



Neutral Citation Number: [2022] EWHC 2613 (Comm)

Case No: CL-2018-000164

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
COMMERCIAL COURT

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

Date: 14 October 2022

Before :

Mr Stephen Houseman KC
Sitting as a Deputy Judge of High Court

Between :

Harbour Fund III, L.P.

Claimant

- and -

(1) Kazakhstan Kagazy PLC

First Defendant/Respondent

(2) Kazakhstan Kagazy JSC

Second Defendant/Applicant

Tomas Mateos Werner of and appearing in person for the **First Defendant**
Rupert D’Cruz KC (instructed by **Bryan Cave Leighton Paisner**) for the **Second Defendant**

Hearing dates: **14th October 2022**

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR STEPHEN HOUSEMAN KC

Mr Stephen Houseman KC
(14:30pm)

Friday, 14 October 2022

Judgment by **MR STEPHEN HOUSEMAN KC**

Relevant Background

1. This is an application made by the second defendant, referred to as JSC, in proceedings in claim number CL-2018-000164. The application is made by application notice dated 23 December 2021 (“the Application”).
2. By way of primary relief, JSC seeks release of £2 million sterling from a designated bank account created pursuant to an order of Henshaw J dated 20 August 2020 (“Henshaw Order”) made in prior substantive proceedings with the claim number CL-2013-000683 (“Main Proceedings”).
3. The claimant in these proceedings (“Harbour”) is neutral and did not appear before me. The only effective respondent to this application who opposes it is the first defendant, an Isle of Man registered company referred to as Plc. JSC and Plc were once part of the same corporate structure under common control. They were first and second claimants in the main proceedings to which Harbour was joined as additional party. JSC and Plc are now adversaries.
4. This litigation has a long history. A bare summary will suffice. The substantive claims were funded and ultimately managed by Harbour. A substantial judgment close to US\$300 million was entered in favour of the claimants in February 2018 following a heavy trial conducted by Picken J during 2017 in the Main Proceedings.
5. Harbour's involvement as litigation funder and the scheme for distribution of the proceeds of any judgment in or settlement of the Main Proceedings is set out in an Investment Agreement dated 31 December 2015. The Investment Agreement is governed by English law and provides for the sole and exclusive jurisdiction of the English courts (see clause 28). Harbour is defined as “HFIII”. The four defendants to this action, including Plc and JSC, are defined as Claimants reflecting their procedural status in the Main Proceedings.
6. Clause 10.1 of the Investment Agreement contains what has been referred to as ‘the waterfall’ governing priority as to distribution of litigation proceeds. It provides as material as follows:

“The Claimants shall apply or instruct the Legal Representatives to apply any Proceeds received as a result of Success in the Proceedings, and which it holds on trust, in the following order immediately upon receipt of such Proceeds:

a) deduction of all stamp duties, bank charges and currency exchange costs (if any) payable by the Claimants relating to or arising out of any such Success in the Proceedings;

b) pay to the Claimants, the Claimants' Incurred Costs to be recovered from the Costs Award (if any); where there is no Costs Award the Claimants' Incurred Costs will be recovered under clause 10.1(g).

c) pay to HF3, the HF3 Investment, first exhausting any remaining Costs Award (if any) and then the remainder proportionately from the Peak Claim Proceeds and Remaining Proceeds. Where there is no remaining Costs Award or no Costs Award, the HF3 Investment shall be recovered proportionately (in accordance with the allocated values) from the Peak Claim Proceeds and the Remaining Proceeds. Where there is only Peak Claim Proceeds, HF3 shall receive the HF3 Investment in its entirety from the Proceeds;

d) pay to HF3 and the Banker, in their capacity as Trust Beneficiaries, from Peak Claim Proceeds less the HF3 Investment (calculated pursuant to clause 10.1(c) above), the HF3 Peak Claim Return and the Banker Entitlement on a £ for £ basis; pursuant to the Priorities Agreement the Banker acknowledges and accepts that it shall be entitled only to the Banker Entitlement and that the Banker may recover less should the Peak Claim Proceeds less the HF3 Investment be insufficient to meet the HF3 Peak Claim Return and the Banker Entitlement calculated pursuant to this clause 10.1(d);

