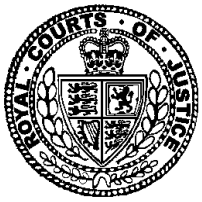

Neutral Citation Number: [2020] EWHC 362 (QB)

Case No: FJ90/16

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2020

Before :

The Honourable Mrs Justice Carr DBE

- -

Between :

STRATEGIC TECHNOLOGIES PTE LTD	**Claimant**
- and -	
PROCUREMENT BUREAU OF THE REPUBLIC OF CHINA MINISTRY OF NATIONAL DEFENCE	**Defendant**

- -
- -

MR HASHIM REZA (instructed by **Bower Cotton Hamilton LLP**) for the **Claimant**
MR JONATHAN MARK PHILLIPS (instructed by **Dechert LLP**) for the **Defendant**

Hearing dates: 28, 29, 30 January and 4 February 2020

- -

Approved Judgment

MRS JUSTICE CARR :

Introduction

1. This action concerns the registration in England and the enforcement (here and elsewhere) of a judgment in the name of the Claimant, Strategic Technologies Pte Ltd ("ST") against the Defendant, the Ministry of National Defence ("the MND") of the Republic of China ("ROC"), also and better known as Taiwan. The judgment ("the Second English Registered Judgment") was registered by ST upon application without notice in February 2016 pursuant to Part II of the Administration of Justice Act 1920 ("the AJA"). It was based upon a default judgment entered in 2009 by ST against the MND in the Grand Court of the Cayman Islands ("the Cayman Default Judgment"). The Cayman Default judgment was itself entered in an action on a judgment entered by ST against the MND in Singapore in 2002 ("the Singapore Judgment"). ST obtained registration in England of the Singapore Judgment in 2004 ("the First English Registered Judgment") but does not rely on that registration (which it never sought to enforce).

2. The Singapore Judgment was entered in proceedings which followed a dispute arising out of the supply of equipment by ST to an underground military facility in Taiwan. ST is a company incorporated in Singapore which is no longer trading. The enforcement of the Second English Registered Judgment is pursued on behalf of investors to whom the Second English Registered Judgment (together with the earlier judgments against the MND) was assigned in equity in March 2019 for the sum of US$150,000. The investors, through an English company known as Red Right Hand Limited, acquired ST for that purpose.

3. The MND is an arm of the government of the ROC. Although it is by its own law a state, the ROC has an unusual status in international, and English, law: although it has all the generally recognised characteristics of statehood, and is often treated as a country, it is not recognised as a state by the United Kingdom ("the UK") and there are no formal diplomatic relations between the two. For the purpose of these proceedings only, and without making any wider concession, the MND does not rely on the State Immunity Act 1978.

4. The MND now applies (by application dated 31 January 2019 (as amended on 29 July 2019)) to set aside the Second English Registered Judgment alongside further relief, including the setting aside of an order made by Supperstone J dated 7 November 2016 granting a certificate under Article 53 of the Judgments Regulation (EU) No 1215/2012 ("Article 53") ("the Judgments Regulation") in relation to the Second English Registered Judgment ("the Article 53 Order"), and enforcement steps taken by ST, in particular a Writ of Control which ST has threatened to enforce at various premises, including the Taipei Representative Office ("TRO") in London ("the Writ of Control"). Alternatively, the MND seeks a general stay of execution or enforcement.

5. ST contends that the MND's application is totally without merit: it is a "desperate, belated attempt by an evasive judgment debtor to avoid payment" and should be dismissed. The ST has issued a contingent cross-application dated 8 May 2019 for

orders under CPR 6.15 seeking to validate service of the Second English Registered Judgment retrospectively if necessary.

6. Written factual evidence has been served as follows:

   i) For the MND: witness statements of Li-Chiang Yuan dated 4 February and 4 April 2019;

   ii) For ST: a witness statement of Damian Prentice dated 6 March 2019.

7. Written and oral expert evidence has been adduced as follows:

   i) On Cayman law: from Marc Kish for the MND and Andrew Woodcock for ST;

   ii) On Taiwan law: from Professor Yao-ming Hsu for the MND and Hsin-lan Hsu for ST.

8. As evidenced in the very lengthy skeleton arguments submitted for the parties, the latest round of this dispute, which now goes back some 20 years, has generated a plethora of new (and sometimes overlapping) arguments ranging from substantive points of law and fact to questions of discretion. The history reveals wide-ranging attempts by ST in multiple jurisdictions to enforce first the Singapore Judgment and then the Cayman Default Judgment. The MND has so far succeeded in resisting those attempts - through a combination of action and inaction. It has incurred some £900,000 in costs in this latest series of challenges.

The Facts

The original contract between the parties

9. By written conditions of contract entered into on 1 May 1996 ST agreed to supply a measuring system to an underground firing range in Taiwan ("the contract"). The conditions supplemented an earlier invitation dated 1 December 1995 and a bid dated 9 April 1996. As security for the performance of its obligations, the MND required and ST procured a performance bond issued by the Development Bank of Singapore. By Article 25 of the conditions, the contract provided for arbitration; by Article 27 of the conditions, it was to be governed by the law of Taiwan.

The proceedings in Singapore

10. A dispute arose in 1998 and ST commenced proceedings in Singapore to restrain payment under the performance bond by a without notice application for injunctive relief on 8 May 1998 (which was granted). The proceedings were notified to and served outside Singapore on the MND. An unqualified memorandum of appearance was entered by Singapore counsel on behalf of MND on 8 July 1998.

11. On 7 August 1998 the MND issued a summons to stay the proceedings pending arbitration, alternatively on the ground of forum non conveniens. Further in the alternative the MND sought an extension of time for service of its defence and discharge of the injunction and an enquiry into damages.

12. The summons was supported by a 15-page affidavit from Lu Sheau-chia sworn on 11 August 1998 in which, amongst other things, the merits of ST's claim as well as the factual basis of the injunction was challenged. It is an important document. Mr Sheau-chia stated that he was "Chief of the Performance Section" of the MND and duly authorised to make the affidavit on behalf of the MND. He stated that the affidavit was filed in support of the MND's application to discharge the injunction and to support the MND's application for a stay of proceedings pending arbitration and also on the ground of forum non conveniens. He denied that the MND was the one unable to perform its part of the contract; ST was the one who "repeatedly delayed certain portions of their Works". He stated that the evidence of ST was "full of inaccuracies". Further, the allegation that the MND did not have the funds was "entirely baseless....The [MND] is a Taiwanese government agency with sufficient funds for its projects at all times. Further, whether the [MND] had the budget or not was entirely an internal matter, not one of which should concern [ST]". ST was in clear breach of its contractual obligations. Mr Sheau-chia went on to identify what he described as ST's further "baseless allegations". Whether or not the MND re-tendered the contract was irrelevant. The MND never provided specifications that did not comply with the contract. The training venue had always been agreed as Singapore. It was ST who requested postponement of the refund guarantee. The sums claimed by ST were not admitted. There was no basis for ST to insist on rescission of the contract. The MND had every right to call on the performance bond.

13. As for jurisdiction, Mr Sheau-chia did not dispute that the Singapore courts had jurisdiction. Rather, he stated that "the [MND] is of the view that this matter is better dealt with by the Courts in the Republic of China" and gave the reasons for that. Significantly, given the events that followed, he went on to address the application for a stay of proceedings pending arbitration:

> "…The basis is that there is an arbitration clause which deals with any dispute between the parties. As can be seen from the above, the dispute actually deals with the carrying out of the Contractual duties of each party. The issues are therefore covered by the arbitration clause. In this regard, the [MND's] solicitors' letter to [ST's] solicitors dated 7 August 1998, exhibited herewith…, will confirm that [the MND] are ready and willing for an arbitration to take place." (emphasis added)

14. The letter dated 7 August 1998 from the MND's solicitors to ST's solicitors did indeed do just that:

> "…. In the premises, we give notice on our clients' behalf that our clients are ready and willing to refer the dispute to arbitration in Taipei, Republic of China. As such, kindly let us have your clients [sic] immediate confirmation that they will agree to stay all present proceedings in Singapore and proceed to arbitration in Taipei as soon as possible…" (emphasis added)

15. On 17 November 1998 the Singapore High Court, with express reference to the MND's evidence, acceded to the MND's application for a stay in favour of arbitration (but not forum non conveniens). It refused the MND's application for discharge of the injunction and claim for an enquiry into damages.

16. Despite its clear representations, not only to ST but also the Singapore High Court, that it was ready and willing to arbitrate, and for reasons which remain unexplained to this day, the MND then declined to arbitrate. On 5 and 7 January 1999 ST's solicitors corresponded with the MND's solicitors in relation to the appointment of an arbitrator. On 18 January 1999 the MND's solicitors responded by saying that they were unable to revert with instructions. In fact, on 8 January 1999 they had filed an application to withdraw, an application granted on 22 January 1999. Notice of ceasing to act was served on 29 January 1999. That notice gave a new address for service on the MND, namely Transpac International Law Offices ("Transpac") in Taipei. ST's solicitors then wrote twice to Transpac on the question of the appointment of an arbitrator, with no response.

17. The arbitration accordingly did not proceed and ST (understandably) applied (by application dated 26 April 1999) to lift the stay of the court proceedings. That application was granted on 12 May 1999. A statement of claim was filed. The order of 12 May 1999 and the Statement of Claim were served on Transpac and the MND on 31 May 1999. On 7 July 1999 ST was granted permission to amend the Statement of Claim and the MND ordered to file a defence within 7 days of service. The amended pleading and order were served on Transpac and the MND on 8 July 1999. The MND did not respond or serve a defence within time or at all. Following application for default judgment served on Transpac and the MND on 23 July 1999, an interlocutory judgment was entered in default of defence on 30 August 1999. This interlocutory judgment was served on Transpac and the MND on 6 December 1999.

18. In 2002 ST restored the proceedings for an assessment of damages. The MND was served with all directions for the assessment hearing, being ordered to give disclosure and given the opportunity to participate. Again, it chose not to engage. An award of damages in the sum of S$10,693.00 and US$ 1,573.510.40 plus fixed costs of S$7,000 was made on 10 December 2002 – the Singapore Judgment.

The First English Proceedings

19. In 2003 ST commenced proceedings to register the Singapore Judgment in England. Service on the MND was effected through the Foreign and Commonwealth Office on 17 June 2004. Permission for registration was granted on 16 December 2004 – the First English Registered Judgment. On 24 October 2005 ST obtained an interim third party debt order based upon the First English Registered Judgment. ST has not explained why it did not pursue either the First English Registered Judgment or the debt order.

