taken into account all such arguments in arriving at my conclusions. I have also taken into account all of the various authorities, of which there were many, to which I was taken during the course of the trial.

Soprim's primary (trust) case

108. I start, then, with Soprim's primary trust case. This issue gives rise to a variety of sub-issues. These include what Mr Venkatesan KC, on the Objecting Parties' behalf, characterised as a *"threshold"* issue, namely whether Ms Tadoral and Mr Youssouf had authority to act on behalf of DCT in doing what Soprim allege they did, which, to reiterate, was to agree, on behalf of DCT, to hold the SCB accounts on behalf of the Republic.

109. That *"threshold"* issue entailed a submission that Ms Tadoral and Mr Youssouf cannot be regarded as having authority unless the foreign judgments by which they were appointed satisfy the rules for recognition under English law, and that the foreign judgments in question do not satisfy those rules. Mr Venkatesan explained in this regard that, since DCT is a legal person which can act only through natural persons, the question is whether Ms Tadoral and Mr Youssouf, as the relevant officeholders at the relevant times, had authority to act for DCT; if not, they could not, as a matter of law, have caused DCT to enter into the Agreement or do anything else. Accordingly, Mr Venkatesan submitted, if Soprim cannot establish that the officeholders have authority, its claims will fail even if all the facts it alleges are true.

110. Notwithstanding Mr Venkatesan's description of this as a *"threshold"* issue, and even though he was probably right to use this description, I prefer nonetheless, first, to deal with whether Soprim has established that there was the Agreement before then turning to the *"threshold"* issue since, as will appear, the *"threshold"* issue has a number of different aspects to it.

111. That said, there is another *"threshold"* issue which must be considered. This is whether, as Soprim contends, the Agreement is governed by English law or whether, as the Objecting Parties maintain, the proper law is Djiboutian/French law.

Applicable law

112. The choice of law rules for determining the proper law of a trust are found in the Hague Convention on the Law Applicable to Trusts and their Recognition (the 'Hague Convention'), incorporated into English law by the Recognition of Trusts Act 1987,

which removed the limitation to be found in Article 3 of the Convention confining its operation to trusts evidenced in writing.

113. Under the Convention, in the absence of an express choice of law, Article 7 provides:

"Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected. In ascertaining the law with which a trust is most closely connected reference shall be made in particular to –

(a) the place of administration of the trust designated by the settlor;

(b) the situs of the assets of the trust;

(c) the place of residence or business of the trustee;

(d) the objects of the trust and the places where they are to be fulfilled."

114. Mr Venkatesan submitted that, having regard to these factors whilst nonetheless bearing in mind that they are not exhaustive and the weight to be attributed to any one factor depends on the facts of the individual case, it is Djiboutian law that should be regarded as applicable because the alleged settlor is DCT, a Djiboutian company, the alleged bare trustee is also DCT and, if the trust arises because of the Agreement between the Republic and Ms Tadoral or Mr Youssouf, then, the place of administration of the trust is Djibouti.

115. I do not agree with Mr Venkatesan about this. On the contrary, I have concluded that the Agreement is subject not to Djiboutian law but to English law. I say this on the basis that it seems to me that Mr Akkouh KC was right when he submitted, on behalf of the Claimant, with Article 7(b) in mind, that the *situs* of the assets of the alleged trust should be regarded as being within the jurisdiction in view of the fact that the SCB Accounts are all in this jurisdiction.

116. I reject the submission made by Mr Venkatesan in this context that the *situs* of the SCB Accounts carries little weight because it is an intangible asset. Mr Venkatesan relied, for these purposes, on what is stated in *Dicey, Morris & Collins on the Conflict of Laws (16th Ed.)* at para. 29-022, as follows:

"The situs of the assets of the trust may deserve little weight: the movables included in a trust are usually intangible, e.g. stocks, shares and bonds; and the situs of an intangible movable is to some extent a fiction."

However, as Mr Akkouh noted, focusing on the period before Ms Tadoral's appointment, it is clear that, as Mr Akkouh put it, this was not a matter of chance: the accounts had different functions, with five of them having different names, namely "*Finance Service Revenue Account"*, "*Offshore Proceeds Account*", "*Offshore Operating Account*", "*Compensation Proceeds Account*", and "*Distribution Account"*. Mr Venkatesan suggested that the reason for this was to keep the monies out of the hands of the Republic. However, this does not meet Mr Akkouh's point, which was that the SCB Accounts were organised as they were *before* Ms Tadoral was appointed and they were thereafter maintained here.

117. Mr Venkatesan also submitted that, in any case, the choice to open the SCB Accounts in England in 2007 cannot have a bearing on the proper law of a trust which Soprim alleges arose in late 2018 at the earliest. Mr Venkatesan observed in this context that, in applying Article 7, the time at which the connection between the trust and the law is to be assessed is the time of creation of the alleged trust on the basis that a trust, like a contract, must have a proper law on the date of its constitution: see *Lewin on Trusts* (20th Ed.) at para. 12-087. This, again, however, somewhat misses Mr Akkouh's point, which was that, when the Agreement was (allegedly) entered into in 2018, the trust thereby (allegedly) created was in respect of assets (the SCB Accounts) which were, both then and thereafter, within the jurisdiction. The fact that the assets had been within the jurisdiction since 2007 is, accordingly, legally irrelevant.

118. Mr Venkatesan went on to submit that, even if the *situs* of the SCB Accounts alone had any material weight, what he characterised as *"a myopic focus"* on *situs* alone to the exclusion of other factors would be unprincipled and inconsistent with the multi-factorial nature of the test under Article 7. In this respect, Mr Venkatesan submitted that Soprim's reliance on ***JSC VTB Bank v Skurikhin (No.2)*** [2019] EWHC 1407 (Comm), in which Ms Patricia Robertson QC observed, at [209], that the *situs* of the trust assets was the *"one constant"* in what was otherwise a *"shifting picture"* where the identity of the trustee had changed several times, was misplaced in circumstances where the (alleged) trustee has throughout remained DCT. The fact remains, nonetheless, that the *situs* of the SCB Accounts has not changed and to that extent, although I acknowledge that the position is not on all fours with ***Skurikhin***, the *situs* has remained, as Ms Robertson QC put it at [208], *"a fixed point"*.

119. It should, furthermore, be borne in mind, in this connection, that, whilst it must obviously be right that the Court should not adopt a myopic approach in considering the Article 7 factors, nonetheless it appears that there is something of a hierarchy between the Article 7 factors at (a)-(d). This was made clear by the *Von Overbeck Report*, which accompanied the Convention, where the following was stated at paras. 72 and 77:

> *"… These criteria are all in principle on the same footing; however, the conference has given them their places by order of importance so that it might be said that there is among them a certain implicit hierarchy …*
>
> *In the end the idea that the preliminary draft constituted a reasonable compromise between the civil law conceptions and the common law conceptions. The delegations of the civil law countries also agreed that the second paragraph, by the order in which the criteria were set forth, comprised an implicit hierarchy which would satisfy the needs of practice. But the text will also allow the judges of the common law countries to take into account, as they have the habit of doing, all factors at the same time …"*.

Accordingly, it is appropriate, in my view, that the *situs* factor (factor (b)) should, at least in the present case, be afforded a higher priority than either factor (c) or factor (d).

120. This is all the more the case given that the only assets held by DCT are the SCB Accounts, which are in this jurisdiction. The position would be different if it were the case that DCT held assets not only in this jurisdiction but also in other jurisdictions. As observed in *Lewin on Trusts* at para. 12-086:

"the assets may be spread in many territories, so their situs may be less important than the residence of the trustees and beneficiaries, especially if all reside in the same territory".

That is not the position here, however, since the SCB Accounts are in a single jurisdiction and, as previously noted, have been throughout since the (alleged) Agreement was made. This makes the *situs* factor particularly significant. Indeed, as it is put in *Harris, The Hague Trusts Convention: Scope, Application and Preliminary Issues, 2002 (Hart)* at page 220:

"... where assets are scattered across the globe, the situs may fail to point to a single law of closest connection. Against that, however, it can be said that the common law cases treat the situs as far from irrelevant where all the assets are located in a single state and that, where a different law has been found to be the proper law, this has been in cases where the court has found factors indicative of an implied choice of law. If, ex hypothesi, there has been no choice of law, and particularly where no place of administration has been designated by the settlor, the situs becomes the most obviously important factor in the search for the law of closest connection."

121. There is a further consideration which is relevant in this context. This is the fact that, noting that the Article 7 factors are not exhaustive, then, as it is put in *Lewin on Trusts* at para. 12-086:

"it is a relevant consideration that one of the possible choices of law would be that of a jurisdiction in which the trust would be invalid, as it must be assumed that the settlor would wish to create a valid trust".

I acknowledge that *Dicey* takes a different view on this at para. 29-024. However, as the *Von Overbeck Report* observed at para. 61:

"One would think that ... the judge will have a tendency to conclude that a trust is most closely connected with a State which has this institution".

As Mr Akkouh observed, this factor applies *a fortori* given that it is the Objecting Parties' position that, under Djiboutian law, there is no concept of a trust akin to that recognised under English law, in particular that the *simulation* principle invoked by Soprim is not analogous to a trust and is, anyway, not applicable in the present case. Put simply, if the Court were to conclude that the Agreement alleged by Soprim was, indeed, entered into, then, the fact that the Agreement is alleged to have brought into being a trust makes it more likely that the parties intended that that trust should be subject to English law – which recognises the concept of a trust – than that they intended it to be subject to Djiboutian law – a law which does not recognise the concept of a trust (even if it does recognise the concept of *simulation*).

122. My conclusion, in the circumstances, notwithstanding that, as I shall now briefly explain, I am not otherwise persuaded by Mr Akkouh's submissions concerning Article 7, is that the (alleged) Agreement should be treated as being subject to English law by virtue of Article 7(b).

123. As to those other submissions, Mr Akkouh's position as to factor (a) was that, whilst there was no express place of administration designated, nonetheless, since the trust

concerns English assets (the SCB Accounts), it is to be inferred that the place of administration of the trust was (and is) England despite the absence of an express designation. Such an inference, Mr Akkouh submitted, is supported by the fact that, when it was an operating company, DCT's revenue and operating accounts were held in this jurisdiction and accrued into the SCB Accounts. The difficulty with this submission, however, is that Ms Tadoral and Mr Youssouf are (and always have been) based in Djibouti, not this jurisdiction; and it is common ground not only that they have not sought recognition in this jurisdiction but also that they have no *de facto* control over the SCB Accounts.

124. As to factor (c) (place of residence of the trustee), Mr Akkouh submitted that, albeit that DCT is incorporated in Djibouti, DCT has no business or meaningful existence in Djibouti any longer and, since 2018, it has not traded. It does not follow, however, that DCT's business (still less its residence) is in this jurisdiction since DCT is a Djiboutian company, which has never carried on business in this jurisdiction.

125. Lastly, as to factor (d) (objects of the trust and places where they are to be fulfilled), Mr Akkouh highlighted how Mr Youssouf has said in correspondence that the SCB Accounts are to be repatriated from England to Djibouti, inviting the Court to infer from this that Ms Tadoral would have taken the same approach, and so that the place where the trust is to be fulfilled is England. However, this is a point which, far from supporting Soprim's position, undermines it because the object of the trust can only be fulfilled in Djibouti given that, obviously, that is where the Republic is. Put differently, the object of the alleged trust for the money would not be fulfilled were it to be removed from this jurisdiction to a jurisdiction other than Djibouti.

Was the Agreement entered into/is there a trust under English law?

The Charging Orders Act 1979

126. The relevance of this question has already been touched upon: Soprim's primary case depends on its establishing that there was (and is) the trust that it has alleged. Specifically, Soprim's primary case depends on it being able to bring itself within the ambit of section 2(1)(a)(ii), which provides that *"a charge may be imposed by a charging order only on – (a) any interest held by the debtor beneficially – (ii) under any trust"*.

127. It is common ground that section 2(1)(a)(i) does not apply because a bank account, such as the SCB Accounts, is not one of the assets specified in section 2(2).

128. I do not understand it to be in dispute that what is, therefore, required for section 2(1)(a)(ii) purposes is a trust proper since, in construing this statutory provision, the starting point must be that, where Parliament uses a legal term of art, that term bears its technical meaning as a matter of English law unless a contrary intention appears; and a contrary intention will not be lightly inferred: see ***Commissioners for Special Purposes of the Income Tax v Pemsel*** [1891] AC 531 at pages 580 and 587 per Lord Macnaghten; and *Bennion on Statutory Interpretation* at para. 22.5. Here, there is no indication suggesting that Parliament intended to use the reference to a *"trust"* in some other sense. Indeed, the indications are firmly to the contrary.

129. First, the categories of property which may be charged are tightly defined in section 2. Secondly, there is an express reference to a *"trustee of a trust"* in section 2(1)(b), which is an indication that the word *"trust"* is deployed in a technical sense in that sub-section, so making it distinctly likely that the earlier reference to *"trust"* in section 2(1)(a)(ii) has the same technical meaning. Thirdly, as Mr Venkatesan pointed out, the Law Commission Report (Law Com. No. 74) which preceded the enactment of the 1979 Act recommended, at [94]-[95], reform to enable a charging order to be granted over a beneficial interest under a trust, irrespective of the nature of the trust assets, with no suggestion that the Court should be able to make a charging order over an interest under an arrangement that did not fulfil the criteria for a trust under English law. Fourthly, as made clear in the same paragraphs of the Law Commission Report, the intention behind the introduction of what became section 2(1)(a)(ii) was to remove a restriction under section 14 of the Judgments Act 1838 which permitted a charging order to be obtained over a beneficial interest (as opposed to the underlying asset) in certain specified assets (e.g. government stock) standing in the debtor's name or in the name of any person in trust for him, but not other non-specified assets. That is why the Law Commission Report noted at [94] that such a restriction was unprincipled and why it was proposed at [95] that the law be changed to permit a beneficial interest to be charged *"no matter what the trust assets may be"*. This serves to confirm that what is covered by section 2(1)(a)(ii) is a trust in a technical sense.

130. I agree with Mr Venkatesan, accordingly, when he observed that there is a distinction between a charging order application under the 1979 Act, on the one hand, and an application for the appointment of a receiver, on the other hand. To that extent, Mr Akkouh's reliance on ***JSC VTB Bank v Skurikhin & ors (No.1)*** [2015] EWHC 2131 (Comm) has something of an in-built limitation. In that case, where Mr Christopher Butcher QC (as he then was) approved the appointment of a receiver by way of equitable execution over what was considered in equity to be the assets of the judgment debtor's interest in an English limited partnership, the defendants sought to argue that the true beneficial owner of the membership interests was a Liechtenstein trust, of which Mr Skurikhin was no more than a discretionary beneficiary. Mr Butcher QC concluded, at [49], that he was satisfied, on the facts, that there was a nominee relationship, including the absence of a proper explanation or evidence of who was the ultimate controlling party. Mr Akkouh suggested, in the circumstances, by reference to what Mr Butcher QC had to say at [39] and [45], that this case is authority for the proposition that property subject to a trust *"or analogous foreign arrangements"* would be regarded in equity as assets of the judgment debtor if he has the legal right to call for those assets to be transferred to him or to his order, or if he has *de facto* control of the trust assets where there is no genuine discretion exercised by the trustee over those assets. However, as Mr Venkatesan noted, ***Skurikhin*** was not a case about charging orders but, instead, about the appointment of a receiver by way of equitable execution under section 37 of the Senior Courts Act 1981, something which can be done in respect of an interest which is not a trust - in contrast to the position in relation to a charging order where there needs, under section 2(1)(a)(ii), to be an interest under a trust. That, indeed, was made clear in the subsequent decision of Ms Robertson QC in ***Skurikhin (No.2)***, where, at [113], she observed that for a receivership order *"it is not necessary to show that Mr Skurikhin is the 'beneficial owner' in the full sense in which that term is used to describe a beneficiary under an English trust, i.e. as the present holder of a proprietary interest in the assets …"*.

Requirements for a trust

131. Coming on, then, to consider what are the necessary characteristics of a trust under English law, there is no dispute that, as Lord Browne-Wilkinson put it in ***Westdeutsche v Islington LBC*** [1996] AC 669 at page 705C-F, in order for there to be a trust: (i) there must be identifiable trust property; (ii) the trustee must be under a duty to hold that property for the benefit of some specified persons or objects and in accordance with the terms of the trust; (iii) from the date of the constitution of the trust, the beneficiary must have a proprietary interest in the trust property; and (iv) that proprietary interest must be enforceable against third parties other than a *bona fide* purchaser for value of the legal interest.

132. Soprim's case is that DCT holds the SCB Accounts on a bare trust for the Republic. As to this, Paul Matthews describes the position, in *'All About Bare Trusts: Part 1'*, P.C.B. 2005, at page 267, as follows:

> *"the trustee holds on trust for the beneficiary absolutely, but also agrees to do either whatever the settlor/principal asks, or at least whatever is asked within a certain range of possibilities".*

133. Also helpful is the following description by Henshaw J in ***Kazakhstan Kagazy plc v Zhunus*** [2021] EWHC 3462 (Comm) at [273]:

> *"A bare trust is a relationship where (i) the nominee or bare trustee holds property on behalf of a (usually single) beneficial owner; (ii) the nominee or bare trustee has no active powers of investment, other than to deal with the relevant asset as instructed by the beneficial owner; and (iii) save where it would be illegal to do so, the nominee or bare trustee must deal with the asset as instructed by the beneficial owner: see, e.g., Lewin on Trusts (20th ed, 2020) § 1-028. The beneficiary rather than the trustee is the true owner of the property: see* ***Tasarruf Mevduatti Sigorta Fonu v Merrill Lynch Bank*** *[2011] UKPC 17."*

> Henshaw J continued at [277]:

> *"True ownership may be inferred from the fact that a person exercises control over assets ostensibly owned by another: see, e.g., Phoenix v Cochrane [2017] EWHC 418 (Comm) § 17(5). In the case of assets ostensibly settled on a discretionary trust, the settlor's power to call for them or exercise other powers tantamount to ownership may lead to the conclusion that they are actually held on bare trust for him:* ***Tasarruf v Merrill Lynch****;* ***JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev*** *[2017] EWHC 2426 (Ch). The same conclusion may also be reached where a person has control in practice over the trust assets because the trustees do whatever he asks: see* ***JSC VTB Bank v Skurikhin*** *[2015] EWHC 2131 (Comm) §§ 39 and 45."*

> Henshaw J, then, at [281], cited ***The Serious Fraud Office v Litigation Capital Limited*** [2021] EWHC 1272 (Comm), in which Foxton J (as he then was) summarised the position in this way:

> *"There are a number of matters which may support the conclusion that the apparent owner of property in fact holds it as a nominee for someone else: whether someone other than the alleged nominee exercises control over the asset (****Phoenix v Cochrane***

*[2017] EWHC (Comm), [17(5)]); whether the apparent owner uses or allows the asset to be used in a manner which advances someone else's interests rather than its own ([**Prest v Petrodel Resources Ltd** [2013] 2 AC 415], [52]); who paid for the asset, which may support a conclusion that it is held on constructive trust (Lewin, 10-019) and whether the person alleged to be the 'real' owner had a motive to disguise his or her ownership (**JSC BTA Bank v Solodchenko & Ors** [2015] EWHC 3680, [8]).*"

Henshaw J added at [283]:

"It is relevant to consider whether a company alleged to be a nominee:

i) acts in a manner that is not consistent with its own best interests (e.g. if a company gives away assets/does not use them for business purposes - such as allowing a property to be used as a matrimonial home for no consideration);

ii) deals with its assets informally, without requiring its affairs to be properly documented;

iii) has any trading business; or

iv) has been newly incorporated to hold the asset in question: see, e.g. ***NRC Holding Ltd v Danilitskiy*** *[2017] EWHC 1431 (Ch) § 39."*

134. It should also be acknowledged that a bare trust cannot arise under English law unless the settlor intended to create a trust. Such an intention need not be by words but can be established by conduct so long as it amounts to clear evidence of the requisite intention. As Scarman LJ (as he then was) explained in ***Paul v Constance*** [1977] 1 WLR 527 at page 532B-D:

"In this court the issue becomes: was there sufficient evidence to justify the judge in reaching that conclusion of fact? In submitting that there was, Mr Wilson draws attention first and foremost to the words used. When one bears in mind the unsophisticated character of the deceased and his relationship with the plaintiff during the last few years of his life, Mr Wilson submits that the words that he did use on more than one occasion, 'This money is as much yours as mine', convey clearly a present declaration that the existing fund was as much the plaintiff's as his own. The judge accepted that conclusion. I think he was well justified in doing so and, indeed, I think that he was right to do so. …".

In sum, a bare trust can be created without using the words *"trust"* or the like: see also ***In re Kayford Ltd*** [1975] 1 WLR 279 at page 282 per Megarry J (as he then was). However, the settlor must have intended to create a private law obligation to hold the property for the beneficiary and to treat it as belonging to the beneficiary: see ***Williams v Central Bank of Nigeria*** [2013] EWCA Civ 785 at [37]-[38] per Aikens LJ.

135. It is not necessary for that intention to be communicated to the beneficiary contemporaneously but a failure to communicate it at any time *"may raise a strong inference that the settlor did not intend to create [a trust]"*: see ***Stein v Jaffe*** [2025] EWHC 2334 (Ch) at [69] per Master Brightwell, one of the editors of *Lewin on Trusts*, citing *Underhill & Hayton, Law of Trusts and Trustees* (20th Ed., 2022) at para. 10-2. Furthermore, there must be some external manifestation of the intention to create a

trust, whether by words or conduct, since there will be no trust if the intention is unexpressed (see ***Re Cozens*** [1913] 2 Ch 478 at page 487), not least because, as explained in ***Stein v Jaffe*** at [69], otherwise third parties who come into contact with the relevant assets will not be able to tell whether they are subject to a trust or not. As to this, where the external manifestation takes the form of conduct, the conduct must *"admit of no other interpretation"* than that the settlor *"had ceased to be, and that some other person had become, the beneficial owner"* of the property: see ***Heartley v Nicholson*** (1875) LR 19 Eq 233 at page 242.

