



Neutral Citation Number: [2026] EWHC 1015 (Comm)

Case No: CL-2025-000313

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 1 May 2026

Before :

THE HONOURABLE MRS JUSTICE DIAS

Between :

OWH SE i.L. (in liquidation)

Claimant

- and -

(1) RTI LIMITED (in liquidation)
(2) UNITED COMPANY RUSAL, IPJSC

Defendants

Mr Fergus Randolph KC, Mr Tim Taylor KC, Mr Paul Wright and Mr Kartik Sharma
(instructed by BDM Law LLP) for the Defendants

Mr Richard Handyside KC and Mr Paul Casey (instructed by Macfarlanes LLP) for the
Claimant

Hearing date: 26 March 2026

Approved Judgment

This judgment was handed down remotely at 0.30am on 1 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Dias :

INTRODUCTION

1. I have before me three applications arising from an order of Robin Knowles J made on 10 July 2025, in which he gave the Claimant (“**OWH**”) permission pursuant to section 66(1) of the Arbitration Act 1996 (the “**1996 Act**”) to enforce an LCIA arbitration award dated 25 September 2024 (the “**Permission Order**”). The award ordered the Defendants (to whom I shall refer as “**RTI**” and “**Rusal**” respectively) to pay OWH some €214 million, none of which has to date been paid.
2. On 21 August 2025, Robin Knowles J made a further order authorising OWH to effect service by alternative methods (the “**Alternative Service Order**”).
3. In the normal way, both orders were made without notice such that the Defendants were given liberty to apply to set them aside.
4. On 10 September 2025, Rusal applied to set aside the Permission Order on the grounds that enforcement would be contrary to English public policy. On 17 September 2025, it applied to set aside the Alternative Service Order.
5. On 13 November 2025, Baker J directed that the present hearing be fixed (i) to determine the application to set aside the Alternative Service Order and (ii) to consider whether the application to set aside the Permission Order should be determined summarily.
6. On 16 March 2026, Rusal served a witness statement in support of an application to adjourn its application to set aside the Permission Order. On the following day, it notified OWH that it was withdrawing the application to set aside the Alternative Service Order and would not raise any objection to an order for costs in OWH’s favour.
7. In the event, therefore, the only live applications before me are Rusal’s applications (i) to set aside the Permission Order (the “**Set Aside Application**”) and (ii) to adjourn that self-same application (the “**Adjournment Application**”). OWH’s position in a nutshell is that the Adjournment Application should be refused and that the Set Aside Application has no real prospect of success and should be summarily dismissed. As will become apparent, the two applications are inextricably entwined since the reasons for which adjournment is sought necessarily require the court to assess the merits of the underlying application.

BACKGROUND

The Parties

8. OWH is a German credit institution which is regulated by the German Federal Financial Supervisory Authority, Bundesanstalt für Finanzdienstleistungsaufsicht (“**BaFin**”) and has been in solvent liquidation since 1 April 2023. It is an almost wholly-owned subsidiary (99.39%) of PJSC VTB Bank (“**VTB Russia**”) and, until 1 January 2024, was known as VTB Bank (Europe) SE. It is not in dispute that VTB Russia is designated as a sanctioned entity in, amongst other countries, the US, the UK, the EU and Jersey. OWH was designated by OFAC but subsequently de-listed in April 2024. It has never been designated by the UK, the EU or Jersey.

9. Rusal is the parent company of a Russian aluminium group. It was originally incorporated in Jersey but later re-domiciled to Russia. Rusal has never been sanctioned in either the UK or the EU. It was sanctioned in the US in 2018 but was subsequently de-listed in 2019 after its major shareholder, Mr Deripaska, reduced his shareholding to a minority holding and ceased to control the company. RTI is an indirect Jersey subsidiary of Rusal. It has been in provisional liquidation since July 2025 and in liquidation since January 2026. At the material times, the majority of its board of directors was resident in Gibraltar.

The relevant UK and Jersey sanctions framework

10. In order to make sense of what follows, it is helpful at this stage to set out the relevant provisions of both UK and Jersey sanctions legislation.

UK sanctions provisions

11. The principal UK sanctions relevant to this case are contained in The Russia (Sanctions) (EU Exit) Regulations 2019 (the “**Russia Regulations**”) made under the auspices of the Sanctions and Anti-Money Laundering Act 2018 (“**SAMLA**”) as follows:

“3. Application of prohibitions and requirements outside the United Kingdom

(1) A United Kingdom person may contravene a relevant prohibition by conduct wholly or partly outside the United Kingdom.

...

(4) A United Kingdom person may comply, or fail to comply, with a relevant requirement by conduct wholly or partly outside the United Kingdom.

...

(7) Nothing in this regulation is to be taken to prevent a relevant prohibition or a relevant requirement from applying to conduct (by any person) in the United Kingdom.

...

10. Meaning of “designated person”

In this Chapter a “designated person” means a person who is designated under regulation 5 for the purposes of regulations 11 to 15.

...

12. Making funds available to designated person

(1) A person (“P”) must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

...

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) The reference in paragraph (1) to making funds available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.”

12. It is therefore clear and, indeed, was common ground before me, that in respect of UK nationals or entities, the Russia Regulations regulate conduct anywhere in the world, but in respect of non-UK nationals or entities, they only apply to conduct within the UK.
13. Some protection against the potentially adverse consequences of compliance with the Russia Regulations on other contractual commitments is provided by section 44 of SAMLA as follows:

“44. Protection for acts done for purposes of compliance

(1) This section applies to an act done in the reasonable belief that the act is in compliance with –

(a) regulations under section 1, or

...

(2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.

(3) In this section “act” includes an omission.”

Jersey sanctions provisions¹

14. Article 11 of the Sanctions and Asset-Freezing (Jersey) Law 2019 (“SAFL”) provides as follows:

“(1) A person (“P”) must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

(2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.”

15. Between December 2014 and 11 February 2021, Jersey also implemented the provisions of EU Regulations No.s 208/2014 and 269/2014, both of which contained a protective provision similar to section 44 of SAMLA in the following terms:

“Article 10(1) The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless

¹ The description of the development of Jersey sanctions legislation is drawn from the judgment of the Jersey Court of Appeal referred to in paragraph 43 below.

it is proved that the funds and economic resources were frozen or withheld as a result of negligence.”

16. As a consequence of Brexit, however, Jersey moved on 12 February 2021 from implementing EU sanctions to implementing UK sanctions which it achieved by means of the Sanctions and Asset-Freezing (Implementation of External Sanctions) (Jersey) Order 2021. Notably, the regulations which were thereby incorporated into Jersey law did *not* include section 44 of SAMLA or any equivalent provision notwithstanding that Article 10(1) of the EU Regulations ceased to apply in Jersey at the same time. This left a lacuna in Jersey law which was only filled some eighteen months later, following an audit carried out by the intergovernmental Financial Action Task Force which recommended the inclusion of a measure protecting the rights of bona fide third parties acting in good faith in perceived compliance with sanctions regulations.