e) pay to HF3, in its capacity as Trust Beneficiary, the HF3 Return (less any sums recovered pursuant to clause 10.1(d) above) from any remaining Peak Claim Proceeds (if any) and Remaining Proceeds;

f) pay to the Success Fee Beneficiaries, in their capacity as Trust Beneficiaries, the amounts due under their respective Success Fee Agreements;

g) pay to the Claimants any remaining amount of Proceeds, which each Claimant shall receive directly in their capacity as Trust Beneficiaries. The remaining amount will be divided between the Claimants in proportion to: (a) the amount of each Claimant's specified award, in the event of the Proceeds being allocated between the Claimants in a judgment or court order; or (b) the amount of each Claimant's claim in the Causes of Action, in the event of an unallocated judgement or settlement agreement.”

7. “Claimants' Incurred Costs” are defined in clause 1 as:

“... the sum of £2,000,000 (inclusive of VAT) being a portion of the legal costs duly and properly incurred by the Claimant [sic] up to and including the date of the Investment Agreement.”

(It appears that reference in this definition to “*the Claimant*” (singular) may well be a typographical error. Nowhere else is any distinction drawn between individual claimants as defined together in the Investment Agreement.)

8. On 16 March 2016, JSC was, at the behest of a bondholder creditor, placed into a rehabilitation procedure in Kazakhstan by the local courts. The rehabilitation plan was approved by the Kazakh court exactly six months later on 16 December 2016, being the deadline provided by local bankruptcy laws. The terms of such rehabilitation plan, with slight variance of translation into English, featured in the analysis presented to me on the Application. The plan is said by JSC to constitute an important matrix for understanding the

proper effect of an assignment agreement between Plc and JSC concluded early the following year, as contemplated and required by the plan itself.

9. In the meantime and separate from the rehabilitation plan, a number of parties took steps to agree a so-called ‘Priority and Standstill Agreement’ during mid-2016. A version of such agreement also dated 31 August 2016 was agreed, but not signed or executed. It is not referred to in the relevant assignment which followed. Clauses 2 and 3 appear to reflect aspects of the waterfall in clause 10.1 of the Investment Agreement, but also purport to alter such priority sequence and distribution. Plc contends that this draft, i.e. agreed but unsigned, agreement is relevant to the proper interpretation of the assignment.
10. That assignment is at the heart of the application. It is dated 5 January 2017. Plc is defined as ‘Assignor’ and ‘Claimant’. JSC is defined as ‘Assignee’ and one of the three ‘Co-Claimants’. I refer to this as the “Plc Assignment”, not least to distinguish it from two other assignments of the same date whereby Plc assigned various identified interests to each of the other two co-claimants, namely Peak Azkhal LLP, the third defendant in this action, and Prime Estate Activities Kazakhstan LLP, the fourth defendant in this action.
11. The Plc Assignment is governed by Kazakh law (clause 6.3) and provides for what appears to be the exclusive jurisdiction of the courts of the Republic of Kazakhstan (clause 6.2) after failure to settle any disputes by negotiation as required by clause 6.1. The meaning of such forum language is itself subject to Kazakh law, of course.
12. The recitals appear on the third page in between clause 1, dealing with definitions, and clause 2, the operative assignment wording. The recitals refer to the rehabilitation plan and specifically the fact that such plan required such assignment to be concluded and that the assignment itself has been sanctioned by the creditors of JSC at a meeting held on 31 August 2016.
13. Clause 2 of the Plc Assignment provides as follows:

“2.1. The Assignor hereby assigns and transfers any and all rights to the Proceeds to the Assignee, and the Assignee accepts this assignment.

2.2. For the avoidance of doubt, the Causes of Action shall remain with the Claimant, and shall not be assigned or transferred to the Assignee by this Agreement.

2.3. By signing this Agreement, the Co-claimants confirm that they agree with the transfer of the Proceeds of the Assignee.

