

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHC(COM) 0025 of 2024

BETWEEN:

TUNG FAI

Claimant/Respondent

and

WEI DONG

Defendant/Applicant

IN CHAMBERS

Appearances:

Mr. George Spalton KC and Mr. Andrew Gilliland and Mr. Jamie James instructed
by MKS Law for the Defendant/ Applicant.

Mr. Aaron Mayers, instructed by Conyers Dill & Pearman for the Respondent.

2025: December 4; Further Submissions by email between 9-12 December;

2026: March 5.

JUDGMENT

[1] **MANGATAL, J. (Ag.):** By application dated 29th May 2025, the Defendant Wei Dong (“**the Applicant**”) seeks to set aside previous orders made on 4th March 2025 for alternative service and he also challenges the Court’s jurisdiction. In particular, the Notice of Application (“**the Set Aside Application**”) seeks the following relief:

- (1) That the order for alternative service (“**the Alternative Service Order**”) be set aside;
- (2) That service of the Claim Form and Statement of Claim and associated documents by substituted means be set aside;
- (3) A declaration that the Court does not have jurisdiction in respect of the claim, pursuant to Rule 9.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules, Revised Edition 2023 (“**the CPR**”).
- (4) In the alternative, the Applicant seeks an order pursuant to CPR 9.8 that the Court will not exercise jurisdiction, and
- (5) An order that the claim be struck out or, in the alternative, be stayed.

[2] The Application is supported by an affidavit of the Applicant. Essentially, as set out in the Applicant’s Skeleton Argument (“**SKA**”), he seeks relief on the following bases:

- (1) There was no basis for the Alternative Service Order, in particular, there was an absence of special circumstances justifying departure from service under the Hague Convention;
- (2) The lack of basis for the Court’s jurisdiction; and
- (3) Failure to comply with the duty of full and frank disclosure when applying for permission to serve out.

[3] The Applicant claims that the Court does not have jurisdiction because:

- (1) There is no sufficient or requisite connection between the claim and the BVI;
- (2) The claim serves no useful purpose given the lack of any assets against which to enforce; and

(3) The Claimant/Respondent Tung Fai (“**the Respondent**”) failed to provide full disclosure of the arguments which the Applicant was likely to advance on jurisdiction.

Background

[4] The Applicant and the Respondent first engaged in business ventures together over twenty years ago.

[5] The Respondent seeks the recognition (and in due course, he says, enforcement), of a Hong Kong judgment and associated orders, which arose from an action brought in Hong Kong by the Respondent against the Applicant. The case number is HCA 1660/2013. In that action, the Respondent sued for damages for the Applicant’s alleged failure to pay the Respondent for the listing and services as a director of the Applicant’s business Fu Ji Food and Catering Services Holdings Limited (“**Fu Ji**”).

[6] On 23rd April 2018, after a trial lasting several days, the Hong Kong Court gave judgment in favour of the Respondent and ordered the Applicant to pay HK\$ 51,101,323.30 to the Respondent, together with interest and costs.

[7] The Respondent is now seeking to enforce the judgment and further orders, including an allocatur (which together I will refer to as “**the Hong Kong Orders**”) in the form of:

(1) An order dated 20th March 2019, made on the joint application of the parties, which provided for the Applicant to pay a settlement sum of HK\$130,000 in respect of the Respondent’s Costs, but which also provided that the Respondent could enforce the payment of the settlement sum together with further interest at the Hong Kong judgment rate if the sum was not paid by the Applicant and;

(2) An allocatur dated 8th January 2020 awarding the Respondent party and party and indemnity costs.

- [8] The Statement of Claim also claims interest of over HK\$38 Million, with further interest at applicable Hong Kong judgment rates calculated on the various sums over different periods.
- [9] Another part of the background relates to different BVI proceedings. Kwok Kin Kwok ("**Madam Kwok**"), the Respondent's wife, and Yao Juan ("**Madam Yao**"), who the Applicant says in his affidavit is now his former wife (having undergone a finalised divorce on 21st May 2025), are engaged in a dispute before the BVI Court. This dispute relates to Crown Treasure Group Limited ("**Crown Treasure**"), a company incorporated in the BVI.
- [10] The dispute arises from Madam Kwok and Madam Yao's shared hotel business. The proceedings ("**the Crown Treasure Proceedings**") have gone through many rounds, over a number of years, including going to the Judicial Committee of the Privy Council. However, at the end of the day, Crown Treasure is currently in liquidation in the BVI, the Privy Council having reinstated the Commercial Court's order that Crown Treasure should be wound up on just and equitable grounds under section 184(2)(f) of the BVI Business Companies Act 2004 (as amended) and sections 162(1)(b) and 159(1) of the Insolvency Act 2003. Madam Yao is a party to proceedings, as indeed is the Respondent's wife, Madam Kwok, in BVIHCOM 2013/0162, BVIHCOMAP 2018/0042, JCPC 2020/0010 and BVIHCOM 2024/0089.
- [11] It is the Applicant's stance that, on any view, he is not a registered shareholder in Crown Treasure, and that he has no beneficial interest in Crown Treasure.
- [12] However, at paragraphs 33 and 34 of the Statement of Claim in these proceedings the Respondent avers that the Applicant and Madam Yao are joint beneficial

owners of the 50% Shares in Crown Treasure registered in the name of Madam Yao.

- [13] It is interesting that in his First Affidavit in support of the Set Aside Application, (which of course, amongst other things, seeks to challenge this Court's jurisdiction), at paragraphs 18-36 the Applicant proffers an outline history of the dispute. At paragraphs 18 and 32-36, the Applicant states as follows:

"18. In reality these proceedings [i.e. the instant proceedings BVIHC(COM) 0025 of 2024] seem to be a continuation of Mr. Tung's and his wife's efforts to gain control over the underlying value held by Crown Treasure. Therefore, I believe it is important for the Court to understand the background of our business dealings with Mr. Tung and his wife and the proceedings initiated by my wife in this jurisdiction concerning Crown Treasure.

.....

Holding Structure of the Hotel Project

32. Crown Treasure was initially a shell company wholly owned by Mr. Tung. However, from the start of the Hotel Project in late 2005, he transferred ownership equally to Madam Kwok and my wife, each holding 50% of the shares.

33. The ownership of Crown Treasure was deliberately designed to reflect the clear separation of responsibilities between the husbands and the wives. This formalized the understanding that the Hotel Project would be co-owned and eventually co-managed by the two wives. This was a conscious and deliberate choice by both of us: the Hotel Project was meant for our wives, and the structure was set up to ensure that it remained entirely their venture both legally and beneficially.