17. With effect from 8 June 2022, Article 46A was accordingly inserted into SAFL as follows:

“A person is not liable to any civil proceedings to which that person would, in the absence of this Article, have been liable in respect of an act, if at the time of the act the person reasonably believed that the act was necessary to comply with an obligation or prohibition imposed –

(a) by this Law;

(b) by an enactment under this Law; or

(c) by a direction or other instruction given under this Law or under an enactment under this Law...”

18. Article 46A thus effectively mirrors section 44 of SAMLA

The dispute and the arbitration proceedings

19. The underlying dispute between the parties arises out of a series of currency swap transactions entered into between RTI and OWH in order to hedge the Rusal Group’s exposure to movements in the value of the Russian rouble. The transactions were carried out pursuant to the terms of an ISDA Master Agreement made between the parties on 11 September 2019. RTI’s obligations under the agreement were guaranteed by Rusal under a Guarantee and Indemnity of even date. Both the Master Agreement and the Guarantee were governed by English law and subject to LCIA arbitration.

20. Following the Russian invasion of Ukraine, wide-ranging sanctions were imposed by the international community on Russian banks, companies and individuals. In particular, on 24 February 2022, VTB Russia became a designated person under UK, Jersey and Gibraltar sanctions legislation and the US sanctions authority, (“**OFAC**”) designated both VTB Russia and OWH.

21. At around the same time, BaFin took a series of measures (the “**BaFin measures**”) designed to segregate OWH and its assets from the VTB group. Thus:

(a) On 17 February 2022, BaFin appointed a special representative from Deloitte to monitor OWH’s payment decisions;

(b) On 24 February 2022, it made an order prohibiting OWH from making payments or asset transfers to VTB Russia or other VTB Group companies which were detrimental to OWH;

(c) On 27 February 2022, it banned OWH from granting loans, accepting deposits, or disbursing any contractually agreed but not yet fully disbursed loans. It further banned OWH from making payments or other asset transfers for the benefit of Russian credit institutions;

(d) On 9 April 2022, it made orders requiring OWH's management not to accept or implement any instructions from VTB Russia;

(e) By notice dated 19 April 2022, it appointed a special representative to OWH with management board functions and executive powers;

(f) On 8 June 2022, the court at Frankfurt-am-Main appointed a trustee to exercise VTB Russia's voting rights in relation to OWH.

22. The invasion prompted a sharp and dramatic fall in the value of the rouble. This led OWH to issue a margin call to RTI under the Master Agreement on 25 February 2022 requiring payment of US\$43.5 million. The Royal Jersey Court concluded in proceedings to enforce the Award in Jersey that RTI did not pay the margin call or, indeed, any subsequent margin calls because to do so might put it in breach of sanctions. While OWH itself was not a designated person under Jersey sanctions legislation, there was a concern that payment to OWH would nonetheless result in funds being made directly or indirectly available to its parent, VTB Russia, which was. Discussions between the parties over the following weeks failed to identify any mutually acceptable mechanism by which the margin calls could be lawfully paid.

23. Eventually, OWH declared an Event of Default under the Master Agreement and sent Notice of an Early Termination Event (the "**Termination Notice**") designating 25 March 2022 as the date for closing out the transactions. The close-out amount payable by RTI to OWH on early termination was calculated as some €214 million. Payment was not made and on 24 June 2022, OWH commenced arbitration proceedings claiming this amount against both RTI as principal debtor and Rusal as guarantor.

24. In the arbitration RTI/Rusal challenged the Termination Notice on a number of grounds. Of particular relevance for present purposes were its arguments that:

(a) The Default Notices had not been validly served in accordance with the contractually agreed method of service;

(b) There had been a Relevant Sanctions Event as defined by the Master Agreement, the effect of which was (broadly) to suspend RTI's obligation to make payment such that non-payment had not given rise to an Event of Default;

(c) Alternatively, the circumstances gave rise to an Illegality under the Master Agreement in that it was unlawful under an "*applicable law*" for RTI to pay the margin call through its Jersey office. If so, this precluded termination on the grounds relied on in the Termination Notice;

25. The distinguished tribunal (Jonathan Nash KC, Dame Elizabeth Gloster, DBE, and Andrew Lenon KC) held that RTI was estopped by convention (based on a common assumption) from denying that service of the Termination Notice had been validly effected. Moreover, it could

not rely on a Relevant Sanctions Event because the Jersey and Gibraltar sanctions authorities were not within the contractual definition of persons whose measures would qualify as giving rise to such an event.

26. In relation to Illegality, the Tribunal held as a matter of construction that prompt notice of the illegality conforming to the contractual requirements of the Master Agreement was a condition precedent to reliance on the Illegality provisions. Following RTI/Rusal's concession in closing submissions that valid notice had not been given promptly, it followed that RTI could not rely on Illegality to excuse non-payment.
27. The Tribunal expressly declined to rule on whether payment of the margin calls would in fact have breached any relevant sanctions legislation.
28. Accordingly, on 25 September 2024 the Tribunal issued its award on liability upholding the validity of the Termination Notice and holding the Defendants liable to pay the close-out amount.² It issued a second and final award on 29 August 2025 dealing with interest and ordering the Defendants to pay some £200,000 of arbitration costs and approximately £3.6 million and €2 million of legal costs.

Subsequent events

29. Since the publication of the Tribunal's award on liability, RTI/Rusal have made a series of applications challenging the decision in one way or another. OWH characterises these as nothing more than cynical attempts to avoid payment, to increase costs and generally to disrupt and delay any enforcement proceedings for as long as possible. Putting forensic hyperbole to one side, it is fair to note that none of these attempts has hitherto met with any conspicuous success. It is unnecessary to go into detail, and the following is but a brief summary.

Application in February 2025 for the Tribunal to admit an irregularity

30. Time for challenging the first award expired on 1 November 2024. On 5 February 2025, the Tribunal notified the parties that it intended to issue its award on interest and costs on 14 February and invited them to agree a figure for interest. On 13 February 2025, EPAM Law Offices in Dubai sought permission by email to be added as an authorised representative of the Defendant and requested further time to finalise an application regarding the Tribunal's retained jurisdiction over interest, costs and other matters.
31. On 19 February 2025, EPAM made an application, although it was rather different in nature from that originally intimated. Instead the Defendants:

(a) Invited the Tribunal to admit that the award was affected by two irregularities falling within section 68(2)(i) of the 1996 Act, namely that the Tribunal had failed to deal with an issue put to it and that the award had been procured by fraud in relation to service of the Default Notices on RTI/Rusal;

(b) Applied for an order suspending the Defendants' undertakings to perform the award if the Tribunal admitted an irregularity and/or because performance would expose the Defendants

² A minor correction to the amount was subsequently made on 12 November 2024.

to the risk of double jeopardy – either by breaching UK and Gibraltar sanctions, or incurring liability in Russia if it made payment, or to OWH if it did not;

(c) Applied for an order permitting the Defendants to apply to the LCIA Court under section 32(2)(b) of the 1996 Act for determination of the Tribunal’s jurisdiction in relation to proposed claims by Rusal under Article 10 of the Bilateral Investment Treaty between the Federal Republic of Germany (the “**FRG**”) and the Soviet Union dated 13 June 1989 (the “**BIT**”).