Are the requirements for a trust as a matter of English law established in this case?

136. Soprim's case is that there was an agreement (express or implied) between the Republic (acting through the President) and DCT (acting by its administrator or liquidator, Ms Tadoral and/or Mr Youssouf) that DCT would hold the funds in the SCB Accounts on behalf of the Republic (defined above as 'the Agreement'). It says that the Agreement was entered into in or around late 2018 (when Ms Tadoral was appointed), alternatively in or around December 2023 (when Mr Youssouf was appointed).

137. As will appear, I find it unnecessary to address the latter, as to which there was, in any event, only very limited focus during the trial. My focus is, instead, on whether Ms Tadoral entered into the (alleged) Agreement.

138. The Objecting Parties' case is that, applying the principles described earlier, the proposition that the SCB Accounts are held on trust for the Republic is unsustainable because Soprim cannot establish the existence of the alleged Agreement and, even if it could, there was no intention to create a trust.

139. As to this, which he characterised as *"a hard-edged question of property law"*, Mr Venkatesan made the point that the answer that the Court will arrive at *"cannot vary according to who is asking"* the question, by which he meant Soprim or the Republic. I agree with Mr Venkatesan about this, although, as I will explain later, the position is not quite the same when it comes to the separate question concerning the exercise of the Court's discretion.

140. Soprim's case is, necessarily, a case that is based on inference since Soprim is unable to point to direct evidence that the Agreement was entered into (and so that a trust came into being). Mr Venkatesan's submission was that, as such, Soprim's case faces a *"threshold"* difficulty in that there is, Mr Venkatesan suggested, no evidence that Ms Tadoral or Mr Youssouf were even aware of the existence of the SCB Accounts in 2018 (in the case of Ms Tadoral) or 2023 (in the case of Mr Youssouf). In this respect, Mr Venkatesan highlighted the fact that in the letter dated 25 May 2025, to which I have previously referred, Mr Youssouf confirmed that he was not aware that the SCB Accounts existed until 4 April 2025. He also said that he had written to SCB to *"obtain confirmation of the existence of such accounts"*.

141. Nor, Mr Venkatesan submitted, is there any evidence that Ms Tadoral was aware of the SCB Accounts since, he observed, if she knew about them, then, she would have told Mr Youssouf about them, which she did not. Mr Venkatesan was able to point also to the fact that the Dissolution Judgment recorded that:

"Mrs Tadoral explains that since her appointment as provisional administrator, she has never been able to perform her duties properly because of DPWD's behaviour in systematically refusing to provide her with the accounting documents that she has requested and calling her appointment into question."

This, Mr Venkatesan submitted, makes it somewhat implausible that Ms Tadoral would have known about the SCB Accounts, as further underlined by the fact that, during her five-year tenure as administrator of DCT, Ms Tadoral never sought to access the money in the SCB Accounts - in marked contrast to her attempts to interfere with DCT's claims against the Republic, including her application for a stay of the Aikens Arbitration.

142. In these respects, Mr Venkatesan referred to ***Invest Bank PSC v El-Husseini et al*** [2024] EWHC 2976 (Comm), a claim under section 423 of the Insolvency Act 1986, in which Calver J observed as follows at [22]:

"The Bank accepts that ... its case in these proceedings is an inferential one: it contends that the court may draw an inference from the factual circumstances concerning the particular transaction that the, or a, purpose of the asset transfer was the Alleged Purpose. An inference is simply a conclusion which flows logically, reasonably or rationally, through a process of reasoning, from proven or admitted facts. But:

(a) Any inference must be drawn from, and be consistent with, all the relevant proved and admitted facts.

(b)An inference of this kind must be drawn on the balance of probabilities. This means that the court must be satisfied that the inference the Bank seeks to draw as to Ahmad's purpose was more likely than not on all the relevant and proved facts. If there are 'conflicting inferences of equal degrees of probability, so that the choice between them is mere matter of conjecture, then the applicant has failed to prove [its] case'. ...".

Calver J continued at [118]:

"I do not accept this submission which is overly broad and lacks proper analysis. It brings to mind the typically pithy observation of Charles Hollander KC in his seminal work Documentary Evidence (14th edn), where he states as follows at [11-28]: 'Parties say they will ask the judge to draw adverse inferences in many circumstances where such a conclusion would be entirely unjustified. Too often the use of the expression is meaningless and is simply used as a substitute for "we will ask the judge to reject your case."' ... An adverse inference, if drawn, is a factual inference, and is not to be regarded as a penalty imposed on a party for his failure to call evidence or disclose documents."

Later, at [144], he added as follows:

"... Here, we are concerned with whether the court should draw an adverse inference in favour of the Bank as a matter of ordinary rationality in the light of all the evidence before the court. It is for the Bank to persuade the court that it should do so and that there is no other equally likely or more likely inference which could be drawn from the admitted or proved facts."

I take these observations into account when considering the present case.

143. Nonetheless, I cannot accept Mr Venkatesan's submissions. I regard it as inherently improbable that Ms Tadoral and, for that matter, Mr Youssouf would not have known about the SCB Accounts. They were DCT's administrators and, as such, they would obviously have wanted to know what monies were held by DCT. That would all the more have been the case given that, by the stage that they were appointed, DCT had no other assets. This was not a situation where the SCB Accounts were part of a range of other assets. The notion, in such circumstances, that Ms Tadoral and Mr Youssouf were unaware of the SCB Accounts is highly implausible. Furthermore, as to the fact that Ms Tadoral never sought to access the SCB Accounts, that is hardly surprising given that they have for some considerable time been the subject of a freezing order.

144. Mr Venkatesan went on to make a number of other submissions beyond this *"threshold"* point.

145. First, he made the point that, by the time that Ms Tadoral was appointed, the Republic had forcibly transferred DCT's assets to SGTD, meaning that no purpose would have been served by agreeing to hold DCT's assets for the Republic in that the Republic had already purported to take those assets. This overlooks the fact, however, that the assets that the Republic had taken were in Djibouti, whereas the SCB Accounts were not within that jurisdiction. That is why there would have been a purpose in entering into the Agreement that Soprim has alleged was entered into.

146. Secondly, Mr Venkatesan submitted that there is no logical reason for Ms Tadoral or Mr Youssouf to have made an agreement with the Republic about anything, given that it is common ground that they act for the Republic's benefit and do what the Republic wants. As Mr Venkatesan put it, *"a puppet of an autocratic ruler would not see any need for or seek to make any agreement with the ruler"*; rather, he *"would simply do what he is told to do by the ruler"*. As he expressed it in his oral submissions, obeying an order from the President is not the same as agreeing to do what the President wants. The more so, Mr Venkatesan suggested, in circumstances where Ms Tadoral and Mr Youssouf have close links to the Republic, standing to benefit if it benefits, and given also that Ms Tadoral and Mr Youssouf would likely have perceived it to be in their own interests not to cross the President Guelleh, particularly given Mr Boreh's own experience of having done that.

147. The flaw in this submission, however, is that it ignores the fact that, if the President wanted Ms Tadoral and Mr Youssouf to conclude an agreement, then, for precisely the reasons given by Mr Venkatesan, Ms Tadoral and Mr Youssouf would inevitably have done as the President wanted and entered into that agreement. Put differently, neither Ms Tadoral nor Mr Youssouf would have told the President that they would not enter into the agreement that he wanted them to enter into. If that is what the President wanted, then, it can hardly be said that the requisite intention to agree and enter into a trust arrangement was lacking. The motivation of Ms Tadoral and Mr Youssouf might have been different from a more usual case, but motivation is not what matters in this context any more than it is what matters when agreements or trust arrangements are entered into in other contexts by other parties.

148. Thirdly, Mr Venkatesan submitted that, if the President had wanted to do whatever was required to prevent Soprim from accessing the monies in the SCB Accounts, then, the

logical step for him to have taken would not have entailed the Republic entering into the (alleged) Agreement since he would, instead, have simply instructed Ms Tadoral or Mr Youssouf to seek to repatriate the money to Djibouti. Making an agreement with Ms Tadoral or Mr Youssouf could only make it easier, not harder, for the Republic's creditors, such as Soprim and DPW, to access the monies in the SCB Accounts. This submission assumes, however, that the existence of the Agreement, on the assumption that it was entered into, was disclosed to the Republic's creditors when, in fact, there has never been such disclosure. Indeed, Ms Tadoral's stance, throughout, has been that she represented DCT impartially and without the input of, or pressure from, the Republic.

149. It follows that I am not persuaded by these various points. On the contrary, it seems to me that there is considerable force in the submissions that were advanced by Mr Akkouh in support of his overall proposition that the Court should conclude, drawing appropriate inferences, that the Agreement alleged by Soprim was, indeed, concluded.

150. First, there is the extent of the President's control over Djibouti in general, including his ability not merely to destroy Soprim's business using machinery of the Djiboutian state but also to procure Mr Boreh's conviction by the Djibouti courts on false terrorism charges, only then subsequently to procure the quashing of that conviction within two weeks of Flaux J making certain observations on 23 November 2015. There is, as such and as previously explained, no likelihood that either Ms Tadoral or Mr Youssouf would have refused to enter into the (alleged) Agreement, assuming that the President wanted them to do so, albeit that, as also previously explained, this does not mean that there was lack of the requisite intention.

151. Secondly, the steps taken since 2018 by the Republic in relation to DCT and the Terminal are all of a piece with the Agreement being concluded. These steps include the President passing decrees by which ownership of DCT's assets was transferred to SGTD and the Djiboutian state, as well as the President passing a decree transferring PDSA's shareholding in DCT to the state, together with the President taking physical control of the Terminal and expelling DPW's expatriate personnel from Djibouti.

152. Thirdly, there is the fact that the Objecting Parties themselves admit in their Amended Defence *"that, after her purported appointment, Ms Tadoral acted at the behest of the President"*, *"that Mr Youssouf and/or Ms Tadoral purport and purported to exercise control over DCT"* and *"that Mr Youssouf and/or Ms Tadoral act on the instructions of the President"*. The Objecting Parties accepted this also in the US Proceedings, stating in that context that *"Tadoral is an 'agent or instrumentality of' Djibouti and that she has a 'direct conflict of interest' with Doraleh. …"*; as well as in the Hong Kong Proceedings, in which Ms Isabelle Michou (a Quinn Emmanuel partner acting for the Objecting Parties) said this in her first affidavit in May 2019:

"Notably, it is public knowledge that Ms Tadoral has close links to the Government and a close relationship with the First Lady of Djibouti, Mrs Kadra Mahamoud Haid."

She went on to say this:

"On 30 September 2018, the Administrator wrote to DPWD's nominated directors and to Quinn Emanuel informing them of her appointment and asserting that DCT's

scheduled Board Meeting could no longer be held. Furthermore, she threatened the Board of Directors with criminal sanctions if they were to hold the Board Meeting as planned."

She continued:

"… the Republic applied to the Djibouti CFI on emergency basis to seek and obtain the appointment of … Ms … Tadoral. It quickly appeared to me that she was acting as an agent or instrumentality of the Republic. …

… Ms Tadoral has communicated on several occasions with the lawyer of the Republic unilaterally and has not acted impartially in the interests of DCT.

Digressing for a moment … this is not the first time that Ms … Tadoral has been criticized for lack of independence. It another unrelated matter, she had been appointed as liquidator in connection with the judicial liquidation of the Djiboutian joint venture between Total and Libya Oil. Ms … Tadoral's management was severely criticised, due to her links with the government, by an American company also present in Djibouti. As was reported by the press:

'Emiroil's relations with the government deteriorated after its management criticised the partisan way Total and Libya Oil had been liquidated. IN particular, Emiroil had denounced the fact that one of the two liquidators, Chantal Tadoral, was close to the Attorney General … and the First Lady ….'

Ms Tadoral's behaviour in the present case is equally subject to criticism. On several occasions, she has not acted in the best interests of DCT but has clearly aligned with the Republic."

Much the same was stated by Mr Suhail Al Banna, a DPW executive, in evidence in the Hong Kong Proceedings some four years later since. In his second affidavit made in August 2023 he described it as being *"public knowledge that Ms Tadoral has close links to the Government and a close relationship with the First Lady of Djibouti, Mrs Kadra Mahamoud Haid"*, and added that *"All the while, Ms Tadoral has failed to act in DCT's best interests, with her conduct instead being demonstrably aligned with the Republic"*.

153. In these circumstances, it is entirely plausible that Ms Tadoral and/or Mr Youssouf would have done as the President wanted; there is no other plausible inference that could be drawn.

154. Fourthly, there is Ms Tadoral's conduct since assuming office to consider since she has consistently and repeatedly shown that she will act on the President's instructions and for the Republic's benefit. Examples of this include her unsuccessful attempt in November 2018 to obtain a stay of the Aikens Arbitration - and so also DCT's own claim against the Republic. This can only have been because the Republic wanted Ms Tadoral to do what she did; the fact it was against DCT's own interests was clearly seen by Ms Tadoral as being no obstacle to the steps that she took.

155. This was not, however, the only intervention that Ms Tadoral came to make on the Republic's behalf (and in apparent disregard for the interests of DCT, the company for

which she was administrator), since the Republic successfully argued before the US Court of Appeals that Quinn Emanuel had no authority to bring an enforcement claim on behalf of DCT against the Republic, Ms Tadoral filing two statements in *support* of the Republic's position. Ms Tadoral also singularly failed to take any steps to enforce DCT's substantial awards (totalling over US$474 million) against the Republic, instead seeking to conceal her relationship with the Republic by stating this in a letter dated 1 December 2018 to the Aikens Tribunal:

"… my application is not made on behalf of the Republic, to which I have absolutely no connection, but on behalf of DCT".

There is also the fact that Ms Tadoral wrote a letter to the solicitors acting for China Merchants in the Hong Kong Proceedings, in which she stated that:

"I therefore confirm to you that I remain … the sole duly appointed statutory representative of DCT. Neither Mr Al Banna nor any one of the former members of the Board of Directors is authorised to represent the company in the context of proceedings between DCT and your client before the Hong Kong courts. …".

China Merchants thereafter used Ms Tadoral's letter to have the claim purportedly made against it by DCT struck out. Again, this was Ms Tadoral acting other than in DCT's interests and, so it seems, acting instead at the behest of the Republic.

156. Lastly in this connection, there is the fact that, as previously touched upon, Mr Youssouf has stated in correspondence with DPW (specifically letters dated 13 and 25 May 2025) that he intends *"to repatriat[e] the funds held"* by SCB to Djibouti; in other words, to return the funds held in the SCB Accounts to Djibouti so that they can be dealt with in accordance with the President's instructions. There is every reason to suppose that Ms Tadoral had the same intention when she was in Mr Youssouf's position, and that this was because it was what the President intended (and still intends). It would be entirely consistent with all the other actions taken by Ms Tadoral; put differently, were her intention different to that of Mr Youssouf, that would be wholly inconsistent with the steps described above.

157. Fifthly, I agree with Mr Akkouh when he submitted that the Republic's application to appoint Ms Tadoral was clearly with the intention of effecting substantial change in DCT's corporate governance. The appointment order stated, in terms, that:

"it is advisable to designate Mrs Chantal Tadoral as provisional administrator with the mission to replace the governing bodies and will be vested with all the powers given by law to those bodies".

It went on to say this:

"As a result, [the Court] designates Mrs Chantal Tadoral as temporary administrator with the powers that the law confers on the governing bodies … the interim administrator will replace the board of directors with the time needed to deal with the crisis".

This was clearly not a situation where Ms Tadoral was to work alongside the existing board of directors; it was, instead, a complete corporate governance overhaul.

158. Sixthly, I agree also with Mr Akkouh's submission that it would be somewhat surprising if the President had not made an agreement with Ms Tadoral (and/or Mr Youssouf) in relation to the funds in the SCB Accounts in circumstances where: there was never any secret that substantial funds were held within the SCB Accounts, which had always been used for transmitting the Terminal's profits to DPW and Djibouti; the funds held in the SCB Accounts in 2018 were earmarked for transmission to the Republic, via PDSA, in 2017, only for them, then, to be frozen by the freezing order made in June 2017; and the SCB Accounts were later mentioned in the Bryan and Teare JJ Injunctions.

159. Seventhly, it should not be overlooked either that neither the Republic nor Ms Tadoral (or, indeed, Mr Youssouf) have filed any evidence to contest Soprim's case. True it is that the Republic has been debarred from defending the application, but it would still have been open to the Republic to have participated through putting forward evidence from the President, Ms Tadoral and Mr Youssouf in relation to the alleged Agreement. The fact that this has not been done is telling, not least because, as Flaux J observed in his earlier judgment at [54] and [57]:

"If the President were telling the truth … then it is difficult to see what he would have to fear by coming to England to give evidence".

As Flaux J went on to put it, it is *"appropriate to draw adverse inferences against the Republic from its failure to call the President to give evidence … "*.

160. I am driven, in the circumstances and mindful of the approach concerning inferences described by Calver J in ***Invest Bank***, to the conclusion that there was the Agreement alleged by Soprim and that it was entered into by Ms Tadoral; being realistic, there is no other plausible inference.

161. This leaves Mr Venkatesan's further submission that, even if the Agreement was entered into, nonetheless Soprim's case must fail because Soprim has not demonstrated that Ms Tadoral (or Mr Youssouf) intended to create a trust and that there was some external manifestation of that intention.

162. Mr Venkatesan made three submissions in this respect, the first of which was that there is a distinction between doing something with the intention of creating a private law obligation and doing it for some other reason such as because the President has ordered that it be done. As he put it, where it is alleged that X agreed to hold money for Y's benefit, there is a trust in respect of that money only if X intended to create a private law obligation in respect of that money by holding it as Y's money rather than his own.

163. Mr Venkatesan suggested that the point is illustrated by ***Williams***, where the Central Bank of Nigeria had c.US$5.8 million in a London bank account with Midland Bank. In a written letter called the Fidelity Guarantee, the President of Nigeria directed the CBN to hold that money for Dr Williams as a *"custodian"* and "*with utmost good faith"*: see [18]. The Central Bank of Nigeria agreed to do so. Dr Williams sought to plead a case that the Midland Bank money was held on trust for him. The Court of Appeal held that the amendment was unarguable and refused permission, Aikens LJ noting at [39] that the amendment would have been arguable if the Fidelity Guarantee "*were intended to be simply a private law document"* but that, since it was an executive

order given by the President and *"given the origin and legislative/executive nature of the Fidelity Guarantee, … it is not reasonably arguable that, in addition, it was intended at the same time to create a document embodying purely private law obligations on the CBN as trustee and private law rights for Dr Williams as beneficiary that would flow from those private law obligations on the CBN"* (see [41]). Mr Venkatesan submitted that in the present case, even if the Agreement was made, Ms Tadoral cannot have intended to create private law obligations as trustee and beneficiary since the President can achieve what he wants not through private law agreements but through the power and authority that he holds outside of the private law arena.

164. I do not agree with Mr Venkatesan about this for essentially the same reason as I have previously given in a different (albeit related) context, namely that Mr Venkatesan's submission ignores the fact that, if the President wanted Ms Tadoral and Mr Youssouf to conclude an agreement, then, Ms Tadoral and Mr Youssouf would inevitably have done as the President wanted and entered into that agreement. In doing so, and so in the face of a demand by the President to enter into a private law arrangement, then, Ms Tadoral and Mr Youssouf would necessarily have been intending to do precisely what the President wanted them to do: they would not be intending anything different.

165. Secondly, Mr Venkatesan submitted that, since it is common ground that the concept of a trust does not exist under Djiboutian law at least in the technical sense understood by English law (I will come on later to address the Djiboutian law position), so the Court should conclude that there cannot have been an intention on the part of Ms Tadoral and Mr Youssouf and, indeed, the Republic that a bare trust should come into being. Mr Venkatesan nonetheless acknowledged that it was open to the Court to conclude that that was the intention. He was right to do so since, in my view, this is not an obstacle to a conclusion that there was the requisite intention if only because there is no evidence one way or the other as to what Ms Tadoral, Mr Youssouf and the Republic might have known about the English law concept of a trust and, in circumstances, where, as previously mentioned, Ms Tadoral, Mr Youssouf and the Republic have chosen not to give evidence, it does not seem to me to be appropriate to assume against Soprim on this aspect. The more so, given that Ms Tadoral is, on any view, a sophisticated person, well able to express herself in formal (indeed, legalistic) terms and so, clearly, is the President. It should not, therefore, be assumed that they (and, indeed, Mr Youssouf also) would not have had the requisite intention, bearing in mind that, as demonstrated by the decision in ***Paul v Constance***, a trust can come into existence even when the parties concerned are unfamiliar with the concept of a trust.

166. Thirdly, Mr Venkatesan submitted that, even if Ms Tadoral had an intention to create a private law trust, there was no external manifestation of it, pointing out that Ms Tadoral has never said that she declared a trust, even in non-technical terms, and nor has Mr Youssouf done so. Again, however, in the absence of evidence from either Ms Tadoral or Mr Youssouf (or from the Republic), this is another aspect that I am not prepared to assume against Soprim.