2.4. The Assignee bears the Claimant's Legal Costs solely insofar as they are paid by Harbour Fund III in accordance with the Investment Agreement. The Assignee will not be obliged to fund any further costs of KK PLC relating to the assigned claims.”

14. “*Costs Award*” is defined in clause 1.1 as:

“... the legal costs and disbursements which are recovered or awarded pursuant to or in connection with the Proceedings or Settlement, including any return of any security or fortification payments made by, or on behalf of, the Claimant.”

15. “*Proceeds*” is defined in clause 1.1 as:

“... any amount of money or the value of any goods, services or benefits, recovered or received by the Claimant or its Affiliates as a result of Success in the Proceedings and/or Settlement (including the present value of any goods, services or benefits to be paid in the future and the present value of any new commercial arrangements entered into with, or at the direction of, the Claimant or its affiliates or otherwise), and shall include interest, any Costs Award and ex gratia payments in respect thereof. Proceeds shall be net of any payment required to be deducted under the Investment Agreement with Harbour Fund III, but otherwise shall be the gross amount prior to any deduction for taxes payable to any governmental authority.”

16. At some point during or after judgment in the Main Proceedings, a dispute arose between Harbour and the funded claimants as to the proper content or effect of the Investment Agreement and whether it had been validly amended or varied. Harbour commenced these declaratory proceedings in March 2018 to determine such funding dispute. The proceedings were bifurcated. The trial of phase 1 led to a judgment of Moulder J in May 2021. Phase 2 is pending.

17. In the meantime, Henshaw J made the Order dated 20 August 2020 which is the subject of this application or, at any rate, its focus. Paragraph 1 of that order reads as follows:

“Paragraph 10 of the Order of the Honourable Mr Justice Picken dated 28 February 2018 shall be deleted and replaced with the following text:

“10. Any sums paid in satisfaction of the judgments or by way of costs shall be paid to the Additional Party's segregated, interest-bearing UK Bank account with Barclays Bank PLC (account number: 03731367) to be retained and not distributed save in accordance with (a) the written agreement of the First and Second Claimants (such agreement, for the avoidance of doubt, not to be given by the Additional Party in its capacity as the Claimants' attorney) and the Additional Party or (b) the further order of the court.” ...”

18. Paragraph 7 of the Henshaw Order contains general permission to apply.

Application

19. The present application is twofold:

- (a) Paragraph 1 seeks release of £2 million from funds in the designated accounts held by Harbour pursuant to paragraph 1 of the Henshaw Order. What is sought, therefore, is a “*further order of the Court*” for the purposes of limb (b) of that provision. What is

not clear, however, is the basis for this court to grant this order in separate albeit related proceedings. I return to this jurisdictional aspect below.

- (b) Paragraph 2 seeks an order requiring Harbour to issue an application as Additional Party in the Main Proceedings seeking to remove the requirement for Plc's written consent within limb (a) of paragraph 1 of the Henshaw Order. This was described as the 'consent issue' and is not a matter before me; not least because Harbour has provided an undertaking, albeit conditional upon the *outcome* of the primary aspect of the Application, to take such step in its relevant capacity in the Main Proceedings. Harbour would presumably engage or activate the general permission to apply paragraph 7 of the Henshaw Order.
20. Separately, an order is sought dispensing with service of the Application and related materials upon the third defendant (Peak) or the fourth defendant (Prime). I am satisfied that it is appropriate to grant such dispensation under CPR 6.28 and by reference to CPR 23.4(2)(c) for the reasons given in the supporting evidence and skeleton argument on behalf of JSC. Neither of these co-defendants have any interest in the Application. They are not effective respondents.
21. The matter before me concerns the primary relief, namely release of £2 million from the designated bank account held by Harbour pursuant to paragraph 1 of the Henshaw Order. The basis of such application is in effect that such sum as between JSC and Plc now belongs to JSC by reason of clause 2 of the Plc Assignment when read with clause 10.1(b) of the Investment Agreement.
22. In short, such sum is the Claimants' Incurred Costs as defined in the Investment Agreement, to which I refer as "CIC" for short, and Plc accordingly assigned whatever interest it had in such distribution entitlement to JSC, so it is said by JSC. There is, however, no claim for declaratory relief to such effect and indeed no substantive claim of any kind in these or any proceedings that touches upon such entitlement.
23. The application was listed for one day with a full day of pre-reading. JSC appeared through solicitors and leading counsel. Plc appeared by its chairman and CEO, Mr Tomas Werner, who explained the reasons for the absence of professional legal representation. Mr Werner presented Plc's position and analysis with commendable clarity and brevity. I was provided with a transcript of the hearing shortly after its conclusion.
24. As indicated, Harbour did not participate in the present hearing. It is neutral as to the primary relief sought effectively as against Plc as co-defendant in the application. It may be easier, therefore, to refer to that contested matter as "the Application".
25. At the end of the hearing on Wednesday, 12 October, I indicated that I would give judgment orally by remote hearing later in the week. I invited draft wording from JSC's legal team as to undertakings that they might be prepared to offer in return for any order that I am competent to make for release of the £2 million. These draft terms have been commented upon by Mr Werner. The twin risks identified by me in this context are, firstly, a successful claim in the near future to invalidate the Plc Assignment in the Kazakh courts; and, secondly, double jeopardy to Plc or double recovery by JSC through any other legal process.

