



Neutral Citation Number: [2026] EWHC 2587 (Comm)

Case No: CL-2025-000494

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT

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

Date: 13/10/2026

Before :

THE HONOURABLE MR JUSTICE CALVER

Between :

(1) CENTRAL TÉRMICA DE TEMANE S.A.
(2) CITIBANK, N.A., LONDON BRANCH

Claimants

- and -

BANCO SANTANDER S.A.

Defendant

Stephen Houseman KC, Nehali Shah KC, Moritz Grimm (instructed by **Greenwoods Legal Services Limited**) for the **First Claimant** and (instructed by **Goodwin Procter (UK) LLP**) for the **Second Claimant**

Adrian Beltrami KC, Paul Bonner Hughes (instructed by **Allen Overy Shearman Sterling LLP**) for the **Defendant**

Hearing dates: 15-17/09/2026

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 12:00 on Tuesday 13 October 2026.

Mr Justice Calver:

FACTUAL BACKGROUND TO THE TRIAL

1. The First Claimant (“**CTT**”) is a Mozambique corporation and was the employer in respect of a project for the design, construction, and operation of a 450 MW combined-cycle power plant fuelled by natural gas at Temane, Mozambique (“**Project**”). Companies in the TSK Group were the onshore and offshore contractors in respect of the Project. CTT and entities in the TSK Group entered into an EPC (Engineering, Procurement and Construction) contract (“**EPC Contract**”) and a Co-ordination Agreement (“**Coordination Agreement**”) pursuant to which two Bonds were issued by the Defendant-bank (“**Santander**”) at the request of its customer, TSK Electrónica y Electricidad, S.A. (Spain) (and together with TSK Moçambique Limitada (Mozambique), “**TSK**”) (part of the TSK Group), in order to secure aspects of the EPC Contract (“**the Bonds**”). The Bonds consist of an Advance Payment Bond and a Performance Bond, each originally dated 2 December 2021, and each in favour of CTT as beneficiary.
2. The purpose of the Advance Payment Bond was to provide security to CTT in the event that TSK should fail to earn the full amount of the Advance Payment (as defined). The value of the Advance Payment Bond was to reduce as interim payments were earned by the contractors, with the remaining value being equal to the unearned amount of the Advance Payment. The purpose of the Performance Bond was to provide security to CTT in the event that TSK should fail to complete the Project in accordance with the contractual scheme.
3. The Expiry Date of the Bonds was originally 1 December 2024. They were extended on or around 5 November 2024 so that the Expiry Date became 28 February 2026. It is common ground between the parties that the Bonds are autonomous demand instruments. It is also common ground that CTT was at all times the beneficiary under the Bonds.
4. By this Part 8 claim CTT seeks an order for immediate payment to it by Santander in the sum of USD90,796,078.66 plus interest pursuant to demands made by CTT under the terms of the Bonds. The claim originally made in this action by the Second Claimant (“**Citi**”) no longer arises further to Santander’s admission that CTT, and not Citi, is the

Beneficiary under the Bonds and that CTT has made valid demands thereunder. However, Santander resists the claim of CTT on the ground that it has an illegality defence by reason of the fact that a Spanish Court has granted an interim injunction restraining it from paying CTT under the Bonds (“**the illegality defence**”).

5. The illegality defence raises four principal issues:

- (1) First, is the Spanish interim injunction capable of engaging the principle in *Ralli Brothers* so as to provide a defence to the claim?
- (2) Second, if the Spanish interim injunction is capable of engaging the principle in *Ralli Brothers*, is the place of performance under the Bonds (i) Mozambique, as the Claimants contend, on the basis that it is the place of Santander’s payment obligation under the Bonds; or (ii) Spain, as Santander contends, either on the basis that it is the country where the demands were to be made (and were in fact made) or the country where necessary performance steps were to be taken?
- (3) Third, is Santander entitled to rely upon the principle in *Ralli Brothers* in circumstances where it has not taken any steps in Spain to seek to discharge the Spanish interim injunction, nor established that any such steps would have been unsuccessful?
- (4) Fourth, is Santander entitled to rely on the principle in *Ralli Brothers* in circumstances where Santander could have paid under the Bonds before notification of the Spanish interim injunction on 10 April 2025?

I address each of these issues below (although I take issue 2 before issue 1), before finally addressing the issue of whether there should be a stay of any order that this court might make or the making of a deferred payment order.

Terms of the Bonds

6. The “*Bond Amount*” is described in Annexure 1 to each instrument. The Bond Amount of the Performance Bond is USD 86,030,000. The Bond Amount of the Advance Payment Bond was USD 24,088,400 but has reduced contractually to USD 4,766,078.66 following the achievement of certain milestones under the EPC Contract.

7. The Bonds provide (identically unless stated otherwise) as follows:

a. Clause 2 of the Performance Bond provides that Santander,

“irrevocably and unconditionally undertakes to pay to the Beneficiary¹ within five (5) Business Days following the Business Day on which it receives a written demand from the Beneficiary in accordance with clause 4 below an amount equal to the lesser of:

a) the amount specified in such demand; and

b) the Bond Amount less the aggregate of all previous payments made under this Bond”.²

b. Clause 3 provides that:

“The Bank’s obligation to make payments under this Bond shall arise on receipt of a demand made in accordance with provisions of this Bond without any further proof or condition and without any right of deduction, set-off or counterclaim, and the Bank shall not be required or permitted to make any other investigation or enquiry”.

c. Clause 4 then governs the making of a demand by the Beneficiary (i.e. CTT):

“The Beneficiary may make one or more demands hereunder. Each demand shall be:

a) substantially in the form set out in Annexure 2 [amended to insert the relevant details]; and

b) delivered to [Santander] on a Business Day and during normal banking hours at its offices specified in clause 9 below³ (or such other office of the Bank in Spain as the Bank may from time to time notify to the Beneficiary).”

d. Clause 6 provides that (i) the Bond is “irrevocable” and takes effect on the date of the Bond; and (ii) the expiry of the Bond (under clause 6(a)) “shall not affect or discharge the liability of the Bank to make payment of any demand in accordance with the provisions of clauses 2 and 4 on or before the Expiry Date”.

e. Clause 7 provides that:

“All payments to be made by [Santander] under this Bond shall be made to the account specified in the relevant demand and within the period

¹ CTT.