167. It follows that I conclude that the Agreement has been made out. This is as far as Soprim's case regarding Ms Tadoral is concerned since, as previously mentioned, in the circumstances, there is no need for me to go on and make a determination in relation to Mr Youssouf's time as liquidator, even though it is difficult to see that the position

in relation to him would have been any different to when Ms Tadoral was in her role. It further follows that there was, and is, the bare trust which lies at the heart of Soprim's primary case. Whether Soprim should obtain the relief that it seeks under the 1979 Act is, nonetheless, dependent on other aspects to which I now turn since, even leaving aside the discretion issue to which I will return and also the full and frank disclosure issue to which I will also come, there are certain other objections that have been raised by the Objecting Parties.

168. I will address these other objections shortly, after first saying something about Soprim's alternative case based on Djiboutian law.

Is there a concept analogous to a trust under Djiboutian law and, if so, does this assist Soprim?

169. I propose to deal with this issue only briefly in circumstances where it only arises if I am wrong as to the applicable law being English law. Furthermore, despite having heard oral evidence from experts on French law (it being common ground that Djiboutian law should, for present purposes, be regarded as the same as French law), ultimately not all of the differences between those experts (Professor d'Avout for Soprim and M Garaud for the Objecting Parties) seem to me to matter. This is because I do not accept that Mr Akkouh was right when he submitted that the French/Djiboutian law concept of *prête-nom* (under which a declaration of *simulation* can be obtained) addressed by Professor d'Avout and M Garaud should be treated as a *"trust"* which is capable of being charged under the 1979 Act.

170. I acknowledge in this respect that section 2(1)(a)(ii) states that a charging order can be imposed on *"any interest held by the debtor beneficially … under any trust …."*, with no suggestion that the trust must arise under English law. I acknowledge also that in ***Interpool Ltd v Galani*** [1988] QB 738, a case concerning whether what is now a Part 71 examination should be confined to assets in the jurisdiction, Balcombe LJ observed, at page 741G-H, that:

"… there should be jurisdiction to charge an interest under a 'foreign' trust, although as a matter of discretion the court will not exercise the jurisdiction where it could expose the trustees to a risk of double jeopardy. …".

Whether this means that the Court can make a charging order in respect of trust property outside the jurisdiction is, nonetheless, something of an open question, not least because in ***Société Eram Shipping v Cie Internationale de Navigation*** [2004] 1 AC 260, [2003] UKHL 30, a case concerned with a third party debt order rather than a charging order, Lord Hoffmann put it at [59]:

"The execution of a judgment is an exercise of sovereign authority. It is a seizure by the state of an asset of the judgment debtor to satisfy the creditor's claim. And it is a general principle of international law that one sovereign state should not trespass upon the authority of another, by attempting to seize assets situated within the jurisdiction of the foreign state …".

Furthermore, in the same case Lord Bingham stated that he found himself *"in close agreement"* with Hill J in ***Richardson v Richardson*** [1927] P 228, a decision that Balcombe LJ in ***Interpool***, at page 741D-H, had considered no longer represented good

law; and ***Interpool*** was also criticised by other members of the House of Lords on this point: see [59] (per Lord Hoffmann); [75] (per Lord Hobhouse); and [104]-[109] (per Lord Millett).

171. I need not, however, decide this point (and so decline to do so) because, even if Balcombe LJ's approach in ***Interpool*** is to be regarded as the correct one, I am clear that, in any event, any interest of the Republic in the SCB Accounts must still satisfy the characteristics of a trust as understood by English law if section 2(1)(a)(ii) is to be applicable. This, indeed, appeared to be acknowledged by Mr Akkouh since, in written submissions addressing the French/Djiboutian law issues exchanged after trial, Mr Akkouh advanced submissions on the point. It was his submission that the similarity with an English law trust is borne out by the fact that *prête-nom* is a basis on which, as it was put in the experts' joint statement, *"a creditor can look beyond nominal title and attribute ownership to a person other than the ostensible owner"*. As such, Mr Akkouh submitted, although there is no formal distinction between legal and beneficial ownership as a matter of French/Djiboutian law, *prête-nom* shares the characteristics of an English law trust, in that it involves an asset being held by one person for another and the beneficiary having a proprietary right in the asset.

172. I do not agree. On the contrary, I agree with Mr Venkatesan when he submitted that, as a concept, *prête-nom* more closely resembles the English law concept of sham than it does a trust. This concerns the one aspect of the French/Djiboutian law expert evidence that it is appropriate that I should address.

173. It was Mr Akkouh's submission that *simulation/prête-nom* is not akin to a sham because there is no requirement that there be an intention to deceive. He highlighted in this context that Professor d'Avout's position was that *"deception is ... a consequence ... not a prerequisite"*, and so that all that a third party has to prove is a *"false appearance"* and that they need not *"technically prove [an intention to deceive] separately"*. Mr Akkouh drew attention, in particular, to what he described as the *"absent reference"* to this suggested positive requirement in at least some of the French cases to which the Court was referred, citing, for example, a Cour de cassation decision dated 18 May 2017, to which M Garaud was taken in cross-examination. M Garaud's position on this was that the reason why the decision did not refer to a requirement that there be an intention to deceive was that this was not a matter which was in dispute in that case. Mr Akkouh criticised M Garaud for this observation. However, I agree with Mr Venkatesan when he submitted, in his post-trial written submissions addressing French/Djiboutian law, that M Garaud's position made sense in that, as M Garaud himself put it, *"very frequently the intent to deceive is obvious by the way the transactions are structured. So it is not even worthy of discussion"*. As M Garaud also remarked, *"If you have cases…that say that specifically intent to deceive is not required, then I would be happy to concede the point. We didn't find one…"*. In short, I agree with M Garaud (and Mr Venkatesan) that it ought not to be concluded from the absence of an express reference in an authority to an intention to deceive that there is no such requirement.

174. It was also suggested to M Garaud, in cross-examination, that there was no requirement for an intention to deceive because a line of case law relating to auctioneers did not require proof of such an intention. However, I agree with M Garaud when he explained

that it was not possible to draw from those cases a general proposition that an intention to deceive is not required.

175. As for Professor d'Avout, Mr Venkatesan submitted that he ultimately accepted that it is required for a *convention de prête-nom* that there be, as he put it, an *"intention to hide"*. Specifically, he said this:

"You might have duality of acts, but you have – you do not have clearly an intention to deceive. You have the intention to hide. You have the intention to hide the precise identity of the owner. This, of course."

He went on later to say this:

"The purpose of the prête-nom is to hide of course. The purpose of the prête-nom is to create a false appearance".

This, in fact, chimed with what M Garaud had earlier said in his oral evidence, which was that:

"... you intend to hide the real, I would say, owner or person doing the transaction".

He added that a fraudulent intention *"is something different than intent to hide and intent to deceive"*.

176. I agree with Mr Venkatesan, therefore, that the experts, in substance, agreed that there is a requirement for an intention to hide the real owner. Indeed, as Mr Venkatesan pointed out, Professor d'Avout later said that for a *prête-nom*, *"You just have to demonstrate that what apparently legally stands does not correspond to what is really intended by the parties"* and, later still, that *"the one who simulates, who is lying, who is – he knows, at this moment, intellectually that the situation is another one"*. This seems to me to confirm that both M Garaud and Professor d'Avout were, accordingly, essentially saying the same thing, as further confirmed by the fact that, when Professor d'Avout was asked whether he agreed that certain paragraphs from a decision of the Versailles Court of Appeal correctly stated the law of *prête-nom* under French law, he said that he could *"live with"* one of those paragraphs. That paragraph stated as follows:

"In other words, simulation therefore consists in the deliberate creation of a deceptive appearance, regardless of whether the deception stems from a single party or from the agreement of two parties; it is 'an act consisting in the creation of an ostensible legal act that does not correspond to the reality of the situation'. Thus, simulations include all instances of purely apparent acts, whether they seek to give the impression that an imaginary transaction exists, or to conceal the nature and actual content of the transaction".

177. My conclusion, in the circumstances, is that, as Mr Venkatesan submitted, an intention to deceive is an essential requirement of *prête-nom* under French/Djiboutian law. As a result, I agree with Mr Venkatesan when he went on to submit, as previously referred to, that this is a concept which is more akin to that of a sham than it is to an English law trust. The consequence is that section 2(1)(a)(ii) of the 1979 Act is not applicable.

The Objecting Parties' other objections

178. A number of other objections were taken by the Objecting Parties to Soprim's case. These were characterised by Mr Venkatesan as entailing a *"threshold"* issue, namely whether Ms Tadoral and Mr Youssouf had authority to act on behalf of DCT. It was Mr Venkatesan's submission (and the Objecting Parties' position) that they did not (and, indeed, do not) because they cannot have authority unless the foreign judgments by which they were appointed satisfy the rules for recognition under English law, and the foreign judgments in question do not satisfy those rules.

179. Mr Venkatesan explained that this issue arises because DCT is a legal person, which can act only through natural persons, and the only natural persons who are alleged by Soprim to have made the Agreement on DCT's behalf are the officeholders – hence the need to be satisfied that the officeholders had authority to act for DCT. If not, Mr Venkatesan submitted and I agree, then, they could not, as a matter of law, have caused DCT to enter into the Agreement or do anything else on DCT's behalf.

180. Mr Venkatesan went on to note and, indeed, it was common ground, that the authority of the officeholders to act for DCT turns on whether the judgments by which they were appointed are capable of recognition under English conflicts rules. That is the position adopted in ***Koza Ltd v Koza Altin Isletmeleri AS*** [2023] 1 BCLC 617, [2022] EWCA Civ 1284, a case in which the claimants were an English company, Koza, and its sole director was a Mr Ipek. Koza's sole shareholder was a Turkish company, Koza Altin. In Turkey, Judge Süer, appointed certain individuals to serve as directors of Koza Altin. His judgment was upheld by the Turkish appellate courts. The issue before the English Court was, accordingly, whether those directors had authority to act for Koza Altin. At first instance, Trower J found that this depended on Turkish law, as the law of the place of incorporation of Koza Altin, and not on whether the order made by Judge Süer was capable of recognition. The Court of Appeal held that this was wrong. Sir Julian Flaux C, with whom Newey LJ and Simler LJ (as she then was) agreed, said, at [144], that it is not choice of law but the rules relating to recognition which determine whether a status derived from a foreign judgment is capable of recognition. If, therefore, the Koza Altin directors were appointed *"pursuant to a corrupt foreign judgment"*, the English Court would not recognise their authority to act for Koza Altin, even if they had such authority as a matter of Turkish law.

181. Adopting this approach, the authority of Ms Tadoral and Mr Youssouf to act for DCT depends on whether the orders by which they were appointed are capable of recognition. In Ms Tadoral's case, her appointment was by an order of the Djibouti CFI dated 27 September 2018, as confirmed at the *inter partes* hearing which took place on 15 November 2018, an order which Mr Venkatesan submitted is not capable of recognition for three reasons: first, because Ms Tadoral's appointment was procured with notice and in breach of the injunctions granted by Bryan J and Teare J, and recognising the appointment order would therefore be contrary to English public policy; secondly, because the appointment order was procured in breach of the arbitration agreement in the JVA and Articles, and recognition is therefore barred both at common law and under section 32 of the Civil Jurisdiction and Judgments Act 1982; and, thirdly, because the Djibouti proceedings were contrary to natural justice and the appointment order was procured by the Republic's exercise of improper influence over the Djibouti courts.

182. I address these points in turn in what follows. As will become apparent, I do not consider any of them to have validity.

Breach of injunction

183. There is no issue that a foreign judgment cannot be recognised if to do so would be contrary to English public policy. Nor is there any issue that it would be contrary to English public policy to recognise a foreign judgment knowingly procured in breach of an injunction of the English Court since it would bring the administration of justice into disrepute for the English Court simultaneously to grant an injunction but recognise a foreign judgment procured in defiance of the injunction. That this is the position is apparent from ***Philip Alexander Securities & Futures Ltd v Bamberger*** [1997] IL Pr 73, in which numerous German customers of Philip Alexander Securities & Futures Ltd ('PASF') commenced actions in Germany for losses incurred in trading in futures and options through PASF. PASF contended that the customers were required to arbitrate their claims pursuant to a London arbitration clause and obtained interim anti-suit injunctions from the English Court restraining the customers from pursuing the German proceedings. Some of the customers, despite having notice of the injunction, ignored it and obtained judgments in Germany. PASF sought declaratory relief that those judgments would not be capable of recognition in England. Waller J (as he then was) refused to grant declaratory relief on discretionary grounds, but was clear, at [120], that *"if someone proceeds in breach of, and with notice of, an injunction granted by the English court to obtain judgments abroad, those judgments should not, as a matter of public policy be recognised in the UK"*, a view with which the Court of Appeal agreed (Leggatt LJ at [43]) and which was also the view of Lord Collins in ***Altimo Holdings v Kyrgyz Mobil*** [2012] 1 WLR 1804, [2011] UKPC 7 at [121].

184. It was Mr Venkatesan's submission that in the present case the appointment of Ms Tadoral was procured with notice and in breach of the English injunction granted by Bryan J and modified by Teare J.

185. Since it is common ground that the Republic and PDSA were both aware of the English injunction, not least because the judgment of the Djibouti CFI appointing Ms Tadoral (at a hearing attended by the Republic's attorney, Mr Ghaleb) referred to both Bryan J and Teare J's orders, the key question is whether, as a matter of construction, the procurement of Ms Tadoral's appointment was a breach of those orders. It was Mr Venkatesan's submission that there was such a breach, given that one of the acts prohibited by the injunction was causing DCT to act on any *"Reserved Matter"*, which included the appointment of an administrator, and given also that PDSA was restrained from doing the prohibited acts directly or through any *"Affiliate"*, which included the Republic. Mr Venkatesan submitted, in particular, that, if the Republic did any of the prohibited acts, that amounted to a breach of the injunction by PDSA and there is no further requirement that the Republic must have acted on behalf of PDSA or pursuant to its instructions.

186. For these purposes, Mr Venkatesan noted, first, that the injunction states that, having been ordered not to do something, PDSA *"must not do it itself or by its directors, officers, partners, employees or agents or in any other way including by its Affiliates as that term is defined in the JVA and the Articles"*; and, secondly, that the Articles define an *"Affiliate"* as *"any person that directly or indirectly…controls or is controlled by or under joint control"* with PDSA, whilst the JVA contains a similar definition. I am clear, in the circumstances, that the Republic is, indeed, appropriately to be regarded as an *"Affiliate"* of PDSA for the purposes of the injunction. Indeed, Mr Venkatesan

pointed out, Soprim previously accepted this, since Mr Boreh's first witness statement, made in support of its application for an interim charging order, positively averred that to be the position. It would be inappropriate, in view of this, Mr Venkatesan suggested, if Soprim were now permitted to resile from that position, even if Mr Akkouh was able to point to the fact that DPW's then counsel at the hearing before Teare J appears to have stated that the term *"Affiliate"* was one which *"arguably doesn't include the State"*. In fact, as Mr Venkatesan pointed out, the full exchanges between counsel and the judge were rather less clear-cut than suggested by Mr Akkouh. In any event, I agree with Mr Venkatesan when he made the point that submissions, if admissible at all, are of no weight in construing an order because the order speaks for itself and in this case *"Affiliate"* is a defined term in a contract and the injunction incorporated that definition. Furthermore, it is worth noting that in related proceedings Henshaw J concluded that the Republic is an *"Affiliate"* for the purposes of the injunction: see ***PDSA v DPW*** [2023] EWHC 1189 (Comm) at [33].

187. This brings me to the more important issue that arises in this context. This is whether it was, without more, a breach by PDSA of the injunction if the Republic (as an *"Affiliate"*) took a prohibited act or whether, as Soprim contends, there is a further requirement that PDSA must have instructed the Republic (as an *"Affiliate"*) to take that prohibited act or that the Republic (as an *"Affiliate"*) must have purported to act on PDSA's behalf in doing what it did. Mr Venkatesan observed that this is another issue that, in Mr Boreh's first witness statement, Soprim had accepted since there he stated that the Republic was prohibited from taking any steps to transfer PDSA's shares in DCT because it is an *"Affiliate"*. I consider, however, that the position is somewhat more nuanced: it is one thing for Mr Boreh to have accepted that the Republic is an *"Affiliate"*, but quite another to take Mr Boreh as saying either that the Republic would itself be in breach or that PDSA would be in breach because of what the Republic (as an *"Affiliate"*) did.

188. Ultimately, the issue turns on the construction that is afforded to the orders made by Bryan J and Teare J, bearing in mind that Mr Venkatesan must have been right when he observed that the purpose of the injunction was to protect DPW's contractual rights under the JVA to control DCT. The injunction was granted under section 44(3) of the 1996 Act, which applies only if the injunction is necessary *"for the purpose of preserving ... assets"* in circumstances where the assets in question were those contractual rights. That was made clear by Bryan J in his judgment when granting the injunctive relief sought: see his judgment at [38], [43] and [46]. Bryan J recognised that DPW's right to control DCT was central to the financing package for the construction of the Terminal since he noted at [19] that the purpose of the control rights in the JVA and Articles was that *"notwithstanding the fact that [DPW] is not the majority shareholder, it remains in control"* of DCT. He clearly had in mind that DPW should be free of any interference either by PDSA or by the Republic since he endorsed an earlier observation of Flaux J that:

> *"Those investing there, specifically DP World and the banks who finance these projects, were only prepared (to invest in Djibouti) on the basis that management control rested with DP World and that there was no interference from the government."*

189. The position, Mr Venkatesan submitted, is further borne out by the modification made by Teare J at the return date hearing, namely the insertion of the words *"including by its Affiliates as that term is defined in the JVA …"* after the existing *"in any other way"* wording since that wording included the Republic as an *"Affiliate"*. Mr Venkatesan submitted that the purpose of this additional wording can only have been to prevent anyone in control of PDSA – particularly the Republic – from doing anything prohibited by the order. Any other construction, Mr Venkatesan suggested, would defeat the purpose of the injunction because it would enable the Republic to do the prohibited acts so long as it does not involve PDSA in doing them. It would mean, for example, Mr Venkatesan observed, that the injunction is breached if PDSA were to execute a power of attorney in favour of the Republic and the Republic, pursuant to that power of attorney, then, did one of the prohibited acts, but that the injunction would not be breached if the Republic did the same thing without there being a power of attorney. Such a distinction, Mr Venkatesan submitted, would make no sense. On that basis, it was Mr Venkatesan's contention that PDSA would be in breach of the injunction if an *"Affiliate"* were to do any of the prohibited acts, irrespective of whether they purport to do so on PDSA's behalf. It follows, Mr Venkatesan submitted, that the Republic's procurement of the appointment of Ms Tadoral as administrator (a *"Reserved Matter"*) – was a breach of the injunction by PDSA.

190. Mr Venkatesan submitted, in the alternative, that, even if Ms Tadoral's appointment was not a breach of the injunction by PDSA, that does not matter because a third party not bound by an order may nonetheless be in contempt of court if it deliberately frustrates the purpose of the order by doing one of the prohibited acts because such conduct is an interference with the administration of justice. In this case, Mr Venkatesan observed, the Republic knew what the injunction prohibited PDSA from doing, yet the Republic proceeded to do one of those things, namely appoint an administrator to DCT; that amounts to a contempt of court by the Republic, even if there was no breach of the injunction by PDSA. In that event, the same public policy bar to the recognition of the order appointing Ms Tadoral would be engaged.

191. I do not accept these various submissions concerning breach. Both injunctions were directed at PDSA, not the Republic, and it was, accordingly, PDSA rather than the Republic which was prohibited from doing the things stipulated in the orders of Bryan J and Teare J. The fact that the definition of *"Affiliate"* was added to the order made by Teare J did not mean that the Republic was restrained by the injunctions; what the Republic was prevented from doing was procuring PDSA to carry out the steps that PDSA - whether directly or indirectly (including through the Republic as an *"Affiliate"*) - was prohibited by the injunctions from taking. To construe the orders (in particular, that of Teare J) as preventing the Republic from taking the steps prohibited by the injunctions would involve treating the Republic, in effect, as though it were itself a defendant when that was not what, in their own terms, the orders were doing.

192. This, in circumstances where an order must be clear and unequivocal before a party will be found to have breached its terms: ***JSC BTA Bank v Ablyazov (No 10)*** [2015] 1 WLR 4754, [2015] UKSC 64 at [19] per Lord Clarke. The Objecting Parties' case requires a reading of the wording contained in the orders of Bryan J and Teare J which goes beyond what the words used actually say. The fact that the Teare J order has the *"Affiliate"* wording does not change things; it simply means that PDSA could be in breach if the Republic did something on its behalf in the same way as PDSA could be

in breach if one of its officers and an agent acting on its behalf did such a thing. In that latter scenario, the officer or agent would not himself or itself be in breach. The same must apply to the Republic since, like the officer or agent, the Republic is not itself a party to the injunctions. The same must also apply as regards the question of whether PDSA is in breach through action taken by the Republic: just as PDSA would only be in breach if the officer or agent had acted on PDSA's behalf, so PDSA could only be in breach if whatever the Republic did was done on behalf of PDSA.

193. It follows that I reject Mr Venkatesan's submission that there could be a breach by PDSA of the injunctions if the Republic (as an *"Affiliate"*) took a prohibited act without more and without, specifically, PDSA having instructed the Republic (as an *"Affiliate"*) to take that prohibited act or without the Republic (as an *"Affiliate"*) having purported to act on PDSA's behalf in doing what it did. The significance of this is that the 9 September 2018 Decree and the Republic's subsequent application seeking the appointment of Ms Tadoral had nothing to do with PDSA, but entailed the Republic (through the President) acting on its (or his) own behalf.