32. A hearing was fixed for 20 March 2025 but, in the event, none of the proposed applications was maintained in the terms set out above. Instead, the Tribunal was invited to admit that the award contained a textual error which was said to undermine a key factual finding as to whether there had in fact been a common assumption for the purposes of an estoppel. It was accepted that application (b) would be difficult to sustain if the Tribunal declined to admit such an error and application (c) was not pursued.
33. On 1 April 2025, the Tribunal issued a procedural ruling declining to admit any textual error and dismissing the application to stay or suspend the Defendants’ undertakings.

Section 68 challenge

34. Notwithstanding that time had by then long since expired, the Defendants applied on 11 April 2025 to challenge the award under section 68 of the 1996 Act for serious irregularity and for an extension of time if necessary. The principal irregularity relied upon related to the fraud previously adumbrated in the 19 February application, namely a knowing failure by OWH to disclose documents bearing on the question of whether the Default Notices had been validly and properly served on RTI/Rusal. As regards the extension of time, the Defendants’ primary submission was that no extension was required since the February application amounted to an “*arbitral process of appeal or review*” such that time did not in fact start to run until the Tribunal’s procedural ruling on 1 April 2025.
35. At the same time, the Defendants also applied for the Tribunal’s award on interest and costs to be deferred pending determination of the section 68 challenge but this application was dismissed by the Tribunal in a further procedural ruling on 2 May 2025.
36. On 11 July 2025, the section 68 applications came before Butcher J, who dismissed them both. He held that an application to a tribunal to admit an error was not an “*arbitral process of appeal or review*” and did not therefore postpone the running of time to challenge the award. On the facts, there was no basis to grant an extension but he would in any event have dismissed the section 68 challenge on the merits as the Defendants had not shown that they had any real prospect of successfully showing that the award had been obtained by fraud or procured in a way which was contrary to public policy.
37. The Defendants were ordered to pay costs on an indemnity basis but have not to date done so.

The challenge for bias

38. On 15 May 2025, the Defendants applied under Article 10.1 of the LCIA Rules to revoke the appointment of all three members of the Tribunal on grounds of bias arising from their refusal to admit any error or irregularity in the award or to delay their award on interest and costs.

39. This application was dismissed by Professor Jan Paulsson (the Honorary Vice-President of the LCIA) on 24 July 2025. He characterised the application as “*unserious*” and “*unmeritorious*” and took the view that the Defendants’ purpose in making it had been “*temporary avoidance of an inevitable conclusion.*”

Jersey enforcement proceedings

40. On 18 November 2024, OWH obtained permission from the Jersey Bailiff to enforce the award in Jersey against the Defendants. RTI applied to set aside the order on the grounds that enforcement would be contrary to Jersey public policy because Article 46A of SAFL either provided it with a retrospective defence to the claim, or because it was reflective of public policy in Jersey and should therefore be given effect in substance if not in terms.
41. These arguments were rejected by the Jersey Royal Court in a judgment handed down on 22 May 2025³. The Royal Court held that Article 46A was not retrospective and did not apply to acts or omissions occurring before it came into force on 8 June 2022. It further held that there was no equivalent public policy prior to 8 June 2022; a defendant either had the defence or it did not. The Defendants could not therefore avail themselves of Article 46A and enforcement of the award would not be contrary to public policy.
42. While not strictly necessary to decide the point, the Royal Court went on to find that RTI had held a genuine subjective belief that payment of the margin call would breach Jersey sanctions by making funds indirectly available to VTB Russia as a designated person, but that this belief was not objectively reasonable as required under Article 46A because:
- (a) There was no evidence to suggest that RTI or its advisers gave any real consideration to whether the risk of a sanctions breach was sufficiently obviated by the BaFin measures referred to above, or by a further suggestion that payment be made into a specially designated OWH account with the Bundesbank;
- (b) It was, or should have been, obvious to RTI that an important option available to it lay in giving notice of Illegality under the Master Agreement. While this would only have delayed matters by a few days (since OWH could thereafter have served a further Termination Notice), it would nonetheless have meant that RTI was not in breach of contract on the grounds in fact relied on by OWH. However, there was no evidence that RTI or its advisers gave proper consideration to this option as an alternative to simply defaulting on payment.
43. RTI’s further appeal to the Jersey Court of Appeal was also dismissed on 27 November 2025. In relation to retrospectivity, the Court of Appeal agreed with the Royal Court that Article 46A was not retrospective and that there was no pre-existing Jersey public policy prior to 8 June 2022 in favour of immunity. As to reasonableness, it did not dissent from the Royal Court’s findings as to RTI’s subjective belief and two of the judges would also have upheld the judgment, if necessary, on the grounds that the belief was not objectively reasonable for the reasons given at first instance. In a separate addendum to the judgment, however, McCullough JA stated that he saw force in RTI’s submissions that its belief was reasonably held in the circumstances pertaining in March 2022, given that it had relied on external legal advice, although he declined to express any concluded view on the point as the Court’s decision on retrospectivity made it unnecessary to do so.

³ [2025] JRC 138.

Proposed application for permission to appeal to the Privy Council

44. As is apparently customary, the Jersey Court of Appeal refused permission to appeal to the Judicial Committee of the Privy Council. I was informed by Mr Fergus Randolph KC, who appeared with Mr Tim Taylor KC, Mr Paul Wright and Mr Kartik Sharma on behalf of Rusal, that RTI was nonetheless preparing an application for permission to the Privy Council and would do so before expiry of the deadline on 7 April 2026. Since preparing this draft, I have been notified that the application was indeed lodged on 2 April 2026 and has been accepted by the Privy Council for consideration. Mr Randolph submits that the proposed appeal has a real prospect of success.