The proceedings in the Cayman Islands

20. On 28 December 2008 ST issued an application for a freezing injunction in the Grand Court of the Cayman Islands by reference to common law proceedings on the Singapore Judgment. ST relied on the fact that the MND had claimed an interest in the proceeds of an account held in the Cayman Islands in proceedings brought by the MND against third parties seeking the recovery of funds allegedly misappropriated ("the Wang proceedings"). ST also sought leave to serve proceedings out of the jurisdiction and an order for discovery. A writ of summons was issued on 29 December 2008. The freezing injunction was granted on 30 December 2008 (and extended on 27 February 2009).

21. In support of the applications Mr John Smith on behalf of ST swore an affidavit on 12 December 2008. It included the following evidence:

> "Court of Competent Jurisdiction
>
> 9. The Plaintiff issued proceedings upon a contract against the Defendant in the High Court of Singapore. A Memorandum of Appearance was submitted on behalf of the Defendant by Messrs Azman Soh and Murugaiyan dated 8th July 1998. There is now produced and shown to me as Exhibit "JS3" a true copy of the Memorandum of Appearance. At no time did the Defendant make any application to challenge the jurisdiction of the Singapore Courts. In addition, the Defendant took steps within the proceedings by applying to the Singaporean High Court to stay the proceedings on the grounds of forum non conveniens and an arbitration clause in the contract. On 27th October 1998 the Singaporean High Court granted the Defendant's application for a stay based on the arbitration clause in the contract.
>
> 10. In my opinion, it is obvious from the steps that the Defendant took in the Singaporean proceedings that it voluntarily submitted to the jurisdiction of the Singaporean High Court in respect of this matter and accordingly the Court was properly seized of the matter and was a Court of competent jurisdiction….
>
> 13. ...I would advise the Court that in accordance with Section 12 of the United Kingdom, State Immunity Act 1978…the Judgment has been duly served on the Defendant on 17th June 2004 through the Foreign and Commonwealth Office, as part of the process of registering the Judgment in the High Court of Justice, Queen's Bench Division….
>
> 15. I am not aware of any defence which the Defendant may be able to raise to the Writ of Summons brought in these proceedings……."

22. On 27 March 1999 ST served the MND with the proceedings, acknowledgment of service packs, Mr Smith's affidavit and the freezing orders by post. The MND did not raise any objection to such service. In an affidavit of 23 April 2009 for ST, Min-Hui Li stated that service by post was the recognised and sufficient method of service.

23. On 30 April 2009 ST applied for a default judgment under O13 Rule 1 of the Grand Court Rules 1995, alternatively summary judgment. The application was rejected on the basis that it was a claim brought upon a foreign judgment and not for a liquidated demand under O13 Rule 1. A fresh application was lodged, enclosing a note from counsel justifying the basis of the application. On 25 June 2009 the Grand Court entered judgment in sums totalling US$1,573.510.40 (plus interest) and S$10,693 (plus interest) – the Cayman Default Judgment.

24. In support of that application Ms Lisa-Ann Welman swore an affidavit on 24 June 2009. Amongst other things, she stated that she had been informed by Mr Keeble of ST's solicitors (and believed) that the MND had no defence to the claim.

25. In 2011 ST sought a charging order over funds held in court and subject to a freezing injunction made in the Wang proceedings. A notice to show cause why a charging order nisi should not be made was served on the MND on 7 September 2012. On 23 October 2012 new solicitors for the MND made written representations seeking an adjournment whilst they sought instructions. That request was granted, with the matter then being adjourned on several further occasions. On one of those occasions, 30 April 2013, counsel for the MND informed the court that an agreement was close to being finalised between the DPP and the MND which agreement "will contain express provision for the payment of the judgment debt due to [ST] together with costs and interest". That information was recorded in the recital to the adjournment order made that day ("the April 2013 Order").

26. On 2 August 2013 in the Wang proceedings the Grand Court (Quin J) granted the MND a freezing injunction over US$48million held in court. On the same day, after hearing from counsel for ST and the MND, Quin J also made absolute a charging order in the sums of US$3,246.571.35 plus S$27,741.70 over the US$48million held in court pursuant to the Wang proceedings ("the August 2013 Order") as follows:

> "IT IS HEREBY ORDERED:-
>
> 1. That the interest of the Defendant in the asset specified in the schedule hereto stand charged with the payment of US$3,246,571.35 and SGD$27,741.70 (Singapore Dollars), the amounts due from the Defendant to the Plaintiff, inclusive of costs and interest, on a judgment dated the 30th June 2009…."

27. On 16 May 2014 the MND through counsel entered into a consent order in the following terms ("the 2014 Consent Order"):

> "UPON the filing of the Plaintiff/Judgment Creditor's summons dated 13th day of May 2014
>
> IT IS HEREBY ORDERED BY CONSENT:
>
> 1. That paragraph 1 of the Order of Quin J, dated 2 August 2013, charging the Defendant's beneficial interest in the asset specified in the schedule thereto be varied to the extent that the said interest of the Defendant stand charged with the payment of US$3,523,198.00 an SGD$28,240.90 (Singapore Dollars), the amounts due from the Defendant to the Plaintiff, inclusive of costs and interest, on a judgment dated 30th June 2009.
>
> 2. That paragraph 1(1) of the Injunction Order granted in this action on 30 December 2008 ("the Injunction Order") and continued by order of Quin J dated 25 June 2009 be varied to restrain the Defendant and/or any third party on notice of the Injunction Order, whether by themselves, their servants or agents or otherwise, howsoever from removing from the Cayman Islands or in any way disposing of or deal[ing] with or diminish[ing] the value of any of the Defendant's assets which are in the Cayman Islands whether in their own names or not and whether solely or jointly owned, up to the value of US$40million.

3. That the Defendant shall within 14 days comply with paragraph 2 of the Injunction Order.

4. Costs are reserved."

28. The 2014 Consent Order was signed by solicitors on behalf of ST (as "the Plaintiff/Judgment Creditor"), by solicitors on behalf of the MND (as "The Defendant/Judgment Debtor") and by the Judge of the Grand Court.

29. On 13 June 2014 the MND's claim in the Wang proceedings was dismissed on the basis that the MND had failed effectively to serve the writ. In any event, MND's standing to bring the claim was doubtful and the claim was statute-barred as a matter of Cayman law. The sums in court were released, and neither the MND nor ST received any proceeds.

The Second English Proceedings

30. On 11 February 2016 ST applied to the English High Court to register the Cayman Default Judgment pursuant to the AJA. The application was supported by a witness statement of Mr Davis of ST's solicitors. Mr Davis exhibited the Cayman Default Judgment and rehearsed its contents. He identified that the judgment was a default judgment but referred to the subsequent enforcement proceedings, the charging order made on 2 August 2013 and the 2014 Consent Order. He stated:

> "...For the purpose of this application, reference to the Order made on 16 May 2014 is to confirm that effectively the Default Judgment made in 2009 was refreshed so there is no longer a limitation issue as at the date of this application."

31. He went on to state that to the best of his knowledge, information and belief, ST was entitled to enforce the Cayman Default Judgment from 2009 which had not been satisfied. He provided updated interest calculations and confirmed that the judgment did not fall within any of the cases prohibited from registration under s. 9 of the AJA, nor was it one to which s. 5 of the Protection of Trading Interests Act 1980 applied.

32. Master Yoxall granted the application on the papers on 4 April 2016. Paragraph 2 granted the MND permission to apply to set aside registration within 2 calendar months and 23 days after service on it of notice of the registration under Rule 74.6 of the CPR if it had grounds for doing so and execution on the judgment would not issue until after the expiration of that period (or any extensions of that period or, where application to set aside was made, disposal of the application).

33. On 28 April 2016 ST, by its lawyers in Taipei, LCC Partners Law Office, sent a copy of the Second English Registered Judgment by registered post to the MND and its Minister in Taipei under cover of letter dated 25 April 2016. An affidavit of service was sworn by a Mr Liu of LCC Partners Law Office on 25 May 2016. Amongst other things Mr Liu confirmed that service by registered letter was a method of service permitted in Taiwan.

34. Under cover of a letter dated 11 July 2016 the MND returned the judgment to LCC Partners Law Office, stating that it did not constitute valid service:

> "1. In response to the attested letter served by your firm on April 29th, 2016.
>
> 2. Regarding the copy of Order of the UK High Court of Justice that was forwarded by your firm on behalf of Strategic Technologies Ptd Ltd, a Singaporean entity, we hereby declare that the procedure of service was illegal; therefore, we return said Order."

35. The evidence for ST states that on receipt of that letter ST consulted its lawyers. ST determined that no further action was necessary as ST believed that it was incumbent on the MND to make an application to oppose the registration of the order.

36. On 16 August 2016 ST sought an Article 53 certificate in order to enforce the Second English Registered Judgment in Italy. Again, Mr Davis of ST's solicitors provided a witness statement in support. Master Yoxall refused that application (twice) in August 2016 on the basis that the procedure does not apply to judgments originating in non-member states. ST appealed that decision successfully on 7 November 2016 when Supperstone J granted the certificate in the Article 53 Order and ordered the MND to pay ST's costs in the sum of £9,000. He directed that the MND:

> "have liberty to apply to discharge and/or vary the terms of this Order, such application to be made within 14 days of service of the Order on them."

The Article 53 certificate was issued on 11 November 2016.

37. On 12 October 2017 ST served the Article 53 certificate on the MND (through diplomatic channels between Italy and the ROC). Mr Li-Chiang Yuan in his witness statement for the MND on this application includes both the Second English Registered Judgment and the Article 53 Order amongst the documents exhibited as those served on that day.

38. Attempts by ST to enforce the Cayman Default Judgment, and subsequent attempts to enforce in Italy and France were unsuccessful. As at 10 January 2019 the sterling equivalent of the amount outstanding under the Cayman Default Judgment and the Second English Registered Judgment was £3,968,787.14.

39. On 11 January 2019 ST obtained the Writ of Control directed to be enforced at three addresses in the UK:

    i) Central Bank of China (Taiwan) ("CBC"), 7 – 11 Moorgate, London EC2;

    ii) Bank of Taiwan London Branch ("BOT"), Level 17, 99 Bishopsgate, London EC2;

    iii) The TRO in the UK, 50 Grosvenor Gardens, London SW1.