194. There is also the fact that both injunctions contained the so-called ***Babanaft*** proviso, which DPW's then counsel told Bryan J made it *"clear the limited extent of its effect on persons outside the jurisdiction"*. That proviso, in the usual way, stated that *"the terms of this order do not affect or concern anyone outside the jurisdiction of this Court"* unless one of its exceptions is engaged, the relevant exception being in respect of *"The Defendant [PDSA] or its officer or its, her or his agent appointed by power of attorney"*. There was (and is) no mention of the Republic, whether directly or indirectly through the use of the words *"Affiliate"*, notwithstanding that this word was included earlier through the modification brought about by the Teare J order to which I have previously referred. It would be wrong, in such circumstances, to read the exception as though it also made reference to an *"Affiliate"* when it so obviously does not and it equally obviously must have been understood at the time of the hearing before Teare J that this was the case.

195. It follows, I agree with Mr Akkouh, that, as the Republic was outside the jurisdiction of this Court, and, as the Republic did not come within the exceptions identified in the injunctions, then, the ***Babanaft*** proviso applies to the Republic, with the consequence that the Republic was neither affected nor concerned with the injunctions. In this connection, it is worth having in mind what Nicholls LJ (as he then was) had to say in ***Babanaft Co SA v Bassaine*** [1990] Ch 13 itself. At page 43D-F, he said this:

> *"But there is a troublesome point here concerning third parties. An injunction, as an order of the court, can affect the conduct of persons other than the defendant in the proceedings against whom the order is made. This was a matter considered in the recent* ***Spycatcher*** *litigation:* ***Attorney-General v Newspaper Publishing Plc*** *[1988] Ch. 333. For the purposes of the present appeal it is sufficient to note that it is well established that a person who knowingly assists in the breach of a court order is himself in contempt of court: see, for example,* ***Seaward v Paterson*** *[1897] 1 Ch. 545 and, in the context of a Mareva injunction,* ***Z Ltd v A-Z and AA-LL*** *[1982] Q.B. 558. This principle is one of the strengths of a Mareva order, but it is the application of this principle to an injunction in respect of overseas assets such as I have described above that causes difficulty."*

He continued at page 44B-E:

"This is not an acceptable situation. It would be wrong for an English court, by making an order in respect of overseas assets against a defendant amenable to its jurisdiction, to impose or attempt to impose obligations on persons not before the court in respect of acts to be done by them abroad regarding property outside the jurisdiction. That, self-evidently, would be for the English court to claim an altogether exorbitant, extraterritorial jurisdiction.

…

To meet this difficulty 1 can see no alternative but to grasp the nettle firmly, and write into the order, which applies only to property outside the jurisdiction, an express provision to the effect that nothing in the relevant part of the order is to affect any person other than the defendants personally. This will remove any extraterritorial vice which be binding only on the conscience of the defendants personally. This will remove any extraterritorial vice which otherwise the order might have, or be thought to have. The order will be binding only on the conscience of the defendants."

He concluded with this at page 45C-D:

"…the order should be confined in its effect to the defendants personally, thus excluding everyone else, even the defendants' servants or agents. The defendants' servants or agents, as much as banks and other third parties, may be acting outside the jurisdiction, so that the problem of extraterritorial effect may be as much relevant to them as it is to banks and others. Thirdly, I do not think that it would be right to attempt to distinguish between third parties who are resident or domiciled or present within the jurisdiction and those who are not. This could give rise, for instance, to a distinction between an overseas bank which has a branch in London and one which does not. More importantly, however, attempting to draw any such distinction is wrong in principle. If it is to be free from extraterritorial vice, the order must not attempt to regulate the conduct abroad of persons who are not duly joined parties to the English action in respect of property outside the jurisdiction."

This demonstrates the cautious approach that the Court adopts to third parties – as Nicholls LJ put it, *"even the defendants' servants or agents"* and so, it seems to me, an *"Affiliate"* in the present case.

196. Mr Venkatesan did not agree with Mr Akkouh's position. He submitted that, on the Objecting Parties' primary case, namely that the procurement of Ms Tadoral's appointment constituted a breach of the injunction by PDSA, the ***Babanaft*** proviso is irrelevant because the proviso does not apply to PDSA as the respondent to the injunctions. That is, no doubt, true. However, Mr Venkatesan's submission somewhat misses the point that is made on Soprim's behalf since what Soprim is saying is that the fact that the ***Babanaft*** proviso did not contain the *"Affiliate"* wording, whereas that wording did appear earlier in the Teare J order, underlines the correctness of Soprim's argument that it would not be sufficient for breach purposes that the Republic took a step which PDSA would be prohibited by the injunctions from taking without taking that step on PDSA's behalf or without the Republic purporting to take it on PDSA's behalf.

197. Mr Venkatesan submitted also that the ***Babanaft*** proviso is irrelevant on the Objecting Parties' alternative case because it could, at most, mean that the Republic cannot be committed for contempt. His contention was that that does not mean that the Republic did not do something that amounted to a contempt, and that is what matters in order to decide whether the order appointing Ms Tadoral is capable of recognition. In this respect, Mr Venkatesan drew an analogy with ***Lakatamia Shipping Co Ltd v Su*** [2026] 2 WLR 877, [2025] EWCA Civ 1389. In that case, Maître Zabaldano, a Monegasque lawyer, caused c.€27 million to be transferred out of his firm's client account on the instructions of his client, Mr Su. Maître Zabaldano did so despite knowing that this was a breach of a freezing order obtained by Lakatamia against Mr Su. Lakatamia brought a claim for (among other things) unlawful means conspiracy against Maître Zabaldano. The unlawful means relied upon were the breach of the freezing order: see [37]. At first instance, Mr Simon Colton KC decided that Maître Zabaldano, a foreigner, was entitled to invoke the ***Babanaft*** proviso and so could not be liable for unlawful means conspiracy. The Court of Appeal allowed Lakatamia's appeal, pointing out that the ***Babanaft*** proviso could mean only that Maître Zabaldano could not be committed for contempt, not that what he did was not unlawful: see [48]-[50] per Mr Colton KC. Mr Venkatesan submitted that, in the circumstances, the Court is not compelled to recognise a foreign judgment obtained by the Republic in contempt of injunctions obtained by DPW merely because the Republic cannot be committed for that contempt, whether because of the ***Babanaft*** proviso or for any other reason.

198. The difficulty with Mr Venkatesan's reliance on ***Lakatamia Shipping***, however, is that, as the Court of Appeal held, that was a case in which Maître Zabaldano was liable in conspiracy notwithstanding that he was entitled to invoke the ***Babanaft*** proviso. As such, it was not a contempt case at all: there was no contempt by Maître Zabaldano; it was not merely that he could not be committed for contempt because of the ***Babanaft*** proviso but that he was not in contempt because the freezing order did not prevent him from doing what he did.

199. Accordingly, I reject the Objecting Parties' case that in the present case the appointment of Ms Tadoral was procured with notice and in breach of the English injunction granted by Bryan J and modified by Teare J.

200. I might add that nor do I agree with Mr Venkatesan when he submitted, as he did orally, that, even if there was no breach of the injunction by the Republic, nonetheless it would be contrary to English public policy for the Court to recognise a foreign order that has been obtained by, as Mr Venkatesan put it, *"deliberately circumventing an order made by the English court"*. In making this submission, Mr Venkatesan fairly noted that he was unable to point to any authority that formulates the public policy as broadly as he did. His submission, nonetheless, was that the Court should not recognise a judgment obtained, again as he put it, *"in defiance"* of an injunction that the Court has granted. He noted that, if his submission were accepted, then, the fact that the Republic was not a defendant to those injunctions and/or is protected by the ***Babanaft*** proviso is beside the point. This was a submission, it should be observed, which only emerged during the course of the trial since previously the case had been put, as described above, on the basis that there had been a breach of the Bryan J and Teare J injunctions by PDSA or on the basis that, even if there was no breach by PDSA, nonetheless the Republic had acted in contempt of court. It was, therefore, something of an afterthought; indeed, again fairly, Mr Venkatesan acknowledged this because he explained that it was a

submission that was the resulted of his having reflected on matters having listened to Mr Akkouh's oral submissions the previous day.

201. As is often the case with submissions advanced by way of afterthought or 'on reflection', this is not a submission that I can accept. I say this because it seems to me that it puts matters far too broadly. Either there was a breach of the injunctions in this case or there was not. There cannot be a circumvention (deliberate or otherwise) or an order obtained in defiance of the injunctions unless there is a breach of those injunctions for the simple reason that, unless the injunctions operate as against the alleged circumventer or defier, there is obviously no circumvention or defiance.

202. It is, lastly, worth mentioning in this context that, although Mr Venkatesan took the Court to ***Bamberger***, specifically to those passages in the judgments of Waller J at first instance and of Leggatt LJ on appeal to which I have previously referred, pointing out, in particular, that, although one of the customers involved, Gilhaus, does not appear to have been served with the relevant English anti-suit injunction (albeit that that customer had notice of the injunction), still the German proceedings that were commenced by that customer and two other customers were treated, in principle at least, as proceedings that were brought in contravention of the anti-suit injunction. The difficulty with this submission on Mr Venkatesan's part, however, is that Waller J was clear that the injunction had been breached (see [122]) and Leggatt LJ similarly referred to there having been *"apparent breaches"* (see [43]). There was no suggestion, notwithstanding that Gilhaus had not been served with the anti-suit injunction, that the case did not entail breach, both on his part and on the part of the other two customers who had been served. It follows, Mr Venkatesan was ultimately constrained to acknowledge, that ***Bamberger*** provides only limited (in fact, I would say, no) support for the broader principle advanced by Mr Venkatesan.

203. The same applies to the other case to which Mr Venkatesan took the Court, namely ***WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka*** [2002] SGHC 104, another case involving an anti-suit injunction, in which Lee Seiu Kin JC observed at [65], as follows:

> *"In my view I cannot ignore the actions of the Defendants. They were aware of the anti-suit injunction and chose to ignore it. By virtue of the MRA they had agreed to submit disputes to arbitration in Singapore upon election by any party and the Plaintiffs have so elected. In the circumstances it would be manifestly against public policy to give recognition to the foreign judgment at the behest of the Defendants who have procured it in breach of an order emanating from this Court."*
>
> Although Mr Venkatesan sought to suggest that the focus here was on the defendants having awareness of the anti-suit injunction, rather than being in breach of that injunction, that is a suggestion which entails an over-focus on one aspect of what the judge had to say concerning awareness. Clearly, the judge was focusing, instead, on the question of breach since that is what he was describing, with awareness being an ingredient of that breach. It follows that this is not a case that supports Mr Venkatesan's wider submission either.

Breach of the arbitration agreements contained in the JVA and Articles

204. I come on to address the Objecting Parties' case that the Republic procured Ms Tadoral's appointment in breach of arbitration agreements in the JVA and Articles.

205. In this regard, Mr Venkatesan drew attention to the fact that section 32 of the Civil Jurisdiction and Judgments Act 1982 provides that the Court *"shall not"* recognise a foreign judgment if the bringing of proceedings in the Court was contrary to an arbitration or jurisdiction agreement and the respondent to those proceedings did not counterclaim, submit or otherwise consent to the foreign proceedings in question. Mr Venkatesan highlighted the use of the words *"shall not"*, submitting that the Court has no discretion in the matter and, as such, is obliged not to recognise the judgment: see ***AES Ust-Kamenogorsk v Ust-Kamenogorsk*** [2012] 1 WLR 920, [2011] EWCA Civ 647 at [149] and [150(v)] per Rix LJ. Mr Venkatesan, furthermore, noted that it is for the English Court to form its own view as to the existence and construction of the arbitration agreement and it is not bound by the foreign court's views: see section 32(3).

206. Mr Venkatesan went on to address the capacity in which the Republic applied for the appointment of Ms Tadoral as administrator in circumstances where the Republic is not, and never was, a shareholder of DCT for the purposes of either the Articles or the JVA because it never signed a deed of adherence as required by the Articles and JVA. That, indeed, is what the Scherer Arbitration found and it was what was confirmed by Henshaw J when dismissing PDSA's challenge to the Scherer Award. What matters, however, Mr Venkatesan suggested, is that, when the Republic was justifying why it had standing to apply for the appointment of an administrator, it was the Republic's position that it became a shareholder in DCT in September 2018, when the ordinance transferred PDSA's shares in DCT to it. Mr Venkatesan made the point that, in effect, what the Republic was doing - and necessarily so - was seeking to do something that only a shareholder in DCT could do. Since, Mr Venkatesan submitted, a shareholder could do what the Republic was doing only by way of, and in, arbitration, it follows that the Republic was also bound to arbitrate.

207. In this respect, Mr Venkatesan relied upon ***Altimo Holdings*** and, in particular, what Lord Collins had to say at [40], namely that it is *"impossible to understand"* how a company could seek relief under a contract but ignore the arbitration clause in it.

208. Mr Venkatesan went on, then, to address the question of whether an application by a shareholder for the appointment of an administrator falls within the ambit of any applicable arbitration agreement. His submission was that it did both in relation to the Articles and in relation to the JVA. As to the former, Mr Venkatesan referred to Article 52, which is in these terms:

> *"All disputes which could arise during the course of the Company or its liquidation, either between the Shareholders themselves regarding the Company affairs, or between the Shareholders and the Company, are subject to arbitration, in accordance with the Rules of the International Court of Arbitration of London, the State and the artificial persons of Djiboutian public law, Shareholders of the Company expressly waiving any privilege of jurisdiction or enforcement."*

209. Mr Venkatesan submitted that this arbitration agreement is governed by English law because the parties expressly chose English law as the proper law of the arbitration agreement. Specifically, as can be seen, Article 52 provides that the disputes to which

it refers are subject to arbitration in accordance with the LCIA Rules, the relevant version of which at the time of the Republic's application to appoint Ms Tadoral were the 2014 Rules. Under Article 16.2 of that version, the default seat for an LCIA arbitration is London and that provision applies because the Articles do not specify any seat, whilst, under Article 16.4, the law of the seat (i.e. London) applies to the arbitration agreement unless the parties have agreed otherwise in writing (which they did not). In view of the conclusion that, as will appear, I have reached concerning the construction of the arbitration agreements, it is unnecessary for me to determine whether Mr Venkatesan was right in what he had to say as to applicable law or whether Mr Akkouh was right when he submitted that Djiboutian law (as opposed to English law) applies.

210. Applying English law, Mr Venkatesan submitted, it is clear that Article 52 applied to the Republic's application for the appointment of an administrator because the basis of the application, as recorded by the Djibouti CFI, was that *"there is a serious dispute between the two shareholders of the company"* that could inhibit the *"smooth running of the company"* absent the appointment of an administrator, and such a dispute fell within the express terms of Article 52 given that this is concerned with disputes between shareholders and disputes between either of them and DCT.

211. I agree with Mr Venkatesan about this, notwithstanding the somewhat odd conclusion of the Djibouti CFI that the arbitration agreement applies to disputes between shareholders (plural) and DCT but not to a dispute between a single shareholder and DCT. Indeed, I did not understand Mr Akkouh to take issue with Mr Venkatesan on this aspect as a matter of construction – subject to a point to which I will come.

212. Nor, as far as I could tell and subject to that same point, did Mr Akkouh dispute that the Republic's application also fell within the scope of the arbitration agreement contained in the JVA, namely Clause 20.3 which provides for arbitration under the LCIA Rules in London and which is expressed to be governed by English law.

213. It was Mr Venkatesan's position that, again applying English law principles of construction, the Republic's application for the appointment of an administrator fell within Clause 20.3 because the basis of the application was the alleged *"serious dispute"* between the shareholders which could inhibit the smooth running of the company, and the effect of Clause 20.3 is that such matters are to be arbitrated since it expressly applies to a *"dispute between the Shareholders arising out of or relating to"* the JVA (see Clause 20.1).

214. I agree with Mr Venkatesan about this also. Whilst it is the case that an arbitrator cannot appoint an administrator, an arbitrator can nonetheless decide the underlying dispute on the basis of which the Republic sought the appointment of the administrator and any attempt to invite a court (rather than an arbitrator) to decide that dispute is therefore a breach of the arbitration agreement, even if it is done by seeking a remedy that only the Court has the power to grant. This is illustrated by ***Family Mart Holding Co Ltd v Ting Chuan Holding Corp*** [2024] 1 All ER (Comm) 697, [2023] UKPC 33, in which FMCH, the minority shareholder in a Cayman company, presented a winding-up petition on the just and equitable ground, on the basis (among others) that the relationship between the shareholders had broken down. That dispute between the shareholders fell within an arbitration clause in the shareholders' agreement. Although

the arbitrator had no jurisdiction to make a winding-up order, the Privy Council held that the underlying dispute on the basis of which an order for winding-up was sought was arbitrable and had to be arbitrated. The winding-up petition was, therefore, stayed: see [23], [95]-[97]. I agree, therefore, with Mr Venkatesan, notwithstanding an argument advanced by Soprim in its pleadings (but not pursued at trial), that it is no answer to say that an arbitrator cannot appoint an administrator: by seeking Ms Tadoral's appointment, the Republic breached the arbitration clause because the factual basis of the application was a dispute that fell within it.

215. That is not, however, an end to the matter. On the contrary, I have concluded that there was no breach of either Article 52 of the Articles or of Clause 20.3 of the JVA. This is because, as Mr Akkouh pointed out, both the Articles and the JVA contain a definition of *"Shareholders"* which is in materially similar terms. Thus, the JVA definition is this:

"Shareholders means:

(i) any shareholders in the Equity Share Capital of the Company who are Parties to this Agreement, being PAID and DPW Djibouti as of the date hereof; and

(ii) any Person to whom Shares are issued or transferred in accordance with this Agreement from time to time and who has executed a Deed of Adherence;

while any Shares are held by such Persons; and Shareholder means any of them (as the context requires)."

The definition in the Articles is this:

"Shareholders means:

(a) The subscribers to these Articles of Association holding Shares in the Capital of the Company, and

(b) Any Person to whom Shares are issued or Transferred in accordance with these Articles and who have executed a Deed of Adherence;

while any Shares are held by such Persons; and Shareholder means any of them (as the context requires)."

216. Both these definitions are specific in their requirement that, in the case of somebody who has shares issued or transferred to him, there must be a Deed of Adherence entered into. That did not happen in the case of the Republic, which was not a party to the JVA (so as to mean that the (i) aspect of the definition in the JVA was inapplicable) and which was not a subscriber to the Articles (so as to mean that the (a) aspect of the Articles definition was inapplicable). It follows that, whilst the approach adopted in ***Altimo Holdings*** might have merit, as a general proposition, in the present case the position is different since the Republic did not come within the JVA and Articles definitions of *"Shareholders"*.

217. Furthermore, in the case of the JVA at least, it is worth noting that the obligation not to act on any of the matters described as *"Reserved Matters"* was an obligation that was

on DCT, as *"the Company"*, not the Republic, a non-party to the JVA. One of those *"Reserved Matters"* was the appointment of an administrator: see Clause 11.1(d). Since it was not DCT, but the Republic, that made the application to appoint Ms Tadoral, there was no breach of the JVA on the part of DCT. It follows, I agree with Mr Akkouh, that it is difficult to see, in such circumstances, that there was, in fact, a dispute that would fall within the scope of Clause 20.3. I do not, however, base my conclusion on this point, but instead on the matter described in the last paragraph.

218. Nor, in the circumstances, need I address a further submission advanced by Mr Akkouh, which was that this is a case in which there has been a submission to the jurisdiction of the Djibouti CFI by DPW given that DPW challenged Ms Tadoral's appointment, and so that the proviso to section 32 comes into play.

219. I should lastly in this context make it clear that I do not base the conclusion that I have reached on the fact that Mimmie Chan J decided as follows in the Hong Kong Judgment at [170]-[173]:

"The Djibouti CFI rejected the argument made by DCT that the transfer of shares between [PDSA] and the Republic was made in violation of the provisions of the Articles of DCT and the relevant shareholders' agreement. The Court held that the shareholders agreement was signed by PAID [later renamed PDSA], and not by the Republic, such that the Republic was not bound thereby. The Djibouti CFI further found that the shareholders agreement had already been terminated by the Presidential Order before the Republic became a shareholder. … The Djibouti CFI and Djibouti CA gave valid reasons for the making of the Appointment Order".

I agree with Mr Venkatesan when he submitted that it is for this Court, under section 32 of the 1982 Act, to form its own view as to whether any arbitration agreement was infringed, and so that it would not be right merely to follow Mimmie Chan J and the Djibouti CFI's earlier decisions.

220. For these reasons, I conclude that the order (the original order as confirmed by the order made after the hearing on 15 November 2018) appointing Ms Tadoral was not procured in breach of any arbitration agreement and so reject Mr Venkatesan's contention that it is, accordingly, not capable of recognition.

Natural justice

221. The third aspect that needs to be considered are Mr Venkatesan's arguments that the order (the original order as confirmed by the order made after the hearing on 15 November 2018) appointing Ms Tadoral offends natural justice and that the Republic obtained it by exercising improper influence.

222. It is clear that a foreign judgment will not be recognised if the foreign proceedings offend English notions of natural or substantial justice: see ***Pemberton v Hughes*** [1899] 1 Ch 781 at pages 790-791 per Lord Lindley MR.

223. The two central requirements, identified by Atkin LJ (as he then was) in ***Jacobson v Frachon*** (1927) 138 LT 386 at page 392 are that: (i) a litigant should be given due notice of proceedings; and (ii) an opportunity substantially to present their case before

the court. A foreign judgment will also not be recognised if the foreign court lacks independence or the judgment was obtained by the exercise of improper influence.

224. This may be an aspect of the public policy ground for refusing recognition: see, for example, ***Altimo Holdings***, in which Lord Collins stated, at [117], that two judgments given by the Kyrgyz courts would not be recognised in the Isle of Man if they were *"corruptly obtained by the exercise of improper influence on the relevant Kyrgyz courts"*.

