Interim Remedies: Commonalities and Differences in Common Law and Civil Law

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Keynote Speech

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Commercial Court of England & Wales

The current landscape in commercial dispute resolution

- High/growing levels of commercial disputes
- Major international elements (e.g. 75% of our work)
- International commercial courts e.g. DIFC, Qatar, Kazakhstan, SICC
- New commercial courts e.g. South Korea, Vietnam
- English language courts e.g. Netherlands, Germany, France
- Competition/synergy with arbitration
- Judicial co-operation e.g. SIFoCC, ENCJ, ELI, IAJ, EAJ

SIFoCC

- Standing International Forum of Commercial Courts
- 71 member jurisdictions across 6 continents
- Current projects
  - 3rd edition of Multilateral Memo on Enforcement of Commercial Judgments for Money
  - Service of proceedings
  - Taking of oral and written evidence between countries
  - AI: common themes and good practices

Common interim remedies in E&W

- Interim injunctions
- Freezing orders: 50th anniversary of the freezing or "Mareva" order
- Search orders/imaging orders
- Summary judgment (both directions)
- Letters of request
- Stays and anti-suit injunctions
- Anti-enforcement injunctions (e.g. Google v Tsargrad [2025] EWHC 94 (Comm))
- In rem orders e.g. arrest of vessel; release of vessel. Otherwise rare.

Jurisdiction to grant interim remedies

- Service in England & Wales
- English jurisdiction clause (CPR 6.33(2B)(a) or (b))
- Contract governed by English law (CPR 6BPD § 3.1(6)(c))
  - In claims to enforce arbitration agreement, that means law governing arbitration agreement itself: e.g. Enka v Chubb [2020] UKSC 38
  - Arbitration Act 2025 s.1, new s.6A, law of seat will apply unless parties expressly agree otherwise.
  - FH Holding Moscow v AO Unicredit Bank and Unicredit SPA [2025] EWHC 3111 (Comm)
- Agreement to arbitrate in E&W (CPR 62.5(1)(a),(c) and (2A)). Cf Investcom Global v PLC Investments [2024] EWHC 2505 (Comm) (ICC Court nomination of Toronto as seat of arbitration)
- Other gateways

The case on the merits

- Interim injunctions in general: American Cyanamid (serious issue to be tried; just and convenient)
- Freezing orders: good arguable case (The Niedersachsen [1983] 2 Lloyd's Rep. 600, 605; Dos Santos v Unitel [2024] EWCA Civ 1109)
- Mandatory injunctions e.g. in shipping cases: closer scrutiny of merits
- Search orders: "clear and compelling evidence"/"strong prima facie evidence" (Rank Film Distributors v Video Information Centre [1982] AC 380)
- Summary judgment: CPR 24.2 no real prospect of success/compelling reason for trial
- Anti-suit injunctions: "high degree of probability" that clause applies

Interim remedies in support of arbitration

- Appointment of an arbitrator
- Stay of proceedings
- Anti-suit and anti-enforcement injunctions
- Freezing/asset preservation orders:
  - Section 44 of the Arbitration Act 1996
  - JOL and JWL v JPM [2023] EWHC 2486 (Comm)
  - Section 9 of the Arbitration Act 2025 (orders against third parties)
- Emergency arbitrators: section 8 of the 2025 Act
- Can support arbitrations taking place abroad, provided foreign seat does not make it inappropriate: CPR 6.37(3); Deutsche Bank v RusChem Alliance [2023] EWCA Civ 1144; UniCredit Bank v RusChem Alliance [2024] UKSC 30

…in support of court proceedings abroad

- Provided court has jurisdiction over respondent, can grant order in support of foreign court proceedings: Civil Jurisdiction and Judgments Act 1982 s.25 and Broad Idea International v Convoy Collateral [2023] AC 389 (PC).
- Territorial connection needed: *Mex Group Worldwide v Ford* [2024] EWCA Civ 959.

Remedies against third parties

- Assets held by third parties (Chabra jurisdiction)
- Norwich Pharmacal orders
- Anti-suit injunctions
    - The ‘contractual’ basis
    - “Vexatious and oppressive” lawsuits
        - (suing affiliate) Eurochem North-West-2 v Tecnimont [2023] EWCA Civ 688; Renaissance Securities (Cyprus) v Chlodwig Enterprises [2025] EWCA Civ 359
        - (affiliate sues) Ingosstrakh Investments v BNP Paribas [2012] EWCA Civ 644 (“Russian Machines”)
        - JP Morgan Securities Plc v VTB Bank PJSC [2025] EWHC 1368 (Comm).
- The conditional benefit” principle: Steam-Ship Mutual v Spain and France (“The Prestige”) [2026] UKSC 36
- Orders against third parties in support of arbitration: s9(2) of 2025 Act

Ancillary matters

- Asset disclosure and other ancillary orders
- Full and frank disclosure in without notice applications
- Undertakings given by applicants for injunctions
- Including cross-undertaking in damages, and fortification: e.g. Arcadia (Alta) v Bosworth [2025] EWHC 91 (Comm) and [2026] EWHC 2767
- Conditional order on a summary judgment application