² Clause 2 of the Advance Payment Bond also includes the following wording “c) the Maximum Bond Amount less the aggregate of all sums previously paid under this Bond.”

³ Which is Santander’s Madrid office.

specified in clause 2, failing which interest shall accrue daily on the unpaid balance at a rate of 8% per annum until payment is made in full by [Santander].” (emphasis added)

- f. Clause 11 provides that all payments under the Bond “*shall be made free and clear of any withholding or deduction on account of tax or otherwise*”.
 - g. Clause 12 provides that the Bond “*and all non-contractual obligations arising from or connected with*” it are governed by English law.
 - h. Clause 13 provides that “*the courts of England have exclusive jurisdiction to settle any dispute arising from or connected with*” the Bond (a “**Dispute**”), and
 - i. Clause 14 provides that the parties agree that the courts of England are “*the most appropriate and convenient courts to settle any Dispute*” and that they will not argue to the contrary.
8. Clause 17 of the Advance Payment Bond provides for a notice from CTT to Santander stating that CTT has made Advance Payments to TSK under the Onshore Contract and Offshore Contract. Such notice was in fact provided to Santander on 22 April 2022.
9. Annexure 2 to the Performance Bond⁴ provides as follows:

“Form of Demand

To: [insert details of the Bank]

Dear Sirs

Re: the Performance Bond⁵ dated [] issued by [*] Bank in favour of [the Beneficiary] (“the Bond”)*

[I][We] hereby demand the amount of USD [] under the Bond.*

Payment should be made to Account Number [] Sort Code [*], designated or named [*] at [*] Bank [address].*

Yours faithfully

For and on behalf of [the Beneficiary]”

⁴ The wording of the *pro forma* Demand under the Advance Payment Bond differed slightly but neither party suggested this made any material difference to the analysis.

⁵ Or “Advance Payments Bond”.

Notices of Assignment

10. CTT obtained institutional funding for the Project. Citi was appointed as Offshore Security Trustee pursuant to the English Security Agreement between it and CTT, dated 21 October 2021 (the “ESA”). Pursuant to the ESA, CTT sent Santander Notices of Assignment dated 23 December 2021 (“NOAs”), which included an instruction that unless Citi served notice that the security created by the ESA had become enforceable (which it has not yet done), payment under the Bonds was to be made to CTT and “*all rights and remedies under or pursuant to the [Bonds], including without limitation, all rights to compel performance*” of the Bonds remained exercisable by CTT. On 2 February 2022, Santander acknowledged (by signature) receipt of the NOAs and the above instruction and confirmed it would act in accordance with them until it received notification from Citi that the security had become enforceable.

Incorrect references to Citi as the beneficiary are corrected (to CTT) by Santander

11. On 5 November 2024, Santander issued two Bond Addenda extending the Expiry Dates of the Bonds to 28 February 2026. On 11 November 2024 CTT advised TSK that the Bond Addenda incorrectly named Citi as the Beneficiary and that the numbers of the Bonds had also been changed erroneously. TSK agreed that no formal change had been made to the identity of the Beneficiary under the Bonds and stated that Santander had changed the numbers of the Bonds. On 26 November 2024 TSK informed Santander that the purported change to the identity of the Beneficiary in the Bond Addenda was a unilateral change not requested by TSK. On 28 November 2024 Citi informed Santander that CTT (and not Citi) needed to be named as the Beneficiary under the Bonds.
12. On 29 November 2024, Santander issued two further Bond Addenda providing notice of the correct Bond reference numbers but the Bond Addenda in their introductory language once again erroneously identified Citi (rather than CTT) as the Beneficiary under the Bonds. On 4 December 2024 Citi emailed Santander, summarising their earlier discussion in which it was made clear that Santander had incorrectly named Citi as the Beneficiary and that Santander had agreed to amend the Bond Addenda to correct this. On the next day, Santander requested by email that Citi and CTT should sign a letter confirming and acknowledging that CTT was the beneficiary under the Bonds.

13. Accordingly, the following day, 6 December 2024, Citi and CTT signed such a letter. On 9 December 2024 Santander emailed Citi and stated: “*We are satisfied with the enclosed letter*”. Santander also confirmed that it had “*sent the request to CESCE*”, being the official Export Credit Agency of Spain. On 10 December Santander told CTT that it was awaiting CESCE’s consent to the specifying of CTT as the beneficiary.
14. On 11 March 2025 in response to a request from TSK, Santander confirmed that the beneficiary under the Bonds was CTT and that CESCE had been notified of the correction to the identity of the beneficiary.

TSK purports to terminate EPC Contract; CTT issues demands under the Bonds

15. On 3 April 2025 TSK issued a notice purporting to terminate the EPC Contract by reason of a natural and prolonged force majeure event (tropical storm Filipo which lasted more than 180 days). This was disputed by CTT which led to the commencement by TSK of an arbitration on 15 May 2025, seated in London (“**the EPC arbitration**”).
16. Pursuant to clause 4 of the Bonds, on the next day, 4 April 2025, CTT sent a Demand Notice in the form of Annexure 2 to Santander at its Madrid office under each of the Bonds demanding payment of specified sums in US dollars to its bank in Mozambique (ABSA Bank) (“**the Demands**”)⁶. This meant that Santander’s obligation under clause 2 of the bonds was triggered on that date, 4 April 2025, to pay the amount specified in each of the demands to the specified account within 5 business days, namely *by 11 April 2025*.
17. It was common ground before me that Santander accepts that the Demands complied with the terms of the Bonds and were valid thereunder.
18. Despite the terms of the Bonds, on 4 April 2025 TSK wrote to Santander and demanded (i) the return of the Performance Bond pursuant to clause 19.7 of the EPC Contract and (ii) that Santander should not take any action that resulted in the Bond being paid or released to any party other than TSK itself.