225. It has been observed that the distinction between public policy and natural justice is unclear: ***OJSC Bank of Moscow v Chernyakov*** [2016] EWHC 2583 (Comm) at [7] per Cranston J. This is because one of the grounds on which foreign proceedings may offend English notions of natural justice is where the judgment is so unsatisfactory that it is evidence of bias or lack of good faith (e.g. because no court acting in good faith could have reached that decision): ***Maximov v Open Joint Stock Co*** [2017] 2 CLC 121 at [15] per Sir Michael Burton. However, as Mr Venkatesan pointed out, the distinction probably does not matter for present purposes because the Objecting Parties' case is that both bars are engaged.

226. It was Mr Venkatesan's submission that the Republic procured Ms Tadoral's appointment through the improper exercise of influence over the Djiboutian courts and that the decisions to appoint her and to uphold her appointment were so unsatisfactory as to be compelling evidence of bias or lack of good faith on the part of the Djiboutian courts. Mr Venkatesan acknowledged that, as he put it, *"it is a strong thing to make such a finding"* but observed that it is common ground that Djiboutian courts lack independence, given that in his first witness statement Mr Boreh himself stated that *"The Djiboutian courts are not impartial or independent of the state, which is in practice controlled by the President"*.

227. That this is the position, Mr Venkatesan submitted, is clear also from a US Department of State report; from the fact that less than two weeks after Flaux J expressed concerns about the false terrorism conviction that the Republic had obtained against Mr Boreh, the Republic procured the Djibouti Supreme Court to quash the conviction; from the fact that the application for Ms Tadoral's appointment was made by the Republic, with DPW and DCT being given no notice of the hearing, nor any opportunity to be heard and with Soprim itself pleading that *"the President procured the Djibouti Courts"* to appoint Ms Tadoral; from the fact that the Djiboutian courts' reasoning in appointing Ms Tadoral and upholding her appointment is, as Mr Venkatesan characterised it, *"incoherent"*; and from the fact that Ms Tadoral has close connections to the President and the First Lady.

228. The only inference, Mr Venkatesan submitted, to be drawn is that Ms Tadoral's appointment was not an independent judicial act, but a result procured by the Republic. If that is correct, it follows that the order appointing her is not capable of recognition in the English Court.

229. I do not agree with Mr Venkatesan about this. I am clear that it is not enough for the Objecting Parties to point to general evidence of a lack of impartiality or bias unless this also impinges the decision which is sought to be enforced. It is instructive in this regard to consider what Sir Julian Flaux C had to say in ***Koza***. The background, which I have previously touched upon, was described at [5] as follows:

"On 26 October 2015, a criminal peace judge in Ankara, Judge Süer, appointed a number of individuals including the trustees as directors of group companies including Koza Altin. This was done pursuant to article 133 of the Turkish Criminal Procedure Code ('TCPC') which allows the court to appoint trustees to administer a company with a view to running its business. There have to be strong grounds for suspicion that one or more of a number of scheduled crimes is being committed within the activities of the company and the appointment of trustees must be necessary for revealing the factual truth during a criminal investigation or case. The claimants allege that the judgment of Judge Süer was corrupt."

Sir Julian added at [6]:

"*On 12 November 2015 an appeal against that judgment was determined on the papers by Judge Sahinbey, another criminal peace judge, and dismissed. Mr Ipek then appealed to the Turkish Constitutional Court and on 8 April 2016 filed an application with the European Court of Human Rights ('ECtHR') challenging the appointment of the trustees as a breach of the European Convention on Human Rights ('ECHR'). That application was declared inadmissible on 11 May 2017 for failure to exhaust all domestic remedies. By a judgment delivered on 24 May 2018, the appeal to the Turkish Constitutional Court was dismissed. On 12 December 2018 Mr Ipek filed a further application to the ECtHR which was still pending at the time that the judge's judgment was delivered on 28 July 2021. Since his judgment, the ECtHR has handed down judgment on 21 October 2021 dismissing that application. The defendants sought to put that judgment before this Court in an application to adduce fresh evidence. That application was not opposed and the parties made submissions as to the effect of that judgment with which I will deal hereafter."*

Sir Julian went on at [25] to say this:

"In relation to the Süer judgment, the judge noted at [62] that the claimants contended that English public policy considerations were engaged because the individual defendants' authority derived from a judicial process conducted for a corrupt political purpose. It was also said that Judge Süer had not acted independently and impartially on the basis of the evidence but his judgment was tainted by what the claimants described as the influence of the Erdogan regime, leading to it being impeachable for fraud. It was also said the judgment was contrary to Turkish law, perverse and not given in good faith. The judge went on to record at [63] the claimants' submission that if the challenge to the individual defendants' authority requires them to rely on the Süer judgment to establish that authority, the English court will not accept their authority if the judgment from which it derives is corrupt or given in breach of principles of natural justice or in breach of article 6 of the ECHR."

He, then, said this at [26]:

"The judge went on to refer to the report of Professor Sir Jeffrey Jowell KC ('the Jowell report') on behalf of the claimants referring to the deterioration in the rule of law and the independence of the judiciary in Turkey which the Erdogan regime has caused or to which it has contributed. He noted at [67] the claimants' submission that one of the consequences of this state of affairs was that the Turkish judicial system did not at any material time operate independently of the government. One of the manifestations of that lack of independence was said by the Jowell report to be the abolition in 2014

of the then system of criminal peace courts and their replacement by a small pool of criminal peace judges (including Judge Süer) whose procedures had been the subject of sustained international criticism. They are appointed directly by the government."

He continued at [116]:

"As Mr Crow put it, he was not asking this Court to agree with everything that the Turkish Constitutional Court said. That was not the question for us, but rather whether this review by the Turkish Constitutional Court provides a sufficient answer to the criticisms of the Süer judgment for this Court to say that it will recognise the Süer judgment, on the assumption that contrary to his primary case, such recognition is required. The question was not, as Mr Scott suggested, whether the Turkish Constitutional Court is part of the normal appellate structure or whether it was concerned not with facts and law but only fundamental breaches of human rights. That was an erroneous line of argument, because the question in this Court is not whether the Turkish Constitutional Court provides a full de novo review of all the evidence and law, but whether, as it was put in ***Maximov****, the judgment of the Turkish Constitutional Court is so perverse that no bona fide court could have reached it. He submitted that it was simply not possible to reach that conclusion in relation to the judgment of the Turkish Constitutional Court. Nor was any such allegation made by the claimants in the re-amended particulars of claim, which simply noted the decision of the Turkish Constitutional Court as part of the chronology of what had occurred in Turkey."*

He, then, said this at [118]:

"Mr Crow submitted that whilst the Jowell report makes a large number of criticisms of different aspects of the administration of justice in Turkey, as the judge correctly pointed out at [79], the Jowell report is as consistent with a finding that the Turkish Constitutional Court is independent, precisely because it does find against the government sometimes and the government simply chooses not to comply with its rulings. Furthermore, that the Turkish Constitutional Court is capable of providing effective remedies for alleged breaches of human rights has repeatedly been recognised by the ECtHR, for example in ***Mercan v Turkey*** *(2016) at [25] and [30]. There, as in previous cases, the ECtHR dismissed the application for failure to exhaust domestic remedies, which as Mr Crow said, it would not have done if it thought that the Turkish Constitutional Court could not provide adequate remedies."*

Sir Julian later said this at [147]:

"… in September 2016, legislative decree no 674 was promulgated under which the powers of trustees such as those appointed to Koza Altin were transferred to the SDIF, part of the executive, and the SDIF then appointed a new board of directors to Koza Altin. The SDIF has made a number of subsequent changes to the identity of the directors, most recently by a decision dated 5 November 2020 (referred to at [18] above), by which the individuals who were the directors at the time the 2021 proceedings were commenced were appointed. It is the authority of those directors which the claimants seek to put in issue."

His conclusion as to this was set out at [150]:

"It follows that it is Turkish legislative and executive acts from which the current directors derive their authority to act as directors of Koza Altin, not the Süer judgment."

Then, however, Sir Julian said this at [153]:

"Even if, contrary to the analysis I have just expounded, the authority of the current directors is derived from the Süer judgment, I consider that the effect of the judgments of the Turkish Constitutional Court and/or of the ECtHR of 21 October 2021 is that the claimants cannot establish that there is a serious issue to be tried that the Süer judgment was corrupt and should not be recognised by this Court."

He continued at [154]:

"The judgment of the Turkish Constitutional Court is some 30 pages of well-reasoned analysis. As Mr Crow said (recorded at [112] above), at the outset of the judgment it states in a nutshell what the complaint was and is, that the applicant's rights to a fair trial and property rights had been violated by, inter alia, the appointment of the trustees pursuant to the Süer judgment. … ."

He, then, said this at [155]:

"There is nothing in the judgment of the Turkish Constitutional Court, which I have considered carefully, to suggest that it did not deal with the issues raised by the applicant or that its approach to those issues was anything other than impartial. As I note at [92] above, Mr Scott relied upon a number of criticisms of the Turkish legal and judicial system contained in the Jowell report, but none of these is a specific criticism of this decision of this Turkish Constitutional Court. As the judge correctly said at [79]:

'Professor Jowell's report is as consistent with a conclusion that the government regularly ignores or sidesteps its decisions, as it is with a conclusion that the court itself does not function as an effective means of judicial review and control.'"

He continued at [156]:

"I agree with Mr Crow that there is nothing in the claimants' point that the Turkish Constitutional Court is not part of a normal appellate structure or did not provide a full de novo review of all the evidence and law (although on my reading it conducted a pretty thorough analysis of the issues raised). When an impugned foreign judgment has been subject to review by a higher court which has rejected the criticisms made, then unless the decision of the higher court can itself be impugned as not having been made in good faith, it is entitled to be recognised by the English court and its conclusions are entitled to be respected. The judge correctly stated the applicable principle at [79] derived from ***Maximov*** *[2017] CLC 121 at [53]-[54]. Mr Scott sought to distinguish* ***Maximov*** *because it was a decision reached after a full trial, but the principle is of general application, as stated by Sir Michael Burton at [15]:*

'The fact that a foreign court decision is manifestly wrong or is perverse is not sufficient (see for example Dicey, Morris and Collins, The Conflict of Laws (15th edn) at 14-163, ***OJSC Bank of Moscow v Chernyakov*** *[2016] EWHC 2583 (Comm) and* ***Erste***

Group Bank AG (London) v JSC VMZ Red October *[2013] EWHC 2926 (Comm)). The decision must be so wrong as to be evidence of bias, or be such that no court acting in good faith could have arrived at it.'"*

He ended by saying this at [159]-[160]:

"In his submissions to this Court, Mr Crow accepted that, whilst in his oral submissions before the judge he had not specifically dealt with whether there was a serious issue to be tried in relation to the integrity of the decision of the Turkish Constitutional Court, he had always made it clear to the judge that he was not abandoning anything that was in his written submissions. I note that in his skeleton argument before the judge at [117(1)] he referred to the decision of the Turkish Constitutional Court and to the decision of the ECtHR of 11 May 2017 referred to at [6] above declaring Mr Ipek's application as inadmissible for failure to exhaust domestic remedies. As Mr Crow had said at [109] that was an important point because, at the very time when Mr Ipek's appeal to the Turkish Constitutional Court was pending, the ECtHR was of the view that the Turkish Constitutional Court was capable of providing redress for ECHR violations, as the ECtHR had previously decided in ***Uzun v Turkey*** *(2013) and* ***Mercan v Turkey*** *(2016). At [118] of his skeleton argument, Mr Crow went on to say this (in a passage repeated in essentially the same terms in the skeleton argument for this appeal at [37(b)]):*

'Nowhere in the claimants' (extensive) evidence is there any attack on the bona fides of the Turkish Constitutional Court. Quite the reverse-the suggestion is that one of the problems in the Turkish legal system is that the decisions of the Constitutional Court are not properly implemented when they go against the judgment … . Nor is there any specific attack on the Constitutional Court's decision of 24 May 2018 dismissing Mr Ipek's appeal against the appointment of trustees. Nor are there even any pleas on these matters. In the circumstances, any 'non-recognition' of judgments case could not get off the ground.'

Accordingly, in my judgment, there is no proper basis for any suggestion that the defendants had somehow conceded before the judge that the claimants had an arguable case which should go to trial that the decision of the Turkish Constitutional Court lacked integrity or was somehow itself corrupt. There is, in any event, no serious issue to be tried as to the integrity of that decision. As the judge correctly said at [76]: 'A functioning system of review and appeal should be capable of validating in the eyes of the English court a decision of a foreign court that might otherwise have been regarded as corrupt'. In my judgment, the decision of the Turkish Constitutional Court did so in relation to the Süer judgment and, in consequence, there is no serious issue to be tried as to whether the Süer judgment should be recognised in England."

230. What these observations show is that it is not enough for the Objecting Parties to point to general evidence of a lack of impartiality or bias unless this also impinges the decision which is sought to be enforced.

231. Mr Venkatesan did not agree. He pointed to certain passages in the judgment of Rix LJ in ***Yukos Capital Sarl v OJSC Rosneft (No.2)*** [2014] QB 458, [2012] EWCA Civ 855, a case which was primarily focused on the application of the act of state doctrine, specifically whether this doctrine precludes the English Court from investigating or adjudicating upon the conduct of the judiciary of a foreign state. He highlighted, in

particular, that, at [35], Rix LJ referred to the fact that Yukos Capital was contending that certain decisions of a Russian court *"should not be recognised by the English court because they were the product of a judicial process that was partial and dependent and therefore offend against English principles of substantial justice"*. Rix LJ went on at [86] to say this:

"In our judgment the time has come, in accordance with the rationalisation and highly authoritative guidance of Lord Collins and the Privy Council in ***Altimo Holdings****, to hold that the act of state doctrine does not prevent an investigation of or adjudication upon the conduct of the judiciary of a foreign state, whether that conduct lies in the past, or in the future, and whether or not its conduct in the past is relied upon as the foundation for an assessment of the risk as to its conduct in the future. As Hamblen J stated in the present case, such a distinction is without principle: it is truly so, for such a distinction has never even been formulated. …".*

He added at [90]:

"In our judgment, therefore, the act of state doctrine does not apply to allegations of impropriety against foreign court decisions, whether in the case of particular decisions or in the case of a systemic dependency on the dictates or interference of the domestic government. Nor is there an absence of justiciable standards by which to adjudicate such allegations."

It was Mr Venkatesan's submission that these various observations support his submission that it is sufficient that, in considering the orders appointing Ms Tadoral and Mr Youssouf, the English Court is entitled to have regard to the more general or systemic situation in Djibouti and is not restricted to looking at the particular decisions themselves.

232. Mr Venkatesan submitted that his contention is supported also by what Lord Collins had to say in ***Altimo Holdings***. He drew attention, in particular, to [90], as follows:

"*Two questions on this aspect of the present case have been canvassed on this appeal. The first is the standard of proof to be satisfied by the party which asserts that justice will not be done in the foreign jurisdiction: does that party have to show that justice will not be done, or simply that there is a risk that it will not be done? The second is whether the court may rule that as a result, for example, of endemic corruption, justice is not to be obtained in the foreign legal system in general."*

Lord Collins continued at [96]:

"Is the court able to find that justice will not, or may not, be done because of endemic corruption in the foreign system? The Appellants say that the court is precluded from undertaking this task by the act of state doctrine or the related principle of judicial restraint enunciated in ***Buttes Gas & Oil Co. v Hammer*** *[1982] AC 888."*

His answer at [101] was this:

"The true position is that there is no rule that the English court (or Manx court) will not examine the question whether the foreign court or the foreign court system is corrupt or lacking in independence. The rule is that considerations of international

comity will militate against any such finding in the absence of cogent evidence. That, and not the act of state doctrine or the principle of judicial restraint in ***Buttes Gas & Oil Co v Hamme****r, is the basis of Lord Diplock's dictum in* ***The Abidin Daver*** *and the decisions which follow it. Otherwise the paradoxical result would follow that, the worse the system of justice in the foreign country, the less it would be permissible to make adverse findings on it."*

Again, Mr Venkatesan submitted, these observations support his contention and undermine that of Mr Akkouh.

233. As previously indicated, however, I do not agree with Mr Venkatesan on this matter, not least because in ***Altimo Holdings*** Lord Collins went on at [102] to say this:

"That conclusion is also supported by the many cases in the United States courts in which the standard of justice in the foreign court has been examined in the context of forum non conveniens questions. It was said in ***Blanco v Banco Industrial de Venezuela****, 997 F 2d 974, at [50] (2d Cir 1993), quoting earlier decisions, that it 'is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation.' That is not the enunciation of the act of state doctrine (well known in the United States) or the doctrine of judicial restraint in foreign relations cases (which has its origin in the United States), but simply a reflection of the fact that comity considerations require the court not to pass judgment on the foreign court system without adequate evidence. Evidence of corruption in the foreign court system is admissible (as, e.g., in* ***Cariajano v Occidental Petroleum Corp****, 626 F 3d 1137 (9th Cir 2010)), but it must go beyond generalised, anecdotal material:* ***Tuazon v RJ Reynolds Tobacco Co****, 433 F 3d 1163, 1179 (9th Cir 2006);* ***Stroitelstvo Bulgaria Ltd v Bulgarian-American Enterprise Fund****, 589 F 3d 417 (7th Cir 2009). Cases in which justice in the foreign legal system has been found wanting have been rare but they are by no means unknown:* ***Rasoulzadeh v Associated Press****, 574 F Supp 854 (SDNY 1983), affd 767 F 2d 908 (2d Cir 1985) and* ***Osorio v Dole Food Co****, 665 F Supp 2d 1307 (SD Fla 2009) are examples in the contexts of forum non conveniens and enforcement of foreign judgments respectively."*

234. It follows that Lord Collins was expressly endorsing a line of authority that evidence as to the court system, whilst admissible, is not sufficient but must go beyond the *"generalised, anecdotal"*. Indeed, after citing this passage with apparent approval in ***Yukos*** at [152], Rix LJ added at [153], as follows:

"It is thus clear that cogent evidence is required before it is possible to call a foreign court decision partial and dependent. The relevant degree of cogency may well differ in different countries."

This confirms, to my mind, that what is required is something that is decision-specific. It is, furthermore, instructive in this respect that in ***Koza***, where ***Altimo Holdings*** was considered by the then Chancellor, the case was not viewed as supporting the proposition now advanced by Mr Venkatesan. On the contrary, as previously explained, the approach of the Court of Appeal in ***Koza*** was to consider general evidence of a lack of impartiality or bias when asking itself whether that evidence impinged the decision which was sought to be enforced; in other words, systemic evidence fell to be considered alongside consideration of the specific court decision that is impugned. Mr Venkatesan sought to distinguish between a case where the decision is from a court in

a country where the judiciary is systematically biased or suborned, on the one hand, and where the decision is from a court where the judiciary is not biased or suborned, on the other hand. However, ***Koza*** was itself a case where, as the Jowell report demonstrated and as the then Chancellor noted at [26], there was *"deterioration in the rule of law and the independence of the judiciary in Turkey which the Erdogan regime has caused or to which it has contributed"*.

235. It is, therefore, with this approach, rather than that urged upon the Court by Mr Venkatesan, in mind that the order appointing Ms Tadoral as administrator needs to be viewed.

236. The most relevant order is the order that was made at the *inter partes* hearing which took place before Madame Nina Mahamoud Nour, President of the Court of First Instance of Djibouti. It was dated 15 November 2018 and starts with *"FACTS AND PROCEDURE"*, recording as follows:

"By court order No. 72/18 of September 27th, 2018, the Commercial Chamber of the Court of First Instance, having heard the Claimant [and not] the Defendant, through summary proceedings, and in first instance:

According to the provisions of Articles L 113-1, L 362-1 et seq. of the Code of Civil Procedure, Article 52 of the Articles of Association of Doraleh Terminal Container (DCT); declared the Commercial Chamber, ruling in summary proceedings, to have jurisdiction to hear this dispute; found that there is a disagreement and a conflict between the shareholders which may hinder the proper operation of the company Doraleh Container.

Stated that the conditions for the appointment of a provisional administrator are met in this case.

As a consequence, designated Madame Chantal TADORAL as provisional administrator with the [same] powers granted by law to the corporate governing bodies [of the company).

Stated that the Provisional Administrator will replace the Board of Directors for the time necessary to resolve the crisis; sets the Administrator's fees at the sum of 400,000 FDJ per month from the date of this order until the end of her assignment to be claimed from DCT funds.

States that her assignment will end upon order by the court (requête ou référé).

Notes that this order is enforceable immediately, notwithstanding any appeal or opposition.

Orders the Defendant to pay the costs."

This, then, was Madame Nour describing the earlier order dated 27 September 2018 by which Ms Tadoral was initially appointed.

237. What follows is a section that sets out DCT's objections, as follows:

"Following the authorization to oppose the nomination of the provisional administrator] through summary proceedings, Doral Container Terminal was authorized to summon the State of Djibouti on October 11th, 2018 at 10 a.m. before the President of the Court of First Instance, for the purpose of declaring DCT's claim admissible and well-founded in its opposition, to declare that there was not sufficient time between the summons and the hearing, for DCT to prepare its defense.

Consequently, declares null and void the summary proceedings of September 26th, 2018 and the subsequent order of November 27th, 2018; in the alternative, declares the State of Djibouti incompetent to act in order to request the judicial appointment of a provisional administrator.

Consequently, withdraws the order of September 27th, 2018; in the further alternative, declares that the conditions for appointing a Provisional Administrator were not met.

In any event, orders the State of Djibouti to reimburse the costs incurred by DCT until Article L 381-6 of the Code of Civil Procedure."

