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CLIENT ALERT

Anti-Suit Injunctions – A Powerful and Helpful Tool in Cross Border Disputes

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In recent times, we have seen a notable rise in applications for Anti-Suit Injunctions ("ASIs"). In this alert, we share our insights based on our experience advising on ASIs, including emergency applications, enforcement issues, and cross-border litigation strategy, as to the reasons for the upward trend; our first-hand impressions of the English courts' relatively permissive and increasingly expansive approach to such applications, and share some practical thoughts on what to expect in seeking or defending an application for an ASI.

- *Why the upward trend in the use of ASIs?*

Two key reasons underpin the rise in applications for an ASI:

The first is the growing tendency of entities – particularly in sanctioned jurisdictions (e.g., Russia) – to seek to bypass contractually agreed arbitration or jurisdiction clauses. These entities frequently initiate proceedings in their local courts, relying on domestic *anti-sanctions* legislations that allow them to override the dispute resolution

mechanisms set out in their contracts. The foreign proceedings are often based on alleged defaults by non-Russian parties who are unable to release or return assets due to international sanctions.

English courts have consistently granted ASIs in such circumstances. Just over a month ago, the English High Court did so in *JP Morgan Securities PLC & others v. VTB Bank PJSC,*[1] holding those Russian proceedings – brought in the non-contractual forum – were in breach of the parties' arbitration agreement and/or vexatious and oppressive. This judgment follows a consistent line of authorities from 2024 and 2025 in which the English courts took a similar approach.[2]

The second factor is the UK's exit from the European Union, which removed the constraints previously imposed on English courts by the Brussels Recast Regulation. Under that framework, English courts were restrained from issuing ASIs against EU proceedings. Post-Brexit, English courts now enjoy greater procedural autonomy enabling them to issue ASIs in EU-related disputes – provided such relief is consistent with general principles of comity and equity.

Given the current legal and geopolitical landscape, we continue to see applications for ASIs to rise – particularly in cases involving sanctioned jurisdictions.

- *What are ASIs?*

ASIs are court orders that restrain a party from initiating or continuing legal proceedings in a foreign jurisdiction when those proceedings conflict with a jurisdiction clause or arbitration agreement. The purpose of ASIs is, in essence, to protect the integrity of the parties' agreements and prevent them from engaging in forum shopping.

- *Why are they relevant?*

In an era of globalised commerce, contracts often span multiple legal systems and disputes can arise in jurisdictions with conflicting procedural rules or judicial attitudes. Parties to international contracts often find themselves engaged in parallel proceedings in different jurisdictions over the same dispute which carries an inherent risk of courts handing down inconsistent judgments that can be challenging to enforce.

The pragmatic approach to avoid those issues is to insert a jurisdiction clause or arbitration agreement in international contracts which ensure all prospective disputes between contracting parties are adjudicated before a single forum. Doing so offers predictability and efficiency, as parties can clearly understand where legal proceedings will take place. It also helps avoid unnecessary complexity and costs associated with disputes over forum selection.

[1] [2025] EWHC 1368 (Comm).

[2] *See e.g.*, G*oogle LLC & Google Ireland Limited v. NAO Tsargrad Media & others* [2025] EWHC 94 (Comm) in which the English High Court granted an Anti-Enforcement Injunction ("AEI") to restrain the enforcement of judgements resulting from parallel proceedings brought in breach of jurisdiction or arbitration clauses. AEIs are rarely granted once a judgment is issued in parallel proceedings.

In practice, however, parties regularly attempt to circumvent those clauses by initiating proceedings in jurisdictions other than the contractually agreed forum, which they may view as less favourable or convenient to their position. This is typically due to a perceived strategic advantage in the alternative forum which aligns with a litigant's objectives, such as a slower (or faster) procedural timeline, more lenient evidentiary rules or a belief that local courts may be more sympathetic to its position. While those courts may ultimately uphold the jurisdiction clause or arbitration agreement, the disruption resulting from the commencement of the proceedings before the alternative or "*wrong*" forum may cause irreparable harm to the innocent party.

Moreover, the expansion of international sanctions regimes has given rise to an increasing number of commercial disputes, which result in parallel proceedings, as sanctioned parties seek relief in their local courts while counterparties turn to arbitration or courts in neutral jurisdictions. This fragmentation of dispute resolution has, in turn, contributed to the growing demand for ASIs as a tool to contain jurisdictional overreach and protect the integrity of the parties' contracts.

ASIs are very effective in ensuring the parties' agreed dispute resolution mechanism is upheld. Once issued, parties usually comply with the injunctions, not least because of fear of the very serious consequences of noncompliance, which could include asset freezing orders against the recalcitrant party, fines or, in some cases, custodial sentences.3

- *ASIs in England and Wales*

Common law jurisdictions, such as England and Wales are known for respecting party autonomy and contractual certainty. They uphold those values using a number of tools, including, perhaps most effectively, through the issuance of ASIs.