⁶ USD 4,766,078.66 under the Advance Payment Bond and USD 86,030,000 under the Performance Bond.

Spanish Interim Injunction

19. Three days later, on 7 April 2025, TSK applied *ex parte* for an urgent interim injunction from the Court of First Instance No 5 de Móstoles, Spain (the “**Spanish Court**”) against CTT, said to be in support of its (intended) arbitration abroad⁷: (i) restraining Santander from fulfilling any request for payment of either or both of the Bonds; and (ii) ordering CTT to annul or cancel its payment demands addressed to Santander and not to formulate any new payment requirements. Mr. Beltrami KC, counsel for Santander (together with Paul Bonner Hughes), pointed out and I accept that there is no evidence to suggest that Santander knew of this application until 10 April 2025.
20. On 10 April 2025, the Spanish Court granted the *ex parte* interim injunction sought by TSK, with the subject-heading “*Arbitration*”. It found that TSK had a prima facie case (known as “*fumus boni iuris*”) that it had lawfully terminated the EPC Contract and that the Bonds should not be enforced. The Spanish Court then considered “*periculum in mora*”, that is whether there was danger in delaying the grant of injunctive relief which might lead to irreparable harm to TSK. It held that there was such danger in that if payment under the Bonds occurred and the arbitral tribunal subsequently found that the termination of the EPC Contract by TSK was lawful, CTT would be required to return the sums paid under the Bonds but it might not be able to do so, leaving TSK exposed to that credit risk. In other words the Spanish Court said, payment under the Bonds “*would anticipate the resolution of the dispute and provoke a disbursement that would be hard to reverse.*”
21. The Spanish Court did not appear to give any weight to the choice of English law and jurisdiction in the Bonds, nor to the fact that the EPC Arbitration was to be seated in London.

Santander’s response to the demands under the Bonds

22. On the same day, 7 April 2025 Santander emailed Citi and stated that it had received the demands made by CTT on 4 April in relation to the Performance Bond and the Advance Payment Bond and that “*taking into account the last communications we had with CTT and with you on who was the beneficiary of the bonds*⁸, we prepared an annex

⁷ The London-based EPC arbitration, which it commenced on 15 May 2025.

⁸ i.e. the confirmation that CTT was the beneficiary on 6 and 9 December 2024.

to the [Bonds] in order to update the beneficiary to be read as CTT....These annexes were never issued as we were waiting to receive updates from our client in this respect, as they didn't agree with CTT being the beneficiary. In the meantime, we received almost at the same time, a request from our client to request [from] CTT the release of the [Bonds] and the [release of the] demand for payment of these [Bonds] from CTT".

23. If this be correct, it appears that TSK may well have been deliberately stalling on confirming that CTT was the beneficiary under the Bonds despite its earlier confirmation that that was so.
24. In the same email of 7 April 2025, Santander understandably said that it wanted to check with Citi before making any payment whether it was *"in agreement with making payments under the bonds to CTT"* and noting that Santander had not received from Citi *"any other such directions other than [those] contained in the notice and the acknowledgment of assignment"* and so Santander wanted to check this with Citi *"for good order"*. It finished its email by stating *"We kindly request and we will highly appreciate your prompt response considering that it is a very sensitive matter."*
25. Santander followed this email up by sending another email to Citi on the next day, 8 April 2025, in which it stated an additional concern, namely:

"Although as per agreed with you and with CTT and as per our understanding the beneficiary of the bonds is CTT. However, as you already know the current beneficiary as per last amendments issued at our end to extend the validity is your entity, Citi.

Having received the demand for payments from CTT under the bonds issued in your favor is discrepant. Therefore, we are willing to receive your confirmation on whether although we have this issue, if we could consider the demand for payment valid.

Given the importance of this matter, we kindly ask you to please give us an answer by today if possible. We will highly appreciate it. (emphasis added)

26. Santander were clearly aware of the urgency of the situation and were pressing for a quick resolution. Two days later, on 10 April, Citi confirmed that it had not notified Santander that the security created by the ESA had become enforceable, and it followed that the instruction in the NOAs - that CTT could exercise all rights under the Bonds - remained valid.

27. However, on the very same day, 10 April 2025, the Spanish Court granted the Interim Injunction. On the same day, 10 April, Santander informed CTT by letter that as a result “*by the moment we cannot pay the amount claimed [in the demands] and we await the Court decision.*” CTT did not respond to this letter.
28. The deadline for Santander making payment in accordance with the Bonds was 11 April (being 5 Business days after the Demands were made on 4 April 2025). However, the Spanish Interim injunction had now been granted the day before, on 10 April.
29. On 11 April 2025 Santander also emailed Citi to inform it that as a result of the injunction, “*we must suspend the payment of the demands. Given that we are a Spanish entity we must abide by the provisions of the Spanish legal system and therefore abide by the aforementioned order*”. Citi did not respond to this email either.
30. As Mr. Beltrami submitted, this correspondence does not suggest to me that Santander was dragging its feet; on the contrary it was requesting swift responses to understandable concerns that it had in relation to payment under the Bonds. A common theme of the submissions of Mr. Houseman KC, counsel for CTT and Citi (together with Nehali Shah KC and Moritz Grimm), was that Santander is the mouthpiece for TSK and that it was deliberately stalling on making payment whilst TSK sought its injunction from the Spanish Court; and, moreover, that Santander has adopted a “non-neutral approach” throughout this dispute. I do not accept this suggestion which is unsupported by any evidence. On the contrary, it is apparent from the foregoing that Santander was chasing for answers in order to be in a position to make payment under the Bonds in the short period prior to the grant of the Spanish Court’s injunction. As I have said, there is no evidence to support the assertion that Santander knew of the injunction application before 10 April 2025.
31. Mr. Houseman also suggested, by reference to paragraph 10 of the Claimants’ skeleton argument that “*Santander has acquired an indirect equity stake in TSK through an investment vehicle during the course of this litigation, making it TSK’s largest institutional investor at the moment. There is no evidence as to the existence or adequacy of security for Santander’s customary indemnity against TSK as procurer of the Bonds. TSK’s proven aggression and this atypical relationship may be motivating Santander to resist payment and preserve the cashflow status quo which benefits TSK.*”