238. Madame Nour, then, referred to the Republic having filed written submissions and to DCT having filed reply submissions, before then setting out her *"GROUNDS OF THE DECISION"* under three headings, the first of which (*"Concerning the invalidity of the summons and the order dated September 27th, 2018"*). Under that heading, she noted as follows:

"Considering that Article L 362-2 of the Code of Civil Procedure provides that 'the request shall be brought by way of summons to a hearing held for this purpose on the usual days and hours of the summary proceedings. If, however, the case needs to be expedited, the judge may allow the court to summon, at the time indicated, even on public or non-working days.'

That under Article 362-3 of the same Code: 'In any case, the judge shall ensure that sufficient time has elapsed between the summons and the hearing for the summoned party to have prepared its defense.'

Considering that the claimant argues that the one-day period between the notification to the public prosecutor's office of the legal representative located abroad and the date of the hearing did not in any way allow DCT to be aware of the summons before the said hearing.

That this short period of time necessarily adversely affected it since DCT was not able to prepare its defense and was not represented at the hearing on September 27th, 2018."

239. After setting out certain related matters, her conclusion was this:

"Considering that the right of defense of DCT was hardly violated, since the order issued on September 27th, 2018 was rendered by default and DCT was authorized to file an opposition with the court that rendered the decision and thus, both parties were heard and the adversarial principle restored.

It is therefore appropriate to reject the invalidity claim submitted by the opposition Claimant as unfounded."

240. Madame Nour, then, addressed a topic described as *"On the lack of jurisdiction of the State of Djibouti due to its lack of shareholder status"*, in this way:

"Considering that DCT argues that the State of Djibouti would not be entitled to take action to request the appointment of a provisional administrator within DCT because the latter cannot claim to have a legitimate interest in the success of its claim.

Considering that Article 231-3 of the Code of Civil Procedure provides that 'a party taking legal action must have a legitimate interest in the success or rejection of its claim and a standing to act.'

Considering that under Presidential Order n°2018-001/PRE dated September 9th, 2018, the shares held by PAID and then PDSA in the share capital of DCT are transferred to the State. That PDSA held 66.66% of the shares.

Since this transfer, the State of Djibouti has become the majority shareholder with 66.66% of the shares in the capital of DCT.

Considering that, as a result, the State of Djibouti, as the majority shareholder, undoubtedly has a personal and legitimate interest in taking legal action in order to request that the dispute between it and its co-shareholder be resolved and to request the appointment of a provisional administrator.

Considering that the opposition Claimant argues that the transfer of shares between the majority government shareholder PAID and then PDSA and the State of Djibouti was made in violation of the provisions embodied in the Articles of Association of DCT and the shareholder agreement.

Considering that the State of Djibouti, the majority shareholder, claims not to have adhered to the shareholder agreement on the grounds that it was terminated by the government shareholder PSDA before the transfer of its shares to the State.

Considering that the shareholder agreement was effectively terminated by PDSA on 28/07/18 and by Presidential Order No. 2018-001/PRE dated September 9th, 2018, PDSA's shareholding in DCT's capital was transferred to the State.

Considering that under article 1240 of the Djibouti Civil Code, 'legally formed agreements shall be regarded as law for those who made them', that the DCT shareholder agreement was signed by PAID, now PSDA, and DPWD and not with the State.

…

That, in view of the aforementioned reasons, the State of Djibouti, as majority shareholder, is indeed entitled to take legal action so that the dispute between it and its co-shareholder DPWD can be resolved and therefore request the appointment of a provisional administrator."

241. Madame Nour, then, turned to the third matter, namely *"On the appointment of a provisional administrator"*, noting this:

"Considering that DCT argues that the conditions for the appointment of a provisional administrator are not met in this case since the State does not report any conflict with the minority shareholder that paralyses the operation of DCT.

Considering that the appointment of an administrator by the judge who will replace the legal bodies while the crisis is being resolved is a serious and exceptional measure, it is neither provided for nor organized by law.

Considering that, according to settled case law, the judge is allowed to interfere in the management of a company in the event of paralysis of the corporate bodies and the presence of an imminent danger [for the company], and that the judge's intervention must be assessed in light of the interest of the company

Considering that, of course, disagreements between the shareholders do not justify the appointment of a provisional administrator as long as the corporate bodies are functioning normally.

Considering that, on the other hand, the appointment of a provisional administrator is necessary when these dissensions or conflicts between partners are such that they threaten the sustainability of the company.

…

Considering that DPWD claims that the State wants to protect not the corporate interest of DCT but its personal interest, which is to take control of DCT by ousting DPWD."

She concluded this section with this:

"Considering that these disagreements and conflicts between partners/shareholders hinder the proper operation of the company and therefore endanger the interests of the company.

In view of these reasons, the invalidity and inadmissibility raised by the Claimant should be rejected as unfounded.

Consequently, confirm the order for interim relief dated September 27th, 2018, even if opposed, which appointed Mrs Chantal Tadoral as provisional administrator with the duties mentioned in the said order."

242. I have set these passages from Madame Nour's order in detail because what they show is that she arrived at a properly reasoned decision – a decision which is far removed from the type of case postulated in ***Maximov*** and ***Koza***. I am clear, accordingly, that, notwithstanding the more general points raised on their behalf by Mr Venkatesan concerning the Djibouti court system, the Objecting Parties do not surmount what they rightly recognise is the high hurdle that they would need to overcome in this context.

243. I should make it clear that, in arriving at the conclusion that I do, I have not regarded myself as bound to follow Mimmie Chan J's judgment in Hong Kong. This is because I agree with Mr Venkatesan when he submitted that no issue estoppel can arise out of that judgment because there is no identity of parties since Soprim is not party or privy to the proceedings in Hong Kong, and nor is there an identity of issues because the issues that arise in the two proceedings are not the same. Specifically, the issue before Mimmie Chan J was whether the Hong Kong court should recognise the order appointing Ms Tadoral, whereas the issue before this Court is whether this Court should recognise it. These are not the same issues because the Hong Kong court did not apply English public policy, whereas the English Court does. As Rix LJ put it in ***Yukos*** [150]-[151]:

> *"The issue in the Dutch proceedings was whether the annulment decisions setting aside the arbitral awards were 'partial and dependent'; if they were, then they were not to be recognised by the Dutch courts. Mr Pollock for Yukos Capital submitted that the issue in the English proceedings is exactly the same since, if the decisions were "partial and dependent", the English courts will not recognise them. It is true that the Dutch courts treat the decision as one of Dutch public order and the English courts will treat it as a matter of English public order. But the public policy, submitted Mr Pollock, is the same in each country and the issue to be decided in accordance with that public policy is identical.*
>
> *The difficulty with Mr Pollock's submission is that 'public order' or 'public policy' is inevitably different in each country. The standards by which any particular country resolves the question whether the courts of another country are 'partial and dependent' may vary considerably and it is also a matter of high policy to determine the circumstances in which this country should recognise the judgments of a state where the interests of that very state are at stake. Normally such recognition will be given and, if it is to be refused, cogent evidence of partiality and dependency will be required. Our own law is (or may be) that considerations of comity necessitate specific examples of partiality and dependency before any decision is made not to recognise the judgments of a foreign state. It is our own public order which defines the framework of any assessment of this difficult question; whether such decisions are truly to be regarded as dependent and partial as a matter of English law is not the same question as whether such decisions are to be regarded as dependent and partial in the view of some other court according to that court's notions of what is acceptable or otherwise according to its law."*

244. I agree with Mr Venkatesan, in the circumstances, that there can be no abuse of process in the Objecting Parties raising the issue of recognition because it is for the English Court to decide for itself whether a foreign judgment should be refused recognition on public policy grounds; it cannot delegate this function to a foreign court.

Soprim's alternative (no separate legal existence) case

245. In view of my rejection of the Objecting Parties' various objections and so my acceptance of Soprim's primary case, it is not strictly necessary to go on to address Soprim's alternative case. However, I propose to do so in relatively brief terms in circumstances where the alternative case was dealt with fully in submissions.

246. This is Soprim's case that, if the Agreement was not concluded, then, the Court should pierce DCT's corporate veil on the basis that it has no separate legal existence from the Republic, such that its assets can be enforced against as if they were the Republic's assets.

247. Although coming into the trial there was an issue as to which system of law is to apply when invoking the doctrine of no effective separate legal personality, ultimately Mr Venkatesan took no issue about it being English law that is the applicable law. He was right to do this since this seems to me to be consistent with authority, including, for example, ***Ahmedova v Akhmedov*** [2018] EWFC 23 (Fam), where Haddon-Cave J (as he then was) held that piercing the corporate veil under the evasion principle was a remedial doctrine to which the *lex fori* applied, remarking at [60]-[61] that:

"The Court should be astute not to aid evasion. To apply the lex incorporationis in relation to the 'evasion' principle would be to do the international fraudster's job for him: it would permit enforcement to be subverted simply by the use of corporate structures in jurisdictions with no such exceptions to the 'veil' of incorporation".

248. As to English law, Mr Akkouh referred to ***La Générale des Carrières et des Mines v FG Hemisphere Associates LLC*** [2012] 2 Lloyd's Rep. 443, [2012] UKPC 27 (***Gécamines***), where the Privy Council considered an appeal from the Manx courts where the no effective separate legal existence doctrine had been applied to Gécamines, a DRC-owned mining company. In doing so, the Privy Council considered the circumstances in which a state trading company could be held liable for a state's debts, and whether the principles which applied to this question differ from those applicable to piercing the corporate veil in private law proceedings. Lord Mance, giving the decision of the Board, reasoned as follows:

(1) Domestic authority on lifting the corporate veil was informative but not determinative given the international law considerations which arise when piercing the corporate veil of a state-controlled company: [23]-[27].

(2) Separate juridical status is not conclusive. An entity's constitution, control and functions remain relevant. However, constitutional and factual control by a state and the exercise of sovereign functions do not, without more, convert a separate entity into an organ of the state: [29].

(3) There is a strong presumption that, where there is a separate juridical entity created for commercial/industrial purposes, with its own management and budget, its separate corporate status should be respected. Extreme circumstances are required to displace the presumption. It will be displaced where an entity has, in fact, no effective separate existence (despite its juridical personality): [29].

(4) For an organisation and a state to be assimilated, an examination of the relevant constitutional arrangements, as applied in practice, as well as of the State's control exercised over the entity and of the entity's activities and functions would have to justify the conclusion that the affairs of the entity and the State were so closely intertwined and confused that the entity could not properly be regarded for any significant purpose as distinct from the State and vice versa: [29].

(5) There may also be particular circumstances in which the State has so interfered with or behaved towards a state-owned entity that it would be appropriate to look through or past the entity to the State, lifting the veil of incorporation: [30].

(6) All relevant circumstances are to be considered rather than one single factor: [33]-[34].

249. As Lord Mance ultimately put it, the primary question was whether the circumstances showed that Gécamines' juridical personality and its apparently separate commercial assets and business were so far lacking in substance and reality as to justify assimilating Gécamines and the State: [74].

250. Mr Akkouh also referred to a decision of Morison J, ***Walker v Republique Populaire du Congo*** [2005] EWHC 2813 (Comm), cited in ***Gécamines*** at [31]-[32], in which the Court considered the position of two Congolese companies: SNPC and Fininco. In concluding that both companies were organs of the state, Morison J observed that *"ultimately [SNPC is] controlled by its Chairman who is the President's representative, to whom the Board have power to delegate their functions"* (see [97]), *"commercial companies do not use their assets to pay for items of expenditure demanded or required by the Government"* (see [98]), and *"the State uses SNPC as a vehicle for doing the Government's business"* (see [99]).

251. Applying this approach to the present case, it was Mr Akkouh's submission that from approximately September 2018 onwards DCT has had no effective separate legal existence from the Republic. In this respect, Mr Akkouh pointed, first, to what the Republic has since that time said and done, noting that: in February/March 2018 the Republic transferred DCT's corporate assets in Djibouti either to itself or to another state company and expelled DPW's personnel from Djibouti; in a press release dated 23 February 2018, when Decrees 85 and 87 were passed by the Republic, DCT was described as *"an instrument essential to Djibouti's economic strategy"*; thereafter, in September 2018, the Republic transferred two thirds of the shares in DCT to itself from PDSA and, then, used this shareholding to petition for, and obtain, the appointment of Ms Tadoral as DCT's interim administrator; Ms Tadoral was conferred with *"all of the authority and power granted by law"* to DCT's management bodies and acts on the instructions/at the behest of the President; and December 2023, Ms Tadoral (acting in accordance with the Republic's instructions) obtained the appointment of Mr Youssouf, who likewise acts on the instructions/at the behest of the President.

252. Secondly, Mr Akkouh highlighted what has not been done by DCT following Ms Tadoral's appointment. Thus, as Ms Scherer found, from February 2018 onwards:

"DCT (i) no longer generated operating revenues; (ii) paid no further dividends; and (iii) ceased to incur management-fee obligations to the Claimant [DPW] rendering the company de facto an empty corporate shell".

Mr Akkouh also drew attention to the fact that the Objecting Parties have not produced any board resolutions (and any ancillary documents to those resolutions such as board papers) passed by DCT after 27 September 2018, explaining that there are no such board resolutions in existence and so indicating, Mr Akkouh submitted, that the board has not functioned in this time period. Nor, Mr Akkouh observed, has DCT seemingly produced any accounts since 2018.

253. Thirdly, Mr Akkouh submitted that it is instructive to consider what DCT has done since Ms Tadoral's appointment since, as he put it, DCT has acted in the Republic's interests in: (through Ms Tadoral) first seeking to have the Aikens Arbitration (where DCT was pursuing a counterclaim against the Republic) stayed on the basis of her appointment; (through Ms Tadoral) in the US giving two declarations explaining that Ms Tadoral alone had authority to direct DCT's affairs when Quinn Emanuel was seeking (purportedly on behalf of DCT) to enforce DCT's awards against the Republic; (through Ms Tadoral) in Hong Kong writing to China Merchants' solicitors explaining that Ms Tadoral had not authorised the claim being purportedly brought against China Merchants by DCT; and (through Mr Youssouf) expressing an intention to repatriate the funds in the SCB Accounts to Djibouti, no doubt (as Mr Akkouh put it) in order that they could be dealt with in accordance with the President's instructions.

254. Fourthly, Mr Akkouh highlighted how no person has come forward to give evidence of DCT's independent status: not Mr Al Banna, who as recently as May this year signed the Objecting Parties' Amended Defence on behalf of DCT and who gave evidence in the Hong Kong Proceedings, the Douglas Arbitration and the Scherer Arbitration; and nor either Ms Tadoral or Mr Youssouf. It was Mr Akkouh's submission, in the circumstances, that this confirms the fact (which is, in any event, common ground) that they act on behalf of the President.

255. In summary, it was Mr Akkouh's submission that the Republic has so interfered with or behaved towards DCT that it would be appropriate to look through or past the entity to the State, lifting the veil of incorporation. As a result, Mr Akkouh submitted the Court should conclude either that DCT holds the SCB Accounts rights on trust for the Republic or that Djibouti should be deemed to have (by reason of the Court's no separate existence finding) legal title to the SCB Accounts. Mr Akkouh submitted that that the first of these approaches is preferable, but that, if the Court prefers the second analysis, then, Soprim should be permitted to obtain a third party debt order.

256. I do not agree with Mr Akkouh about this. I say this because, as appeared to be acknowledged by Mr Akkouh given how he put Soprim's case, unless a trust can be established, the Court would not have jurisdiction to make a charging order even if DCT has no separate legal existence from the Republic. This is because, as previously explained, a bank account such as the SCB Accounts is not one of the assets identified in section 2(2) of the 1979 Act. There is, therefore, jurisdiction to make a charging order only if the Republic's rights in the SCB Accounts constitute a beneficial interest *"under a trust"*, meaning that Soprim must show that DCT holds the SCB Accounts on trust for the Republic. However, if, as Soprim contends, DCT has no separate legal existence from the Republic, then, there cannot be any such trust: DCT and the Republic would be the same, meaning that DCT cannot be a trustee for the Republic; as Mr Venkatesan put it, if X and Y are the same, X cannot be a trustee for Y.

257. As Mr Venkatesan went on to submit, albeit that this was not a point which was pressed by Mr Akkouh in his oral submissions, nor is it an answer to the difficulty identified by Mr Venkatesan for Soprim to say, as it did in its Amended Particulars of Claim, that the Republic has an *"equitable interest"* in the SCB Accounts even if DCT has no separate legal existence from the Republic because that is the *"appropriate way"* of reflecting that, *"as a matter of property law"*, DCT remains the legal owner of the SCB Accounts, but that its separate corporate personality falls to be disregarded *"for the*

purposes of enforcement". English law does not make up a trust: there is either a trust or there is not, and that depends on the ordinary rules of trust law. The fact that the trust for which, on this scenario, Soprim contends would be confined to one context alone, namely the enforcement of judgments, meaning that DCT would be a trustee of the SCB Accounts for some purposes but not others, makes the position all the more implausible from Soprim's perspective.

258. It follows that Soprim's alternative case in support of the charging order application cannot succeed. I will come on shortly to address its application for a third party debt order, but should first deal with Mr Venkatesan's submissions concerning ***Gécamines*** and how the principles described in that case should be applied in the present case since, as will appear, I am not persuaded, in any event, that it would be appropriate in this case to conclude that DCT lacks separate legal existence.

259. Mr Venkatesan, in this context, emphasised what Lord Mance stated, at [29], about there being a *"strong presumption"* that the distinct legal personality of a separate entity should be respected, especially where the entity was formed by the State for commercial or industrial purposes, with its own management and budget, and how it would take *"quite extreme circumstances to displace that presumption"*. He drew particular attention to the fact that Lord Mance went on to say that the presumption would be displaced if, despite its separate personality, the entity had no effective separate existence and was an organ of the State in view of the entity's constitutional arrangements (including as applied in practice), the State's control over the entity and the entity's activities and functions. He particularly flagged that Lord Mance noted that only if the Court were to consider that *"the affairs of the entity and the State were so closely intertwined and confused that the entity could not properly be regarded for any significant purpose as distinct from the State and vice versa"* would the Court be justified in reaching a conclusion which, as Foxton LJ recently observed in ***Korea v Elliott Associates LP*** [2026] EWHC 368 (Comm) at [126(iv)], would be *"exceptional"*.

260. I have these aspects in mind when considering the present case. In doing so, it should not be overlooked that DCT was incorporated as a joint venture company and had its own business and assets until at least 2018, when the Republic seized the Terminal. There is, therefore, a strong presumption that DCT's separate legal personality should be respected. The question is whether that presumption should be displaced. I have concluded that it should not for a number of reasons.

261. First and perhaps most fundamentally, it is significant that DCT has never been wholly owned by the Republic because DPW has always been a one-third shareholder. Although Mr Akkouh submitted that this is not fatal to the conclusion that DCT is an organ of the Republic, nonetheless no authority was cited to the Court where the Court has found a separate legal entity which is not exclusively owned by the State to be a State organ.

262. Secondly, as Mr Venkatesan pointed out, the Republic exercises no constitutional control over DCT, it being common ground that, notwithstanding its minority shareholding, DPW was given control of DCT under the JVA and Articles.

263. Thirdly, the fact that the President has control over DCT, through Ms Tadoral and Mr Youssouf, does not, in and of itself, justify the conclusion that is urged upon the Court

by Soprim since a separate legal entity does not become a State organ merely because the State controls it. As Lord Mance made clear, factual control alone is not enough.

264. Fourthly, Soprim's reliance on the Republic's decrees transferring DCT's corporate assets to SGTD similarly does not go far enough, not least because, as Mr Venkatesan submitted, if DCT were a State organ, there would be no need for the Republic to transfer those assets to itself or any other entity; and nor would there be any need for the Republic to install a pliant administrator.

265. Fifthly, DCT has an independent board, which, as Mr Venkatesan observed, has spent the last 7 years since Ms Tadoral's appointment bringing arbitration and litigation proceedings around the world to enforce DCT's rights – albeit that Ms Tadoral has, on occasion, sought to thwart those efforts.

266. Sixthly, the fact that there is no evidence from certain people asserting DCT's independence is, again, not sufficient since, rather than showing that DCT is an organ of the State, the absence of such evidence shows, at most, that the Republic has factual control over DCT and that, to repeat, is not sufficient without more for DCT to be an organ of the State as explained above.

267. Seventhly, whilst DCT has not apparently traded since Ms Tadoral's appointment, it is wrong to suggest that DCT has done nothing since that appointment given the extensive litigation and arbitration pursued by DCT's board in the meantime. In any event, as Mr Venkatesan submitted, the fact that the State asserts control over a separate entity does not equate to that entity being an organ of the State; on the contrary, if anything, it shows the entity to be a victim of the arbitrary exercise of sovereign power, as opposed to an organ wielding such power.

268. For these additional reasons, even if a charging order could, as a matter of law, be made on the basis that DCT lacks separate legal existence, I have concluded that it would be inappropriate for the Court to make such an order in this case.

Discretion

269. It is not in dispute that the Court has a discretion under section 1(1) of the 1979 Act whether to make a charging order since the words used in that sub-section are *"may make"*. Section 1(5) stipulates that the Court *"shall consider all the circumstances of the case and, in particular, any evidence before it as to ... (b) whether any other creditor would be unduly prejudiced by the making of the order"*, whilst section 3(2) provides that a *"charging order may be made either absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters"*.