34. Crown Treasure wholly owns the shares issued by Strong Nation, a company incorporated in the BVI [in] 2002.

35. Strong Nation was the beneficial owner of all the shares in Xiamen Royal Victoria Hotel ("**Xiamen RVH**"), a company incorporated in the PRC, which owns and operates the 5-star luxury hotel in Xiamen that we finished developing in or around 2011 as part of the Hotel Project ("**the Xiamen Hotel**").

36. In hindsight, this layered structure, placing Strong Nation between Crown Treasure and the onshore operating company Xiamen RVH, was likely a deliberate move. This two-layer structure was key in distancing me and my wife from the Xiamen Hotel. In particular, this arrangement enabled Mr. Tung and Madam Kwok to carry out several transactions that diluted my wife's interest in the Xiamen Hotel."

(emphasis provided)

These Proceedings

- [14] The Claim in these proceedings was issued on 19th January 2024.
- [15] On 5th March 2024, the Respondent filed a Certificate of Service out of the Jurisdiction, pursuant to CPR 7.6, identifying CPR 7.3(5) as the gateway and certifying that (i) the Respondent had a good cause of action; (ii) the Hong Kong Orders were amenable to being enforced in the BVI pursuant to CPR 7.3(5); and (iii) that the BVI Court was the proper forum for the trial and/or that the Claim was a proper one for the jurisdiction; and (iv) that Hague Convention service was intended.
- [16] On 11th March 2024, the Hague request pack, including translations, was lodged via the Registry of the High Court for transmission to the Minister responsible for foreign affairs, with the requisite undertakings as to expenses (**“the Hague Service”**). It is accepted that this is the prescribed orthodox route for service in a Hague State such as the PRC, which objects to Article 8 and 10 channels and requires service via the Central Authority.
- [17] On 16th January 2025, the Respondent filed an *ex parte* application for an extension of time for service of the Claim (**“the Extension of Time Application”**). That application was granted by Wallbank J (Ag.) on 6th February 2025.
- [18] The Respondent also filed an *ex parte* application seeking permission to serve by alternative means pursuant to CPR 7.10 on 11th February 2025 (**“the Alternative Service Application”**). That Application was supported by the First Affirmation of the Respondent dated 11th February 2025 (**“the Respondent’s First Affirmation”**). The Respondent sought to rely on the address provided by the Applicant in a Witness Statement dated 2017, provided by the Applicant in the Crown Treasure Proceedings.

[19] In the Respondent's First Affirmation, the following description was provided of attempts to serve the Applicant:

- (1) On 31st January 2024, the Respondent enquired of Henry Wai & Co. Solicitors LLP ("**Henry Wai**"), the Applicant's solicitors in the Hong Kong Action, whether they were instructed to accept service of the proceedings. Henry Wai confirmed on the same day that they did not have instructions and were not instructed by the Applicant to act on any matter.
- (2) The Respondent then asked Harney Westwood & Riegels ("**Harneys**"), Madam Yao's representatives in the BVI proceedings, on the same 31st January 2024, if they were instructed to accept service. The Respondent did not receive a response.
- (3) The Respondent subsequently, on 11th March 2024, made a request to the Court for service under the Hague Convention. The Court confirmed that the Hague Convention Request was couriered to the Ministry of Justice in the PRC. The Respondent never received confirmation that service had been effected.

[20] The Respondent's Alternative Service Application was granted by way of the Alternative Service Order, on 4th March 2025, giving the Respondent permission to serve the Applicant by serving the claim documents at the offices of Harneys. The Respondent indicates that the Court made the Alternative Service Order of its own motion and without a hearing, in keeping with its case management powers. It would seem that no SKA was provided before the Order was considered and granted.

[21] On 9th April 2025, the Applicant filed an Acknowledgement of Service (i) confirming that the Applicant had received the Claim Form on 5th March 2025 but noting in terms that Harneys were not instructed to and did not accept service and (ii) stating that it was without prejudice to the Applicant's right to contest jurisdiction and to apply to set aside the Alternative Service Order.

[22] On 2nd May 2025, Wallbank J approved a Consent Order affording an extension of time for the Applicant to file his jurisdiction challenge, and providing a time period within which the Respondent could respond.

[23] The Set Aside Application was filed on 29th May 2025, with the Applicant's Affidavit in support. The Respondent filed evidence in response by way of the First Affirmation of Norman Hau dated 26th June 2025.

The Applicant's Arguments

[24] Learned King's Counsel Mr. Spalton argued on behalf of the Applicant that the Alternative Service Order should be set aside for the following reasons:

- (1) The address used by the Claimant was incorrect, and the Claimant failed to make any meaningful effort to discern the Applicant's correct address.
- (2) There were no exceptional circumstances justifying departure from service by way of the Hague Convention. Further, the Respondent failed to draw the Court's attention to authorities setting out the threshold for alternative service.
- (3) There was and is no substantial connection to the BVI and the Respondent failed to draw this to the Court's attention.

[25] In addition, the Court does not have the necessary jurisdiction to hear the claim, or in the alternative, should refrain from exercising any such jurisdiction because:

- (1) The Respondent has brought these proceedings to enforce a foreign judgment against a foreign resident, without sufficient (or indeed any) nexus to the BVI to ground jurisdiction.
- (2) The Applicant has no legal or beneficial ownership in Crown Treasure. That a binding 2018 agreement exists between Madam Yao and the Applicant which establishes that the shares are solely owned by Madam Yao.
- (3) The Applicant otherwise has no presence or assets in the BVI.

- (4) The Applicant repeats the allegations about a lack of full and frank disclosure and says that the Respondent failed to provide full and frank disclosure of the arguments which the Applicant was likely to advance on jurisdiction.

CPR 7.10 and Good Reason

- [26] Mr. Spalton KC referred to Rule 7.9(1)(a) of the CPR which provides that a court process may be served out of the jurisdiction by a method provided for by Rule 7.12, which includes Hague Service.
- [27] Reference was made to Rule 7.10 under which the Court has power to grant permission for alternative service. The Rule provides, amongst other things, that where service under Rule 7.9 cannot be effected on the defendant for good reason, the claimant may apply for an order under this rule that the court process be served by a method specified by the court. (emphasis provided).
- [28] Learned King's Counsel referred to a number of cases where the "*good reason test*" was addressed. He referred to the decision of Foxton J in **M v N**¹ (cited in **Gorbachev v Guriev**.² Learned Counsel also referred to my own decision in this jurisdiction in **AQF v XIO**.³
- [29] It was submitted that, accordingly, as paragraphs 8(iii) to 8(vi) of **M v N** make clear, it is first necessary to take into account whether the Hague Convention applies before ordering service by alternative means. If it does apply, one then needs to consider whether 'exceptional circumstances' exist which militate in favour of permitting service by alternative means. Further, that merely avoiding delay or inconvenience does not, all else being equal, satisfy that test.