40. It is this last step which appears to have prompted the issue by the MND of its current application.

The AJA and the Civil Jurisdiction and Judgments Act 1982 ("the CJJA")

41. Given the issues raised as identified below, it is convenient to set out in full at this stage s. 9 of the AJA which provides:

> **"9 Enforcement in the United Kingdom of judgments obtained in superior courts in other British dominions.**
>
> (1) Where a judgment has been obtained in a superior court in any part of His Majesty's dominions outside the United Kingdom to which this Part of this Act extends, the judgment creditor may apply to the High Court in England or **…** , at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case they think it just and convenient that the judgment should be enforced in the United Kingdom, and subject to the provisions of this section, order the judgment to be registered accordingly.
>
> (2) No judgment shall be ordered to be registered under this section if—
>
> (a) the original court acted without jurisdiction; or
>
> (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
>
> (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
>
> (d) the judgment was obtained by fraud; or
>
> (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
>
> (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.
>
> (3) Where a judgment is registered under this section—
>
> (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;

(b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;

(c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) Rules of court shall provide

(a) for service on the judgment debtor of notice of the registration of a judgment under this section; and

(b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and

(c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside."

42. S. 12 (1) of the AJA defines "judgment" as follows:

"The expression "judgment" means any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place."

43. Ss. 32 and 33 of the CJJA provide:

"32. Overseas judgments given in proceedings brought in breach of agreement for settlement of disputes.

(1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognised or enforced in the United Kingdom if—

(a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of that country; and

(b) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and

(c) that person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of that court….

33. Certain steps not to amount to submission to jurisdiction of overseas court.

(1) For the purposes of determining whether a judgment given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—

(a) to contest the jurisdiction of the court;

(b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;

(c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings."

44. There is no equivalent of ss. 32 and 33 of the CJJA in Cayman law.

The Issues in overview

45. The application to set aside the Second Registered English Judgment raises the following issues:

i) Was the Second English Registered Judgment served properly on the MND in April 2016?

ii) If so, should the MND have permission to apply to set it aside out of time? If not, should service be retrospectively validated and what effect does that have on the ability of MND to advance this application?

iii) If the application to set aside by MND proceeds substantively:

a) Was ST's application in February 2016 to register the Cayman Default Judgment statute-barred by virtue of s. 24 of the Limitation Act 1980?

b) If not, does the AJA apply at all?

c) If so, did the Cayman Default Judgment meet the criteria for registration under s. 9 of the AJA:

- Did the Cayman Grand Court act without jurisdiction?

- Was the MND carrying on business or ordinarily resident within the jurisdiction of the Cayman Grand Court and, if not, did the MND voluntarily appear in the Cayman Grand Court in relation to the action brought to obtain the Cayman Default Judgment or did it otherwise submit or agree to submit to the jurisdiction in relation to such proceedings?

d) Were there grounds to allow the Second English Registered Judgment to be registered outside the period of 12 months provided for by s. 9?

e) Was it just and convenient for it the Cayman Default Judgment to enforced in the United Kingdom?

f) Should the Second English Registered Judgment be set aside because of non-disclosure (or misrepresentation) on the part of ST?

46. In the event that the Second English Registered Judgment is to be set aside, questions surrounding the Article 53 Order (and certificate) fall away. Similarly, if the Second English Registered Judgment has not been served properly and service is not retrospectively validated, then any enforcement steps are premature. But in any event, the MND contends that the Article 53 Order should be set aside because:

i) Article 53 does not apply to the Second English Registered Judgment which is based on a default judgment from a non-EU member state in turn based on a default judgment from another non-EU member state;

ii) ST made material non-disclosures and/or misrepresentation for the purpose of securing the Article 53 certificate.

47. As for enforcement steps, and in particular the Writ of Control, again in the event that the Second English Registered Judgment is to be set aside, they must fall away. Similarly, if the Second English Registered Judgment has not been served properly and service is not retrospectively validated, then any enforcement steps are premature. But in any event the MND contends that the Writ of Control should be set aside (or stayed):

i) For material non-disclosure by ST at the time of obtaining the writ;

ii) Because it was not appropriate for the Writ of Control to be issued in all the circumstances.

48. Finally, the MND invites me to conclude (as a matter of general discretion under CPR 3.1 and/or under CPR 83.7) that the Second English Registered Judgment should not be enforceable and to stay its enforcement generally.

49. In broad overview, the following points of principle concerning the English approach to the recognition of foreign judgments are non-contentious:

i) At common law the English courts will recognise a common law action and register the judgment of a foreign court in certain circumstances. A prominent feature will be that the foreign court should be a court of competent jurisdiction (see Rule 43 in *Dicey Morris & Collins 15th Edition* ("*Dicey*"));

ii) It is a matter for the enforcing court as to whether or not the foreign court was of competent jurisdiction. Local procedural rules are not determinative but what is done is to be assessed in the context of what local conditions require;

iii) The English courts will not allow a party to participate and then attempt to escape. It will form a view if, in the absence of any other connection with the jurisdiction, a party had in reality participated or submitted in the proceedings

in a way that makes it right for the judgment to be enforced here by action or statutory procedure;

iv) The question of whether there has been a decision on the merits engages whether the court in question is a court which had or should have had the substantive merits before it. Withdrawal by a party does not deprive the foreign court of jurisdiction.

Application to set aside the Second English Registered Judgment

Was the Second English Registered Judgment served validly on the MND in April 2016?

50. The first issue is whether or not there was valid service of the Second English Registered Judgment. This falls to be determined as a matter of English law and by reference to CPR 74.7 and CPR 6.40.

51. CPR 74.6 provides:

> "(1) An order granting permission to register a judgement ("registration order") must be drawn up by the judgment creditor and served on the judgment debtor –
>
> (a) by delivering it to the judgment debtor personally;
>
> (b) by any methods of service permitted under the Companies Act 2006; or
>
> (c) in such other manner as the court may direct.
>
> (2) Permission is not required to serve a registration order out of the jurisdiction, and rules 6.40, 6.42, 6.43 and 6.46 apply to such an order as they apply to a claim form."

52. CPR 6.40 provides materially:

> "(1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction……
>
> *Where service is to be effected on a party out of the United Kingdom*
>
> (3) Where a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served –
>
> (a) by any method provided for by –
>
> (i) rule 6.41 (service in accordance with Service Regulation);
>
> (ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
>
> (iii) rule 6.44 (service of claim form or other document on a State);

(b) by any other method permitted by a Civil Procedure Convention or Treaty; or

(c) by any other method permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served…"

53. Thus, in the absence of an order of the court under CPR 74.6(1)(c) indicating what method of service is to be used, the party serving the order (for which permission to serve outside the jurisdiction is not required) may do so in any of the ways set out in CPR 6.40 (3), subject to CPR 6.40 (4).

54. The MND submits that CPR 6.40 (3) and (4) imposes two separate requirements. There is a general permissive ability under CPR 6.40(3)(c) to serve in a manner permitted abroad with an overarching prohibition under CPR 6.40 (4) on the taking of steps that are prohibited by the law of the jurisdiction where service is to take place. Although the two are often elided, the requirements are not the reverse of each other: a method of service may not be prohibited but it nevertheless may not be permitted for the purpose of CPR 6.40(3)(c).

55. The MND relies in this regard on *Arros Invest Ltd v Nishanov* [2004] EWHC 576 ("*Arros*") and *Shiblaq v Sadikoglu* [2004] EWHC 1890 (Comm) ("*Shiblaq*") (at [26] to [28]). In *Arros* Lawrence Collins J (as he then was) concluded that, in a case in which the defendant had not received actual notice, the onus was on the claimant to show that the method of service adopted was adequate and in accordance with the local rules. At [25] he said:

> "The claimant accepts that it would be inappropriate to rely on service in accordance with a code which plainly could not apply to this kind of case (e.g. if it applied only to matrimonial or criminal proceedings). I accept that CPR 6.24(1)(a) [predecessor to CPR 6.40(3)(c)] has to be applied with a reasonable degree of flexibility when applied to foreign systems of law, but it is plain that where it is common ground that the claimant has not complied with the service provisions of the basic code of the CPC, and seeks to rely instead on the rules relating to a specialist jurisdiction such as the APC, the onus is on the claimant to show, by expert evidence, that the rules of that specialist jurisdiction would have applied to the proceedings had they been proceedings in the foreign country."

56. It appears to have been common ground between the parties in *Arros*, and accepted without comment by the court, that service was required to be effected in accordance with domestic Russian rules on service to commence proceedings. The question for the court was which of two possible Russian Codes applied. (Russia is party to the Hague Convention which, in Article 10, allows service by post and, in Article 15, precludes summary judgment except where the claim has been served personally or "by a method prescribed by the internal law of the state addressed for the service of documents in

domestic actions upon persons who are within its territory.") As the MND points out, if all that was necessary was service by a method that was not prohibited under Russian law, the debate as to which Russian Code applied would have been entirely unnecessary.

57. I accept the MND's case that, for the purpose of assessing whether service has been made effectively under CPR 6.40(3), the question is what constitutes good service in the foreign country, not whether what was done was illegal or forbidden.

58. The MND then points to the statement in CPR 74.6(2) that CPR 6.40 (and the other rules specified) apply to a registration order "as they apply to a claim form". CPR 6.40 applies to "a claim form or other document" but does not distinguish between them for that purpose. It may be that CPR 6.40 will apply in the same way to claim forms and other documents but if there is a difference, CPR 74.6(2) requires the rules for originating process to be followed. This conclusion seems to me to be right as a matter of the language of CPR 74.6(2) and as a matter of principle. Alongside a plain reading of the words, I note that CPR 74.6(2) does not provide for CPR 6.40 to apply to a registration order as it applies to a claim form "or other document". Service out of the jurisdiction of a registration order made without notice is an important step which initiates a fresh process against the defendant that may lead to enforcement.

59. Against this background, I accept the MND's case that, in the absence of any specific applicable provision, service of a registration order needed to be effected with the formality that would attach to service of originating local process in Taiwan.

60. The thrust of ST's case is that valid service could be effected by any method accepted by the law of the foreign jurisdiction for serving documents that were intended to have legal effect. ST relies on *Habib Bank Ltd. v Central Bank of Sudan* [2007] 1 WLR 470 ("*Habib"*):

> "27. The evidence before Cooke J from Mr. Salih [the expert witness for the claimant] was that it would not be possible to serve the claim form in a manner expressly permitted by the law of Sudan because the law of Sudan requires service of process to be affected by the Sudanese Court and a Sudanese Court would not recognise their request to serve process issued out of an English Court on a Sudanese Defendant. On the other hand, Mr. Salih reported that the method of service Cooke J was asked to and did permit was not contrary to the law of Sudan. The Court has a broad discretion to allow service by any alternative method where service would otherwise be impractical or would involve very extensive delay, see *Marconi Communications v PT Pan Indonesia Bank* [2004] 1 Lloyd's Rep 594 at 601-602. Plainly, service of the originating process through diplomatic channels in this case was both impractical and subject to very extensive delay…."

