



# The Hidden Ally

## *State Courts' Support in M&A Arbitrations*

DISPUTE RESOLUTION IN M & A TRANSACTIONS – INTERNATIONAL CONFERENCE 2026

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# Overview

*Why state courts matter in M&A arbitration*



English courts' pro-arbitration stance



Anti-suit injunctions: three categories



Overseas-seated arbitrations and UniCredit



Emergency arbitrators and enforcement



The Uncertain Boundary: injunctions against third-party claims

# English Courts' Pro-Arbitration Policy

1

Arbitration agreements treated as commercial commitments

2

Courts ensure agreements operate "in a businesslike way"

3

Strong presumption in favour of one-stop adjudication

4

Broad, purposive construction of arbitration clauses

5

Consistent with NY Convention Art II(3)



# Anti-Suit Injunctions: Three Categories

**1**

## **Party A vs Party B**

Arbitration seated in England;  
B sues elsewhere

**2**

## **Foreign Party vs English Party**

Arbitration seated outside  
England; injunction sought in  
England

**3**

## **Claims Against Third Parties**

Most complex and  
controversial



# Categories 1 & 2: Routine and Effective

## Legal Framework

- Granted weekly by Commercial Court / Circuit Commercial Court
- Legal basis: s.37 Senior Courts Act 1981
- Delay only relevant where it increases interference with foreign court

## Applicant Must Show

- Arbitration agreement exists
- High probability of breach
- Relief granted unless strong reasons exist not to



# Construction & Incorporation Issues

*Incorporation usually straightforward in bespoke M&A contracts*

## More Complex Where

- Standard terms incorporated by reference
- Multiple related agreements

## Construction Guided By

- Broad wording
- Fiona Trust presumption of one-stop adjudication

# ⇒ Derived Rights Principle

*Third parties relying on contractual rights must respect the same dispute-resolution mechanism*

## **Applies To**

- Subrogation
- Assignment
- Tort/delict claims based on derived rights

## **Key Authorities**

- *The Jay Bola*
- *Aspen Underwriting*
- *Airbus v Generali*



# Anti-Suit Relief for Foreign-Seated Arbitrations

## UniCredit Bank GmbH v RusChemAlliance (2024)

English courts may restrain breach of arbitration agreements even where the seat is abroad

Condition: personal jurisdiction over respondent

Same "strong reasons" test as domestic cases

Reinforces the principle: courts must hold parties to their bargain





# Impact of Arbitration Act 2025

## New s.6A

- Law of the seat governs the arbitration agreement unless expressly agreed otherwise
- Narrows English courts' jurisdictional reach

## But...

- s.41A emergency arbitrator powers
- Emergency arbitrator's peremptory orders can be converted into court orders
- **Enforceable by imprisonment (up to 2 years) or unlimited fine**



# The Uncertain Boundary: Third-Party Claims

**Can A be restrained from suing C (a non-party) abroad?**

## Tension Between

Freedom to sue legitimate third-party defendants

Preventing circumvention of arbitration agreements

## Key Cases

*Renaissance Securities v Chlodwig*

*JP Morgan v VTB Bank*

# ⇔ Competing Approaches

## Implied Term Approach

- Rejected by Singh LJ
- Considered "arguable" by Males LJ
- Rejected by Foxton J as conceptually uncertain

## Vexatious/Oppressive Approach

- Used cautiously
- Applied in JP Morgan v VTB
- Requires showing the foreign claim is a device to evade arbitration

# ! Why This Is Controversial

Restricts a party's right to pursue legitimate foreign-law claims

Forces courts to make subjective judgments about motive

Creates tension with principles of comity

**Yet consistent with English courts' strong support for arbitration**



# Key Takeaways for M&A Practitioners



English courts remain highly supportive of arbitration



Anti-suit injunctions are powerful tools — especially in cross-border M&A disputes



Emergency arbitrator provisions now have real teeth



Third-party claim injunctions remain unsettled — watch this space

## Drafting Matters

- Express choice of law for arbitration agreement
- Consider institutional rules allowing joinder