¹ [2021] EWHC 360 (Comm).

² [2022] EWCA Civ 1270.

³ BVIHC(COM) 2023/0239.

- [30] Applying that test to this case, it was submitted that the Respondent has failed to set out any such circumstances and there are, in any event, no such exceptional circumstances.
- [31] The Applicant submitted that the Respondent did not demonstrate that there is “*good reason*” for the failure to perform service via the Hague Convention. The Applicant accepts that the Respondent did explain that service had yet to be effected. However, it was submitted that the Respondent’s evidence amounted to no more than a complaint about a slow-moving process and delay, with such delay being hardly surprising in circumstances where the Applicant had not taken, nor attempted to take, all possible steps available to ascertain the Applicant’s correct address.
- [32] The Applicant contended that in all of the circumstances, the test in CPR 7.10 was not met, and the Court’s discretion to permit alternative service is not engaged, such that the Alternative Service Order should be set aside. In the alternative, if the Court is satisfied that the test at CPR 7.10 is met, the Court should not have exercised its discretion to permit alternative service for all the reasons previously given.

CPR 7.8

- [33] The Applicant points out that, pursuant to CPR 7.6, by way of the Certificate for service out of the jurisdiction, the Respondent self-certified that (i) the Hong Kong Orders are amenable to being enforced in the jurisdiction pursuant to CPR 7.3 (5); (ii) that the Court is the appropriate forum for the trial and/or that the Claim is a proper one for the jurisdiction, and (iii) that the Respondent has a good cause of action.
- [34] The Applicant has opposed all of these assertions on the basis that the Respondent cannot enforce the Hong Kong Orders against the Applicant in this jurisdiction because, he says, there is nothing against which to enforce, such that

the Respondent has no cause of action and the Court is not the appropriate forum for the trial.

- [35] It is for these reasons, says the Applicant, that even if the Court accepts that there was valid service on the Applicant by alternative means, service should be set aside pursuant to CPR 7.8, with the burden falling on the Respondent to show that there is a basis for the claim/service of the claim.

Full and Frank Disclosure

- [36] Mr. Spalton KC argued that the Respondent's Alternative Service Application failed to address the following adequately or at all:

- (1) The Respondent failed to draw the Court's attention to the fact that he had not made any or any detailed inquiries as to the Applicant's address for service from either law firm Henry Wai or Harneys.
- (2) The Respondent failed to draw to the Court's attention the legal test set out in the authorities. Specifically, alternative service instead of service via the Hague Convention requires "*exceptional circumstances*" to justify alternative service.
- (3) The Respondent failed to draw to the Court's attention the fact that Crown Treasure is subject to separate proceedings between Madam Yao and Madam Kwok, but that the Applicant has no shares in Crown Treasure. It was argued that both of these were material facts for the purposes of the exercise of the Court's discretion, because they go to the question of the proper forum for the proceedings, as well as the utility and purpose of the Claim.

- [37] It was submitted that this failure to comply with the duty of full and frank disclosure was a further basis on which the Alternative Service Order should be set aside.

Jurisdiction

[38] Mr. Spalton K.C. had a number of points to make under this head. The Applicant seeks (i) declaratory relief to the effect that the Court has no jurisdiction to try the Claim, and (ii) an order that the Claim should be struck out.

[39] In the alternative, the Applicant seeks a stay pursuant to CPR 9.8 (1) on the basis that the Court should not exercise its jurisdiction on *forum non conveniens* grounds.

No interest in Crown Treasure-meaning no basis for enforcement against the assets in the jurisdiction

[40] It has been the Applicant's refrain throughout the hearing that the Hong Kong Orders are not amenable to enforcement in the jurisdiction and the Respondent has no cause of action against the Applicant.

[41] The Applicant asserts that there is a lack of assets against which to enforce in the jurisdiction. Reference was made to the decision of the Irish High Court in **Petersen Energia Inversora S.A.U. et al v The Argentine Republic**⁴ where it was held that enforcement of a New York judgment in Ireland in the circumstances of that case would not have a practical benefit because the defendant had no assets in Ireland.

[42] In the instant case, the Respondent has brought the Claim to recognize and enforce the Hong Kong Orders against the Applicant by way of five shares in Crown Treasure (constituting 50% of the shareholding) owned by Madam Yao. However, the Applicant maintains that he does not have any assets in the jurisdiction, whether in the form of shares in Crown Treasure or otherwise. The submission is therefore that the Claim proceeds on the wrong basis, i.e. that the Respondent can enforce the Hong Kong Orders in this jurisdiction.

⁴ [2025] IEHC.

[43] Reference was made to the First Affirmation of Norman Hau, filed in opposition to the Applicant's Application, where at paragraph 20 it is stated that: "the [Applicant] has assets within the BVI, namely his interests in the shares of Crown Treasure Limited, a BVI incorporated company as both he and Yao Juan admitted during the trial in BVIHCOM 2013/0162 under oath."

[44] However, the Applicant has countered, and says that in his Affidavit he has explained to the following effect:

- (1) Madam Yao and Madam Kwok are the sole registered shareholders of Crown Treasure. The Applicant has never been a registered shareholder, and that is to be seen from looking at the Register of Members of Crown Treasure.
- (2) Crown Treasure's registered agent Vistra Trust (BVI) Limited ("**Vistra**") maintains the ultimate beneficial owner records of Crown Treasure, and refers only to Madam Yao.
- (3) On 28th October 2021, solicitors for Madam Kwok wrote to Harneys informing them that Madam Kwok had recently received requests for KYC documents from Vistra and HSBC and shared relevant documentation. This included among other things:
 - (i) An email from Ms. Wendy Yao of Vistra dated 7th October 2021 which noted that the two beneficial owners were Madam Yao and Madam Kwok, and
 - (ii) A "Due Diligence and Know Your Client" letter written by Madam Kwok to the Compliance Team of the Offshore Incorporation Group, by which Madam Kwok undertook for Crown Treasure that she was providing the necessary information. This was accompanied by "OIL" verification of identity forms filled in for Madam Kwok and Madam Yao, with their identity documents.
- (4) The Applicant and Madam Yao agreed on 4th January 2018, in the form of a Marital Property Agreement, that Madam Yao had exclusive ownership of her

shareholdings. Reference was made to paragraph 4 of the Agreement, which states:

“The shares Mdm. Juan Yao currently holds in several companies, [including one or more companies in the Chinese mainland, and Top Ample Limited and Crown Treasure Group Limited (in which Mdm. Juan Yao holds a 50% equity interest) in the BVI] , shall be the sole and exclusive property of Mdm. Juan Yao. [...] The shares Mr. Dong Wei currently holds in several companies shall be the sole and exclusive property of Mr. Dong Wei.”