270. Mr Akkouh pointed out, however, that once a creditor has obtained an interim charging order, the bar for another creditor to establish that it has been unduly prejudiced or that there are exceptional circumstances is very high indeed, given that the usual rule is 'first past the post'. Thus, in ***FG Hemisphere Associates LLC v Democratic Republic of Congo*** [2005] EWHC 3103 (Comm), Kensington had obtained an interim third party debt order over a US$39 million debt owed by Glencore to Congo in April 2005, made final in November 2005. After the final order was made, but before it was sealed, Hemisphere made its own third party debt order application and sought a *pari passu*

payment of its judgment debt from the Glencore debt that Kensington had already charged. Cooke J observed, at [16], that there was no reason why Hemisphere *"should take advantage of Kensington's hard-earned fruits of litigation"*, citing, at [17], what Lord Goddard CJ had to say in ***James Bibby Ltd v Woods*** [1949] 2 KB 449, namely that *"the person who gets in first gets the fruits of his diligence"*. Cooke J added, in somewhat cinematic terms, this at [18]:

"As the parties put forward their arguments, the court was subjected to a barrage of noise from a protest outside the building, including music blaring from loudspeakers. Two of the more readily recognisable ditties were those of the themes The Great Escape and The Dambusters. Concluded at [18] that "I decline to allow [Hemisphere] to escape from the effect of their dilatoriness in pursuing this asset at any time before this, notwithstanding the well publicized litigation which was taking place and initiated by Kensington. I further decline to bust the dam or open the flood-gates to allow all creditors of the Congo to latch on to this debt as a matter of equitable discretion and to take advantage of the fruits of Kensington's diligence."

271. In a subsequent case, ***British Arab Commercial Bank plc v Algosaibi*** [2011] 2 CLC 736, [2011] EWHC 2444 (Comm), eight banks had obtained judgments of c.US$250 million against the same defendants. HSBC obtained an interim charging order over London properties it said belonged to those defendants, and the other banks thereafter made similar applications and obtained (subsequent) interim charging orders. The Court had to decide whether to make HSBC's order final, or whether it should instead make the opposing banks' orders final – on their undertaking to share the proceeds of enforcement *pari passu* amongst all the banks (including HSBC). The Court made HSBC's order final, on the basis that it was first in time and there was no undue prejudice to the competing banks. Flaux J explained at [53] as follows:

*"I have reached the conclusion that Cooke J [in **FG Hemisphere**] was right in saying that in non-statutory insolvency regime cases, the general rule is that the principle of 'first past the post' applies. However, it is only a general rule, to which there may be exceptions when it is appropriate in the exercise of the court's discretion not to make a charging order final. It seems to me that (despite Mr Lord's submissions to the contrary) there may be exceptional cases where even though no statutory insolvency regime applies, it is appropriate to conclude that someone in the position of HSBC should not have the benefit of a final charging order."*

He went on at [54] to say this:

"It seems to me that this conclusion flows from the fact that both section 1 of the Charging Orders Act 1979 and the terms of CPR 73.8 recognise the existence of a discretion as to whether to make an order final. However, I do not consider that the discretion is a general one at large. Rather, subsection (5) talks about any other creditor being 'unduly prejudiced' by the making of the charging order. I agree with Mr Twigger that Mr Lord is wrong in suggesting that this provision is only intended to inure to the benefit of the general body of creditors, since it refers in terms to 'any other creditor' as opposed to 'all other creditors'. However, the expression 'unduly prejudiced' seems to me to recognise that a charging order in favour of one creditor will almost certainly, in one sense, prejudice other creditors, because it gives that creditor security against which to enforce his judgment which the other creditors do

not have, but it is only where that prejudice is 'undue' that the court should consider not making a final charging order."

Flaux J added at [55]:

"In my judgment, the prejudice to other creditors, such as the opposing banks in the present case, can only be said to be 'undue' if there is something about the judgment creditor's conduct which would cause undue prejudice if there were a final charging order or if there are some other exceptional circumstances, which mean that other creditors will suffer some prejudice over and above the prejudice they would inevitably suffer, if an order were made in favour of the judgment creditor."

He continued at [56]:

"There is no authority directly on the point as to when, in non-statutory insolvency regime cases, the prejudice to other creditors will be 'undue' or as to what constitutes an exceptional situation, so that it would be appropriate for the court to exercise its discretion not to make a charging order final. However, I accept that (although the House of Lords in ***Roberts*** *disapproved the ratio of* ***Burston*** *and therefore care must be taken in placing too much reliance on the judgments) the judgments of Megaw LJ and Shaw LJ in that case do provide some guidance as to when it would be appropriate not to make a charging order final because of exceptional circumstances, such as aspects of the judgment creditor's conduct. Nonetheless, in my judgment, it is of some significance that all the examples the two Lords Justice give are ones of what might be described as 'sharp conduct' by the judgment creditor: putting other creditors off the scent by purporting to agree to forego immediate pursuit of a claim or undue haste in obtaining a preferred position or unfair use of special knowledge."*

272. I refer also to ***Midtown Acquisitions v Essar*** [2018] EWHC 789 (Comm), a case concerned with two competing creditors: Midtown, which had obtained judgment of US$171 million on 17 March 2017 and an interim charging order on 11 September 2017; and ICICI Bank, which had obtained judgment in the sum of US$588 million on 10 November 2017 and an interim charging order on 20 November 2017. Both creditors asked for their interim orders to be made final, but ICICI also said that their order should rank *pari passu* with Midtown's order, rather than taking effect as a second charge. Knowles J concluded that Midtown should have priority, taking the view that, in order to achieve an *"equitable outcome having regard to all the circumstances"* (see [16]), including the 'first past the post' principle, relevant factors included the fact that both parties were significant commercial entities, well able to look after their own interests (see [20]), Midtown got past the post first, without the defendant engineering that outcome (see [21]), ICICI was not seeking equality between all creditors – just between itself and Midtown (see [22]) and this was not a case in which it could be said that one party had been diligent and the other dilatory (see [27]). Ultimately, Knowles J explained at [29], *"the party that was first past the post, namely Midtown, is the party that will and should … enjoy priority over ICICI"*.

273. Adopting the approach described in these authorities, Mr Akkouh noted, in the first instance, that Soprim got to the post first. Indeed, Mr Akkouh highlighted how DPW has not itself made its own application for a charging order as a creditor of the Republic – a matter to which I will return. Secondly, Mr Akkouh observed that the reason why there are funds in the jurisdiction against which anyone can enforce is because Soprim obtained the worldwide freezing order that it did in 2017, Waksman J noting earlier this

year in the context of a security for costs application that this worldwide freezing order was *"obtained and maintained by Soprim no doubt at considerable expense"*. Thirdly, Mr Akkouh described the Objecting Parties as having adopted an aggressive and obstructive approach to this litigation throughout. Fourthly, Mr Akkouh referred to the Objecting Parties having acted in this way notwithstanding that Mr Boreh helped them to fend off the Republic's attempts – in the Aikens Arbitration – to have the 2006 CA declared invalid on the basis that DPW had bribed Mr Boreh. Fifthly, Mr Akkouh noted that Soprim had not acted in any way improperly; on the contrary, it had preserved the SCB Accounts and it was seeking to enforce against them in the usual way. Sixthly, Mr Akkouh suggested that, as between Soprim and DPW, Soprim is the more deserving party since Soprim's business was destroyed by the Republic's conduct and Mr Boreh was relentlessly persecuted for almost a decade, whereas DPW, although also a victim of the Republic's conduct, does not appear to have lost any of its own money.

274. This is a curious case. It is unlike those to which I have referred. This is because the Objecting Parties are not themselves asking the Court to order that they should receive any of the monies in the SCB Accounts. As such, although Mr Venkatesan took issue with the sixth point made by Mr Akkouh, noting that DPW has found itself very substantially out of pocket as a result of the Republic's termination of the CA 2006 and its failure to pay arbitration awards totalling some US$165 million, this is not a case in which the Court is being asked to weigh up the position as between two rival parties who are each seeking a charging order.

275. I specifically explored this with Mr Venkatesan, giving him time to seek instructions on whether, although they had not to date asserted a claim to the monies, nonetheless they wish to do so. Having obtained instructions, he explained that the Objecting Parties were not seeking a charging order in their favour. Their position, however, is that the Court should not grant Soprim the relief sought for three reasons.

276. The first such reason is that to make a final charging order would involve recognising that the Republic can do indirectly something that it cannot do directly, namely expropriate DCT's English assets. This is because, Mr Venkatesan submitted, Soprim's case for a charging order requires it to contend that the Republic has *"captured"* DCT through Ms Tadoral and Mr Youssouf in circumstances where it is contrary to English public policy to recognise a foreign State's attempt to expropriate property situate in England: see *Dicey*, Rule 21; and ***Peer International Corp v Termidor Music Publishers Ltd*** [2004] Ch 212, [2003] EWCA Civ 1156 at [38]-[40] per Aldous LJ. To permit the Republic to achieve the same result indirectly would, Mr Venkatesan suggested, not be an appropriate exercise of discretion since, although Soprim is seeking to be paid the monies in the SCB Accounts, rather than the Republic, the monies can go to Soprim only if they belong to the Republic. To allow Soprim, therefore, to receive the monies would involve, Mr Venkatesan submitted, accepting that a foreign State - here, the Republic - can seize money in an English bank account provided that that foreign state does so indirectly.

277. Mr Venkatesan began his oral submissions by making this point and returned to it towards the end of his submissions, submitting that the Court should proceed on the basis that, in effect, it is the Republic that is making the present application since what Soprim is asking the Court to do is to decide that the monies in the SCB Accounts belong not to DCT but to the Republic. He suggested, indeed, that the question of

whether there is the bare trust alleged by Soprim cannot change just because it is Soprim which is asking the Court to find that there is that bare trust, as opposed to the Republic asking the Court to make such a finding. I do not agree with Mr Venkatesan about this, however, since it seems to me that his arguments ignore reality. It is not the Republic that is asking the Court to allow it to receive the monies. It is, instead, a party to which the Republic has been held liable. In making the present applications, that party, Soprim, is endeavouring to recover that which it has been decided it is entitled to receive from the Republic. In such circumstances, to equate Soprim (the aggrieved creditor) with the Republic (the wrongful debtor) is wrong in principle.

278. The second reason why, in Mr Venkatesan's submission, the Court's discretion should not be exercised in Soprim's favour is that, assuming that Ms Tadoral or Mr Youssouf made the Agreement on which Soprim's case depends, then, they acted in serious breach of their duties. Accordingly, Mr Venkatesan submitted, it would not be an appropriate exercise of the Court's discretion to grant relief founded upon breaches of duty by individuals purporting to act as officeholders. Specifically, Mr Venkatesan submitted, there was a breach of duty by Ms Tadoral and Mr Youssouf given that it is common ground that they act on the instructions of the President, rather than in DCT's interests, the breach is self-evident. Professor d'Avout, Mr Venkatesan observed, did not appear to dispute that it would be a breach of their duties for Ms Tadoral and Mr Youssouf to act on the Republic's instructions, his point, instead, being that such an act by Ms Tadoral or Mr Youssouf is not void but only voidable and must be treated as valid unless declared to be void by a court.

279. I agree with Mr Venkatesan as to this last point. However, what matters is not whether the acts of Ms Tadoral and Mr Youssouf are void or voidable, but whether they acted in breach of duty since, if that was the case, then the Court is entitled to have regard to all relevant factors and one of those factors is whether, by making a charging order, this would somehow entail the Court condoning Ms Tadoral and Mr Youssouf's breach of duty.

280. This was another submission that was at the forefront of Mr Venkatesan's submissions. Nonetheless and contrary to what Mr Venkatesan submitted, as just explained, the fact that it is Soprim, rather than Ms Tadoral, seeking the order should not be overlooked or treated as an irrelevance. The fact that Soprim's case entails Ms Tadoral and Mr Youssouf acting in a way which involved a breach of duty on their part does not mean that Soprim's and the Republic's respective positions should be treated as being on all fours with each other. That this is the position is clear. If the Republic was contending as Soprim now contends and asking the Court both to find that the Agreement existed and to exercise its discretion to permit the Republic to access the monies, the Court would necessarily be sceptical about the former and unwilling about the latter. Where, however, it is a party that is owed considerable sums by the Republic that is asking the Court to find that there was the Agreement and, if so, to exercise its discretion in its favour, the Court is bound to approach matters differently, if not as to the former, then, certainly as to the latter since it is obvious that, in terms of discretion, there are very real differences between the position of the Republic and its creditor. The fact that the Republic might benefit by having its debt to Soprim reduced is not a significant factor, in my view, since the more appropriate way in which to look at the position is that, given my conclusion that the Agreement came into existence, the Republic is having its own funds taken away from it in order partially to discharge its debt to Soprim.

281. Thirdly, Mr Venkatesan submitted that, although there is authority endorsing a 'first past the post' rule of enforcement, there is no such absolute rule and that exceptional circumstances are not required to depart from it. In his submission, making a final charging order would involve preferring one victim of the Republic's arbitrary exercise of state power (Soprim) over others (DCT and DPW), and that this would not be appropriate because Soprim should not be allowed to steal a march on other victims of the Republic's conduct by keeping the money in the SCB Accounts for itself. The more so, Mr Venkatesan observed, given that it is not right to proceed on the basis that the only reason why there are funds in the SCB Accounts against which anyone can enforce is because Soprim obtained the worldwide freezing order in view of the fact that the SCB Accounts had already been frozen since 2014 for unrelated reasons and given also that the Objecting Parties obtained injunctive relief in 2017 which also protects the SCB Accounts. Furthermore, Mr Venkatesan submitted, a final charging order in Soprim's favour would also be inconsistent with the various judgments and awards that have upheld DPW's right to control DCT (e.g. the Scherer Award and the judgment of Henshaw J) and the 2006 CA (the first Douglas Award), which the Objecting Parties have themselves procured.

282. The difficulty with these submissions, however, is a straightforward one: it is only Soprim that has taken steps to obtain a charging order, the Objecting Parties having not taken equivalent steps. If the charging order that is sought by Soprim is not made, then, the monies in the SCB Accounts will stay where they are, going nowhere despite the fact that the Republic is in substantial debt to Soprim, the party that is seeking the charging order. It cannot be right, in such circumstances, for the money to stay where it is held on trust for the Republic, albeit subject to the restrictions contained in Teare J's order.

283. When I put this point to Mr Venkatesan, his answer was to raise the possibility that, on a later occasion, there might be proceedings under section 423 of the Insolvency Act 1986 seeking to set aside the Agreement allegedly made by Ms Tadoral and Mr Youssouf or under section 220 of the same Act in each case on the basis that, as Mr Venkatesan put it, *"ex hypothesi we only got to this point in the analysis because [the Court] has found that Ms Tadoral [and/or Mr Youssouf] decided effectively to give away DCT's money to the Republic"*. In that event, Mr Venkatesan explained, the monies in the SCB Accounts would, or at least might, revest in DCT, whereas, if the charging order sought by Soprim were to be made, then, those monies would have gone to Soprim, with any claim against Soprim (assuming that such a claim would be viable) being a matter to be addressed separately.

284. Such proceedings have not, however, to date been brought. Mr Venkatesan explained that this is because the Objecting Parties' position is that the monies in the SCB Accounts are not the Republic's and so, as matters stand, it would be inconsistent for the Objecting Parties now to be making applications under sections 423 or 220. Whether he is right about that or not, the fact remains, however, that the Court needs to make an assessment now, on the basis of the position as it currently is, and that position is clear: there is one party (Soprim) that has taken the steps that it has; it is that party (Soprim) which is not only the first past the post but, to date, the only party even to have begun the race. It would be wholly inappropriate for the Court, in these circumstances, to deny Soprim what it seeks on discretionary grounds.

285. In conclusion, therefore, I am clear that the discretion should be exercised in Soprim's failure in such a way as to see Soprim recover all the monies in the SCB Accounts. I should explain, for completeness, that I reach this conclusion for the reasons set out above, primarily on the basis that only Soprim has sought a charging order and so this is not a case in which the Court has to decide between two competing charging order applicants. I need not, in the circumstances, base my decision on the second, third, fourth and sixth reasons advanced by Mr Akkouh as described earlier. As to the fifth reason, there has been no suggestion that Soprim has acted in any way improperly, and so I say no more about that.

Soprim's alternative application for a third party debt order

286. It is unnecessary, in the light of my conclusions so far, to address Soprim's alternative case for a third party debt order. I will, however, do so briefly, noting, in doing so, that this is an application which was only mentioned once in Soprim's skeleton and, even then, on the basis that its preferred analysis would not involve the making of such an order.

287. I am clear, indeed, that the application cannot succeed for a number of reasons.

288. The first of those reasons is that CPR 72.2(2) provides that the Court *"will not make"* a final third party debt order without first making an interim third party debt order, and the Court in this case has not made an interim third party debt order because Soprim has never applied for one.

289. Secondly, there is a further jurisdictional reason why a third party debt order should not be made. This is that the monies in the SCB Accounts do not constitute a *"debt due or accruing due"* to the Republic, which means that there is no debt due from SCB to the Republic *qua* judgment debtor, and so a third party debt order is not appropriate. The banker-customer relationship in respect of the SCB Accounts is between DCT and SCB, with the consequence that the monies in the SCB Accounts represent a debt owed by SCB to DCT rather than the Republic.

290. Thirdly, although related to this last point, whilst Soprim pleaded that the monies in the SCB Accounts should be *"treated as debts accruing to DCT, and hence the Republic"* because DCT has no separate legal existence, that is a contention that I have previously rejected.

291. Fourthly, even if I had accepted that DCT has no separate legal existence, Soprim's case in this respect faces the difficulty that CPR 72.2 does not apply unless the debt is owed in the name of the judgment debtor, and the fact that the judgment debtor has a beneficial interest in a debt owed to someone else is insufficient, even if that person lacks separate legal existence from the judgment debtor.

292. This is demonstrated by two authorities. The first is ***AIG v Kazakhstan*** [2006] 1 WLR 1420. In that case, the claimant, AIG, obtained an ICSID award against the State of Kazakhstan. It then obtained an interim third party debt order over cash held by the National Bank of Kazakhstan in an account with ABN Amro, a London custodian. NBK was the central bank of Kazakhstan and trustee of a national fund created by the State. It was common ground that the cash in the ABN Amro account in London formed part of the assets of the national fund and that the State had a beneficial (i.e. proprietary)

interest in it: see [16], [25], [27(1)], [28(2)]. Despite this, Aikens J (as he then was) held that there was no jurisdiction to make a third party debt order and discharged the interim order. This was because the account holder was NBK, not the State, and the debt was therefore owed by ABN Amro to NBK in NBK's name; and the fact that the State had a beneficial interest in the debt was irrelevant. As Aikens J put it at [31]:

"The fact that Kazakhstan holds the ultimate beneficial interest in the national fund and thereby has a beneficial interest in the cash accounts held by AAMGS on behalf of NBK does not, in my view, mean that there is a debt due or accruing due to Kazakhstan in respect of those accounts. Kazakhstan has no contractual rights against AAMGS either under the global custody agreement or otherwise. There is no relationship of debtor and creditor between them. The fact that Kazakhstan may, ultimately, have a beneficial interest in the money represented in the cash accounts cannot, in my view, create such a relationship."

293. The second case relevant on this aspect is ***Continental Transfert Technique Ltd v Nigeria*** [2009] EWHC 2898 (Comm). In that case, Continental obtained an arbitral award for £139 million against Nigeria. Continental obtained interim third party debt orders over the London bank accounts of NNPC, which it alleged (as Soprim does in this case) was an organ of the State. NNPC applied to set aside the interim order. The application succeeded. Mr Jonathan Hirst QC considered both ***AIG*** and a decision to the contrary (***Kensington International***, a decision of Cooke J) in which ***AIG*** was not cited. He declined to follow ***Kensington***, instead endorsing Aikens J's view that CPR 72.2 was only intended to be available in respect of debts actually owed to the judgment debtor and in their name. He pointed out that any other approach would prejudice the third party, which might be forced to pay the same debt twice, and that the position under the RSC was also that any trust or other interest could not justify the imposition of a garnishee order (as it then was). He observed at [29], in particular, that *"CPR r. 72.2 was not intended to deal with debts other than those actually owed in the name of the judgment debtor"*.

294. I agree with Mr Venkatesan (and Mr Mustafa who made oral submissions on this point) when he submitted in this context that the requirement that the debt must be owed to the judgment debtor and in their name is essential to avoid prejudice to the third party. This is because CPR 72.9 provides that compliance with a third party debt order discharges the third party from *"his debt to the judgment debtor"*, but not to anyone else. Where the third party owes a debt to X in their name, but Y is the judgment debtor, if it were possible for a third party debt order to be made merely because X holds that debt on trust for Y or lacks separate existence from Y, then, the third party would be at risk of having to pay twice because CPR 72.9 would discharge his debt only '*to the judgment debtor*', i.e. to Y, not to X, to whom he actually owes the debt.

295. Furthermore, the judgment creditor cannot be in a better position *vis a vis* the third party than the judgment debtor himself would be. This is why in ***Ferrera v Hardy*** [2016] HLR 9, at [13], [18]-[20], Floyd LJ observed that a *"useful test must be whether the judgment debtor would be in a position to sue the third party for recovery of a debt"*. In this case, as Mr Venkatesan (and Mr Mustafa) pointed out, the Republic would not be in a position to sue SCB for the credit balance in the SCB Account. If it were to do so, SCB's defence would be that the Republic is not an account holder and that no money

is due to it. Soprim cannot be in a better position than the Republic, which would be the consequence of granting a third party debt order.

296. Accordingly, the alternative, third party debt order, case fails.

Receivership

297. The same applies to Soprim's further alternative application for a receivership order, which is put on the basis that the Court should appoint a receiver over the over the Republic's beneficial or other interests in the SCB Accounts held by the Republic under a *prête-nom*.