The BIT arbitration

45. On 30 January 2026, OWH applied to enforce the award in Hong Kong and issued a statutory demand against Rusal which opened up the possibility of a winding up petition being brought at any time after 20 February 2026. This was on the basis that Rusal is listed on the Hong Kong stock exchange.
46. On 16 March 2026, Rusal served on OWH a Request for Arbitration which it had lodged with the LCIA seeking resolution of a dispute between Rusal on the one hand, and OWH and the FRG on the other. The claim against the FRG is asserted pursuant to the BIT referred to in paragraph 31(c) above. No prior warning had been given in correspondence of this claim, although a claim under the BIT had previously been adumbrated in the February 2025 application made to the Tribunal. Mr Taylor KC (who argued this part of the case on behalf of the Defendants) explained that it had been triggered by the very real possibility that Rusal could face a winding-up petition at any moment as a result of the Hong Kong enforcement proceedings. However, it would have a defence to any such petition if it could demonstrate a pending arguable cross-claim against the petitioner as a result of which it would be a net creditor. A reverse umbrella clause in the BIT enables claims against both OWH and the FRG to be brought in LCIA arbitration. The LCIA had accepted the Request for Arbitration and a tribunal will therefore be constituted in due course.
47. OWH reserved all its rights in relation to the proposed claim, which it has not yet had a proper opportunity to consider. I return to the BIT arbitration in paragraphs 95ff. below.

DISCUSSION AND ANALYSIS

48. Logically, the Adjournment Application should fall for consideration before the substantive question of the whether the Set Aside Application can be determined summarily. In the circumstances of this case, however, it is impossible to adjudicate on the one without also addressing the other. Accordingly, I heard argument on both matters together.
49. There was some debate before me as to whether the purpose of this hearing was simply to determine whether the set aside application should be summarily dismissed. If so, the parties agreed that the appropriate test was the usual test for summary judgment. However, Mr Richard Handyside KC, who appeared with Mr Paul Casey for OWH, suggested that the question of summary dismissal was in fact a red herring. He submitted that there was no need for disclosure or witness evidence in this case and that the court could and should determine the application once and for all on the basis of the available material. I am inclined to agree and subject only to the question of adjournment, I propose to take that course.

50. As to the Set Aside Application, I start by clarifying what is and, more pertinently, what is *not* in issue before me. Thus:

(a) RTI is currently in liquidation and the Set Aside Application is brought only by Rusal. Whatever the outcome, therefore, permission to enforce the award against RTI remains in place.

(b) It is not asserted by Rusal that payment of either the margin call or the award would be a breach of sanctions or illegal under English law. Mr Randolph accepts that the Russia Regulations do not apply directly to either RTI or Rusal.

(c) Equally, it is not, and never was, suggested that payment of the margin call or the award by RTI *would in fact* have been a breach of sanctions or illegal under Jersey Law. As described above, illegality under Article 11 of SAFL was raised in the arbitration but the Tribunal held that RTI was contractually precluded from relying on the point because it had failed to give a contractual notice in time. It did not adjudicate on the merits of the argument. Rusal itself is not a Jersey entity and is accordingly not subject to Jersey law.

(d) Rusal's case is accordingly limited to the proposition that RTI held a reasonable belief at the time that payment would breach Jersey sanctions law and that it therefore had a defence under Article 46A to which the English court should now give effect as a matter of English public policy.

51. The central plank of Rusal's argument is that RTI has at least a good arguable case that the decision of the Jersey courts was wrong and that:

(a) Article 46A did have retrospective effect in the sense that it applied to any civil proceedings commenced after it came into force (as is the case here) irrespective of when any relevant conduct or non-payment took place; and/or

(b) There was in any event a pre-existing public policy conferring an equivalent immunity; and/or

(c) The courts were wrong to hold that RTI's subjective belief that payment would be in breach of Jersey sanctions law was objectively unreasonable in circumstances where:

(i) RTI had sought legal advice and advice from other official authorities;

(ii) None of the advice received suggested that the BaFin measures offered sufficient protection against a breach of Jersey sanctions;

(iii) In any event, the prohibition under both English and Jersey law was against making funds available directly or indirectly not only to a designated person, but also to an entity owned or controlled by a designated person. Although OWH itself was not a designated person, it was very much owned and controlled by a designated person and nothing in the BaFin measures addressed that particular point;

(iv) Service of a notice of Illegality would not have achieved anything in practical terms except for a very short moratorium of three days.

52. Mr Randolph submitted that the Defendants have every hope and expectation of vindicating this position before the Privy Council. If so, then he argues that RTI was in fact entitled to rely

on Article 46A directly, alternatively that there was at all times a public policy in favour of immunity identical to that reflected in section 44 of SAMLA such that enforcement in Jersey should be set aside. In those circumstances, and irrespective of the fact that section 44 does not itself apply, he submits that it would be contrary to English public policy to enforce the award in England when, as a matter of an identical Jersey statutory provision and/or public policy it could not be enforced in Jersey.

53. I am prepared to accept that there is at least a good arguable case that the decision of the Jersey courts is open to doubt on the issue of retrospectivity. The wording of Article 46A is materially the same as that of section 44 and the very recent judgment of the Supreme Court in *Celestial Aviation Services Ltd v UniCredit Bank GmbH, London Branch*, [2026] UKSC 10 lends some support for the argument that it is to be interpreted as applying to all civil proceedings commenced after its entry into force, without any temporal limitation on the acts in respect of which protection is provided:

“91. The purpose of section 44 is to provide protection for a person who acts or omits to act in the reasonable belief that the act or omission is in compliance with, for instance, regulation 28(3)(c). The protection provided to the person furthers the public purpose of the sanctions provision. A person with the requisite belief should have that protection because making payments might undermine the sanction regime.

92. The protection provided by section 44(2) is that “[a] person is not liable to any civil proceedings to which that person would, in the absence of [section 44], have been liable in respect of the act.” Section 44(3) provides that in section 44 “act” includes an omission.

93. Section 44 does not prohibit civil proceedings. That would require clear words because it would prevent access to justice: see R (UNISON) v Lord Chancellor, [2017] UKSC 51; [2020] AC 869 at paras 76-77. Rather, section 44 provides a defence in civil proceedings. In this case the civil proceedings are for a debt. Civil proceedings to recover a debt are only brought if the person, in this case the Bank, fails to pay the debt. As the Bank’s liability is “in respect of” its omission to pay upon receipt of a compliant demand under the letters of credit, the protection afforded falls within the language used in section 44(2). Furthermore, a failure to pay a claim for interest or a claim for costs is also an omission “in respect of” the debtor’s failure to pay the debt so as to fall within the language used in section 44(2). I consider that section 44 would have provided protection to the Bank against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs.”

54. Admittedly, there is no indication that their Lordships had in mind the particular situation that arises here, but there is equally nothing in the passage quoted to suggest that it is relevant to enquire when the relevant non-payment occurred. If that is right, then RTI would have been able in principle to claim the protection of Article 46A in civil proceedings commenced after it came into force (i.e., the arbitration), notwithstanding that the margin call had fallen due for payment before that date.
55. It is undoubtedly true that the Jersey legislature could have provided expressly that Article 46A applied retrospectively to conduct pre-dating its enactment. Alternatively, it could have implemented section 44 of SAMLA directly. It might therefore be said (as the Jersey courts posited) that its failure to do so represented a conscious choice on the basis that the purpose of the provision was to encourage sanctions compliance and that, by definition, it would be too late to achieve that objective in relation to acts which had already occurred. However, there is an equally strong argument that the lacuna in Jersey law arose by oversight rather than

deliberate choice in circumstances where an equivalent immunity had existed under the EU regulations and there was no obvious reason why it should have been abandoned, given the obvious imperative to achieve a unified and seamless sanctions regime across the international community despite Brexit.