In as early as 1911, the English Court in Pena CopperMines Ltd. V. Rio Tinto Co. Ltd held that "it is beyond all doubt that this Court has jurisdiction to restrain the [Defendant] from commencing or continuing proceedings in a foreign court if those proceedings are in breach of contract."[4] Such has been and continues to be the stance of English courts on ASIs.[5]

To obtain an ASI, the applicant must establish that: (1) the English forum has a sufficient interest in, or connection with, the matter in question; (2) the foreign proceedings cause sufficient prejudice to the applicant; and (3) the ASI would not deprive the claimant in the foreign court of a legitimate advantage.

The English courts' generally positive attitude towards granting ASIs has only strengthened over time reflecting an increasingly robust approach to upholding jurisdiction clauses and arbitration agreements. This was mostly

[3] *See e.g. Dell Emerging Markets (EMEA) Ltd v Systems Equipment Services SARL* (2020) [2020] EWHC 1384 (Comm) (The High Court handed down sentences of up to 18 months to the directors of one of Dell's Lebanese distributors for procuring breaches of ASIs).

[4] *Pena CopperMines Ltd. V. Rio Tinto Co. Ltd* (1911) 105 LT 846.

[5] *See e.g.*, *The Angelic Grace* [1995] 1 Lloyd's Rep. 87 (CA); *Starlight Shipping Co. v Tai Ping Ins. Co. Ltd* [2008] 1 Lloyd's Rep. 230 (QB).

reflected in the recent landmark decision of the UK Supreme Court in *UniCredit Bank GmbH v RusChemAlliance LLC*.[6] Traditionally, English courts were more restrained in issuing ASIs for arbitrations seated abroad, particularly when the connection to England was limited. However, in September 2024, the UK Supreme Court unanimously held that English courts had jurisdiction to grant ASIs in support of foreign-seated arbitrations solely because the arbitration agreement was governed by English law.

In that case, the applicant, UniCredit applied for an ASI from the English Commercial Court to restrain RusChem from continuing proceedings it had commenced before Russian courts and relating to a dispute arising from performance bonds guaranteed by UniCredit. The bonds were governed by English law and subject to an arbitration clause specifying Paris as the seat and applying the ICC Rules. The case reached the Supreme Court which, among other things, held that the governing law of the bonds (i.e., English law) extended to the arbitration agreement. This afforded the English courts jurisdiction to grant an ASI in support of the Paris-seated arbitration. The Supreme Court's decision demonstrated the extent to which the English courts are prepared to go to give effect to the Parties' agreed dispute resolution mechanism.

English courts have also been open to granting relief to constrain proceedings brought in Russia and other sanctioned jurisdictions where claims are found to circumvent arbitration and jurisdiction clauses.

Against that backdrop, we are often asked to advise on the use of ASIs to shield arbitrations or court proceedings from parallel and obstructive actions abroad – particularly in jurisdictions with slower processes, political interference, or unpredictable outcomes.

- *Willkie's experience with ASIs*

Willkie has a proven track record in complex, cross-border litigation, including the strategic use of ASIs to protect our clients' interests. Our litigation and arbitration teams are experienced in securing injunctions swiftly, often on an emergency or *ex parte* basis.

Among other things, in a recent high profile matter, we successfully obtained an ASI from the English High Court for a major European insurance company, preventing its counterparty from running concurrent proceedings in the United States and the English High Court.

The contract between the parties was governed by English law and contained a jurisdiction clause in favour of the courts of England and Wales. Despite the clear wording of the clause, our client's counterparty commenced proceedings in the United States. Fearing that our client could take action to remove the dispute from the jurisdiction of the U.S. court, the counterparty urgently sought a Temporary Restraining Order ("TRO") from the U.S. court aimed at compelling our client to litigate the dispute before that court and prevent it from seeking any form of

[6] *UniCredit Bank GmbH v* RusChemAlliance LLC [2024] UKSC 30.

injunctive relief from the English court. In response, we obtained an ASI from the English courts to compel the counterparty to litigate in England.

One of the key issues for applicants to bear in mind when seeking an ASI is to make the application promptly. The further the foreign proceedings have advanced, the more difficult it becomes to obtain the order. Thus, in the very small window while a decision on the TRO was pending, the London litigation team urgently applied for and obtained the ASI from the English High Court. Consequently, with the TRO application rendered nugatory, the counterparty discontinued the U.S. proceedings and agreed to pay costs.

Willkie's approach combined deep understanding of jurisdictional issues, technical precision, and a strategic litigation posture – elements that are crucial to success in such matters.

ASIs are a powerful but nuanced remedy, requiring experienced counsel to navigate procedural hurdles and present a compelling case. Whether it is to enforce an English jurisdiction clause, protect an arbitration agreement, or prevent vexatious proceedings abroad, Willkie has the experience to assist.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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