298. In circumstances where I have decided that there was no *prête-nom*, this is an application that obviously cannot succeed. In any event, even if I had decided that there was a *prête-nom*, still a receivership order would not have been appropriate in this case. That is because even if the Republic had a right under a *prête-nom*, that would be a right not as against SCB but as against DCT, as demonstrated by the fact that the Republic could not sue SCB for the money in the SCB Accounts.

299. I agree with Mr Venkatesan in this latter respect that, in a case where an asset is owned in equity, the judgment debtor needs to be shown to have an enforceable legal right to call for the asset to be transferred to him if a receiver is to be appointed. This must be the position as a matter of principle, not least because, unless a judgment debtor has the right to call for an asset to be transferred to it, then, it would offend what has been described in authorities such as ***Broad Idea International Ltd v Convoy Collateral Ltd*** [2023] AC 389, [2021] UKPC 24 at [84]-[89] (per Lord Leggatt), as the *"enforcement principle"*, to use that asset to satisfy a judgment against the judgment debtor. The fact that the judgment debtor has *de facto* control of an asset may be evidentially relevant to the question of whether it belongs to the judgment debtor. However, as recognised in ***Skurikhin (No. 2)*** by Ms Robertson QC (and endorsed by the Court of Appeal: ***JSC VTB Bank v Skurikhin*** [2021] 1 WLR 434, [2020] EWCA Civ 1337 at [73] per Phillips LJ), *de facto* control alone does not turn the controller into the owner: see [103] and [106].

Full and frank disclosure

300. I turn, next, to a matter that has been raised by DCT but not by DPW. This is DCT's case that, in obtaining the interim charging order before Dias J, something that, in the ordinary way, was done *ex parte*, there was breach on Soprim's part of the duty to give full and frank disclosure that Soprim accepts it was under when making the application.

301. That duty exists in order to protect the integrity of the court's process (see ***Banco Turco Romana SA v Cortuk*** [2018] EWHC 662 (Comm) at [45] per Popplewell J (as he then was)) and entails the applicant having to disclose all material matters of fact or law and to present the application fairly (see ***Memory Corp Plc v Sidhu (No. 1)*** [2000] 1 WLR 1443, [2000] EWCA Civ 9 at pages 1459H-1460B per Hart J). As to the test of materiality, a fact or point of law is material if it *"would be relevant to the exercise of the court's discretion"* as to whether to make the order or as to its the terms (see ***Alliance Bank v Zhunus*** [2015] EWHC 714 (Comm) at [65] per Cooke J), meaning that the applicant must disclose all matters *"which reasonably could or would be taken*

into account by the Judge in deciding whether to grant the application" (see ***Siporex Trade SA v Comdel Commodities*** [1986] 2 Lloyd's Rep 428 at page 437 per Bingham J (as he then was)). As it was put by Carr J (as she then was) in ***Tugushev v Orlov (No. 2)*** [2019] EWHC 2031 (Comm) at [7]:

"i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

… .”

302. As Butcher J put it more recently in ***Brightwaters v Eroton*** [2026] EWHC 296 (Comm) at [56]-[57], materiality *“depends in every case on the nature of the application and the matters relevant to be known by the judge when hearing it”*.

303. Furthermore, the duty to raise legal points must be kept within sensible limits given that it is a duty to *“identify arguments which it is reasonably anticipated that the absent party might wish to make, rather than to attempt an exhaustive trawl through every possible legal objection that might be taken”* (see ***WWRT Ltd v Tyschenko*** [2021] Bus. L.R. 972, [2021] EWHC 939 (Ch) at [122] per Bacon J).

304. It is with these principles in mind that I come on to consider the matters raised by DCT – more particularly, the five matters identified by Mr Venkatesan and Mr Mustafa in their skeleton argument, as opposed to the nine aspects raised in DCT’s Ground 9 Objection, since by the time of trial there had been some modification in this respect.

305. The first matter is DCT’s contention that Soprim failed to disclose to Dias J that its own then French law expert, Mr Genet, considered that it was unlikely that the concept of French law said to be analogous to a bare trust (*simulation*) would apply to DCT. As to this, Soprim told Dias J that if, contrary to its case, Djiboutian law was the applicable proper law, then, it was still entitled to a charging order because *“there is an analogous concept of simulation to the present facts, such that there is no objection to be made that a nomineeship/bare trust is not known under Djiboutian law”*, citing Mr Genet’s letter in support of this proposition, when, in fact, Mr Genet had stated in his letter at paragraph 33 as follows:

“… although there is no express prohibition on a court applying simulation principles, it would be unlikely that a French court would apply the simulation doctrine because the entity against which enforcement is sought is a State, i.e. Djibouti”.

306. Although it would have been better had Soprim drawn specific attention to what Mr Genet had there said, nonetheless I am not persuaded that there was an unfair presentation in this respect since, whilst Ms Tims, who addressed this aspect of the case in oral submissions, recognised that Mr Genet’s preference for the application of *émanation* over *simulation* was not referred to in Soprim’s skeleton argument before Dias J, the fact remains that this issue concerns which one of Soprim’s two alternative arguments was to be preferred and, furthermore, whilst Mr Genet’s preference was for *émanation*, he did, however, say that *“a strong argument for simulation also exists”*. Moreover, as Ms Tims also pointed out, Dias J was invited to read paragraph 33 of Mr Genet’s letter. This was not, therefore, a case of Soprim seeking to conceal Mr Genet’s opinion from Dias J.

307. Secondly, DCT complains that Soprim failed to tell Dias J that there was at least a credible argument that English law did not apply to the alleged trust. As to this, Mr Venkatesan observed that the Objecting Parties’ argument that Djiboutian law applies to the Agreement alleged by Soprim to have been entered into is at least credible. However, the proper law issue was the subject of a single paragraph in Soprim’s skeleton argument before Dias J, which did no more than assert that English law is the proper law either under Article 6 or Article 7 of the Convention. This, in circumstances, Mr Venkatesan noted, where Soprim no longer relies upon Article 6. Had this matter

been disclosed, Mr Venkatesan suggested, Dias J may have concluded that she did not have jurisdiction to make a charging order because Djiboutian law applied and, referring to the first of the matters addressed above, under Djiboutian law, the concept of *simulation*, on Soprim's own evidence, did not apply to DCT.

308. There is, however, I am clear, no merit in this objection either. As Ms Tims pointed out and leaving to one side my ultimate conclusion that the applicable law was, indeed, English law rather than Djiboutian law, the point now raised is untenable in view of the fact that Soprim's skeleton argument for the hearing before Dias J referred to Soprim's primary argument as being that English law applies whilst going on to make it clear that, if Soprim was wrong on that primary argument, then, its case was that "*broadly similar concepts*" arise under French law. In other words, Dias J was being told by Soprim that it had an alternative case under Djiboutian law. That can only have been because Soprim was recognizing the possibility that English law did not apply and doing so, importantly, in what it was choosing to tell Dias J.

309. DCT's third point is that Dias J was told that *"there is no separate legal existence between DCT and D, and therefore an interim charging order can be granted over D's beneficial interest in the SCB Account"* without drawing to her attention the point that if X and Y lack separate legal existence, X cannot be a trustee for Y. I agree with Ms Tims, however, that this is an example of something that Soprim should not be criticised for apparently having overlooked. The fact that I have decided that the Objecting Parties are right on the point does not change this conclusion.

310. Fourthly, Mr Venkatesan submitted that, although Mr Boreh's own evidence was that the Republic is an *"Affiliate"* of PDSA under the English Injunctions, Soprim did not tell Dias J that there is a credible argument that the appointments of Ms Tadoral and Mr Youssouf were procured in contempt of the English Court and, accordingly, should not (indeed, Mr Venkatesan would say, cannot) be recognised. This is another aspect, however, where Soprim should not be criticised for apparently not having anticipated an argument that, in the event, came to be deployed.

311. Lastly, it is suggested that Soprim should have informed Dias J that Mr Genet had an existing professional relationship with Soprim when it made its application. Specifically, the point is made that, whilst there was mention of this fact in Mr Boreh's witness statement in support of the application (Mr Boreh referred to the letter from Mr Genet as *"advice from its [Soprim's] French lawyers"*), there was no mention of it in Soprim's skeleton argument. This, Mr Venkatesan submitted, was not sufficient since, as it was put by Trower J in ***Piroozzadeh v Persons Unknown*** [2023] EWHC 1024 (Ch) at [21], it is not usually possible to comply with the duty of fair presentation *"without the signposting which is contained in the main affidavit and the skeleton argument"*. That is all the more the case, Mr Venkatesan observed, because judges deal with such applications under time constraints and cannot be expected to absorb every point mentioned in every document in their pre-reading list without clear signposting. Whereas this is the case, it does not, however, follow that everything needs to be included in a skeleton argument. In this case, the fact that Mr Boreh's witness statement was explicit on the role played by Mr Genet seems to me to make DCT's present objection unmeritorious.

312. It follows that DCT's set aside application based on an alleged breach of the duty of full and frank disclosure must fail.

A final matter

313. There is a final matter that needs to be addressed. This is the Objecting Parties' application to set aside the Arbitration Claim Form and the order of Teare J giving Soprim leave to enforce the Langley Awards. In considering this matter at the end of this judgment, I follow the approach adopted by the Objecting Parties, whilst nonetheless noting that, if the application succeeds, then, all of Soprim's applications would fail.

314. In summary, the Objecting Parties' case is that Soprim was required to serve the Arbitration Claim Form within one month but failed to do so. The consequence of this failure, Mr Venkatesan submitted, is that the Arbitration Claim Form and Teare J's order must both be set aside.

315. The chronology, as to some extent already set out, is as follows. On 26 February 2019, Soprim issued the Arbitration Claim Form seeking to enforce the Langley Awards under section 66 of the Arbitration Act 1996. On 21 March 2019, Teare J made, *ex parte*, an order giving permission to enforce the Langley Awards. Teare J's order was sealed on 3 April 2019 and, thereafter, re-sealed with a minor variation on 17 April 2019 following correspondence with the Foreign Process Section. Soprim attempted to effect service on 18 April 2019. The Arbitration Claim Form was served on 15 July 2019.

316. CPR 62.4(2) provides as follows:

> *"Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly."*
>
> Accordingly, Mr Venkatesan submitted, Soprim was required to effect service by 26 March 2019 – something that it is common ground that Soprim did not do.

317. Soprim's position is that CPR 62.4(2) does not apply and that the time limit is, therefore, the usual six months contained in CPR 7.5(2).

318. Mr Venkatesan submitted that Soprim is wrong about this for three reasons. First, he submitted that Soprim's argument is contrary to the language of CPR 62.4(2) and CPR 62.18; secondly, he submitted that it is contrary to principle and would undermine the policy of speedy finality; and, thirdly, he submitted that it is contrary to authority.

319. As to the first of these submissions, Mr Venkatesan pointed out that, although CPR 62.2(2) provides that *"this Section of this Part"* does not apply to an arbitration claim to which Section III applies, this does not mean that the one month time limit in Section I (CPR 62.4(2)), therefore, does not apply to Section III since CPR 62.18(1)(a), which is in Section III, states that an enforcement application under section 66 is to be made in an *"arbitration claim form"* and sub-rule (2) provides that *"The court may specify parties to the arbitration on whom the arbitration claim form must be served"* – something that Teare J did in this case since paragraph 3 of Teare J's order states that

"the Claimant shall serve this order and the arbitration claim form on the Defendant …". CPR 62.18, Mr Venkatesan observed, does not contain any express provision as to the time by which the claim form must be served once it is ordered to be served under sub-rule (2), as occurred in this case. However, he suggested, it would be surprising if the draftsperson intended a different time limit to apply to the service of arbitration claim forms under Section III. Indeed, he noted, the fact that the draftsperson did not intend this is apparent from CPR 62.18(3), which reads as follows:

"(3) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part."

Accordingly, Mr Venkatesan submitted, once an order is made requiring an arbitration claim form to be served, Section I becomes applicable, meaning that CPR 62.4(2), which is contained in Section I, also becomes applicable and so that the same one month time limit applies to the service of an arbitration claim form under Section III if the Court orders it to be served.

320. Mr Venkatesan went on to submit that Soprim's attempt to invoke the general 6-month period in CPR 7.5(2) is incorrect because Section III of CPR Part 62 does not cross-refer to CPR 7.5(2), and nor does CPR 62.18(2). Furthermore, Mr Venkatesan pointed out that, whereas CPR 7.5 contains two different time limits (four months if the claim form is served within the jurisdiction and six months if it is served outside the jurisdiction), CPR 62.4(2) expressly refers to, and modifies, those time limits for arbitration claim forms by specifying a time limit of one month irrespective of whether service is to take place within or outside the jurisdiction. Yet, Mr Venkatesan suggested, on Soprim's case, if the arbitration claim form seeks to enforce an award, the time for service will vary according to where service is to be effected, with the result that, if there are multiple respondents only some of whom are within the jurisdiction, then, there would be different periods for serving the same claim form seeking to enforce the same arbitral award.

321. For these reasons, it was Mr Venkatesan's submission that the one month time limit referred to in CPR 62.4(2) and 62.18 applies to an arbitration claim form seeking to enforce the award under section 66.

322. I do not agree that that is the case. I am clear, on the contrary, that, as Mr Mordaunt submitted (and as Mr Akkouh also submitted by way of reply), there is no one month time period in which to serve an arbitration claim form under Part 62 of the CPR where that claim relates to enforcement of an arbitral award. Instead, the definition of *"arbitration claim"* contained in CPR 62.2(1) has a restricted meaning which is confined to claims under the 1996 Act challenging an award that has been obtained (in relation to which, it should be noted, the application or appeal must be brought within 28 days: see section 70(3) of the 1996 Act). That is why CPR 62.2(2) stipulates that *"This Section of this Part does not apply to an arbitration claim to which Sections II or III of this Part apply"*; in other words, claims under Sections II and III are not subject to the one month time period stipulated in CPR 62.4(2). If that were not the case, then, it would entail ignoring the clear statement that Section I (including, therefore, CPR 62.4(2)) has no application to Sections II and III. That, however, is what the Objecting Parties' position necessarily entails.

323. That Section III is concerned with a different type of arbitration claim from an arbitration claim under Section I is, furthermore, underlined by the fact that Section III is headed *"Enforcement"* and also by the fact that CPR 62.18(1)(a) expressly includes within Section III *"An application for permission under section 66 of the 1996 Act … to enforce an award in the same manner as a judgment or order …"*. The position could not, in truth, be clearer.

324. There is, however, a further strong pointer towards the correctness of Soprim's position. This is *"the enforcement proceedings will continue as if …"* wording used in CPR 62.18(3), which is focusing on the future, not the past: on what happens after acknowledgment of service, rather than in what time period the arbitration claim form must be served. As such, what Section I has to say concerning a one month time period for service is irrelevant. It is only if the arbitration claim form has been served and an acknowledgment of service filed that Section I comes into play at all; it does not apply to a Section III claim at any prior stage.

325. I appreciate that this leaves open the question of what happens if no acknowledgment of service is filed since CPR 62.18(3) assumes, indeed stipulates, that there will be an acknowledgment. This lack of clarity does not, however, undermine Soprim's position since it remains the case that CPR 62.18(3) is prospective in the language it uses rather than retrospective.

326. Nor, coming on to address Mr Venkatesan's second argument, do I agree that Soprim's case is contrary to principle. The fact that in ***AAA v BBB*** [2025] EWHC 1763 (Comm), at [41], Henshaw J explained that there is a one month period because of the *"premium placed in the rules, and the law generally, on speed and finality in relation to arbitration applications"* casts no particular light on the present issue because he was there referring to a claim form under Section I, where there is an understandable policy of speedy finality in view of the fact that Section I claim forms involve a challenge to an award by a party that has lost in an arbitration. In contrast, a claim form under Section III will be issued by the party that has been successful in the arbitration which wants to have the award enforced. In that latter scenario, there is not the same policy need for speed or finality because there is no challenge to the award – in fact, quite the opposite – and it would make no sense if the successful party were subject to the same one month time restraint as applies to a Section I challenge.

327. The fact that in another case, ***M v N*** [2021] EWHC 360 (Comm), the claimant sought to enforce an award under section 66 and served the claim form within one month does not alter the analysis, not least because the present issue does not appear to have been the subject of debate. That was a case in which the defendant challenged an order permitting service by alternative means under CPR 6.15 and in which Foxton J (as he then was) observed, at [13], as follows:

> *"While these arbitration claim cases have generally involved applications relating to pending arbitrations or challenges to arbitral awards, the policy of 'speedy finality' which they reflect is, in my opinion, equally applicable to applications brought with a view to assisting the enforcement of arbitral awards. Indeed, in that context, the position might be thought to be even more compelling."*

What Foxton J plainly had in mind here was that a defendant (the unsuccessful party in the underlying arbitration) should not be permitted to thwart a claimant (the successful

party in the underlying arbitration) in its attempts to have the award enforced, including by objecting to an application for alternative service.

328. Accordingly, I reject the submission advanced by Mr Venkatesan that the policy of speedy finality applies equally (or, as he put it, *"if anything with greater force"*) to arbitration claim forms seeking to enforce an award. It is a matter for the claimant seeking to enforce to proceed at a pace that suits it: if the claimant wishes to proceed speedily, then, the defendant should not be permitted to slow the process down in the way that was sought to be done in ***M v N***; if, on the other hand, they choose to take longer, then, subject to the four or six month period for serving a claim form prescribed by CPR 7.5(2), then, that is the claimant's prerogative.

329. As to authority, which was Mr Venkatesan's third argument, he himself acknowledged that the point has not squarely arisen for decision in any previous case. Mr Venkatesan nonetheless pointed to two earlier decisions. The first was ***Good Challenger Navegante SA v Metalrexportimport SA*** [2004] 1 Lloyd's Rep 67, [2003] EWCA Civ 1668, in which the claimant had obtained an *ex parte* order permitting it to enforce an award under section 26 of the Arbitration Act 1950 (the predecessor to section 66 of the 1996 Act), only then not to serve that order for several years, so giving rise to various procedural complications which do not matter for present purposes. Mr Venkatesan nonetheless highlighted the fact that Clarke LJ (as he then was) observed at [115] that:

"I would add by way of postscript that it is common ground that the same problem could not arise under the CPR. CPR 62.18 is very similar to the old RSC Order 73 rule 10 but it provides that the application may be made without notice in an arbitration claim form. Under CPR 62.4 the general rule is that any arbitration claim form must be served on a defendant within one month of the date of issue unless the court orders otherwise… ."

Mr Venkatesan suggested that it is implicit in this passage that the Court of Appeal considered that an arbitration claim form seeking to enforce an award under section 26 of the 1950 Act (and so under section 66 of the 1996 Act) is subject to a one month time limit (i.e. that now contained in CPR 62.4(2)) and not the longer time limit applicable to claim forms more generally.

330. Again, I do not agree with this. It is clear that the issue before the Court of Appeal was not the issue that is now before the Court; indeed, all that is done at [115] is to describe that which was apparently common ground, so underlining the point that there was no debate as to the point.

331. As for the second authority relied upon by Mr Venkatesan, this was ***P&ID v Federal Republic of Nigeria*** [2018] EWHC 3174 (Comm), a case in which P&ID, the claimant, issued an arbitration claim form on 16 March 2018 seeking to enforce an award. On 23 March 2018, an order was made for the claim form to be served on Nigeria through diplomatic channels. Bryan J subsequently noted that *"initially, the deadline for serving the claim form was 16 April 2018"* (i.e. one month from issue: see [21]), apparently reflecting the fact that both parties (and Bryan J) proceeded on the basis that the one month time limit was applicable (see [37], [40] and [64]). It follows that, like ***Good Challenger***, this is not a case in which the present issue was before the Court. It, therefore, further follows that ***P&ID v Federal Republic of Nigeria*** does not represent authority on the point.

332. My conclusion, accordingly, is that the Objecting Parties' set aside application must fail. In short, the Arbitration Claim Form was served within time and so also was Teare J's order giving permission to enforce the award. As a result, this is not a case where the Arbitration Claim Form is to be regarded as not validly served, with the result that the proceedings are a nullity or that the Court somehow lacks jurisdiction.

333. It is unnecessary, in the circumstances, to address a related aspect, namely Soprim's argument that the Objecting Parties lack standing to make the set aside application given that they are not the Republic and it is the Republic that the Arbitration Claim Form and Teare J's order needed to be served upon. Had it been necessary to determine this point, however, I would have rejected Soprim's argument on the basis that, had Soprim failed to serve the Arbitration Claim Form on the Republic in time, then, the proceedings would be a nullity (see ***Robertson v Google LLC*** [2026] 1 WLR 1225, [2025] EWCA Civ 1262 at [50] per Coulson LJ) or, at a minimum, the Court would have no jurisdiction over the Republic (see ***R (Good Law Project Ltd) v Secretary of State*** [2022] 1 WLR 2339, [2022] EWCA Civ 355 at [41] per Carr LJ (as she then was); ***Bellway Homes Ltd v Samuel Garside House*** [2025] EWCA Civ 1347 at [62] per Coulson LJ). In that event, I agree with Mr Venkatesan when he submitted that Soprim would not be able to seek any orders attaching the Republic's alleged property owing to a lack of jurisdiction over the Republic, and so that it would not now be open to Soprim to seek the relief that it does since the premise for the grant of any such relief would be that the Court has jurisdiction over the Republic.

Conclusion

334. In conclusion, therefore:

(1) I grant the final charging order that is sought as to the entirety of the amounts contained in the SCB Accounts;

(2) I reject the alternative applications for a third party debt order and a receivership order; and

(3) I dismiss the Objecting Parties' set aside application.

335. I end by expressing my gratitude for the high quality of the submissions that were advanced by all counsel. This was a complex case and the quality of the submissions reflected this.