Jurisdiction

26. Plc filed new evidence in the lead up to this hearing detailing a claim that was commenced in late September 2022 in the Madeusky District Court of the city of Almaty in Kazakhstan by one of its minority shareholders seeking invalidation of the Plc Assignment under Kazakh law. Plc appeared to seek an adjournment of the present hearing on this basis. This perceived request was resisted by JSC through further evidence and supplemental written submissions served on the allocated reading day. As matters turned out, no such adjournment was sought by Plc. The invalidation claim was dismissed or terminated without prejudice by the Madeusky District Court in a ruling delivered on the afternoon of my allocated reading day. The basis for such dismissal is not material save insofar as may impact the precise terms of any undertakings required as the quid pro quo for release of the £2 million to JSC, if that is to be ordered at this stage.
27. Mr Werner did, however, urge upon the court the fact that the possibility of an invalidation claim in the prorogated courts affected the balance of justice or injustice - to put it into curial language - underpinning the primary relief sought by JSC on the application. JSC, for its part, says that the recent ill-fated invalidation claim and the spectre of any further such claim or claims in Kazakhstan is part and parcel of a strategy of delay and evasion on the part of Plc, involving in this instance collusive or compliant behaviour of a minority shareholder.
28. These events and the procedural context or forum for the application itself caused me to raise two concerns at the outset of the hearing. Both are jurisdictional in nature, but in different ways or senses.
29. In a formal sense, there is a jurisdictional concern around this court being invited to make any findings, whether final or summary in nature, as to the proper meaning and effect of the Plc Assignment in light of the choice of governing law and ostensibly exclusive jurisdiction of Kazakhstan. No substantive claim is made by JSC in this regard and hence no opportunity has arisen for Plc to contest jurisdiction or seek to stay or otherwise restrain pursuit of such claim as being in breach of clause 6.2 of the Plc Assignment.
30. That said, Plc has engaged on the merits of the analysis underpinning the application through both evidence and submission without jurisdictional reservation. Plc therefore appears content for this court to do likewise. There was no suggestion on behalf of Plc that it would invite the Kazakh court to determine any issue as to the proper meaning or effect of the Plc Assignment. On the contrary, Plc's stated position is that there are grounds for its invalidation by the Kazakh court, as already addressed. Those grounds appear to overlap, however, with the grounds advanced by Plc in opposition to the Application.
31. On that basis, Plc has suggested in open correspondence that the determination of the Application be stayed, and therefore in a sense adjourned, pending the outcome of any validity challenge to the Plc Assignment in the prorogated courts.
32. Neither side has identified any provision of Kazakh law which would cause this court to approach any question of interpretation of the Plc Assignment other than it would in accordance with well-known principles of contractual construction under English law. As many may recall, ICS v West Bromwich Building Society was a case about assignments.