56. I also consider that there is a plausible argument that RTI's subjective belief that payment would contravene Jersey sanctions law was objectively reasonable, essentially for the reasons given by McCullough JA. Nor would service of a formal Notice of Illegality have achieved much, if anything, in practical terms.
57. Mr Handyside did not necessarily accept any of this, but he was nonetheless content not to dispute it, and to proceed on the basis that RTI had a reasonable prospect of succeeding before the Privy Council. However, he submitted that even if the appeal succeeded, Mr Randolph's fundamental argument was still flawed and that there was no reason to adjourn the Set Aside Application which should be dismissed. This, then, is the critical issue for determination since if Mr Handyside is right, Mr Randolph accepts that his case on both applications rests solely – and rather less comfortably – on the proposed BIT arbitration.

Public Policy

58. It was common ground between the parties that the court has a discretion to refuse enforcement of a domestic arbitration award under section 66 of the 1996 Act and that public policy is a legitimate reason at common law for doing so. It was also not in dispute that there is a strong public interest in upholding the finality of arbitration awards and in enforcing them.
59. I was referred to a number of authorities which articulated the need for a court to exercise extreme caution before refusing enforcement of an arbitration award on grounds of public policy. These include the following passage from the judgment of Sir John Donaldson MR in *Deutsche Schachtbau-und Tiefbohr GmbH v R'As al Khaimah National Oil Co.*, [1987] 3 WLR 1023 at 1035D-E:

“Considerations of public policy can never be exhaustively defined, but they should be approached with extreme caution. As Burrough J. remarked in Richardson v. Mellis (1824) 2 Bing. 229, 252, ‘It is never argued at all, but when other points fail.’ It has to be shown that there is some element of illegality or that the enforcement of the award would be clearly injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised.”

See also *Eternity Sky Investments Ltd v Zhang*, [2024] EWCA Civ 630 at [136]-[138].

60. In the event, I derived limited assistance from previous authorities. Many concerned either foreign awards or situations where English public policy differed from public policy under the law of the seat or the governing law. By contrast, this is a case concerning a domestic English award with an all-English tribunal adjudicating on a contract governed by English law and where (on this hypothesis) English public policy is identical to Jersey public policy.
61. Ultimately, it seemed to me that the question is simply one of deciding how the balance between competing public interests should be struck after taking into account all relevant factors and circumstances, both for and against the relief sought. Decided cases are undoubtedly helpful in assessing the importance to be ascribed to certain public policy

considerations. For example, as the *Eternity* case (*supra*) demonstrates at [141], the public interest in upholding the principles of consumer legislation is so strong that it is unnecessary to differentiate between different categories of consumer protection. However, a different combination of interests may lead to a different balance and it is not necessarily possible to transpose previously decisions directly. Ultimately, I did not understand either party to dissent from this approach.

Henderson v Henderson

62. Mr Handyside's first, threshold, point was that it was not open to Rusal now to raise any argument based on English public policy because public policy is a point which could and should have been taken, if at all, in the arbitration.⁴

63. The relevant test in this regard was accepted by both parties as that set out by Lord Bingham in *Johnson v Gore Wood*, [2002] 2 AC 1 at 30-31 in the following terms:

"Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: ... The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, ... It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before..."

64. Mr Randolph accepted that the question of English public policy was not raised in the arbitration but submitted that it could not have been because English public policy as such was irrelevant. Section 44 and the Russia Regulations did not apply directly and the only point open to RTI in the arbitration was public policy or illegality under Jersey Law. He accordingly argued that RTI and Rusal were not precluded by the doctrine in *Henderson* from relying on English public policy when it came to enforcement in England.

65. He also accepted that no defence was raised in the arbitration under Article 46A and that there was no evidence before the Tribunal relating directly to the factual elements necessary to establish the defence. The finding of the Royal Court as to RTI's subjective belief was based on witness evidence and documentary disclosure (including communications with RTI's legal representatives over which privilege had been waived) which had not been placed before the Tribunal.

66. Nonetheless, it was common ground that RTI/Rusal's skeleton argument and closing submissions in the arbitration did argue that payment would be illegal under Article 11 of SAFL. Witness evidence was also adduced that referred to concerns about a breach of Jersey

⁴ He does not argue that English public policy should have been raised in the Jersey enforcement proceedings since the courts would obviously only have been concerned there with Jersey public policy.

sanctions law (albeit not a belief that payment *would* breach sanctions) and to RTI's unsuccessful attempts to obtain advice on Jersey law in circumstances where its long-standing legal advisers had refused to act for it further following the invasion. It might, therefore, be said that there was material before the Tribunal on the basis of which a submission could have been made that RTI reasonably believed that payment of the margin call would be caught by the sanctions regime. But it is not disputed that there was no mention of Article 46A in terms, even as an alternative to Illegality.

67. In the event, the Tribunal did not consider the sanctions position under either Jersey or English law at all because it held that (i) the only relevant sanctions regime for establishing whether there was a Relevant Sanctions Event was the US regime; and (ii) the Defendants were prevented from relying on Illegality because the mandatory notice provision had not been complied with. In other words, the Defendants lost on a procedural rather than a substantive point.
68. Mr Randolph also pointed out that when RTI raised the question of Article 46A in the Jersey enforcement proceedings, it was never suggested by OWH that it was barred by the rule in *Henderson v Henderson* from doing so. In point of fact, this is not entirely accurate: *Henderson v Henderson* was raised by OWH but only in relation to Article 11. Its argument in that context was that Article 11 required “reasonable cause to suspect” and that since there was no evidence on this point in the arbitration, RTI was barred from relying on Article 11 at the enforcement stage. Article 11 differs in this regard from Article 46A which refers to reasonable belief. I accept, therefore, that the rule in *Henderson* was not raised by OWH as an objection to reliance by RTI on Article 46A in the Jersey enforcement proceedings.
69. Mr Randolph further argued that, even if Article 46A had not been explicitly raised in the arbitration, nonetheless the court was obliged to determine of its own motion whether the Tribunal's application of the sanctions regime was consistent with the statutory provision or not. He relied in support of this proposition on a passage in the Opinion of Advocate General Biondi delivered on 26 February 2026 in the European case of *Reibel v JSC VO Stankoimport*, Case C-802/24, although he accepts that this is as yet only an opinion which may not ultimately be adopted by the European Court.
70. This case arises from a reference by the Swedish court relating to a seller's failure to supply goods under a sale contract on grounds that export was prohibited by Article 11 of Regulation 833/2014. The buyer sued for compensation for non-delivery and also to recover certain advance payments it had made. The Swedish arbitration tribunal disallowed the claims for compensation on the basis that they fell within Article 11 but held the repayment claim did not and therefore succeeded. The seller applied to the Swedish court to set aside the award. Swedish law permits an award to be declared null and void where it is manifestly incompatible with Swedish/EU public policy and the court referred to the European Court the question of whether Regulation 833/2014 is part of EU public policy.
71. Advocate General Biondi's Opinion recognises that the questions raised are:
- “hugely important, given that they arise here in the particular context of restrictive measures adopted against Russia following its actions to destabilise and its subsequent invasion of Ukraine, which constitute both a flagrant infringement of international law and the United Nations Charter and one of the most serious threats to European security and the international order since the end of the Second World War.”*