32. The Claimants having asserted this in their skeleton argument with the suggestion that this was indicative of Santander's bad faith, in oral submissions Mr. Houseman further asserted that this court could infer from the fact that Santander had, he said, spent £2.5m on running its defence to this claim, that TSK is indemnifying Santander to run that defence, and part and parcel of this "hidden commercial deal" between Santander and TSK is that the Bank would not apply to the Spanish Court to set aside the injunction obtained by TSK. There is no evidential support for either of these assertions which I do not accept.
33. Allen Overy Shearman Sterling LLP ("**A&O Shearman**"), Santander's solicitors, had already explained on 4 September 2026 in their letter to the Claimants' solicitors that *"the observations in your letter regarding Santander Asset Management, S.A., SGIIC (SAM) [concerning the acquisition of the equity stake] are misconceived and irrelevant. SAM is an investment management firm which is operationally and regulatorily independent from Santander in its investment management activities. The referenced stake in TSK Electrónica y Electricidad, S.A. was acquired by funds managed by SAM in the ordinary course of its asset management activities and is unrelated to the[se] Proceedings"*. The Claimants' solicitors did not follow up on this point but the Claimants nonetheless maintained it at trial. I reject it.
34. In short, I accept Santander's submission that it is defending these proceedings because of the position in which it finds itself where (i) on the one hand it is subject to an injunction of the Spanish Court ordering it not to make payment under the Bonds and (ii) on the other hand it is Defendant to this claim in which the Claimants maintain that Santander must make payment under the Bonds by reason of the governing law of the Bonds, namely English law. Had Santander simply paid in breach of the Spanish Court Injunction and before any ruling on this claim from this court, the parties' experts on Spanish law are agreed that the risk of Santander incurring civil and criminal liability under Spanish law would have been high. In these circumstances its dilemma is readily understandable, although Santander's failure itself to challenge the grant of the interim injunction in Spain raises the issue of whether Santander has taken all reasonable steps to bring about its contractual performance.
35. However, I accept Mr. Beltrami's submission that Santander has always accepted that the Bonds are autonomous instruments payable in accordance with their terms

regardless of any dispute between CTT and TSK; that Santander has accepted the validity of the demands as regards form and content; but as Santander explained on the 10th of April 2025 it has not paid under the Bonds because it is subject to a binding order from the Spanish Court prohibiting it from doing so and with the attendant (high) risk of civil and criminal liability in Spain should it do so. It resists this claim solely on the ground, it contends, that the Spanish order provides a complete defence to Santander under the rule in *Ralli Brothers*; and, by way of alternative submission, it seeks a stay of execution of any order of this court in order for an application to be made in Spain under article 743 of the Spanish Civil Procedure Act on the ground of there being a relevant change of circumstance (namely (if granted) the order of this court that Santander must pay under the Bonds as a matter of English law).

Commencement of the arbitration and CTT's application to discharge the Spanish Injunction

36. On 15 May 2025 TSK commenced its arbitration against CTT (which was required by the Spanish injunction).
37. On 22 May 2025 CTT filed written submissions and evidence in Spain in support of its application to discharge the Spanish interim injunction. CTT's written submissions were thorough, consisting of 50 pages of closely reasoned arguments and made all of the key points for the discharge of the injunction. In particular they advanced the following arguments:

(1) The injunction is not intended to ensure the enforcement of a foreign arbitration, but rather is aimed at preventing the enforcement of the [Bonds] over which the English courts have exclusive jurisdiction, but without any proceedings having been initiated before that jurisdiction.

(2) The injunction ordering Santander to refrain from complying with the request for payment of the Bonds lacks the appearance of good faith because these are first demand instruments under English law, there is no fraud and so they must be complied with as autonomous and irrevocable guarantees. Such Bonds are a fundamental pillar of global commercial traffic. If market participants begin to perceive that a local court can invalidate an on-demand guarantee by means of a unilateral order their reliability

evaporates. The injunction wrongly interferes with Santander's obligation to pay on demand under the Bonds.

(3) There was no danger to TSK had an injunction not been granted. CTT is solvent and could reimburse the proceeds obtained under the Bonds; CTT's shareholders can meet their obligations; CTT is hedged against political risks; enforcement of the bonds will not have adverse economic consequences for TSK; if payment under the Bonds is made the arbitration proceedings will, contrary to TSK's argument, still have a clear purpose, namely to determine TSK's claim for a declaration that the termination by it of the underlying contract was lawful, such that the sums paid under the Bonds should be returned.

(4) The injunction is disproportionate in depriving CTT of the essential cashflow for which it bargained. By agreeing that the Bonds were to be on demand, TSK expressly assumed the contractual risk inherent in this type of guarantee. In support of this case CTT attached the opinion of Mr Rhodri Davies KC, whom it described as an English legal expert. Mr Davies explained that an important function of a first demand guarantee is to secure cash flow for the beneficiary once the demand has been issued. It must be met without enquiry consistent with the very purpose of the protections. Accordingly the demands should have been honoured by Santander without further enquiry.

38. It follows that, as Mr. Beltrami submitted, CTT made the Spanish Court aware of the particular obligations under on-demand bonds under English law, of the impact of the Spanish injunction on Santander's obligations under the Bonds, and of the jeopardy that Santander faced by reason of the risk of conflicting obligations between court orders and its contractual obligations. Despite this, the Spanish Court granted the interim injunction.

Spanish Court vacates the hearing of CTT's discharge application

39. A return date for the discharge application of CTT was initially fixed for 17 September 2025, but on 11 September the Spanish Court vacated that hearing date and re-fixed it for 19 January 2026.