33. With all that said or assumed, however, I do not feel that it is appropriate for this court to engage in any final or summary determination of the meaning and effect of the Plc Assignment. There is no substantive claim in existence as to such matters. No declaratory relief is sought or could be sought by JSC by application notice of the kind before me in these ancillary funding-related proceedings. Further, as indicated above, the grounds for alleged invalidation of the Plc Assignment appear to overlap with the contractual analysis underpinning the Application.
34. This inevitably leads into the less formal jurisdictional concern which I raised at the outset of the hearing, although this concern arose independently while reading the materials in preparation for the hearing. It is not clear why the court hearing an application in these proceedings has the relevant power to make an order for release of funds pursuant to an order made in other continuing proceedings before the Commercial Court. The fact that both proceedings are in the Commercial Court is not material.
35. JSC identified practical reasons why neither it nor Harbour could make the application for release of funds from the designated bank account in the Main Proceedings, as matters currently stand. In short, this is because Harbour took over control of such claims and enforcement of the substantive judgment, leaving JSC as formal nominal co-claimant with no means of being separately legally represented for such purposes in those ongoing proceedings. Only one solicitor is on the record for the claimants in such proceedings.
36. There is, however, a manifest conflict now between the interests of two of those claimants, namely JSC and Plc, as regards distribution of sums from the designated account created pursuant to the Henshaw Order.
37. These current obstacles are not insurmountable. It must be possible, in my view, for separate legal representation to be obtained for JSC and Plc, if it so desires, for these specific purposes within the Main Proceedings, even though and whilst Harbour maintains overall control of the enforcement process in the (presumably aligned) interests of all substantive stakeholders in actual or future recoveries. Nor does this procedural or formal impediment itself mean that it is necessarily appropriate for the court to grant the application in these proceedings; or, at any rate, not without the formal sanction of Henshaw J or another judge in the Main Proceedings.
38. I raised with Mr D'Cruz KC on behalf of JSC whether this might require a fresh action against Plc seeking declaratory relief to the effect which underpins JSC's analysis in support of the primary relief sought on the application. A Part 20 claim between defendants in this action may be the neater process, on reflection. This was not an invitation so much as a means of testing the jurisdictional or procedural position.
39. This debate in turn raised and raises a central question of what procedural power and what applicable test this court has and should apply, as the case may be, in determining the Application made in these separate proceedings - at any rate insofar as acceding to such application rather than dismissing it outright.
40. No provision of the CPR was identified for such purposes. The obvious procedural mechanism is paragraph 7 of the Henshaw Order conferring a general permission to apply; but, of course, that is not being operated or exercised in this context. The application is

made in separate proceedings. I am asked, therefore, to proceed under the inherent jurisdiction of the High Court. For its part, Plc does not object to me doing so as a matter of jurisdiction in any of its senses.

41. Assuming such an inherent procedural power to grant release of relevant funds, what is the applicable standard or test? In the absence of any substantive claim for declaratory relief, this feels decidedly procedural in nature. I add to this the fact that, as was accepted by JSC, the analytical framework feeding the professed contractual entitlement as between JSC and Plc existed in its entirety when the Henshaw Order was made in August 2020. There has been no change to that contractual bedrock since then. Events have evolved in terms of the commencement and evolution of these separate proceedings and further steps in the enforcement stages in the Main Proceedings. Those changed circumstances supply the *impetus* for JSC now seeking release of the £2 million as what it says is the CIC under clause 10.1 of the Investment Agreement.
42. In the event and despite these jurisdictional or procedural misgivings, I am nevertheless persuaded that it is appropriate to entertain the merits of the application. I am also persuaded that it is in the interests of justice that the sum of £2 million be released from the designated account to JSC because JSC plainly has the better of the argument, on the material before me, as to such entitlement as between itself and Plc.
43. By reaching and expressing these conclusions, it is my hope that I save judicial time and energy as well as duplicative costs and delay in this matter being re-argued before another commercial judge in the Main Proceedings. Not to mention the attendant cost and delay of arranging separate legal representation for JSC and Plc, i.e. additional to that of all the claimants through Harbour, for this specific purpose or indeed commencement of collateral substantial proceedings as between JSC and Plc.
44. Beyond this position and subject to appropriate protective undertakings from JSC, which I address further below, I refrain from considering the effect of the Plc Assignment in a substantive or determinative manner. I do not make summary or final findings as to the contractual position as between Plc and JSC under Kazakh law.
45. Further, having reflected on this aspect, I consider it appropriate that I should not make an order, or at least make an order that can take effect, until Henshaw J or another allocated judge has endorsed or sanctioned the release of the relevant funds in the Main Proceedings pursuant to paragraph 1 of the Henshaw Order. This judgment is given in order to assist that formal process occurring without delay.