He concluded that Article 11 is part of EU public policy on the basis that it:

“[71] ...seeks to ensure that EU operators will not be exposed to adverse consequences resulting from the change in their legal position following the entry into force of the restrictive measures in respect of Russia. In other words, a co-contracting party of a Russian entity which can no longer comply with its contractual obligations on account of the measures laid down by Regulation No 833/2014, as amended, can rely on the right under the provision not to satisfy that entity’s claims, and it falls to the national courts and tribunals to protect that right.”

Furthermore:

*“[78] It follows from the reasoning set out above that Article 11(1) of Regulation No 833/2014, as amended, is part of EU public policy. A national court or tribunal before which an action for an arbitration award to be set aside is brought must ensure, **where appropriate of its own motion**, that the application of that provision by the arbitration body is consistent with that provision. If an incompatibility with the provision is found to exist, the court or tribunal concerned must draw all the appropriate conclusions, in accordance with its national law, and grant the application to have the award set aside based on the breach of EU public policy in order to remove the incompatibility from the EU legal order.”* (Emphasis added.)

72. Mr Randolph also drew attention to the following passage in Mr Justice Bright’s judgment in *Eurochem (supra)*:

“466. The Banks submitted that, even if the case did not fall squarely within the rule in Ralli Brothers (in particular, if the Claimants were right about the place of performance being Russia), the court should still not enforce the Bonds, because to do so would be contrary to public policy. They relied on a dictum from the judgment of Lord Collins, sitting in the Hong Kong Court of Final Appeal, in Ryder Industries Ltd v Chan Shui Woo (2015) 18 HKCFAR 544, at [57], suggesting that this was a possible basis on which enforcement could be refused even outside the rule in Ralli Brothers:

‘[56] It has been suggested (obiter) that a contract which is valid by the governing law of the forum, English law, or in this case, Hong Kong law, may be refused enforcement if it has been ‘performed in such a way that one party (or both parties) commits a legal wrong’: Barros Mattos Jnr v MacDaniels Ltd [2004] EWHC 1188, [2005] 1 WLR 247, [30] (Laddie J). But,..., this obiter suggestion states the principle much too widely.

[57] There may nevertheless be cases in which a sufficiently serious breach of foreign law which reflects important policies of the foreign state or separate law district may be such that it would be contrary to public policy to enforce a contract. But there is no basis in authority or principle for holding that every breach of foreign law would come into this category.’

467. This dictum was approved as part of English law and applied in Magdeev v Tsvetkov [2020] EWHC 887 (Comm). At [317], albeit Cockerill J concluded at [341] that the breach of foreign law in that case was not sufficiently serious to engage English public policy. Magdeev v Tsvetkov was itself followed in Haddad v Rostamani [2021] EWHC 1892 (Ch), per Zacaroli J at [88], albeit the court again did not consider the breach of foreign law so serious as to justify a refusal to enforce the contract. All these cases recognise that the underlying rationale is comity.

468. *The Banks said that the facts of this case were very different from those in Ryder Industries Ltd v Chan Shui Woo, Magdeev v Tsvetkov or Haddad v Rostamani, and that the breach of French/Italian/EU law was much more serious, so the principle of comity is more strongly engaged. They also said that it is significant that the foreign laws in question (i.e., Regulation 269 and Regulation 833) have counterparts in UK law, enacted for precisely the same policy objectives (i.e., the Russia Sanctions) (EU Exit) (Amendment) Regulations 2019).*

469. *Regulation 269 and Regulation 833 are an important part of EU legislation and of French and Italian domestic law. They were enacted as part of an EU-wide strategy, at the behest of the heads of state and governments of all member states. Their purpose is as grave as any imaginable. It is evident from the exchanges with the DGT and the CSF that the Regulations are applied and enforced with extreme care and strictness. The punishments available are severe. Moreover, I consider that the Banks are right to suggest that the fact that UK/English public policy on this point is precisely aligned with that of the EU is an important pointer to the very great significance that should be attached to comity, on the facts of this case."*

73. In response, Mr Handyside relied on the decision of Cockerill J in *Alexander Brothers Limited (Hong Kong S.A.R.) v Alstom Transport SA*, [2020] EWHC 1584 (Comm) where she said this in reaching her conclusion that a point which had not been raised in the arbitration could not, on the evidence before her, be raised on enforcement:

"141. What is however more troublesome is the question of how the different attitudes to the public policy question between the law of the arbitration and the law of the enforcing court ... should be regarded in this context. What if the party seeking to resist enforcement has not run the point because the law of the arbitration makes the point hopeless?"

142. *While it is of course the case that the burden falls on the party relying on the Henderson principle to establish abuse, a deliberate decision not to take a point when it can be taken is prima facie abusive. Choosing the forum in which to bring a particular point so as to maximise chances of success, rather than bringing all arguments at once in the same (here contractually selected) forum, is a classic case of deliberate abusive behaviour which will generally result in a finding of Henderson abuse.*

...

147. *But in a situation where it is clear that the point could have been taken, the burden effectively shifts to the party seeking to raise that point for the first time on enforcement, to explain why that point was not taken so that the Court can assess the question of "should". The requirement of "could and should" from the Henderson authorities in this context drives the requirement for a good reason. The significance of an explanation for the failure to pursue all points can be seen for example in *Playboy Club London Limited v Banca Nazionale De Lavoro Spa* [2018] EWCA Civ 2025. There the party seeking to make the new case explained in considerable detail that the case which was not run at trial was one where evidence only came to hand very late in the day, and pursuing it would have derailed a long-scheduled trial."*

74. In relation to *Reibel*, Mr Handyside submitted that even if the Advocate General's Opinion, were to be accepted by the European Court, it does not assist Rusal. *Reibel* raises a straightforward question of actual illegality: was the sale prohibited or not? In that context, it is easy to see why the court is bound to consider the matter independently, and references to it doing so "of its own motion" have to be read in that context. In any event, the defence of

illegality *had* been taken in the arbitration in that case and was not being raised for the first time only at the enforcement stage. By contrast, the situation here is completely different. Article 46A and section 44 do not depend on actual illegality but on reasonable belief and Advocate General Biondi's Opinion cannot be taken as expressing any view on provisions of that nature. Accordingly, there was no reason why the Tribunal should have taken any point on public policy of its own motion, let alone English public policy, in the absence of being alerted to it or being presented with evidence to support it.