61. I do not see *Habib* as supporting ST's case in the manner contended. Field J was concerned with the discretion of the Court to allow service by an alternative method (now under CPR 6.15). The implicit starting point was the rules in Sudan for the service of process (being the method "permitted") and an alternative method was considered because those rules made service "impractical" or involving "very extensive delay". The only constraint on the Court authorising an alternative method was the prohibition

in what is now CPR 6.40(4). Neither Cooke J (who made the original order for service by an alternative method) nor Field J thought the method of service adopted was permitted in Sudan, although it was not prohibited.

62. Armed with these conclusions, I turn to the evidence of the Taiwan law experts. Following on from my findings in paragraph 57 and 59 above, on the key question of whether or not service by post of foreign process was permitted (in the sense that I have identified) under the law of Taiwan, the experts were in agreement: it is not. The Law Supporting Foreign Courts on Consigned Cases (as it was described by both experts) provides a mechanism whereby a foreign court may obtain the support of the Taiwan court in serving documents in Taiwan. This mechanism must be followed in the case of a foreign judgment that is to be recognised and enforced in Taiwan. It could have been used here. In domestic proceedings in Taiwan originating process is served by the court. The court (but not the party itself) may serve by post and, on the evidence of Ms Hsu, it will usually do so.

63. I find, therefore, that ST's service of the Second English Registered Judgment by registered post was not valid service for the purpose of CPR 6.40(3). Although there was no prohibition on such service, in order for service to be effected validly, the use of official channels was required.

64. In these circumstances it is not necessary to consider further the expert evidence on service in Taiwan. For the sake of completeness, however, I record that I would have preferred the evidence of Ms Hsu, a practising lawyer with personal experience of service issues, over that of Professor Hsu, who is not a practising lawyer, on the material points of difference between them. Ms Hsu gave clear evidence that if the party serving the judgment did not wish to seek recognition or enforcement in Taiwan the order would be regarded as a "private document" and effective, under Art. 95 of the Civil Code, when delivered to the place under the control of the person to be served. Professor Hsu's evidence was that while it may be common practice for court documents to be served other than through the court or diplomatic channels that would only apply between two private parties. Documents to be served on MND could not be regarded as "private" documents in this sense, because MND is a government agency. As Ms Hsu stated, the logic in Professor Hsu's analysis is, at least in parts, difficult to follow and he relied at least in part on a 2014 decision of the French Cour de Cassation in proceedings between ST and the MND which, as he rightly accepted in cross-examination, was in fact of no relevance.

65. Further, had I concluded that there had been valid service, I would not have granted permission to the MND to apply to set aside the Second English Registered Judgment out of time. I would have held as follows.

66. First, consistent with *Satellite Communications Network Ltd v Faisal Islamic Bank of Khartoum* [2015] EWHC 4500 (QB), there was no power to do so (either under CPR 3.1(2) or 3.9). Nor would the facts of this case have come close to being an exceptional case of the type contemplated in *Pomiechowski v Poland* [2012] 1 WLR 1604 and *Adesina v Nursery and Midwifery Council* [2013] 1 WLR 3156.

67. Secondly, even if there were jurisdiction, I would not have exercised it in the MND's favour by reference to the three questions identified in *Denton v TH White Ltd* [2014]

EWCA Civ 906; [2014] 1 WLR 3296. First, this would have been a serious and significant breach. The MND's application would have been ignificantly (over 2 ½ years) out of time. The fact of any other delays in the history of the proceedings is immaterial at this stage of the analysis. It would also have been a significant breach, amongst other things allowing ST to proceed on the basis that it had a valid English registered judgment which it could and did take steps to enforce (incurring costs along the way). Secondly, there would have been no good reason for the delay, which occurred entirely due to circumstances within the MND's control. The MND, a sophisticated organisation with ready access to internal and external lawyers as it wished, did nothing to protect its position. It chose to stand or fall by the correctness of its view of service. Thirdly, considering all the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders, it would not have been right to allow the MND now to mount a challenge. Whilst accepting the lengthy overall chronology, this would have been a breach of an express cut-off point in an area where finality and certainty are of the utmost importance. ST had taken steps, incurring significant costs, acting on the (then unchallenged) Second English Registered Judgment. There have been several applications all premised on the existence of an enforceable registered judgment to which there had been no challenge. The sums of money at stake are significant but (as the submissions for the MND and evidence have made clear) in no way a serious threat to the MND, an organ of the government of Taiwan. If the consequences were of such importance for the MND, it was all the more incumbent on it to take steps to protect its interests. Finally, as will be apparent below, the merits of the application to set aside the Second English Registered Judgment cannot on any view be said to be so obvious or overwhelming as to be relevant for present purposes.

Should service of the Second English Registered Judgment be validated retrospectively?

68. In the light of my finding on service, ST's contingent application under CPR 6.15 arises.

69. CPR 6.15 provides for service of a claim form by an alternative method as follows:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method ….. not otherwise permitted by this Part, the court may make an order permitting service by an alternative method….."

CPR 6.27 provides that CPR 6.15 applies to the service of any documents in proceedings.

70. The principal ground relied upon is that there is good reason to believe that ST's steps to effect service in 2016 obviously resulted in the MND acquiring knowledge of the Second English Registered Judgment. ST submits that the MND's conduct is another exercise in playing technical games (see *Woodward v Phoenix Healthcare Distribution Ltd* [2019] EWCA Civ 985 at [33] and [50]).

71. In my judgment there is no good reason retrospectively to authorise service of the Second English Registered Judgment by registered post. The fact that the Second English Registered Judgment came to the MND's knowledge and attention in 2016 misses the point that service of international proceedings – here on a foreign government organ - is an important (and formal) step. So much was emphasised (in the

context of an application to dispense with service) in *Bas Capital Funding Corporation* [2004] 1 Lloyd's Rep 652 at 682. Amongst other things, valid service triggered the timetable set in the judgment. It cannot be right that the MND should be held subject to the steps taken by ST to enforce the Second English Registered Judgment in circumstances when the MND was not yet under an obligation to apply to vary or set it aside (if it wished to do so) (see [42] of the judgment in *Shiblaq* for parallel reasoning). Further, ST was on clear notice at all material times (from the MND's letter dated 11 July 2016) that the MND did not accept that valid service had been effected and was proceeding on that basis. On my finding, it was entitled to reject service as being invalid. Like the MND, ST chose to proceed at its own risk, relying on its view as to the validity of service, which in the event I have found to be incorrect. There was nothing impractical about ST obtaining the support of the Taiwanese courts for service or in proceeding through official channels, as it had done previously with the First English Registered Judgment.

72. In these circumstances, ST's steps to enforce are premature and fall to be set aside.

Was ST's application in February 2016 to register the Cayman Default Judgment statute-barred by virtue of s. 24 of the Limitation Act 1980?

73. S. 24 of the Limitation Act 1980 provides that an action shall not be brought upon any judgment after the expiry of six years from the date on which the judgment date became enforceable. The Cayman Defendant Judgment was made on 25 June 2009. ST's action upon it was not commenced until 11 February 2016.

74. However, s. 29(5) of the Limitation Act 1980 provides:

> "(5)….where any right of action has accrued to recover
>
> a) Any debt or other liquidated pecuniary claim;…..
>
> and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgment or payment."

75. By s. 30 of the Limitation Act 1980, to be effective for the purposes of s. 29, an acknowledgment must be in writing and signed by the person making it (or that person's agent).

76. As identified in *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 1 WLR 565 (at 575E), to be an acknowledgment, the debtor must acknowledge his indebtedness and legal liability to pay the claim in question. The important thing is that the present obligation to pay is admitted (see *Spencer v Hemmerde* [1922] AC 507 at 517).

77. ST relies on the 2014 Consent Order as an acknowledgment in writing and signed by the person making it. Mr Kish confirmed that the 2014 Consent Order would be seen under Cayman law (as in England) as being similar to an enforceable contract. For ease of reference, I repeat its contents:

> "UPON the filing of the Plaintiff/Judgment Creditor's summons dated 13th day of May 2014

IT IS HEREBY ORDERED BY CONSENT:

1. That paragraph 1 of the Order of Quin J, dated 2 August 2013, charging the Defendant's beneficial interest in the asset specified in the schedule thereto be varied to the extent that the said interest of the Defendant stand charged with the payment of US$3,523,198.00 an SGD$28,240.90 (Singapore Dollars), the amounts due from the Defendant to the Plaintiff, inclusive of costs and interest, on a judgment dated 30th June 2009.

2. That paragraph 1(1) of the Injunction Order granted in this action on 30 December 2008 ("the Injunction Order") and continued by order of Quin J dated 25 June 2009 be varied to restrain the Defendant and/or any third party on notice of the Injunction Order, whether by themselves, their servants or agents or otherwise, howsoever from removing from the Cayman Islands or in any way disposing of or deal[ing] with or diminish[ing] the value of any of the Defendant's assets which are in the Cayman Islands whether in their own names or not and whether solely or jointly owned, up to the value of US$40million.

3. That the Defendant shall within 14 days comply with paragraph 2 of the Injunction Order.

4. Costs are reserved."

78. The MND submits that when one considers the history of the Cayman proceedings as a whole, as set out above, the 2014 Consent Order was no more than a variation to the earlier charging order against the MND. The premise of the order is recorded as a matter of completeness; the reference to the amounts due on the Cayman Default Judgment are not to be read as an acknowledgment that they are in fact due. The context was that ST was seeking to secure the payment of funds held in court to the benefit of the MND in the Wang proceedings. The debt was biting only a small proportion of those funds and not of any significance.

79. I have no hesitation in finding that the 2014 Consent Order operated as an acknowledgment by the MND for the purpose of s. 29 of the Limitation Act 1980, so that the action to register the Cayman Default Judgment in 2016 was not statute-barred by virtue of s. 24 of the Limitation Act 1980.

80. It is useful to repeat some of the build-up to the 2014 Consent Order:

i) In 2012 ST obtained a charging order nisi over funds held in the MND's favour in the Wang proceedings with payment of the sums due under the Cayman Default Judgment. It then issued notice to show cause why the order should not be made absolute;

ii) The MND instructed solicitors, Diamond Law, to represent it. Those solicitors sought adjournments of the notice to show cause in order to consider the MND's position. There was no challenge at any stage to the Cayman Default (or the Singapore) Judgments;

iii) On 30 April 2013 Quin J made an order relating to arrangements involving the Director of Public Prosecutions of the Cayman Islands ("the DPP"). Materially, the order recorded that at the hearing, attended counsel for ST, the MND and the DPP, Quin J was informed that a "Sharing Agreement" was close to being finalised with the DPP, which agreement would contain "express provision for the payment of the Judgment Debt due to [ST] together with costs and interest from the share of the funds to be distributed";

iv) On 2 August 2013, following a hearing again attended by counsel for ST and the MND, Quin J ordered the MND's beneficial interest in the sum of approximately US$48,000,000 held in court in the Wang proceedings to stand charged with payments "due from [the MND] to [ST] …on a judgment dated 30th June 2009".