40. On 22 September 2025 CTT lodged a 16 page written submission to the Spanish Court by which it sought to appeal against the vacating of the hearing date and the re-fixing of the hearing date to a date in January 2026. CTT told the Spanish Court that since the Bonds were due to expire on 28 February 2026, if a hearing did not take place until the 19th of January 2026 that would not give CTT enough time, after an assumed discharge of the Spanish injunction, to enforce payment in England before the Bonds expired, and CTT would thereby suffer “irreparable” damage. At this stage, therefore, CTT was seeking the removal of the Spanish injunction before seeking to enforce payment under the Bonds.

CTT commences this action, seeking payment under the Bonds

41. Because of the delays in the Spanish Court process, it appears that it was around this time that CTT decided that it should also seek an order of the English Court to enforce payment under the Bonds. On 7 October 2025 its solicitors, Greenwoods, sent a letter before action to Santander demanding payment under the Bonds failing which it said CTT would seek an order from the English court compelling it to make payment.
42. Santander responded by letter dated 9 October in which it simply reiterated what it said in its letter to CTT dated 10 April 2025, namely that it was enjoined from paying by reason of the Spanish injunction.
43. On 29 October 2025 Citi also issued Demands under the bonds under a covering letter in which it stated that “*for the avoidance of doubt, the Trustee Demand Notices [were] served expressly without prejudice to the principal position that the CTT Demand Notices [were] valid and should be paid by Santander*”. Citi’s Trustee Demand Notices were said to be served on a precautionary basis, in case it was determined that it was the Offshore Security Trustee, rather than CTT, that was entitled to issue demands under the Bonds.

TSK seeks injunctive relief in the arbitration to restrain these proceedings; it also applies to join these proceedings

44. On the same date, 29 October, CTT and Citi issued these Part 8 proceedings against Santander. This appears to have prompted TSK to apply, on 12 November 2025, for

interim injunctive relief in the underlying arbitration. TSK sought the following relief in particular:

(a) As a matter of immediate priority, an order that CTT take all necessary steps to suspend or stay the English Proceedings pending the Tribunal's determination of its application—and in any event, within 24 hours of the Tribunal's decision on this urgent request;

(b) An Order that CTT immediately withdraw the English Proceedings;

(c) An Order that CTT immediately formally withdraw its call on the Bonds;

(d) An Order that CTT refrain from (i) issuing any new payment demands under the Bonds or (ii) taking any other actions that could result in the collection of any amounts under the Bonds.

45. In addition, TSK applied to join the Part 8 proceedings on 18 November 2025.
46. On 25 November 2025 A&O Shearman wrote to Citi's solicitors and stated that "[a]s anticipated in the 19 November letter, having reviewed the position, Santander confirms that it considers CTT (and not Citibank) to be the Beneficiary under, and as defined in, the Bonds". They suggested that in those circumstances Citi did not need to remain a party to the proceedings.
47. On 12 December 2025, A&O Shearman wrote to Greenwoods and confirmed that "*Santander takes no independent points as to compliance of the demand notices themselves (i.e. as regards form and content) with the terms of the relevant bonds*", although it could not make an admission as to the validity of the demands made by CTT in circumstances where Santander was not a party to the arbitral proceedings and did not have access to the relevant evidence (Santander subsequently repeated this position by letter from A&O Shearman dated 16 January 2026). On the same date Santander informed TSK by letter that it stood ready to extend the validity of the Bonds if the arbitral tribunal required TSK to procure such an extension for such period as the tribunal thought fit.

48. On 6 January 2026 by Procedural Order No 4, the arbitral tribunal dismissed TSK's application for the interim injunctive relief referred to in paragraph 44 above and such ruling is now final and binding upon it under the Arbitration Act 1996.

Santander sets out its Ralli Brothers defence; alternatively its need for a stay

49. In the letter from A&O Shearman to the Claimants' solicitors dated 16 January 2026, Santander set out its position from the outset concerning the Spanish proceedings and the English proceedings, which in summary was as follows:

"In short, Santander contests the [English] Proceedings on the basis that it is prohibited from making payment under the Bonds due to the Spanish Interim Injunction and the rule in Ralli Brothers applies to prevent enforcement of its contractual performance, alternatively that the Court should order a stay of enforcement pending the discharge of the Spanish Interim Injunction. Further, in light of the matters raised in the context of TSK's application to join the Proceedings dated 18 November 2025 (the Joinder Application), and pending its determination, Santander at this stage makes no admission as to the validity of the demands made by CTT."

50. A&O Shearman further stated that any payment under the Bonds would be unlawful in Spain by reason of the Spanish interim injunction and the application of the rule in *Ralli Brothers*:

"[t]he relevant contractual performance in this case is the payment by Santander under the Bonds. The relevant place of performance, contrary to the position taken by CTT, is Spain as this is where the demand notices were required to be delivered".

51. A&O Shearman added that *"If the English Court were ultimately to grant the order the Claimants seek in the Proceedings, Santander would be faced with two conflicting orders where the potential consequences of non-compliance in both cases are serious. In such circumstances, if the Court is not persuaded that the rule in Ralli Brothers should apply to prevent Santander from being required to make payment in breach of the Spanish Interim Injunction, Santander will request that the Court exercise its discretion to stay any such payment until the Spanish Interim Injunction is lifted."*

Spanish Court dismisses CTT's discharge application

52. The return date for CTT's application to discharge the Spanish interim injunction was 19 January 2026. A hearing took place on that day and the Spanish Court gave its

judgment the next day, on 20 January 2026, in which it dismissed the application (“**the Confirmatory Order**”).