(5) The Applicant says that he has no other assets in the jurisdiction and has no presence in or other connection with the jurisdiction.

[45] It was submitted that therefore, as in the **Petersen** case, these present proceedings can serve no practical or legitimate purpose. Further, that instead, the efforts to enforce against Crown Treasure are prima facie abusive as they appear to be intended to provide the Respondent with an opportunity to intervene in ongoing proceedings specific to Crown Treasure and between non-parties to the claim (i.e. Madam Yao and Madam Kwok), by way of a collateral attack on Crown Treasure.

Application for a Stay: Forum Non Conveniens

[46] The Applicant's alternative position is that the Court should not exercise its discretion and should stay these proceedings so that they may be heard in the appropriate forum.

[47] Reference was made to the decision of Webster J(Ag.) in the Commercial Court in **Global Steel Holdings Limited v Direct Investments Limited et al**⁵ where

⁵ BVIHCOM 2023/0127.

reference was in turn made to Lord Goff's judgment in **Spiliada Maritime Corporation v Consulex Limited**⁶ and it was held that a Court may choose to stay proceedings where the present jurisdiction is an inappropriate forum pursuant to the relevant provisions of *forum non conveniens*. At paragraph 51, Webster J summarised the principles as follows;

"[51] Lord Goff's opinion in *Spiliada* is also well known for its clear exposition of the steps to be taken when a court is considering an application for a stay based on *forum non conveniens*. In summary, Lord Goff said that there are three steps in the search for determining the most appropriate forum, namely: (i) is there another available forum; (ii) if so, is that forum more appropriate for the trial of the claim; and (iii) if there is another more appropriate forum a stay should be granted unless there is a risk that the claimant will not receive justice in the more appropriate forum. In steps (i) and (ii) the burden of proof is on the defendant challenging the jurisdiction...If there is an available forum, that is more appropriate for the trial of the claim the burden shifts to the claimant (Global) to show why it will not receive justice in the more appropriate forum"

[48] Mr. Spalton KC concluded this aspect of the submissions by asserting that it is for the Applicant to establish that there is another available forum, which is also more appropriate for the trial of the claim. The Respondent then has the burden of showing that any alternative forum will not result in a just outcome. It was submitted that here, however, there is no or no meaningful evidence in support of any such submission before the Court. The Applicant asserts that the Court has before it two individuals from Hong Kong in respect of Hong Kong Orders, the Court has enough basis upon which to decline jurisdiction.

The Respondent's Arguments

The Alternative Service Order

[49] In his SKA, Mr. Mayers on behalf of the Respondent says that in short, the Alternative Service Order satisfies the conditions under CPR 7.10, and should not be set aside because:

⁶ [1987] AC 460.

- not
- (1) Service via the Hague Convention mechanism was attempted and could reasonably be effected;
 - (2) There were (and remain) good reasons for permitting service via alternative means, including:
 - (a) excessive delay in Hague service on the Applicant;
 - (b) limitation prejudice to be suffered by the Respondent;
 - (c) exhausting multiple other means of possible service;
 - (d) apparent service evasion by the Applicant.
 - (3) The method ordered, being service via the Applicant's wife's BVI solicitors in hard copy and via email, was likely to bring the proceedings to the Applicant's attention (as, says the Respondent), the Applicant's conduct now confirms); and
 - (4) The method ordered is not contrary to BVI law.

[50] The Respondent submits that, in any event, pursuant to CPR 7.11 the Court has jurisdiction to dispense with service in exceptional circumstances, particularly where, as here, the Applicant has actual knowledge of the claim and has actively engaged in the proceedings.

[51] Further, the Court is urged in the circumstances to adopt a pragmatic and just approach with reference to the overriding objective and its case management powers. It is therefore contended that the Court should dismiss the Set Aside Application, and if the Court identifies any technical concern pertaining to service, it should regularize service prospectively or retrospectively and give consequential timetable directions if appropriate.

[52] As regards the claim, the Respondent states that it is intended as an enforcement claim under CPR 7.3(5). At this stage, he states that no particular means of enforcement has yet been selected, the principal objective being to have the judgment recognized in the BVI. The Respondent maintains that the Hong Kong judgment debt is due and enforceable.

[53] He further points out that there is no pending Hong Kong appeal to impugn the Hong Kong Judgment, and he avers that all historic attempts by the Applicant to challenge the Hong Kong Judgment in Hong Kong have failed.

[54] The Respondent also indicated that, in relation to Hague Convention Service in the PRC, the legal opinion that he had obtained confirms the following:

- (1) As a matter of PRC law, foreign judicial documents from a Hague Service Convention State that has no bilateral civil or commercial judicial assistance treaty with the PRC may only be served in Mainland China via the Hague Service Convention.
- (2) PRC objects to Article 10 (which concerns postal and other direct channels), so those channels are unavailable.
- (3) Any other form of service within China by foreign authorities or individuals is prohibited, absent legal permission.
- (4) The designated Central Authority is the Ministry of Justice ("**the MOJ**"), International Legal Cooperation Centre ("**ILCC**"). The process typically follows the following sequence:
 - (i) Request filed with the MOJ;
 - (ii) MOJ review;
 - (iii) Supreme People's Court review and onward transmission to the relevant High People's Court;
 - (iv) High People's Court review and transmission to the competent intermediate Basic People's Court (or service by the High Court itself);
 - (v) Execution of service by the Intermediate/Basic People's Court;
 - (vi) Issuance of the service result to the requesting party.

[55] Further, continues the Respondent, publicly available information indicates an execution time of around 6 months. In practice, it may be longer and, in some cases, no certificate is ever returned.