81. As to the 2014 Consent Order itself, there was, on the face of the order, and not for the first time, a clear and unequivocal acknowledgment by the MND of its indebtedness to ST under the Cayman Default Judgment: the MND's beneficial interest in the monies in court were to be charged with the sums identified, as "the amounts due from the [MND] to [ST]….on a judgment dated the 30th June 2009". The MND was described throughout the document as the "judgment debtor" and ST as "the judgment creditor". The 2014 Consent Order was signed for the MND by its solicitors.

82. The size of the debt as a proportion of the funds held in court in the Wang proceedings is neither here nor there. Nor is the fact that the ultimate availability of the source of the funds (ie the monies held in court to the MND's order) was not certain, or the fact that this involved a variation of an earlier charging order. The liability to pay was not expressed as being in any way conditional. Moreover, the 2014 Consent Order involved more than a variation of a charging order. It also (at paragraph 2) involved the variation of a freezing injunction granted in ST's favour on 30 December 2008 and continued at the time of the Cayman Default Judgment. That continuation was made expressly "in aid of execution" of the Cayman Default Judgment. By paragraph 2 of the 2014 Consent Order the MND was also confirming the validity of the Cayman Default Judgment.

Does the AJA apply at all?

83. The MND submits that the AJA does not apply at all to allow the registration of a judgment in England which, as here, was given, not on the merits of a substantive dispute within the jurisdiction of the foreign court, but upon an action to enforce a judgment obtained elsewhere ie a judgment on a judgment. It appears that there is no English authority on point.

84. For the MND it is suggested that, as a matter of construction, while the definition of "judgment" in s. 12 of the AJA is broad, the scheme of s. 9 of the AJA (which speaks amongst other things of justice and convenience) clearly envisages that the foreign court whose judgment is to be registered should have substantive jurisdiction and that the decision to be exported should be a judgment on the merits (or at least after the proper opportunity (even if not taken by the defendant) to determine the substantive merits). The AJA was intended to implement a procedure for the registration of judgments of the Dominions to which it related, but which mirrored the approach and

protections of the common law. In *Nouvion v Freeman* [1889] 15 App Cas 1 (at 9-10) Lord Herschell stated:

> "The principle upon which I think our enforcement of judgments proceed is this: that in a Court of competent jurisdiction, where according to its established procedure the whole merits of the case were open, at all events, to the parties, however much they may have failed take advantage of them, or may have waived any of their rights, a final adjudication has been given that a debt or obligation exists which cannot thereafter in that Court be disputed, and can only be questioned in an appeal to a higher tribunal."

85. Reliance is placed by the MND on the comment of Professor Briggs in *Civil Jurisdiction and Judgments* (6th Ed) ("*Civil Jurisdiction*") at 7.86. There, having recited s. 12 of the AJA, Professor Briggs went on to state:

> "It is not said that it excludes a "judgment on a foreign judgment", though it seems reasonable to suppose that it does."

86. It is also to be noted that the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("the 1933 Act"), on similar though not identical wording, was amended (by schedule 10 of the CJJA 1992) to introduce s. 1(2A). That section expressly excludes the enforcement of the judgment of a recognised court "given by that court in proceedings founded on a judgment of a court in another country and having as their object the enforcement of that judgment." In the Scottish case of *Clarke v Fennoscandia Ltd* [2004] SC 197 (Scottish Outer House) Lord Kingarth commented that the amendment was no doubt made to avoid "laundering" of judgments in countries to which the 1933 Act did not apply. In reliance on this comment, the Hong Kong High Court in *Morgan Stanley & Co International Limited v Pilot Lead Investments Limited* [2006] 4 HKC 93 stated (at [26]) that without amendment the 1933 Act would have permitted a judgment on a judgment. Professor Briggs (at 7.66 in *Civil Jurisdiction*) described the suggestion in that case (which did not involve the AJA) that an order registering a foreign judgment in Singapore is itself capable of registration as a Singapore Judgment in Hong Kong as "very surprising"; Professor Smart (writing in (2007) 81 ALJ 349) also identified the potentially troubling consequences of the decision and advocated a broad and fundamental approach which focuses on whether or not there has been a final decision on the merits by the intermediary court.

87. Whilst I accept that the AJA falls to be construed on its own terms, I am unable to accept the MND's contention that it does not apply to the registration of foreign judgments on foreign judgments made in civil proceedings whereby a sum of money is payable. The definition of "judgment" provided for in s. 12 of the AJA is very broad and the word "any", in particular, powerfully inclusive. However desirable it might for judgments on judgments not to be registrable under the AJA and for there to be deterrence against the "laundering" of judgments, there is no escaping the clear and express words of s. 12 of the AJA, legislation which, unlike the 1933 Act, has not been amended so as to exclude the registration of judgments on judgments. The words of s. 12 of the AJA do not permit a construction which excludes the registration of the Cayman Default Judgment which was a judgment made by a court in civil proceedings whereby a sum of money was made payable. Professor Briggs does not analyse how they might. If Parliament wishes to exclude a judgment on a judgment from registration under the AJA, it can do so by legislative change, as exemplified by the amendment to

the 1933 Act. But as a matter of construction the present words of s. 12 encompass the Cayman Default Judgment and ST was able properly to invoke the AJA.

Did the Cayman Default Judgment meet the criteria for registration under s. 9 of the AJA?

The expert evidence on Cayman law

88. MND contends that the Cayman Grand Court was not a court of competent jurisdiction for the purpose of recognising the Singapore Judgment at common law, such that the prohibitions in s.9(2)(a) and (b) of the AJA apply. On the facts of this case, the single question is whether or not, as a matter of Cayman law, the MND submitted or agreed to submit to the jurisdiction of the Singapore Court.

89. This was an issue on which I heard evidence from Mr Kish (for the MND) and Mr Woodcock (for ST). It was common ground:

    i) That whether a defendant in the foreign proceedings had submitted to the jurisdiction of the Singapore Court, was a matter to be decided by the Grand Court applying Cayman law;

    ii) The Grand Court follows English law, unless there is good reason not to;

    iii) There is no statute in Cayman that is equivalent to ss. 32 and 33 of the Civil CJJA.

90. In his report Mr Kish relied principally on *Banco Mercantil Del Norte SA v. Cabal Peniche* [2003] CILR 343 ("*Banco Mercantil*") , in which Levers J set out the requirements for the enforcement of a foreign judgment by the Grand Court as follows:

> "8…..At common law the court will enforce the judgment of a foreign court in a claim *in personam* provided that the foreign court had jurisdiction over the judgment debtor in accordance with the rules of private international law, *i.e.* in one of the following four cases:
>
> a) If the judgment debtor was, at the time the proceedings were instituted, present in the foreign country;
>
> b) if the judgment debtor was the plaintiff or counter-claimant in the proceedings in the foreign court;
>
> c) if the judgment debtor was the defendant and submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings and contesting them on the merits; or
>
> d) if the judgment debtor was the defendant and, before the commencement of the proceedings, agreed in respect of the subject matter of the proceedings to submit to the jurisdiction of the foreign court.

> The foreign judgment must also not be procured by fraud given in breach of natural justice or otherwise contrary to Cayman public policy.
>
> 9. The above reflects Rule 36 in Dicey & Morris, 1 The Conflict of Laws, 13th ed., at 487 (2000) for the recognition and enforcement of foreign judgments."

91. In *Masri and Manning v Consolidated Contractors International Company SAL* [2010] (1) CLR 265 Jones J summarised the position at [6]:

> "The English court is regarded as a matter of Cayman law as a court of competent jurisdiction because CCIC submitted and contested the actions on their merits…"

92. Mr Kish noted that the position taken by Levers J in *Banco Mercantil* generally reflects the provisions of Rule 43 of *Dicey* but with an additional requirement in case (c) that the judgment debtor should have contested the proceedings "on the merits". Mr Kish did not at any stage refer in his report to *Henry v Geoprosco International Ltd* ([1976] Q.B. 726 ("*Henry v Geoprosco"*). Mr Kish referred to Levers J in *Banco Mercantil* at [19], where she said:

> "It is not a question of investigating the propriety of the foreign courts but rather whether the Cayman Grand Court under its rules would find that the matter had been adjudicated on its merits or whether it was purely a question of submission to the jurisdiction.",

citing as support for this, a passage in *Desert Sun Loan Corp. v. Hill* ([1996] 2 All ER 847 at 862) in which Roch LJ said:

> "As I understand these principles, voluntary appearance in the foreign proceedings in a way accepted by English law as amounting to a voluntary appearance has to be shown. To show that there was a voluntary appearance in the proceedings in the eyes of the court of the foreign country whose judgment the English court is being asked to enforce is not sufficient, unless it amounts to a voluntary submission according to our rules."

93. Mr Kish went on to consider Order 12 Rule 8 of the Grand Court Rules 1995, which deals with challenges to the jurisdiction of the Cayman Grand Court and which provides in Rule 8(5) that "a defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the court by reason of having given notice of intention to defend the action...". Paragraph (1) contemplates applications, for, amongst other things, the discharge of any order made to prevent any dealing with any property of the defendant (Rule 8(1)(f)) and a declaration that, in the circumstances of the case, the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action (Rule 8(1)(g)). Mr Kish expressed the view that the MND's applications for a stay of the Singaporean proceedings in favour of arbitration or on the ground of *forum non conveniens* were challenges to its jurisdiction within Rule 8(1)(g) and the application to discharge the injunction was within Rule 8(1)(f). He did not consider these steps sufficient to amount

to a submission to the jurisdiction of the Singapore Court under the rules of the Cayman Grand Court.

94. In his oral evidence Mr. Kish confirmed his view that *Banco Mercantil* was the leading case in Cayman law and set out the law that would be applied by the Grand Court. However, he explained that he did not think Levers J had intended to introduce any grand departure from English law. He agreed that the reference to a "contest on the merits" in paragraph 8c) of the judgment could be read as a "gloss" by reference to the facts of that case. He also fairly accepted that the Grand Court would look at all the circumstances relevant to the question of submission and that the outcome in each case is fact-sensitive. Specifically, he confirmed that while Grand Court would not treat the relevant rules of the local court (in this case including RSC Order 12, rule 7 referred to below) as determining the question of submission, that would be one of the factors to be taken into account in the assessment of whether the MND had voluntarily submitted to the jurisdiction.

