

With anti-suit injunctions becoming harder-edged and more adaptable, how do you deploy them in litigation to secure a tactical advantage?

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MERITS

1. If hold ring: **American Cyanamid** “serious issue to be tried”.
2. If determinative as to where substantive issues will be tried: ‘high probability’¹ that there is an AA or JA and that the dispute falls within it.

LAW OF AA

3. Governing law of arbitration agreement:
 - a. Choice
 - b. Pre-1.8.25: “matrix” contract: **Enka v Chubb: UniCredit Bank GmbH v RusChemAlliance LLC** [2024] UKSC 30
 - c. Thereafter: seat: s.6A Arb Act 1996
4. CPR 62.5 or PD 6B 3.1: **Investcom Global Limited v PLC Investments Limited** [2024] EWHC 2505 (Comm), Henshaw J.
5. Matrix English law – not enough for CPR PD 6B 3.1(6)(c) gateway – claim is made in respect of a contract governed by English law. Males LJ, giving leading Jt in CA in **FH Holding Ltd v AO Unicredit Bank** [2026] EWCA Civ 468.

TIMING

6. **Ust-Kamenogorsk v AES** [2013] UKSC 35: even where no foreign proceedings have yet been commenced, provided there is a clear and imminent threat².
7. Avoid consumption of foreign court time³; cost; investigation of merits⁴. Risk of submission. Not fatal⁵ if foreign jurisdiction requires plea to merits; or plead under ongoing objection to the jurisdiction of the foreign court⁶.

¹ **Nigeria v Williams** [2025] EWHC 2217 (Comm) at [17]-[19], Henshaw J; **Warner Bros. Discovery, Inc. v Nokia Corporation** [2025] EWHC 2888 (Pat), Mellor J.

² **AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC** [2013] UKSC 35 at [23] (Lord Mance)

³ **Barclays Bank v VEB.RF** [2024] EWHC 1074 (Comm) at [56]

⁴ **A v B** [2020] EWHC 3657 (Comm) [2021] 2CLC 47 per Calver J at [36]

⁵ **SAS Institute Inc v World Programming Ltd** [2020] EWCA Civ 599; 1 CLC 816, at [114]

⁶ **Ecobank Transnational Inc v Tanoh** [2015] EWCA Civ 1309 at [68]

8. If foreign court hostile, delay will be “of relatively minor concern”⁷: **Google v Tsargrad Media**.
9. Delay held permissible; one year trying to deal with the foreign proceedings in the foreign courts⁸; 13 months trying to restructure a lending agreement giving rise to the litigation⁹.

COMITY

10. No real concern in contractual cases: **Enka v Chubb** at [184] “*Forum conveniens* considerations are irrelevant and comity has little if any role to play. The court’s concern will be to uphold the parties’ bargain, absent strong reason to the contrary, and the court’s readiness to do so is itself an important reason for choosing an English seat of arbitration.” (Lords Hamblen and Leggatt, with whom Lord Kerr agreed)¹⁰.
11. Lord Leggatt in **Unicredit**¹¹: non-supervisory courts can police the arbitration agreement and prevent a party breaking his contract to arbitrate [100]. *Obiter*: at [75]: no burden on the applicant for anti-suit relief to show that there is only one court which can properly grant the ASI, let alone that the English court is that court. At [108] order from arbitrators pointless.
12. Check institutional Rules. Some deal with when you can or can’t apply to a court for interim relief:
 - a. ICC: “before the file is transmitted to the arbitral tribunal”
 - b. LCIA: before formation of arbitral tribunal, or after if exceptional cases and with tribunal’s permission
 - c. UNCITRAL: anytime
 - d. ICDR: anytime

CIRCUMVENTION

13. SANCTIONS: In **Renaissance Securities (Cyprus) v Chlodwig Enterprises** [2025] EWCA Civ 369, CA – ASI refused, but would have protected the public policy of the United Kingdom in having the sanctions regime which it does. Circumventing that regime was to seek “an illegitimate juridical advantage” [147], Singh LJ.
14. JURISDICTION AGREEMENT: Contractual approach: argument that JA should be treated as including affiliates.
 - a. wide approach, see the *obiter* remarks of Lord Scott in **Donohue v Armco** [2001] UKHL 64
 - b. narrower approach: **Cavendish v Ghossoub** [2017] EWHC 2401 (Comm)

⁷ **Google LLC v NAO Tsargrad Media** [2025] EWHC 94 (Comm) at [14], HHJ Pelling KC; evidence of such disregard noted in **Maxamcorp International S.L. v Eurotel LLC** [2026] EWHC 666 (Comm) at [85], Bryan J

⁸ **Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd** [2013] EWHC 1276 (Comm); [2013] 2 Lloyd’s Rep 196 at [33], Hamblen J

⁹ **Africa Finance Corporation v Aiteo Eastern E&P Company Ltd** [2022] EWHC 768 (Comm), Teare J

¹⁰ **Enka Insaat ve Sanayi AS v OOO ‘Insurance Company Chubb’** [2020] UKSC 38, [2020] 1 WLR 4117 [184]

¹¹ **Unicredit v RusChem**: [2024] UKSC 30, [2025] AC 1177

- c. Andrew Burrows QC in ***Clearlake Shipping v Xiang Da Marine*** [2019] EWHC 2284 (Comm)¹². Both approaches valid, all depended on construing the clause in context [24].
15. ARBITRATION AGREEMENTS: See ***Renaissance Securities*** in the CA, where the court divided on this, *obiter*. Males LJ (paras 77-78) v Singh LJ (paras 44-48).
16. VEXATION AND OPPRESSION: ***JP Morgan v VTB Bank PJSC*** [2026] EWCA Civ 589¹³, [45]: CA upholding Foxton J.
17. Also ***Clearlake Shipping Pte Ltd v Xiang Da Marine Pte Ltd*** [2019] EWHC 2284 (Comm)¹⁴; ***Barclays Bank plc v PJSC Sovcombank*** [2024] EWHC 834 (Comm), HHJ Pelling KC, at [25].

CAUTION

18. Articles 248.1 and 248.2 of the Russian Arbitrazh Procedural Code.
19. ***Unicredit***: RusChem application to Russian Courts; Unicredit applied to remove injunctive parts from original order.
20. Anti-enforcement: ***JPMorgan Securities plc v VTB Bank PJSC*** [2025] EWHC 1368 (Comm); ***Google LLC v NAO Tsargrad Media*** [2025] EWHC 94 (Comm).

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¹² Cited with approval by CA in *VTB* at [38]

¹⁴ Cited with approval by CA in *VTB* at [38]