- [56] As regards follow up on the Hague Convention Service, the Respondent claims that it chased the status of the Hague Service request on numerous occasions over many months and continued efforts to verify a workable address in the PRC.
- [57] By November 2025, the Respondent says that there was still no confirmation of service-some 20 months after the Hague request-supporting the conclusion that Hague service was an extremely difficult and protracted process.
- [58] The Respondent recounts that he then applied *ex parte* under CPR 7.10, proposing alternative service by specified steps within the jurisdiction and electronically, and claims to have explained in detail why: (1) service under CPR 7.9 could not reasonably be effected; (2) why the proposed method was likely to notify the Applicant; and (3) why the method was not contrary to the law of the place of deemed service (the BVI).
- [59] It was Mr. Mayers' submission that the Court determining the application of its own motion on the papers without a hearing is consistent with the pragmatic approach to alternative service adopted post-2023 where 'good reason', not strict 'impracticability' is the governing test.
- [60] Mr. Mayers referred to the decision of this Court by Adderly J(Ag.) in **JSC VTB Bank v Katunin and Taruta**.⁷ In that case, the relevant Rules were the stricter CPR Rules of "*impracticability*" as opposed to the language of CPR 2023 "*good reason*". In this case the Commercial Court granted alternative service where Hague service in Russia (a country which, like the PRC, has rejected Articles 8 and 10 of the Hague Service Convention) proved impracticable, permitting service on BVI legal practitioners.
- [61] It was Mr. Mayers submission that, in particular, the Russian context-objections to Article 8 and 10 channels and associated central authority delays-offers a close

⁷ BVIHCM2016.

analogy to PRC practice, which likewise excludes postal channels and requires service via the Ministry of Justice; the practical impediments and the court's response are therefore directly comparable here. Counsel submitted that a similar ratio was followed in **Stichting Nems v Igor Borisovitch Gitlin**.⁸ This case was again, a case determined with reference to the old, stricter CPR Rules, in which alternative service was nonetheless granted.

[62] Mr. Mayers also referred to a number of other cases, including **Marashen Kenvelt**⁹ where, as he puts it, the court, surveying the relevant English authorities (which applied the 'good reason' test), reiterated that in Hague Convention cases alternative service is exceptional and not justified by speed alone; but it may be justified by facts specific to an evasive defendant or urgency, citing **Cecil and others v Bayat and others**¹⁰ and recognized the Supreme Court's decision in **Abella v Baadarani**¹¹ in which the court deployed a pragmatic lens while preserving comity to treaty processes.

[63] It was submitted that the delay in this case is more extreme than the worst case scenarios envisaged in similar cases in England, where it has been said that "*a delay of 12 months would be close to the limit beyond which it might be said that it was of exceptional length so as to be incompatible with the due administration of justice*" see **Celgard LLC v Shenzhen Senior Technology Material Co. Ltd** at paragraph 119.¹²

[64] Mr. Mayers submitted that there is an additional critical and prejudicial factor. He asserts that if service is not permitted, the Respondent's Hong Kong judgment will arguably be statute-barred. The order of Justice Lock is dated 23rd April 2018 and on the premise that the Claimant has six years to file and serve this claim for enforcement, if the alternative service order is now set aside, there will be

⁸ BVIHC (COM) 2018/0001.

⁹ [2017] EWHC 1706 (Ch).

¹⁰ [2011] 1 WLR 3086.

¹¹ [2013] UKSC 44.

¹² [2020] EWHC 2072(Ch).

ostensibly no recourse for the Respondent to bring and enforce the claim in the BVI. Setting aside the Alternative Service Order could therefore be fatal to the underlying claim and serve to facilitate the Applicant's avoidance of service. As Mr. Spalton KC pointed out in his Reply submissions, no authority was cited by the Respondent in support of this, to my mind, potentially far-reaching point.

[65] Reference was also made to the decision of the ECSC Court of Appeal in **Maluf v Durant**¹³ where the Court confirmed the power to dispense with service under CPR 7.11, including retrospectively, as a procedural case-management jurisdiction, and Mr. Mayers submitted that this power ought to be considered, especially where the defendant has actual knowledge and no prejudice arises.

[66] It was Mr. Mayers overall submission that Rule 7.10 of the CPR was satisfied, and that the alternative service order ought to stand.

The Applicant's Forum/Jurisdiction objections do not justify setting aside service

[67] In relation to the submissions as to forum/jurisdiction advanced by the Applicant, the Respondent states that its primary contention is that the Applicant has assets in the jurisdiction in the form of a beneficial interest in Crown Treasure. The Applicant denies this, and thus, the Respondent opines that the issue of what assets the Applicant may have in the jurisdiction is therefore contested. It was submitted that there are a number of substantive and practical reasons why one should conclude that the Court has jurisdiction to make an order recognising a final and conclusive foreign judgment.

The Submissions on limitation period after the Hearing on 4 December 2025

[68] On 9th December 2025, after I had reserved judgment on 4th December, the Applicant's Counsel sent an email to the Court stating that whilst the Respondent

¹³ BVIHCMAP 2021/0025.

had suggested that the limitation period for an action to enforce foreign judgments was six years, no authority had been cited for that proposition. Mr. Spalton K.C. had in fact made that point at the hearing. It was reiterated that further, no evidence had been filed in respect of this assertion. Counsel Mr. Gilliland referred to and attached a copy of section 4(4) of the **Limitation Ordinance** (1961) and argued that that section sets out that the limitation period for any action brought upon any judgment is in fact 12 years. It was therefore submitted that there is no prejudice to the Respondent in relation to the possibility of any limitation issue.

[69] On the same 9th December 2025, Counsel for the Respondent, responded and expressed the view that it was inappropriate for the Applicant to be making fresh submissions after the conclusion of the Hearing, without the Court's permission, without invitation, and without notice to the other side. Further, it was not appropriate for the arguments to be made in correspondence.