95. Overall, Mr Kish stated that the Grand Court has a broad discretion as to whether, as a matter of Cayman law, a party has submitted to the jurisdiction of a foreign court. The Grand Court would look objectively at all the relevant circumstances in the round.

96. In his report Mr Woodcock expressed the opinion that: "[a] defendant may be held to have submitted where he voluntarily appeared in the foreign action". He based this on the case of *Henry v Geoprosco* which he noted was on similar facts to those in this case. Specifically, in *Henry v Geoprosco* it was held that an application for a stay of proceedings on the ground of an arbitration clause was a submission to the jurisdiction of the court to which the application was made. He commented that the House of Lords decision in *Trendtex Trading Corporation and Another v. Credit Suisse* [1982] AC 679 referred to *Henry v Geoprosco* with approval. In his oral evidence he accepted that this was an overstatement: the House of Lords did no more than refer to *Henry v Geoprosco* without disapproval. He made no reference to *Banco Mercantil* in his report and acknowledged in his oral evidence that he was not aware of it at the time he wrote the report. He also made no reference to Order 12 Rule 8 of the Grand Court Rules 1995.

97. Mr. Woodcock considered that the application by the MND to the Singapore Court for a stay pending arbitration was "clearly" enough to give the Grand Court jurisdiction. He observed that the MND had not at any stage raised the question of the jurisdiction of the Singapore court with the Grand Court. He also considered that the MND's actions in 2013 and 2014 would be regarded by the Grand Court as confirming its submission to the jurisdiction of the court. He referred to the MND's appearance (by counsel) before Quin J in connection with the charging order and the terms of the consent order.

98. Neither expert referred in his report or elsewhere in writing to any relevant Commonwealth authorities commenting on *Henry v Geoprosco*, though Mr Kish stated in examination in chief in general terms that the Cayman Grand Court would look, alongside decisions of the English courts, to other foreign common law jurisdictions.

Analysis and findings

99. It is convenient at this stage to set out in broad terms my assessment of the evidence of the expert witnesses who testified to Cayman law. Mr Kish was generally a reliable

and fair witness, although it is disappointing that he did not refer to *Henry v Geoprosco* in his report, even if only to explain why it should be disregarded (and to identify that it was not an authority addressed (or even apparently referred to) in *Banco Mercantil*). Mr Woodcock was not an entirely satisfactory witness: he had not considered *Banco Mercantil*, which, although on different facts, is an important case in Cayman law on the question of submission; he overstated the position in relation to *Trendtex* approving *Henry v Geoprosco*; although he correctly stated that *Henry v Geoprosco* is a Court of Appeal decision, he did not note that it has been doubted and/or disapproved by academic commentators and in a number of Commonwealth courts; and his views on a party's duty of disclosure were not always consistent.

100. As will become apparent, however, this does not mean that I accept in their entirety the views of Mr Kish; nor do I reject in their entirety the views of Mr Woodcock.

101. It makes sense to start the analysis by considering *Henry v Geoprosco*. Both experts were clear that the Cayman Grand Court will follow English law unless there is a good reason not to do so. As a Court of Appeal decision that has never been judicially overturned and was cited without adverse comment in *Trendtex*, it appears to be an authoritative statement of the common law position in England. It was negatived in English law by the introduction of ss. 32 and 33 of the CJJA but there is no statutory equivalent in Cayman. *Henry v Geoprosco* is a decision that has been criticised in the textbooks and in other common law jurisdictions. But I note that the Court of Appeal was well aware of the criticism that its decision was likely to generate. (Thus, for example, it referred (at 747D) to the comment in *Dicey* that the position being adopted was "revolting to common sense"). It expressed its conclusions as being required by a long line of authority, including *Harris v Taylor* [1915] 2 K.B. 580. Roskill LJ set out the position (at 746G – 747B):

> "Taking this view of the decided cases which bind this court, it seems to us that they justify at least the following three propositions: (1) The English courts will not enforce the judgment of a foreign court against a defendant who does not reside within the jurisdiction of that court, even though that court by its own local law has jurisdiction over him. (2) English courts will not enforce the judgment of a foreign court against a defendant who, although he does not reside within the jurisdiction of that court, has assets within that jurisdiction and appears before that court solely to preserve those assets which have been seized by that court. (3) The English courts will enforce the judgment of a foreign court against a defendant over whom that court has jurisdiction by its own local law (even though it does not possess such jurisdiction according to the English rules of conflict of laws) if that defendant voluntarily appears before that foreign court to invite that court in its discretion not to exercise the jurisdiction which it has under its own local law."

He also addressed in terms the argument that submission required a submission of the merits to the foreign court:

> "For our part, we think that where any issues arise for decision at any stage of the proceedings in the foreign court and that court is invited by the defendant as well as by the plaintiff to decide those issues, "the merits" are voluntarily submitted to that court for decision so that that submission

subsequently binds both parties in respect of the dispute as whole, even if both would not have been so bound in the absence of that voluntary submission." (749G)

102. If this was a question of English common law it would be clear that this court was bound to follow *Henry v Geoprosco* and conclude that the MND submitted to the jurisdiction of the Singapore court without more by virtue of its application to stay the proceedings.

103. However, the exercise in which I am engaged is to determine, as a matter of fact, what Cayman law is on this question. I accept the evidence of Mr Kish that a Cayman Grand Court would consider *Banco Mercantil* and *Masri*. However, it is striking that *Henry v Geoprosco* is not referred to in either of those cases and I do not accept that *Henry v Geoprosco* can (or would) simply be disregarded. The key question is to understand whether the judgments of Levers J and Jones J introduced an additional requirement to those set out in Rule 43 of *Dicey*.

104. I find that the effect of these judgments is not to have introduced such an additional requirement and that there is under Cayman law no separate pre-requisite that a defendant should have substantively contested the substantive merits (through service of a defence and beyond) in a foreign jurisdiction before it will be found as a matter of Cayman law to have submitted to that foreign jurisdiction. That is not part of the *ratio* in either *Banco Mercantil* (in which the defendant had only contested the jurisdiction of the court and it was clear had done nothing to contest the merits) or *Masri* (where the question for the court related to the status of a receivership order of an English court). Mr Kish did not explain what he thought the courts intended by their reference to "merits". It would be hard to see how the imposition of a requirement for a contest of the substantive merits in order for submission to a jurisdiction to be established could be anything other than a "grand departure" from English law. Mr Kish expressly stated that it was not his opinion that that any such departure was intended.

105. In the light of the evidence I have heard, I find that Cayman law requires the Court to look objectively at all the circumstances in the round to determine whether there has been a submission to the jurisdiction of the foreign court. Such a submission can take place without a full contest on the merits.

106. Adopting that approach, I am quite satisfied that the MND submitted to the jurisdiction of the Singapore court as a matter of Cayman law.

107. Here there was much more than a mere application by the MND for a stay. None of the events described below is necessarily on its own sufficient, but taken together they undoubtedly are:

i) The MND entered an unqualified memorandum of appearance on 8 July 1998;

ii) The MND did not then challenge jurisdiction by the deadline (of 22 July 1998) for challenging jurisdiction under RSC Order 12 rule 7(1). By RSC Order 12 rule 7(6):

> "Except where the defendant makes an application in accordance with paragraph (1), the appearance by a defendant shall, unless the appearance is withdrawn by leave of the Court…., be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings."

Mr Kish agreed that, although a failure to apply in time for a declaration that the court had no jurisdiction was not determinative, the failure to do so is relevant to the factual matrix overall. I regard this omission as highly material to the objective assessment of the question of submission, bearing in mind the comments of Thomas J (as he then was) in *Akai Pty Ltd. v People's Insurance Company Ltd* [1978] 1 Lloyd's Rep 90, at 97:

> "The court must consider the matter objectively; it must have regard to the general framework of its own procedural rules, but also to the domestic law of the court where the steps were taken. This is because the significance of those steps can only be understood by reference to that law. If a step taken by a person in a foreign jurisdiction, such as making a counterclaim, might well be regarded by English law as amounting to a submission to the jurisdiction, but would not be regarded by that foreign court as a submission to its jurisdiction, an English court will take into account the position under foreign law.";

iii) On 7 August 1998 the MND applied by summons for orders not only for a stay pending arbitration or on the ground of *forum non conveniens* but also for an extension of time for service of a defence and for discharge of the injunction that had been obtained by ST and an enquiry as to damages. The application to discharge could be seen as an application to protect property, as Mr. Kish contended, but the application for an enquiry as to damages could not be. It is also significant that at no stage did the MND dispute the jurisdiction that the Singapore Court had jurisdiction;

iv) On 12 August 1998 the MND filed a lengthy affidavit in support of its summons of 7 August 1998, which included evidence going to the substantive merits of ST's claim;

v) The MND was partially successful in its applications, being granted the stay it sought pending arbitration. Its applications for discharge of the injunction and an enquiry as to damages appear to have been refused on the merits;

vi) On 29 January 1999, the MND's solicitors gave notice that they had ceased to act, giving an alternative address for service. It is hard to see how providing an address for service of proceedings or applications is consistent with disputing the jurisdiction of the Singapore Court at that stage.

108. In addition to the events in Singapore, ST can point to the events in the Cayman proceedings as further confirming that the MND had accepted the jurisdiction of the Singapore court. The relevant events included:

i) On 23 October 2012 the MND applied for an adjournment of ST's application for a freezing order, on the basis that it had appointed a new firm of solicitors to represent it in place of the firm previously appointed (whose instructions were withdrawn because of a conflict of interest). The grounds asserted for the adjournment did not include any challenge to the jurisdiction;
ii) The 2014 Consent Order considered in further detail above, in which the MND acknowledged that the amounts were due from the MND to ST pursuant to the Cayman Default Judgment, reciting the Singapore Default Judgment.

109. For all these reasons I find that the prohibitions in s.9(2)(a) and (b) of the AJA did not apply and the Cayman Default Judgment met the criteria for registration under s. 9 of the AJA.

110. The MND advanced a "fall-back" position in support of its non-disclosure submissions, namely that it was at least "seriously arguable" that the MND did not submit to the jurisdiction of the Singapore Courts as a matter of Cayman law. The submission is without merit: ST could reasonably have believed that, as Mr Smith deposed in his affidavit of 12 March 2008 in the Cayman proceedings, it was "obvious from the steps that the [MND] took in the Singaporean proceedings that it voluntarily submitted to the jurisdiction of the Singaporean High Court".