53. In its judgment the Spanish Court explained that, as a matter of Spanish procedural law, the hearing before it did not take the form of a full review of the legal criteria applied in the earlier judgment. The Court explained that the earlier judgment granting the measure expressly and sufficiently set out its findings, namely that TSK had established that there were sufficient grounds for the existence of ‘*fumus boni iuris*’⁹, recognising the existence of a legally well-founded dispute regarding the enforcement of the guarantee, as well as the existence of ‘*periculum in mora*’¹⁰ arising from the immediate and largely irreversible nature of the payment of the guarantee. The Court observed that CTT’s arguments did not introduce any new factual or legal elements which would allow the provisional assessment of the Court which granted the interim injunction to be altered. Rather, CTT merely reiterated its argument regarding the full autonomy of the guarantee and the inappropriateness of suspending it, points which were already weighed in the balance by the Court at the time when the injunction was granted.
54. On 24 March 2026 CTT filed an appeal against the Confirmatory Order. The appeal will apparently be determined on the papers.

CTT’s response to the Spanish injunction

55. Mr. Beltrami submitted that it is “clear” that CTT’s primary strategy from the outset was to seek the removal of the Spanish injunction before enforcing the Bonds. He suggests that CTT maintains even now before the Spanish Court that the removal of the Spanish injunction is a vital piece of the contractual machinery required to enable it to make a claim on the Bonds, otherwise CTT would not have told the Spanish Court that unless its appeal were allowed there would be damage of a greater magnitude which is more difficult to remedy than the damage which the injunction is intended to prevent.
56. Whether that be the case or not, I consider it to have been understandable for CTT to have attempted in the first instance at least to have the Spanish interim injunction set

⁹ i.e. the claimant’s argument has a reasonable chance of success at the interim stage (akin to a “good arguable case” test).

¹⁰ i.e. a risk of injustice if the interim injunction is not granted arising from the immediate and irreversible nature of the payment under the Bonds.

aside in order to avoid any conflict between an English court order and a Spanish court order. Once it became apparent that that was not going to be an easy task, CTT commenced these proceedings and pursued both courses of action. In these circumstances and contrary to Mr. Beltrami's submission, I do not consider that CTT's approach to the dilemma in which it finds itself lends any weight to Santander's stay application to which I refer below, nor do I consider that it casts CTT in a poor light generally. Indeed, both CTT and Santander found themselves in a difficult position, which was not of the making of either of them, as a result of TSK obtaining the interim injunction from the Spanish Court. I do not consider this fact, *per se*, has any significance in the determination of this Part 8 claim.

TSK's joinder application is dismissed

57. On 27 March 2026 Knowles J heard and dismissed TSK's application to join the Part 8 claim as an additional party. He also dismissed TSK's application for permission to appeal against his order. On 12 May 2026 the Court of Appeal also dismissed TSK's application for permission to appeal the dismissal of its joinder application. As Popplewell LJ stated, "*the validity of the demands as a matter of TSK's contractual rights and obligations vis a vis CTT under the EPC are not relevant to whether Santander has a defence to the claim on the bonds and, therefore to the validity of the demands in that sense*".

THE LAW: THE RALLI BROTHERS PRINCIPLE

58. In *Ralli Brothers v Compania Naviera Sota Y Aznar* [1920] 2 KB 287 ("**Ralli Brothers**") the freight for the carriage of a cargo of jute to Barcelona was to be paid in Spanish currency to a Spanish company. After the contract was made the Spanish Government set a maximum for freight, which was much lower than the amount agreed by the parties. The receivers of the cargo declined to pay above that maximum threshold and the Spanish owners sued in London for the balance. It was held that they could not recover it. In particular, Scrutton LJ stated at 300-301 as follows:

"It is now quite common for exceptions, or exemptions from liability to be grafted by implication on contracts, if the parties by necessary implication must have treated the continued existence of a specified state

of things as essential to liability on the express terms of the contract. If I am asked whether the true intent of the parties is that one has undertaken to do an act though it is illegal by the law of the place in which the act is to be done and though that law is the law of his own country; or whether their true intent was that the doing of that act is subject to the implied condition that it shall be legal for him to do the act in the place where it has to be done, I have no hesitation in choosing the second alternative. “I will do it provided I can legally do so” seems to me infinitely preferable to and more likely than “I will do it though it is illegal.”

And at 304:

“I should prefer to state the ground of my decision more broadly and to rest it on the ground that where a contract requires an act to be done in a foreign country, it is, in the absence of very special circumstances, and implied term of the continuing validity of such a provision that the act to be done in the foreign country shall not be illegal by the law of that country... this country should not in my opinion assist or sanction the breach of the laws of other independent states.”

59. In general, illegality under foreign law does not frustrate or otherwise relieve a party from performance of an English law contract. The rule in *Ralli Brothers* accordingly “operates as a limited exception to this general rule. It provides that an obligation under an English law contract is invalid and unenforceable or suspended in the case of a payment obligation insofar as the contract requires performance in a place where it is unlawful under the law of that required place of performance”: per Cockerill J in *Banco San Juan Internacional Inc v Petroleos de Venezuela SA* [2021] 2 All ER 590 at 606 ([76]-[77]).
60. In *Mackender v Feldia AG* [1967] 2 QB 590, Diplock LJ described the rule as follows at p 601, “... the English courts will not enforce performance or give damages for non-performance of an act required to be done under a contract... if the act would be illegal in the country in which it is required to be performed.” Similarly, in *Standard Chartered Bank v Ceylon Petroleum Corp* [2011] EWHC 1785 at [459], Hamblen J stated that “Under English law, performance of a contract is excused if it necessarily involves doing an act which is unlawful by the law of the place where the act has to be done...”. In other words, when the *Ralli Brothers* rule is engaged it operates as a complete defence to the claim seeking contractual performance.