Notwithstanding, and with reluctance, Mr. Mayers says that he felt constrained to respond as follows:

- (1) The Applicant and his legal representatives were on notice of the argument concerning limitation and prejudice (which is 'purely a legal point') prior to the Hearing, as it was contained in the Respondent's SKA, so they cannot justifiably say they could not have addressed the point at the Hearing.
- (2) Despite taking the opportunity to advance further argument, points out Mr. Mayers, no case law has been cited and no analysis of the application of section 4(4) of the **Limitation Ordinance**, or any exceptions to it has been provided.
- (3) The Applicant's submission is incomplete and inaccurate. The very same provision provides that "*no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.*" Accordingly, submits the Respondent, limitation does bear directly upon the recoverability of judgment interest and prejudice is plain. This is because the Hong Kong judgment of 23rd April 2018 ordered interest on the principal sum of HK \$51,101,323.30 at the commercial rate

from 3rd September 2013 to 23rd April 2018, and thereafter at the Hong Kong judgment rate until payment. The subsequent costs order of 2019 likewise provided for judgment rate interest if unpaid and the allocatur of 8th January 2020 quantified costs. Therefore, argues the Respondent, the potential effect of section 4(4) is that any arrears of interest that became due more than six years before in this jurisdiction, risk being irrecoverable. That risk would likely become realized if the Alternative Service Order is set aside. Given that the judgment's interest accrued from 2013 and post-judgment interest from April 2018 onward, the longer the interest is delayed (including through service issues), the greater the tranche of the judgment interest that may be statute-barred. That is real and material prejudice to the Respondent. Thus, in the circumstances, the prejudice point stands. That there remains a concrete risk that substantial portions of the judgment interest will be time-barred under section 4(4) absent timely progress, and Mr. Gilliland's email does not address, still less dispel, that prejudice.

[70] The Court then emailed to indicate that the Respondent's Counsel was correct that it was inappropriate for the Applicant's Counsel to email the Court with further submissions in the circumstances. However, in the interest of saving time and expense, I was minded to accept both emails as further submissions, without the necessity of any further hearing and that the breach by the Applicant could be dealt with in whatever order was made as to costs in the judgment/ruling. I asked for both sides' views to be conveyed to the Court by 3:00 p.m. on 12th December 2025.

[71] Both wrote back saying they were content with the Court's approach. Counsel Mr. Mayers took the opportunity on 12th December 2025 to make yet another submission, having reflected on matters. This submission was to the effect that, the Applicant's position was internally inconsistent. Mr. Mayers made the point that a foreign judgment is not a judgment in the BVI unless and until recognized. Therefore, it cannot be said that, prior to recognition, the Hong Kong judgment is a

BVI Judgment within the meaning of section 4 (4). The argument continued that, without recognition, it would appear that the Hong Kong judgment proceeds at common law. That orthodox analysis treats the foreign judgment, prior to recognition, as giving rise to a fresh simple contract cause of action and would more readily fall within the causes of action described at section 4 (1)(a) of the **Limitation Ordinance** (actions founded on simple contract or on tort). On that footing, says the Respondent, the limitation risk is plain and reinforces the prejudice point, and, at a minimum, the uncertainty between six and twelve years is itself materially prejudicial, notwithstanding the separate and independent interest point raised above.

Discussion and Analysis

The Law and the relevant Rules of the CPR

- [72] Part 7 of the CPR addresses service out of the jurisdiction. By virtue of Rule 7.2, the Court process may be served out of the jurisdiction without the permission of the Court, provided certain things are done, including satisfying Rule 7.3 and Rule 7.6.
- [73] In the instant case, the Respondent relied on CPR 7.3(5) which authorizes service out of a claim *“to enforce any judgment...which was made by a foreign court.... and is amenable to being enforced in the jurisdiction.”*
- [74] Rule 7.6 requires a certificate signed by the applicant or their legal practitioner certifying certain matters. In this case, the certificate identified CPR 7.3(5) as the gateway, certified that the BVI was the appropriate forum, and that Hague Service was intended.

- [75] CPR 7.9 sets out general modes for service out (Hague/foreign governments, in accordance with foreign law; or personal service), subject to the limitation that nothing may require doing anything contrary to the law of the place of service.
- [76] CPR 7.10 provides for an alternative service procedure where service under Rule 7.9 “*cannot be effected on the defendant for good reason*”.
- [77] On the outer bounds of the Court’s powers in this area, CPR 7.11 empowers the Court to dispense with service “*in exceptional circumstances*”, on affidavit evidence, with consequential timetable directions.

The Limitation Ordinance

- [78] Section 4 of the **Limitation Ordinance** provides as follows:

“Actions of contract and tort and certain other actions

4. (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-
- (a) actions founded on simple contract or on tort;
 - (b) actions to enforce a recognizance;
 - (c) actions to enforce an award, where the submission is not by an instrument under seal;
 - (d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.
- (2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.
- (3) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:
- Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Ordinance.
- (4) An action shall not be brought on any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no

arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued. Provided that for the purposes of this subsection the expression “penalty” shall not include a fine to which any person is liable on conviction of a criminal offence.

(6) Subsection (1) shall not apply to an action to recover seamen’s wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty Jurisdiction of the High Court which is enforceable in rem.

(7) This section shall not apply to any claim for specific performance of a contract or for an injunction or other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner to the corresponding enactment repealed by this Ordinance has heretofore been applied.”

‘Good Reason’ and whether Service Can Reasonably Be Effected

[79] A number of cases have been cited to me, by both sides, notably my own decision in **AQF v XIO**¹⁴ where on a review of the authorities, I pointed out that the 2023 CPR test of “*good reason*”, which replaced the former CPR 7.8A of ‘*impracticability*’ is widely considered a more liberal test and a lower bar than impracticability. Further, that “*the good reason*” test is a general one not confined to specific and limited categories.

[80] In **M v N**,¹⁵ and in **Marashen**, and a number of other cases, it has been held that in those cases where the country in question has stated its objection to Article 8 and 10 (a)-(c) of the Hague Convention, as is the case with China, alternative service

¹⁴ BVIHC(COM) 2023/0239.

¹⁵ [2021] EWHC 360 (COMM).

orders will only be granted in exceptional or special circumstances. In **AQF v XIO**, I ought to have perhaps made clearer that the need for exceptional or special circumstances, does not just arise simply because the case concerns the Hague Service Convention. Rather, such considerations arise where the State in question has objected or opted out of the particular Articles of the Hague Convention (Articles 8 and 10) having to do with postal service and other channels and where service can only take place through the central authority of the relevant State.