Were there grounds to allow the Second English Registered Judgment to be registered outside the period of 12 months provided for by s. 9 and was it just and convenient for it the Cayman Default Judgment to enforced in the United Kingdom?

111. Given the overlapping nature of the issues that arise on these discretionary factors, it is convenient to address them together.

112. As set out above, s. 9 provides for a judgment to be registered "at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court". It may allow registration if it thinks in all the circumstances of the case that it is "just and convenient" to do so. Thus the court is granted a broad discretion both on delay and substance.

113. The discretionary factors of delay, justice and convenience under s. 9 of the AJA were considered by Pepperall J in *Tenaga Nasional Berhad v Frazer-Nash Research Limited and another* [2018] EWHC 2970 (QB). He concluded, on the facts of that case, that the judge below had been right to allow registration proceedings to be brought after a delay of some ten years. At [74] he commented that considerations of comity require the English court to lean in favour of enforcing a foreign judgment within the first 12 months or such longer period as may be allowed where none of the bars under s. 9(2) of the AJA prohibit registration.

114. The enforcement history in this case can be summarised as follows:

9 December 2002	Singapore Judgment
23 July 2003	ST appoints Commercial Intelligence S.E Asia PTE Ltd ("CISEA") to recover judgment debt
22 September 2003	ST applies to register Singapore Judgment in UK
16 December 2004	English Judgment registering Singapore Judgment
24 October 2005	Interim Third-Party debt order in UK for £1,281,743 against China Trust Commercial Bank
November 2005	ST registers Singapore Judgment in USA. ST files complaint seeking to enforce Singapore Judgment in District Court of Columbia USA
17 October 2006	Affidavit of Sreenivasan explaining why Singapore Judgments were properly entered and enforceable judgments of Singapore High Court
10 May 2007	Decision of District Court of Columbia in USA dismissing ST's complaint in November 2005 seeking to enforce Singapore Judgment
2007-2009	ST registers Singapore Judgment in Belgium for enforcement against military equipment owned by the MND
29 December 2008	ST commences new proceedings in Cayman based on the unpaid Singapore Judgment
25 June 2009	Cayman Default Judgment
27 July 2009	ST files exequatur proceedings in France to enforce Singapore Judgment.
9 September 2010	French Court declares exequatur proceedings invalid for non-compliance with service under Article 684 of French Code of Civil Procedure
30 March 2011	Paris Court of Appeal dismisses ST's appeal against decision declaring exequatur proceedings invalid for non-compliance with service under Article 684 of French Code of Civil Procedure
2 August 2013	Charging Order made by Quin J in Cayman Proceedings charging the MND's beneficial interests in funds of US$48,000.000 with payments due under Cayman Default Judgment
19 March 2014	French Cour de Cassation dismisses ST's appeal against decision declaring exequatur proceedings invalid for non-compliance with service under Article 684 of French Code of Civil Procedure
16 May 2014	Consent Order in Cayman proceedings
13 April 2015	Final Costs Certificate in Wang proceedings in Cayman Islands of costs payable by ST
4 April 2016	Second English Registered Judgment
7 November 2016	ST obtains the Article 53 Order
11 November 2016	Article 53 certificate
12 October 2017	Article 53 certificate served on the MND via Italy
12 October 2017-June 2018	ST attempts to attach hull of vessel in Italy with Article 53 certificate

2018	ST attempts to attach Matra Arbitral award to the MND in respect of a missile contract in France
10 January 2019	Notice of Enforcement for £3,968,787.14 served Article 53 Order attached
11 January 2019	Writ of Control

115. The MND submits in overview:

i) On delay, that the enforcement history provided by ST is patchy. This is on any view an attempt to enforce an extraordinarily stale judgment obtained by default more than 20 years ago. ST has not explained its failure to enforce the First English Registered Judgment;

ii) that it is neither just nor convenient to enforce the Cayman Default Judgment:

a) the proceedings are pursued purely as a speculative investment by those who have acquired ST;

b) there has never been an adjudication on the merits against the MND, or any substantive decision against them. Rather there has been a consistent rejection by the courts of ST's attempts to enforce;

c) from an English law point of view there was no submission by the MND to the Singapore High Court (see ss. 32 and 33 of the CJJA). The making of an application for an extension of time to serve a defence would not amount to submission to the jurisdiction: see *Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd* [2008] SGCA 34;

d) as matter of Cayman law, the MND did not submit to the jurisdiction of the Singapore High Court, alternatively this was at least seriously arguable and there was a failure to disclose as much;

e) there were other material failures to disclose on the part of ST in particular as to the availability to the MND of a limitation defence, the existence of the First English Registered Judgment and the fact that the Cayman Default Judgment was based on the Singapore Judgment from 2002;

f) the First English Registered Judgment could not now be enforced without permission and it would be wrong for ST to recover now sums by way of arrears of interest under that judgment;

g) the practice of "judgment laundering" is to be discouraged. The Second English Registered Judgment is brought to circumvent the defects and delay in relation to the First English Registered Judgment. If necessary, the MND submits that there has been an abuse of process. There is no justification for the entry of a second judgment on the same underlying claim;

h) ST's conduct in its threats to execute the Second English Registered Judgment warrants setting aside registration.

116. ST submits in overview:

i) on delay, that ST never slept on the question of enforcement, expending time and effort in investigations and attempts in different jurisdictions. The reason for any staleness is that, despite acknowledgment of its debt to ST, the MND has evaded enforcement in Singapore, the USA, Italy, France, Belgium as well as the UK. It is notable that no court, wherever situated, has refused to enforce on the merits;

ii) that it is just and convenient for the Cayman Default Judgment to be registered here. ST takes issues with all of the MND's criticisms. Reliance is placed on the MND's conduct in 1998 and 1999 and in particular on events in the Cayman proceedings in 2013 and 2014.

Analysis

117. ST's application for the Second English Registered Judgment was made some 6 ½ years after the date of the Cayman Default Judgment. The time lapse was identified in the witness statement of Mr Davis dated 11 February 2016 in support of the application to register it. The date of the Cayman Default Judgment was clear, the judgment itself (showing its foundation on the Singapore Judgment) exhibited, and the acknowledgment in the 2014 Consent Order referred to.

118. My findings as to the status of the Singapore Judgment and the Cayman Default Judgment are set out above. So far as relevant, I would find that the MND submitted to the jurisdiction of the Singapore courts not only as a matter of Cayman, but also, English law. Amongst other things, I would not accept that by its summons of 7 August 1998 (which included, for example, a claim for an enquiry into damages as well as discharge of an injunction) the MND was acting solely to protect, or obtain the release of, property seized or threatened with seizure in the proceedings for the purpose of s. 33 of the CJJA.

119. As for non-disclosure, it is not necessary for me to enter into the arena of the detailed debate between the Cayman law experts as to the precise extent of ST's duty of disclosure in the Cayman proceedings. The broad position is that the duties are similar to those that arise in the English courts, as to which the relevant principles are well-known. Reference was made to the recent decision (admittedly on extreme facts) *The Libyan Investment Authority v JP Morgan Markets Limited and others* [2019] EWHC 1452 (Comm). The MND fairly does not suggest that any non-disclosure on the part of ST was deliberate.

120. I have already addressed above the legitimacy of ST's representation as to the MND's submission to the Singaporean High Court. Beyond that, the MND alleges that ST ought to have disclosed the First English Registered Judgment. It would have been better for ST to have given the full enforcement history, including the First English Registered Judgment. But technically ST was not seeking registration of the same judgment twice. In so far as necessary, I would not hold that there has been an abusive attempt by ST to circumvent the defects and delays in relation to the First English

Registered Judgment (and CPR 83.2 (or its predecessor)), particularly in the light of the 2014 Consent Order. Consideration of the enforcement history raises a fair inference that ST did not pursue the First English Registered Judgment whilst it was pursuing (or considering pursuing) other potential recovery avenues. Whilst the court must guard against any abuse of process and unwarranted repeat attempts to enforce, I do not consider that disclosure of the First English Registered Judgment would have affected the outcome of ST's application either for the Cayman Default judgment or the Second English Registered Judgment.

121. Equally, although more emphasis could have been placed on the overall chronology by Mr Davis in his statement of 11 February 2016, it can fairly be assumed that Master Yoxall looked at the Cayman Default Judgment exhibited which clearly refers to the fact that it was made upon the Singapore Judgment (in 2002).

122. The MND also alleges that ST ought to have disclosed in the Cayman proceedings that the MND would have a limitation defence (since more than 6 years had elapsed since the Singaporean Judgment). It was clearly wrong for ST to assert expressly, as it did in Mr Smith's affidavit of 12 December 2008 and through Ms Welman's affidavit of 24 June 2009, that the MND had no defence to the claim. With hindsight, the limitation defence can be said to be obvious. However, the six year period had only just elapsed in December 2008 and the defence was clearly not identified by or on behalf of ST (and it was never taken at any material time by the MND). This is so despite the fact that the MND was served with Mr Smith's affidavit of 12 December 2008 over a month before the application for the Cayman Default Judgment was issued. (It can be noted that it was also not raised by the MND as an issue in this application until amendment in July last year.) In any event, and importantly, disclosure of the issue would not have led to a different outcome. It is now common ground that the limitation defence would have barred the remedy but not the right (see *Ketteman v Hansel Properties Ltd and others* [1987] 1 AC 189 at 219D to G).

123. Standing back and looking at matters in the round, I conclude that, particularly bearing in mind that the MND had acknowledged its debt to ST as recently as May 2014, the registration in April 2016 of the Cayman Default Judgment (outside the twelve-month period provided for in s. 9(1) of the AJA) should not be set aside. Master Yoxall would have been well aware of the (extendable) twelve-month period; he was of course aware of the date of the Cayman Default Judgment (which recorded the date of the Singapore Judgment on which it was based). Whilst the overall history of activity on ST's part is not fully explained, and there appear to be periods when enforcement was not being progressed with any vigour, it can fairly be said that this was a complex international situation involving multiple jurisdictions raising difficult and challenging enforcement issues. There does not appear to be any tangible prejudice arising out of the delay; the MND's interest-related complaint is essentially answered by the parties' agreement in the 2014 Consent Order. That order (containing the MND's acknowledgment of liability) remains the most striking and significant factor in ST's favour for present purposes.

124. I also conclude, having regard to all the circumstances of the case, that it would not be right to set aside the Second English Registered Judgment on the basis that it is not just and convenient for the English court to register the Cayman Default Judgment.

125. First, I am not persuaded by the submission that it would not be right to allow registration because this matter is now pursued (allegedly) purely as a speculative investment by or on behalf of those who have acquired ST. There is nothing illegitimate in effectively factoring a debt such as this, and the exercise is not risk-free (in terms of costs) for those involved.