75. OWH also relied on Mr Justice Bright's comments in *Eurochem (supra)* at [469] set out above to argue that where a breach of foreign law is involved which is sufficiently serious to engage English public policy, it can operate as a defence to a claim. Accordingly, Mr Handyside submitted, if there really was an available defence based on English public policy, it both could and should have been taken in the arbitration.
76. Persuasively as these arguments were put, however, I do not consider that Rusal is barred by the rule in *Henderson* from taking a point on English public policy in these English enforcement proceedings. Despite Mr Handyside's submissions to the contrary, I do not accept that the Defendants could *and should* have argued in the arbitration that because Article 46A applied to RTI as a Jersey company, the Tribunal should have given effect to that defence *as a matter of English public policy* simply because the regimes were aligned. The judgment in *Eurochem* was only delivered on 31 July 2025 and so was not available at the date of the arbitration hearing. Furthermore, there is nothing in the material before me to indicate that the Defendants made a deliberate decision not to run the point, or to defer it to enforcement for tactical reasons. On the contrary, the fact that Article 11 was explicitly relied upon suggests the opposite, if anything, and there was evidence before the Tribunal explicitly addressing RTI's concerns about breach of Jersey sanctions. Accordingly, while Article 46A could and possibly should have been raised, it is less easy to say that the Defendants should have raised *English public policy* as a defence when it was not a point which had apparently occurred to any of their lawyers.
77. I therefore reject Mr Handyside's threshold objection to Rusal's argument, although I accept his submission that *Reibel* is not directed at the circumstances in issue here and provides no support for Rusal's argument.

Striking the balance

78. Mr Randolph relied on *Celestial (supra)*, the comments of Mr Justice Bright at [469] in *Eurochem (supra)* and the Opinion of Advocate General Biondi in *Reibel (supra)* in support of the proposition that the sanctions regulations engaged vital public interests.
79. He also laid great stress on the statement of Jersey public policy articulated in paragraph 46 of the judgment of the Royal Court as follows:

"... subject to the qualification described in the following paragraphs [i.e., the retrospectivity point] we find that enforcement of an arbitration award against a party under an obligation to effect a payment he reasonably believes would be in breach of Jersey sanctions provisions in circumstances where the award has given no consideration to whether the defence provided for in Article 46A is available on the facts and where the court finds that it is so available, would fall within the public policy exception and such an award should not be enforced."

80. Mr Randolph submitted that this was an accurate reflection, *mutatis mutandis*, of English public policy with regard to section 44 of SAMLA, and that it should make no difference that the relevant statutory provision was one of Jersey law since the two systems were completely aligned. I have two immediate concerns with this proposition. First, I note that the paraphrase of this passage in his skeleton argument had been somewhat massaged to refer to a defence under section 44 that the English court found was “*or was arguably applicable*”. I am not persuaded that this is a legitimate refinement, since it seems to me that the English court would at the very least need to be satisfied that the defence *was* available before concluding that English public policy was engaged.
81. Secondly and in any event, I harbour some doubts about paragraph 46 of the Royal Court’s judgment as a statement of Jersey public policy. I would have thought that much might depend on why the award gave no consideration to a possible immunity defence. After all, there is a wide difference between a point being raised which the tribunal simply overlooks or ignores, and a point which the tribunal declines to address because the party in question is contractually precluded from relying on it. A case where the point was raised but not supported by sufficient evidence might fall somewhere in between. Be that as it may, it is not for me to set myself up as the arbiter of public policy in Jersey. I merely note that I am far from persuaded at present that there is any English public policy of quite this width.
82. I nonetheless accept without question that, as has been reiterated time and again in the case law, there is a vital public interest attaching to the sanctions regime, the purpose of which is to bring pressure to bear on Russia to cease its operations in Ukraine. I also recognise the importance of the immunity provisions in section 44 of SAMLA and Article 46A of SAFL as a critical part of that sanctions regime. By mitigating the otherwise potentially harsh consequences of sanctions on persons who are caught between complying with their contractual obligations on the one hand and the sanctions legislation on the other, they allow the sanctions net to be cast more widely: see, by analogy, *Celestial (supra)* at [76]-[79].
83. Mr Handyside nonetheless suggested that there was an element of the pot calling the kettle black in Rusal’s submissions. He argued that refusal of enforcement would not further the purpose of the sanctions regime in any way because OWH was in any event banned from making payments to its parent company by the BaFin measures. If anything, the boot was on the other foot since Rusal is a Russian company and (presumably) a Russian taxpayer and so permitting enforcement would actually do more to further that purpose and incidentally deprive the Russian state of tax revenues.
84. Mr Randolph’s riposte to this was that while OWH is a regulated entity in Germany, it is not regulated in the UK and payments to it would fall foul of UK sanctions because its parent, VTB Russia, is a designated person. By contrast, Rusal is not sanctioned in either the UK or the EU and, following its de-sanctioning by the US, it has undertaken strict monitoring and reporting obligations to OFAC.
85. Ultimately, it did not seem to me that a consideration of which side’s case was more or less likely to further the purpose of the sanctions regime tilted the balance appreciably one way or the other.
86. On the other hand, it is acknowledged that there is a well-established and strong public interest in the finality and enforcement of arbitration awards. Clear reason is required before enforcement will be refused.