- [81] It has been held that mere delay or expense in serving in accordance with the Treaty cannot without more constitute such ‘*exceptional circumstances*’. The reason for this is that the Court should take care to ensure that the provisions of the relevant Treaty are not circumvented.
- [82] In two BVI cases, under the older, stricter CPR rule, **JSC VTB v Katunin & Taruta** and **Stichting**, the Commercial Court granted alternative service where the Hague Convention service in Russia (a country which, like the PRC, has rejected Articles 8 and 10 of the Convention), proved impracticable. In **JSC VTB** alternative service by email and on BVI Practitioners was permitted.
- [83] In the decision in **Celgard**, Justice Trover considered a case involving service under the Hague Convention in China. At paragraph 119 of the judgment, reference was made to paragraph 57 of the judgment in **Marashen**, where at sub-paragraph ii), Mr. Foxton Q.C. pointed out that “mere delay or expense in serving in accordance with the Treaty cannot, without more, constitute such ‘exceptional circumstances’. I say ‘without more’ because delay might be the cause of some other form of litigation prejudice, or be of such exceptional length as to be incompatible with the administration of justice.”
- [84] CPR 7.10 requires proof that service under CPR 7.9 “*cannot be effected.... for good reason*”, and an application made pursuant to CPR 7.10 must provide full details why service under Rule 7.9 cannot reasonably be effected, that the ordered

method is “*likely to enable*” the defendant to ascertain the contents, and that it is “*not contrary to the law*” of the country where the process is to be served.

[85] The caselaw demonstrates that “*good reason*” can include circumstances which consist of one or a combination of:

- (1) The limited lawful options for Hague Service in the defendant’s home country, (e.g. If the country has opted out of Articles 8 and 10 of the Hague Convention) and those options have been exhausted-**JSC MCC**;
- (2) The prospect of (or actual) exceptional delay in service pursuant to the Hague Convention-**Stichting**; and
- (3) Evidence that the Claimant has attempted service on multiple occasions-**Lonestar**.

[86] In my judgment, in the instant case, all of these factors are present. I say so for the following reasons:

- (1) Prior to the attempted Hague Service, the Respondent had exhausted the other means of service known and available to him; he had relied on the address provided by the Applicant in his witness statement in the Crown Treasure Proceedings as being the address of the matrimonial home which he shared with Ms. Yao.
- (2) The Hague Service process was initiated on 11th March 2024. At the time of the application for alternative service on 11th February 2025, almost a year had passed since the attempted Hague Service at the Applicant’s last known address in Shanghai, PRC, which address the Respondent obtained as stated above.
- (3) Despite seeking updates from the BVI High Court Registry, there has been no indication that the claim has been served in the PRC.

[87] I reject the Applicant’s submission that the Respondent is at fault in not taking all possible steps available to ascertain the Applicant’s correct address. The Respondent enquired of the Applicant’s Hong Kong solicitors whether they would

accept service. Whilst acknowledging receipt of Conyers letter of 31st January 2024, which enclosed the Claim Form and Statement of Claim, Henry Wai & Co indicated that they had no instructions to accept service. The Respondent's legal practitioners also made enquiries of Harneys, who had acted for the Applicant's wife in the Crown Treasure proceedings. There was no response. In my judgment, the Respondent made reasonable efforts.

[88] I accept Mr. Mayers' submission that in this case, the delay is more extreme than the worst case scenarios envisaged in similar cases in England, where it has been said that: "a delay of 12 months would be close to the limit beyond which it might be said that it was of exceptional length so as to be incompatible with the due administration of justice...", see **Celgard**.

[89] In my view, these circumstances combined are a good reason for alternative service, and the Court was, and remains justified in granting the Alternative Service Order, just as it did in **VTB** and **Lonestar** where repeated service failures and unacceptable delay sufficed as 'good reason', and the ordered method was likely to notify the defendant. The period of delay is of exceptional length, such as to be incompatible with the proper administration of justice.

Whether the Method Ordered Was Likely to Enable the Applicant to Ascertain the Contents

[90] In my judgment, it is appropriate for the Court to take a pragmatic approach to the question of service, and to bear in mind the overriding objective of dealing with cases justly. It is plain that the Applicant knows what is involved in these proceedings. In the Acknowledgement of Service filed on the Applicant's behalf, it was indicated that he received the Claim Form and Statement of Claim on the 5th of March 2025.

[91] The Applicant has filed an affidavit in support of his Set Aside Application, in which he has in my view gone somewhat beyond contesting service and the jurisdiction

of this Court. Indeed, he has sought to provide this Court with context, history and understanding of the underlying disputes between the parties, and has discussed other proceedings taking place in the BVI in which his former wife Ms. Yao is a party and he, the Applicant, has given evidence. As pointed out at paragraph [13] above, the Applicant has even expressed the belief that it is important for this Court to know (and for him to point out) the background and history of the parties' dealings so that this Court would have a better understanding.

[92] I note that although the 2018 Marital Property Agreement speaks of Madam Yao as having the sole beneficial interest in the Crown Treasure Shares, the parties have agreed together, to sell certain other real estate properties, to repay the loan incurred, for covering legal fees and expenses related to the BVI litigation. The parties also by the Agreement are required to regularly deposit their income into their joint account to fund family expenses. I am quite satisfied to the requisite standard that the method of alternative service chosen, of service on Harneys, Ms. Yao's legal practitioners, was likely to enable the Applicant to ascertain the contents of the Court process. It is plain from his affidavit that he clearly has.

[93] In **Abela** it was held that although the mere fact that the defendant had learned of the existence and content of the claim could not of itself constitute good reason, it was a critical factor to consider, since the most important purpose of service is to inform the defendant of the contents, and the nature of the Claimant's case. This reflects the position in the present case, as the Applicant now clearly has knowledge of the claim against him.

[94] I accept Mr. Mayers' submission that, even if the initial conduit was not the Applicant's own BVI lawyers, the combination of actual knowledge, immediate responsive steps by the Applicant, and the practical reliability of the conduit demonstrate substantive effectiveness of the service, however unorthodox it may have been. I accept the argument that the Court's focus on whether the mode of service was functional or effective is especially apt where the Hague Service

destination State (like Russia in **VTB** and the PRC here) bars Article 8 and 10 channels and central authority timelines are unpredictable.

- [95] It does seem to me that the Court has to take a pragmatic approach, as recommended in **Abela** and other cases, whilst balancing the interests of comity and preserving the observation of Treaty processes. It is plain to me that the Applicant has not suffered any prejudice in all of the circumstances.