Release of £2 million from designated account

46. JSC's demand or claim for release of the £2 million was made by a solicitor's letter last September. There ensued several rounds of correspondence through which Plc advanced a number of reasons for contesting JSC's entitlement to receive the money as CIC. Most recently, as described above, Plc's position was tied solely to the prospect of a successful invalidation claim in respect of the Plc Assignment in Kazakhstan.
47. The key points taken on behalf of Plc can be summarised as follows:

48. First, Plc actually paid the CIC originally and, insofar as able to do with cash provided to or through it by group entities or subsidiaries, remains liable for such intra-group debts to this day. Clause 10.1(b) of the Investment Agreement properly construed requires reimbursement to the specific claimant or claimants who paid relevant parts of the CIC.
49. Secondly, the Plc Assignment did not assign Plc's interest in recovery of the CIC. The definition of "Proceeds" included the proviso language in the second sentence as quoted above. The CIC was "required to be deducted under" clause 10.1 of the Investment Agreement, hence the CIC was excluded from the asset or interest being assigned by Plc to JSC.
50. Thirdly, the Plc Assignment should not be construed by reference to or to reflect the provisions of the rehabilitation plan to which Plc is not a party and by which it is not bound, but instead should reflect the terms of the draft agreed Priority and Standstill Agreements, as described above. This purported to alter the waterfall as set out in clause 10.1 of the Investment Agreement.
51. Fourthly and as indicated above, insofar as the Plc Assignment is vulnerable to being invalidated by a claim in the Kazakh courts, no effect should be given to it by allowing release of the £2 million even if otherwise properly due to JSC as CIC, contrary to the above points.
52. JSC's position is simply that the definition of "Proceeds" in the Plc Assignment is wide enough to and was manifestly intended to include the CIC, as shown by, for example, paragraph 4.3.6 of the rehabilitation plan. Indeed, it would make little sense and be contrary to the structure of the arrangements for the CIC to be carved out of the assignment given its provenance and purpose. Plc did not pay the CIC originally as a matter of economic reality or legal analysis; but, even if it had, this state of affairs is assumed to be so or otherwise neutral as to the effect of the Plc Assignment. The draft Standstill Agreement is immaterial and inadmissible. Finally and separately, there is no warrant for construing clause 10.1(b) of the Investment Agreement in the narrow manner now suggested by Plc.
53. As already indicated, I make no findings as to the proper meaning or effect of the Plc Assignment. I assume it is valid as a matter of Kazakh law for present purposes. Having read and heard evidence and submissions from both sides, as summarised above, I am amply satisfied that JSC has the better argument as to its entitlement to be paid the CIC as between itself and Plc. There appears to be no good reason for concluding that the Proceeds assigned by Plc to JSC did not include the CIC. The contrary suggestion feels powerfully counter-intuitive given the origin and objective of the Plc Assignment in the context of JSC's rehabilitation plan.
54. As regards the first point taken by Plc seeking to construe clause 10.1(b) of the Investment Agreement in a certain way, I can go a little further because that agreement is governed by English law and subject to the exclusive jurisdiction of this court. I would reject Plc's suggested construction. The definition of "CIC", subject to the typographical error noted above, and the wording of clause 10.1(b) itself, is clear. The distribution belongs or inures to the relevant claimants irrespective of which of them paid what (or when or how) to the CIC originally. If the matter rested entirely with me free of jurisdictional or procedural contingencies as outlined, I would be satisfied, putting it colloquially, that the CIC belongs

to JSC not Plc and as such is due to JSC alone pursuant to clause 10.1(b) of the Investment Agreement.