126. Secondly, and as set out above, I do not consider that there has been material non-disclosure on the part of ST such as make it unjust to register the Second English Registered Judgment.

127. Thirdly, whilst there has never been a decision on the merits following a contested hearing, any complaint in this regard lies ill in the mouth of the MND which had every opportunity to arbitrate (as it expressly indicated it would) and/or to participate in the proceedings in Singapore. In this context, and materially, the MND's unexplained change of position (on arbitration) and conduct in 1998 and 1999 is troubling.

128. Fourthly, and again, I consider the MND's acknowledgment of its liability to pay in 2014 to be a, if not the, key feature militating in favour of registration in 2016. This outweighs any concerns about what is said to be the practice of "judgment laundering". I address below (in the context of the Writ of Control) ST's conduct in its threats to execute. I do not find that that conduct justifies the setting aside of registration, either alone or in combination with any other factors.

Should the Second English Registered Judgment be set aside because of non-disclosure (or misrepresentation) on the part of ST?

129. For the reasons set out above, and having considered all of the MND's many criticisms in this regard, I do not find that the Second English Registered Judgment falls to be set aside for non-disclosure or misrepresentation on the part of ST.

The Article 53 Order

130. The MND contends that, whether or not the Second English Registered Judgment is set aside, the Article 53 Order should be set aside because Article 53 does not apply to the Second English Registered Judgment. That judgment is based on a judgment from a non-EU member state which is in turn based on a judgment from another non-EU member state. The MND also contends that ST made material non-disclosure and/or misrepresentation for the purpose of securing the Article 53 Order such as to justify setting it aside.

131. In the light of my finding on service, the Article 53 Order falls to be set aside without more as having been premature. In any event, the outcome of this part of the application might well have been academic. ST is not seeking to enforce in Italy or France. During the course of closing submissions, Mr Reza for ST indicated that ST would be prepared to give an undertaking not to enforce the Article 53 certificate.

132. I propose to deal with the merits of the application shortly in any event, for the sake of completeness. The question of timing of the application needs to be addressed first. As set out above, the Article 53 Order allowed the MND permission to apply to discharge or vary the order within 14 days of service. It appears at least possible that the Article 53 Order was served on the MND (through diplomatic channels) in October

2017. However, the position is not clear and the evidence on the point is unsatisfactory. The Article 53 Order was certainly sent to the MND on 10 January 2019. The MND issued its application on 31 January 2019 and so, even then, was (a week or so) out of time. I note that in that period there was correspondence between the parties from 17 January 2019 onwards (when the MND first instructed its current solicitors). ST agreed to hold off enforcement action for a short period. On 29 January 2019 ST's solicitors indicated that, in the event of any action by the MND to postpone or avoid payment, enforcement would commence immediately. In response, the MND issued its application.

133. I would have been prepared to grant any necessary extension of time, proceeding on the basis that service before 10 January 2019 has not been safely established. On that basis the delay, if any, is short and no resulting prejudice arises. As set out below, the merits of the application are compelling.

134. The Judgments Regulation contains the present European scheme for mutual recognition and enforcement of judgments which are the decisions of the courts of the Member States. The procedure for the enforcement of a judgment under the Regulation is contained in Articles 39, 41, 42, 43 and 53.

135. The ECJ in *Owens Bank Ltd v Bracco Case C-129/92* [1994] QB 509 ("*Owens v Bracco"*) considered the scope of the scheme by reference to the pre-cursor provisions in the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 ("the Brussels Convention"). It held (at [25]) that the Brussels Convention does not apply to proceedings for the enforcement of judgments given in civil and commercial matters in non-contracting states. In line with that reasoning, the Judgments Regulation does not apply to the registration (or enforcement) of judgments which emanate from a non-contracting state.

136. I reject ST's contention, amongst other things by reference to what is said to be the broad definition of "judgment" in Article 2 of the Judgments Regulation and the submissions in ST's skeleton argument before Supperstone J, that the principle in *Owens v Bracco* has no application where, as here, the judgment of a non-contracting state (ie Cayman) has become a judgment of a Member State (ie the United Kingdom). First, once a foreign judgment is registered under the Judgments Regulation, it takes effect, for the purpose of enforcement, as a local judgment would. What the judgment creditor then proceeds to enforce is the foreign judgment itself, as distinct from an English judgment which mirrors or reflects the foreign one (see eg. the commentary of Professor Briggs in *Private International Law in English Courts* (2014) (*"Private International Law"*) at 6.25). Secondly, Article 2 expressly limits the scope of the Judgments Regulation to "any judgment given by a court or tribunal <u>of a Member State</u>, whatever the judgment may be called…." (emphasis added). The ECJ expressly considered Article 25 of the Brussels Convention, the pre-cursor to Article 2, which is in identical terms. It relied on this definition (at [24]) in support of its conclusion at [25] that the Convention did not apply to proceedings of judgments given in non-contracting states. Thirdly, I note that the St. Vincent judgment in *Owens v Bracco* had in fact also been registered in England by the time that the House of Lords referred the matter to the ECJ.

137. This conclusion is also consistent with the very recent rejection by the Regional Court of Paris of the enforcement proceedings commenced by ST in France based on

the Article 53 certificate (Docket No. 19/82081, 10 December 2019, Regional Court of Paris) and also academic commentary (see eg. *Dicey* at 14-205 and *Private International Law* at 6.45 and 6.46), to which Supperstone J does not appear to have been taken.

138. In summary, judgments upon judgments from non-member states do not fall within Chapter III of the Judgments Regulation and so cannot be certified under it; registration of the Second English Registered Judgment under the Judgments Regulation was not permissible. In these circumstances and in any event, it is not necessary to consider the MND's further or alternative challenges to the Article 53 Order.

The Writ of Control

139. Again, in the light of my findings on service, the Writ of Control falls to be set aside as having been premature. That aside, the MND contends that, whatever the fate of the Second English Registered Judgment, the Writ of Control should be set aside or enforcement stayed. The court has a general discretionary power to stay or suspend absolutely any writ of execution where there are "special circumstances which render it inexpedient to enforce the judgment or order" (see CPR 83.7(4)).

140. The grounds relied upon by the MND in summary are as follows:

i) Material non-disclosure by ST at the time of obtaining the Writ of Control;

ii) It was not appropriate for the Writ of Control to be issued in all the circumstances. Amongst other things, it would be wrong now to allow execution in circumstances where the non-pursuit of the 2004 Judgment could not be enforced. No good grounds for enforcement of the Second English Registered Judgment against the three entities the subject of the Writ had been identified. The consequences of enforcement against those entities would be "potentially catastrophic". The TRO essentially fulfils the functions of a diplomatic mission in London; it is a de facto consulate of the ROC. Enforcement on the CBC would potentially delay the reporting of critical financial research to the bank's head office in Taipei. Further, the Writ of Control was not being used for proper purposes, rather it was a) based on purely speculative evidence as to the availability of assets and b) being used to coerce payment out of the MND under threat of significant disruption and embarrassment (see in particular the comments of Blair J in *Midtown Acquisitions LP v Essar Global Funding Limited and others* [2017] EWHC 2206 (QB) at [30];

iii) The 2004 Judgment could not now be enforced without permission. It would be not merely inexpedient but tantamount to an abuse for ST to seek now to enforce by the indirect route of the Cayman Default Judgment an alleged liability for which ST failed to take enforcement steps in England since 2006.

141. In closing submissions Mr Reza for ST conceded that the Writ of Control should not be pursued against the BOT.

142. Had the application remained live for my substantive determination, I would have found in summary:

i) That there were no good grounds for setting aside the Writ of Control for non-disclosure;

ii) That, whilst I held concerns about the tone and content of certain correspondence written by Mr Prentice (who is not a lawyer) to the MND's solicitors in June 2019, that correspondence was borne out of Mr Prentice's frustration at what he (with some justification) considers to be the MND's longstanding refusal to meet its liabilities to ST, which liabilities the MND has recognised in the past. I would have held that, however unfortunate his words or actions - and his threat to offer to sell the debt to the People's Republic of China is particularly troubling - the Writ of Control nevertheless represented a genuine attempt by ST to enforce against assets properly available for such purpose;

iii) In the context of available assets, it is now agreed between the Taiwanese law experts that a debt of the MND is a debt of the ROC, even though the assets of an organ like the MND are held separately from other organs. All of the assets of the CBC and TRO belong to the ROC. It is to be remembered that the Chief of the MND's Performance Section deposed in 1998 that the MND is a Taiwanese government agency with sufficient funds for its projects at all times;

iv) Looking at the circumstances as a whole, I would not have considered it inexpedient (or an abuse) to allow enforcement of the Second English Registered Judgment. That it is not to say that repeat attempts to enforce the same debt in the same jurisdiction via different routes are to be granted lightly, let alone encouraged. The failure on the part of ST to give any detail as to why it did not progress enforcement of the 2004 Judgment is unsatisfactory. However, against that, I balance the MND's persistent failure to challenge jurisdiction or fight the merits at any substantive hearing and its subsequent acknowledgment of its debt to ST in 2014, a debt which it has never satisfied.

143. I would then have considered (and invited further submission on) whether to grant a short stay of execution of the Writ of Control in order to allow the parties to reflect on the findings that I have made above and to seek a resolution. During the course of the hearing, I expressed on several occasions my concern as to the reasonableness and proportionality of at least parts of these proceedings. As I understand the position, ST's interests are purely commercial. Whilst the ROC is not recognised formally as a state by the UK government, the MND is an organ of the Taiwanese government and prays in aid that status, for example in support of its resistance to the Writ of Control, as indicated above. It seems to me that the parties should now concentrate on reaching a final resolution of their long-running dispute rather than incurring yet further legal costs.

Residual power to conclude judgment not enforceable and to stay its enforcement generally

144. In circumstances where I have found the mandatory requirements for registration under s. 9 of the AJA to have been met, and decided that the Second English Registered Judgment should not be set aside for discretionary reasons, and considering all the circumstances, it is not appropriate to direct that the Second English Registered Judgment is not enforceable, nor should there be any general stay of enforcement or execution.

Conclusion

145. For these reasons:

i) The MND's application to set aside the Second English Registered Judgment will be dismissed;

ii) The MND's application to set aside the Article 53 Order and the Writ of Control will be allowed;

iii) The MND's application for a general stay of enforcement and execution will be dismissed;

iv) ST's cross-application for retrospective validation of service of the Second English Registered Judgment under CPR 6.15 will be dismissed.

146. I invite the parties to agree, so far as possible, all consequential matters arising upon this judgment, including costs.