Litigation Prejudice

- [96] Initially, when the submission was made at the hearing, I was inclining towards the Respondent's submission that there is an additional critical factor that shows that delay could result in other litigation prejudice and that was the question of limitation. However, based upon the further submissions provided by email, I am now satisfied that I do not have a sound foundation upon which to accept that submission. The point is not free from difficulty and would have required fuller argument were it critical to the case.
- [97] Although section 4 of the Limitation Ordinance has been placed before the Court by way of the further emails sent after the hearing, no case law interpreting the section or discussing its application to foreign judgments has been provided. I therefore cannot say, as presently advised, whether it is the six-year or the twelve-year period referred to in the Ordinance that applies to the Hong Kong judgment, or indeed, whether any other period applies and upon what legal basis it does so. Nor can I say that the potential effect of section 4(4) is that any arrears of interest that became due more than six years before in this jurisdiction, risk being irrecoverable. It seems that there may be more complicated questions, having to do with the interaction of Limitation periods in the foreign country (the *lex situs*) and the Limitation periods in BVI (the *lex fori*), and whether Limitation periods in the foreign country are to be considered procedural or substantive. As these matters have not been addressed before me, I will not consider them when deciding the issues herein. None of the parties have pressed for a further hearing

to be had in relation to this question. As I am able to decide the matter without exploring this point, I did not consider that dealing with the case justly required me to call the parties back for a further hearing on this point. These issues and matters can therefore be adjudicated upon in an appropriate case where they are critical and are argued out fully.

Forum/Jurisdiction Objections

[98] I now turn to examine the Applicant's Forum/Jurisdiction objections. CPR 7.3(5) allows service out for enforcement of a foreign judgment "*amenable to be enforced within the jurisdiction*". The certificate under CPR 7.6 was filed, identifying and relying upon Rule 7.3(5), certifying a good cause of action and that the BVI is an appropriate forum.

[99] The Respondent's primary contention was that the Applicant has assets in the jurisdiction in the form of a beneficial interest in Crown Treasure. The Applicant denies that assertion with some evidence (although I agree with the Respondent that this evidence predates the Applicant's separation from his wife and so does not clarify the position as it stands today regarding the BVI situ assets or transfers). The issue of what assets the Applicant may have in the jurisdiction is therefore contested. However, even if, as Mr. Mayers put it in his SKA, one were to prefer the Applicant's case on this point, in the context of recognising a final and conclusive foreign judgment for the purposes of enforcement, there are a variety of other substantive and practical reasons to conclude that the court has jurisdiction to make such an order as follows:

- (1) If and when the Hong Kong judgment is recognized, the Respondent will have a range of BVI enforcement tools whether assets are presently located in the Territory or have been recently dissipated.
- (2) Where assets have been moved or are not yet identified, the Court may grant a freezing order with ancillary disclosure to police dissipation and force a verified asset statement; appoint receivers by way of equitable execution over income streams or equitable interests; order examination on oath and

production of documents; and (where jurisdictional criteria are met) entertain insolvency routes with the investigative powers of an office-holder.

- (3) The recognized judgment can also be advanced into other jurisdictions for registration and execution under their local regimes while preservation orders here in the BVI support coordinated cross-border recovery.
- (4) The importance of these potential measures is that recognition of the Hong Kong judgment enables any such applications to be brought, and it is in the context of those applications that the question of whether and on what basis the Applicant has legal or beneficial ownership of assets in the jurisdiction which may be responsive to such an application should be ventilated.
- (5) I accept the Respondent's contention that, these enforcement possibilities, together with the contested assets situation, also explain why the BVI is an appropriate forum for recognition, notwithstanding any present uncertainty about assets. As Mr. Mayers argued, at sub-paragraph 30.2(e) of his SKA, *"The BVI courts have unique supervisory and coercive powers over BVI companies, shares and registered agents, and are the natural forum for preservation and execution against BVI-situ property and interests. Recognition here unlocks these tools and allows the Respondent to combine them with targeted foreign enforcement where assets are found. That is precisely the connection contemplated by CPR 7.3(5): recognition in the place where enforcement may realistically be undertaken or marshalled."*

[100] I also accept that it is not necessary to prove the location of every asset now, nor to particularize each enforcement step in advance. The threshold is whether the claim is to enforce a foreign judgment amenable to be enforced here and whether the BVI is an appropriate forum to facilitate that outcome. In my judgment, both are satisfied. The means of enforcement, or indeed which assets they might apply to is not the matter before the Court today.

[101] Whilst the dicta in the Irish first instance judgment in the **Petersen** case, cited by Mr. Spalton KC is relied upon by the Applicant, it seems to me that the facts of that

case are distinguishable. In that case, there appeared to be clear evidence that there were no assets of the defendant's in Ireland, the defendant being itself a State, i.e. The Argentine Republic (emphasis provided). However, in the instant case, whether the Applicant has a beneficial interest in the Crown Treasure shares is a contested issue, which arises against a backdrop of a complex interwoven history and set of dealings between the Respondent, the Applicant, and their respective wives. The threshold for this Court is not so high as to require proof at this stage that there are in fact assets to which the enforcement procedures can apply. There is more than sufficient connection to the Jurisdiction to demonstrate that the BVI is an appropriate forum for enforcement of the Hong Kong Orders.

- [102] I also find that there is no sound basis for the Applicant's alternative claims for a declaration that this Court has no jurisdiction, or that it should decline to exercise jurisdiction, or grant a stay.

Full and Frank Disclosure

- [103] It does appear that the Respondent's application for alternative service was determined before the Respondent had filed a SKA. However, the Court determined the application of its own motion. The Respondent claims at paragraph 17 of Mr. Hau's First Affirmation that he did not invite this approach. In my view, the learned Judge who dealt with the application was within his rights of case management. In any event, he should be taken to be well experienced with the principles having to do with the meaning of "good reason" in the context of ordering alternative service in countries that have rejected Articles 8 and 10 of the Hague Convention. Alternatively, if I am wrong on that, the Court could simply re-grant the Order because there is a sound basis for making it. In my judgment that is unnecessary in all of the circumstances, and would not be the best use of time, resources or costs.

[104] For these reasons, the Notice of Application dated 29th May 2025 is dismissed and the relief sought is refused. The Order for Alternative Service made on 4th March 2025 therefore stands.

[105] The Respondent is in my view the successful party. Costs are awarded to the Respondent against the Applicant, to be assessed if not agreed within 21 days of delivery of this judgment.

[106] I have now further reflected upon the Limitation point and how the arguments on that unfolded. Though it was not appropriate for the Applicant to seek to put further arguments to the Court without notice to the other side and without invitation, at the same time, the state in which the Respondent left the point was less than satisfactory. In all of the circumstances, weighing the justice of the issue, I am of the view that it would not be appropriate to penalize the Applicant by way of an order for costs other than in the amount of standard costs to be assessed if not agreed as referred to in paragraph [105] above.

[107] I thank both sides for their helpful submissions.

Ingrid Mangatal
High Court Judge (Ag.)

BY THE COURT



Registrar