61. The confines of the doctrine are, however, narrow. The rule applies where contractual performance *necessarily* requires an act to be done in a place where it would be unlawful to carry it out: *Celestial Aviation Services Ltd v UniCredit Bank GmbH, London Branch* [2025] 1 WLR 196 at [105].
62. Furthermore: (i) the illegality or unlawfulness must relate to the performance itself; (ii) reasonable steps must have been taken to avoid the illegality/unlawfulness; and (iii) the party seeking to rely on the illegality/unlawfulness must not have been at fault in the sense that it could have done something to bring about valid performance and failed to do so: *Celestial* at [106] and [120]-[125]. I return to this below when considering the facts of this case.
63. As Cockerill J stated in *Banco San Juan* at [79]: “*The doctrine therefore offers a narrow gateway: the performance of the contract must necessarily involve the performance of an act illegal at the place of performance. ... it is no use if the contract could be performed some other way which is legal; and it is no use if the illegal act has to be performed somewhere else*”.
64. Importantly, Falk LJ explained a further restriction on the availability of the defence in *Celestial* at [106]:
- “*A distinction has been drawn in the case law between situations where performance is illegal in the jurisdiction where performance must take place, where the principle applies, and cases where the illegality relates to a preparatory step to performance, or “equipping to perform” ... where the illegality does not excuse non-performance.*”
65. Thus, in *Kleinwort, Sons and Company v Ungarische Baumwolle Industrie Aktiengesellschaft* [1939] 2 KB 678, the Court of Appeal rejected an attempt to rely upon *Ralli Brothers* based upon legislation and decrees of the Hungarian government declaring it illegal for Hungarian subjects to pay sums in sterling except with the consent or permission of the National Bank, where the contract was an English one to make payment in England (see [693]). As du Parc LJ emphasised at [699]:
- “*Primarily it is our business to see that English contracts are observed and carried out according to English law*”.

Relevant to the present case are the observations of Atkinson J (at [700]) that:

“In this contract the obligation is to pay certain money in London, and the contract is not concerned with the steps which the debtors may have to take to put themselves in a position to pay. It is concerned only with the payment itself, which is to be made in this country”.

66. Similarly, in *Toprak Mahsulleri Ofisi v Finagrain* [1979] 2 Lloyd’s Rep 98, the sellers sold to the buyers, a Turkish state organisation, 350,000 tonnes of US wheat, C&F named Turkish ports. Payment was to be by irrevocable, divisible and transferable letter of credit to be opened in the sellers’ favour with and confirmed by a first class US or West European bank covering 100% payment against presentation of shipping documents. The Turkish organisation failed to establish the required letter of credit by reason of Turkish government exchange controls. It maintained that the contract became illegal by the law of Turkey. If it were to obtain permission for currency to be provided, it would have to operate through an issuing bank in Turkey, which would have a confirming bank in London, Switzerland or some other country. But by Turkish law it was illegal for the Turkish organisation to provide the finance for this letter of credit. In these circumstances the Turkish organisation argued that in view of that illegality by Turkish law they had a *Ralli Brothers* defence to the claim.

67. The Court of Appeal rejected the *Ralli Brothers* defence. At [114] Lord Denning MR stated:

“In this particular case the place of performance was not Turkey. Illegality by the law of Turkey is no answer whatever to this claim. The letter of credit had to be a confirmed letter of credit, confirmed by first class West European or U.S. bank. The sellers were not concerned with the machinery by which the Turkish state enterprise provided that letter of credit at all. The place of performance was not Turkey.” (emphasis added)

Lord Denning MR stated that this case was, rather, governed by the approach taken in the *Kleinwort* case (*supra*).

68. In *Libyan Arab Foreign Bank v Bankers Trust Co* [1989] 1 QB 728 at 744, Staughton J said that he concluded from the *Toprak* case that it is “*immaterial whether one party has to equip himself for performance by an illegal act in another country. What matters is whether performance itself necessarily involves such an act.*” (emphasis added)

69. As set out in paragraph 50 above, Santander accepted in correspondence that “[t]he: *relevant contractual performance in this case is the payment by Santander under the*

Bonds". But it then went on to suggest that: "*The relevant place of performance, contrary to the position taken by CTT, is Spain as this is where the demand notices were required to be delivered*". I accordingly turn to this question next.

IS THE PLACE OF PERFORMANCE IN THE PRESENT CASE SPAIN OR MOZAMBIQUE?

70. The starting point in the analysis, in determining whether the performance of the contract by Santander necessarily requires the performance by it of an act illegal at the place of performance, must be to construe the Bonds themselves, the relevant provisions of which are set out above.
71. It is clear from the express terms of the Bonds themselves (in particular clauses 2, 3 and 7) that Santander's obligation under the Bonds is to make payment within 5 Business Days following receipt of a written demand, delivered to its offices in Spain, in the form of Annexure 2. As A&O Shearman themselves rightly stated: "[t]he: *relevant contractual performance in this case is the payment by Santander under the Bonds.*"
72. Furthermore, by clause 7 of the Bonds Santander's *contractual obligation* is to make payment (payment "shall be made") to the bank account specified in the relevant demand, which in this case was a bank account at the ABSA bank in Mozambique. By clause 7 of the Bonds, Santander accordingly agreed to a contractual term which allows CTT to fix the place of payment: in other words, Santander allowed CTT to determine how it was to discharge the contractual obligation which it owed to CTT.
73. This is not merely "*contractual machinery for identifying the destination account*" as Santander suggest in paragraph 42 of their written argument or merely an "*administrative provision recognising that the beneficiary would provide account details in due course*" as Mr. Beltrami characterised it in oral argument. Rather, clause 7 specifies what Santander must do in order to comply with its payment obligation under the Bonds, namely it must make its payment to the account specified by CTT in the relevant demand, being in this case the account at ABSA bank, Mozambique. Payment into the account in Mozambique is the performance of Santander's payment obligation. If it were to pay to an account elsewhere it would be in breach of its payment obligation.