55. In the circumstances and subject to appropriate conditions described next, I am satisfied that it is in the interests of justice that £2 million be released from funds held in the designated bank account. By this I mean that the balance of relative justice and injustice to each side favours the release of such funds at this point in time and without further delay.

Conditions

56. The first condition I am minded to impose on such release from the designated bank account is that Henshaw J or another allocated judge sitting in the Main Proceedings endorses or sanctions such release in light of my judgment and any conditional or draft order.
57. It may be that the only procedural solution is for Harbour into apply in its capacity as Additional Party in the Main Proceedings under the general permission in the Henshaw Order for a variation of limb (a) of paragraph 1 of that order and/or an order under limb (b) and/or directions to deal with the separate representation issue in the Main Proceedings.
58. I will direct that this judgment, once approved, and the draft order which I approve but may not yet make is provided to Harbour's legal team to consider and then let me know the position within a specified period of time. It will be for Harbour and its legal team to be satisfied as to what is appropriate in the name of all of the Claimants within the Main Proceedings, guided as necessary by the terms of this judgment.
59. In the meantime, I will refer the matter to the Judge In Charge of the Commercial Court so that arrangements can be made, if required and so far as possible, for this matter to be addressed (also) in the Main Proceedings in light of my judgment and approved draft order.
60. This leaves the question of undertakings to deal with the two areas of perceived risk affecting the balance of justice calculus outlined above.
61. **First, the risk that a further invalidation claim is brought in the prorogated courts and succeeds in the near future.** This may feel hypothetical given the amount of water under the bridge in this funding/distribution dispute and the recent dismissal of just such an invalidation claim brought by a minority shareholder of Plc. But I nevertheless feel it is appropriate to grant Plc some limited protection in this regard given that the basis for JSC's claim, in a procedural sense for present purposes, for release of the money is the Plc Assignment itself.
62. The proposed structure of an undertaking was provided by JSC's legal team after the hearing at my request. I envisage a tight timetable under which the monies are first released to an account held by JSC's solicitors in London and only then released to JSC if an invalidation claim is not brought or, if brought, does not succeed in final and binding form within set time periods. More precise dates and details will be considered at the hearing handing down this judgment. The balance of justice favours tight timeframes at this late stage in the story, so long as achievable in practice.

63. **Secondly, the risk of double jeopardy for Plc or double recovery for JSC in respect of the CIC.** This risk may also be hypothetical on proper analysis. There is no evidence before me to show Plc's outstanding intra-group liabilities as asserted by it or the pendency of any legal process seeking recovery of sums from Plc which in substance reflect or relate to the CIC; but, given the intensity of this legal and corporate battle, such risk cannot be ruled out, in my judgment. Mr Werner's witness evidence makes reference to proceedings filed by JSC against another (former) group entity in the Kazakh courts this year. I will, therefore, require an undertaking in suitable terms which protects Plc from double jeopardy in respect of any liability which in substance relates to or reflects the CIC.

Next Steps

64. I will hear submissions on the form of order, including undertakings, that is appropriate in light of the above. I will then notify the parties of the order which I am minded to hold as an approved draft order until I decide otherwise.
65. This judgment, once approved, and my approved draft order will be provided to Harbour's legal team to consider whether it is appropriate to apply in the Main Proceedings for variation or release or other directions in respect of the designated bank account. I will make provision for a deadline to revert to me on that procedural option.
66. I will separately provide my approved judgment and approved draft order to the Judge In Charge of the Commercial Court so that the procedural and listing position can be considered at a higher level and regularised so far as possible. This may mean that the matter comes back before me sitting (also) in the Main Proceedings, but that is for others to decide. As stated above, the purpose of providing this judgment is to avoid or minimise duplication of time and energy if the matter finds itself before another judge in that other action for the formal or jurisdictional reasons I have described.