87. I recognise that this is perhaps not a case where the highest degree of caution is required before invoking public policy. There is no question here of imposing English public policy on a foreign award which is perfectly lawful under its foreign law. On the contrary, it is a domestic English award and the premise of the argument is that English and Jersey public policy are completely aligned and, moreover, part of a vital international consensus. As such, it could be said that section 44 and Article 46A both reflect international public policy.
88. However, Article 46A is not itself a primary sanctioning provision, such as was before Mr Justice Bright in *Eurochem*. If payment would actually put one or other of the Defendants in breach of sanctions law in the country of its incorporation that is one thing. But that is not alleged here. Article 46A/section 44 are rather ancillary provisions designed to support the primary sanctions by providing immunity in certain circumstances. As Mrs Justice Cockerill pointed out in *Alexander (supra)*, corruption is not a “one size fits all” category and the court must therefore assess whether the nature and degree of corruption involved in the particular case engages public policy. Some may; some may not. Similarly, in my judgment, with the sanctions regime. Different components of that regime may carry different weight from a public policy perspective and just because the Article 46A/section 44 immunity is part of the sanctions regime does not mean that it necessarily attracts the same public policy interest as the primary sanctioning provisions.
89. In this context, Mr Handyside made the powerful point that there is no obligation on a party to avail itself of a defence under Article 46A/section 44. It can always take the risk of a breach and pay. If, in fact, it turns out that there is no illegality then no harm will have been done. He submits that in this case there is no allegation of actual illegality and the fact that RTI could have relied on a defence which it was not obliged to take and which it did not take is no reason, *per se*, to refuse enforcement.
90. I agree. While the public policy underlying the immunity is important, I do not regard it as sufficiently important to require enforcement here to be refused. This is for the following reasons in particular:
- (a) It is not obligatory to take the defence under section 44/Article 46A. Unlike actual illegality, it does not itself prohibit payment;
 - (b) It is not said that either payment of the margin call or of the award would breach English or Jersey sanctions law;
 - (c) The point was not raised before the Tribunal and there was no evidence to support it or, indeed, to explain why it was not raised.
91. In this regard, I do not consider that there is any inconsistency between (c) and my conclusion on the *Henderson* point. Although I have held in the latter context that a failure to take the point before the arbitrators is not a bar to raising it now, that does not mean that it cannot and should not go into the balance to be weighed along with all other relevant factors.
92. Mr Handyside made the further point that even if the award was ultimately held not to be enforceable in Jersey, it could still be enforced elsewhere. Accordingly, there could be no public policy against enforcing it against Rusal as guarantor which, not being a Jersey or an English company, could not itself rely on Article 46A/section 44. Mr Randolph’s riposte was to submit that if this were a good argument, a court could never refuse enforcement on grounds

of public policy unless there was complete uniformity across the world – or at least in all jurisdictions where the defendant was likely to have assets.

93. So far as RTI is concerned, that is a powerful point well made. I am here concerned with English public policy and only with English public policy and had I concluded that it was appropriate to refuse enforcement in England against RTI on grounds of English public policy, I would not have been deterred simply because another court elsewhere might take a different view. Even so, the argument does not to my mind assist Rusal. The award still stands and can be enforced against RTI wherever it has assets. Rusal is not a Jersey company and is not entitled to take advantage of Jersey public policy. I can therefore discern no public policy interest in refusing enforcement – even in England – against Rusal as guarantor.
94. Accordingly, I conclude that even if RTI were to succeed before the Privy Council, that would not justify the English court in refusing to enforce the award here. It necessarily follows that no useful purpose would be served by adjourning the Set Aside Application pending the outcome of the proposed appeal to the Privy Council.

Request for Arbitration: the BIT claim

95. Rusal nonetheless argued that I should still adjourn the Set Aside Application pending disposal of the BIT arbitration rather than deciding it here and now. Mr Randolph accepted that if I was against Rusal on the public policy argument (as I am), then this was the only basis on which an adjournment could be sought.
96. As already noted in paragraph 31(c), a claim under the BIT was first mooted in February 2025 in the context of the Defendants' application to the Tribunal for, *inter alia*, permission to apply to the LCIA court under section 32(2)(b) of the 1996 Act to determine the Tribunal's jurisdiction over proposed claims under Article 10 of the BIT.
97. Although the claim was not pursued at that time, Mr Taylor explained that it had received fresh impetus following the threat of a winding-up petition against Rusal in Hong Kong. He submitted that in any event the claim could not have been brought before 25 September 2025 because of a requirement in the BIT to undertake six months of amicable negotiation. However, Rusal was now on the horns of a dilemma. On the one hand, it could be penalised in Russia if it paid OWH. In this connection, he referred me without objection to a letter from the Russian Central Bank making clear that, as a matter of Russian law, Rusal could only pay the money into a blocked account in Russia. On the other hand, if it paid into a blocked account in Russia, it could be in trouble with OFAC to whom it is required to report.
98. The claim outlined in the Request for Arbitration asserts that the measures taken in Germany against OWH had the effect of disrupting the carefully constructed hedging arrangements that had been put in place between the Defendants, OWH and VTB Russia. This is said to have amounted to dispossession and/or unlawful and discriminatory measures which caused damage to Rusal's economic activity by forcibly separating OWH from its parent. Causes of action arising therefrom are asserted against OWH and the FRG in unjust enrichment, unlawful means conspiracy, causing loss by unlawful means and intentionally inducing a breach of contract. The damages sought include the amount of the arbitration award.
99. I confess that I had some difficulty in following this claim. At times, it appeared to assert that OWH was vicariously liable for the actions of the FRG. At others, it appeared to assert the opposite. On any view, I agree with Mr Handyside that it is difficult to see how measures taken

against OWH by BaFin in pursuance of an international sanctions regime can give rise to any of the causes of action alleged, or how OWH can have incurred any liability for what BaFin did. Even if I were to accept, making due allowance for the difficulty and complexity of framing essentially public law arguments in the context of municipal law, that there are valid arguments here, they seem to me to be ambitious and by no means obvious or straightforward. In particular, the suggestion that there was an unlawful conspiracy between OWH and the FRG is bordering on the surreal.

100. With all due respect to Mr Taylor, who argued this part of the case valiantly, I cannot regard the BIT arbitration as a valid reason for exercising my discretion to adjourn the Set Aside Application. The delay involved is likely to be at least a year and very probably much more than that, and I do not consider the merits of the claims to be so strong as to delay an enforcement that I have held should otherwise proceed. In any event, if the BIT claims ultimately succeed it cannot seriously be said that the FRG would not be good for the money.

101. There was a faint suggestion in Rusal's skeleton argument that section 9 of the 1996 Act might apply on the basis that legal proceedings (i.e., the application to enforce) had been commenced against Rusal in respect of a matter which had been agreed to be referred to arbitration, namely the BIT claims. The answer to this, however, was given by Mr Handyside, namely that the relevant "matter" for these purposes is the enforcement of the award which is not a matter itself capable of being referred to arbitration.

CONCLUSION

102. For all these reasons, I refuse the application to adjourn the Set Aside Application. I further find that Rusal has no real prospect of successfully raising any objection on grounds of English public policy to enforcement of the award against it and the Set Aside Application itself is accordingly dismissed.

APPLICATION TO SET ASIDE ALTERNATIVE SERVICE ORDER

103. This having been withdrawn, it was common ground that OWH was entitled to recover its costs. Given the Commercial Court's wish to give junior advocates as many opportunities for oral advocacy as possible, it was unfortunate that time did not allow for argument on costs which would otherwise have been presented by Mr Casey on behalf of OWH. I therefore invited written submissions on paper, which I have now received.

104. However, since there may yet need to be an oral consequential hearing in the light of my decision, I propose to defer the determination of costs so that it can be dealt with at the same time. If that gives the junior advocates a chance to address the court, so much the better. If not, I will determine the costs on the papers, together with all other consequential matters.