74. Santander's obligation under each of the Bonds – to make payment – only arises on receipt of the written demand which demand must comply with clause 4 of the Bond. CTT's obligation under each of the Bonds, if it wishes to be paid by Santander, is to make a conforming demand. But once a conforming demand is made by CTT, Santander's obligation to pay arises without more - as clause 3 of the Bonds provides, it "*shall not be required or permitted to make any other investigation or enquiry.*"
75. It follows in my judgment that, Santander's obligation under the contract being to make payment at the bank in Mozambique which CTT specified in its written demand, the place of performance of the payment obligation is Mozambique. Compliance with that obligation is not contrary to the law of Mozambique and accordingly the *Ralli Brothers* exception does not apply.
76. This is what the parties have agreed to in their contract. As Falk LJ emphasised in *Celestial* at [116], contracting parties have the power to "*agree terms of their choice, including as to the manner of performance.*" In *Celestial*, Falk LJ referred to the fact that the Judge at first instance concluded that the place of performance was London or Dublin, according to the location of the bank account specified in the relevant demand certificate (the letter of credit provided that "*the confirming bank will make payment to beneficiary's account specified in the demand certificate*"). There is no suggestion in her judgment that she disagreed with that approach.
77. So too in *Cargill International Trading Pte Ltd v Uttam Galva Steels Ltd* [2019] EWHC 476 (Comm), Bryan J considered that "*an obligation to pay money into a specified bank account is performed in the place where the bank account is located, not the place where the payer is located*" and was "*satisfied that this is a proposition which is self-evident and is obviously right*".
78. Bryan J observed that this proposition was supported by authority, namely the judgment of Leggatt J in *Dana Gas PJSC v Dana Gas SUKUK Ltd* [2018] 1 Lloyd's Rep 177 at [80], in which the Judge held that the place of performance of a payment obligation, arising upon a trustee exercising a power requiring Dana Gas to purchase all of the trustee's rights and benefits following the service of an Exercise Notice, was the place of the account into which payment was to be made (as opposed to the place where the Exercise Notice was to be served):

“It [did] not appear that any of the obligations that the defendants wish to enforce require Dana Gas to do anything in the UAE. In particular the obligation which arises where the trustee exercises its rights under the Purchase Undertaking by delivering an Exercise Notice is an obligation to pay the Exercise Price into the Transaction Account. The Transaction Account is an account maintained by the trustee with Deutsche Bank in London. Performance of this obligation therefore is to take place in England.”

79. In *Credit Agricole Indosuez v Chailease Finance Corp* [2000] 1 All ER (Comm) 399 the appellant, Credit Agricole Indosuez (“**CAI**”), was a French Bank with a branch in Geneva. That branch issued a Letter of Credit in favour of the respondent, Chailease Finance Corp (“**CFC**”). The Letter of Credit was subject to the Uniform Customs and Practice for Documentary Credits No 500 (UCP 500) and it covered the sale of a vessel, with payment to be made in two tranches. CFC presented what it contended were conforming documents to CAI in Geneva and instructed CAI to make payment of the first tranche to its bank in Taipei. CAI rejected the documents. CFC made a second presentation and again instructed payment to its bank in Taipei. CAI again rejected the documents. A third presentation took place and on this occasion CFC instructed that the funds be paid to its account in London. Again the documents were rejected. CFC brought an action in England for payment. It argued that for the purposes of Article 5(1) of the Brussels Convention the place of performance of the obligation in question was London in accordance with the instructions given to CAI upon the third presentation. The judge found in favour of CFC and awarded it summary judgment. The Court of Appeal dismissed the appeal of CAI.
80. In particular, the relevant letter of credit stated as follows:
- “Upon receipt at our counters in Geneva of documents in strict conformity with this standby letter of credit terms and conditions, we shall pay you as per your instructions, value two Geneva/New York Bank working days.”*
81. Article 5(1) of the Brussels Convention provides that:
- “A person domiciled in a contracting state may, in another contracting state, be sued: (1) in matters relating to a contract in the courts for the place of performance of the obligation in question...”*
82. Potter LJ, who gave the leading judgment of the court, first referred to the analysis of the Judge below (Stephen Tomlinson QC, whom the Court of Appeal subsequently followed):

“10. The Court of Justice of the European Communities has held that, in order to identify the obligation in question, one must identify the obligation ‘which corresponds to the contractual right on which the plaintiff’s action is based’...

11. The judge held that the relevant obligation was the obligation of CAI to pay the plaintiff in London pursuant to its instruction on the occasion of the third presentation. He said:

‘It is true that that obligation does not arise unless and until conforming documents are presented to the bank, and that on the facts of this case that presentation had to take place in Geneva. But, provided that conforming documents have been presented to the bank in Geneva, the contractual right on which the beneficiaries’ action is thereafter based is the right to receive payment in London. No doubt the bank has a separate obligation to examine documents presented and to take up only conforming documents, although I should have thought that is likely to be a duty which is owed to the applicant for the credit, rather than to the beneficiaries. The beneficiary has no need to rely upon such a separate obligation. If conforming documents are presented, the bank owes an autonomous duty to the beneficiary to make payment to it at the place designated for payment. The beneficiary’s entitlement is contingent not upon examination of the documents but upon their objective conformity. If the documents are, objectively judged, conforming, then the bank is obliged to pay the beneficiary at the designated place of payment. In the event that it does not do so, then the contractual obligation whose performance is sought in the ensuing judicial proceedings ... is the obligation to pay the beneficiary at the designated place of payment.’
(emphasis added)

83. The Judge’s analysis above was challenged in the Court of Appeal by Mr. Stephen Males QC (as he then was). He submitted that on the true construction of the letter of credit, and in accordance with the principles on which art 5(1) is based, the ‘obligation in question’ was the bank’s obligation to examine and take up conforming documents, which obligation was to be performed in Switzerland (‘at our counters in Geneva’). He submitted that the bank’s obligation following receipt of conforming documents in Geneva, to pay ‘as per your instructions’ was dependent on and no more than secondary to that principal obligation.
84. Potter LJ rejected this challenge to the judge’s analysis. He explained that the “*claim in this case is based on the contractual right of Chailease to be paid, conditional on presentation of conforming documents prior to expiry of the credit. Where a claim is based upon failure to pay money, the obligation in question is the obligation to pay the money, and the place of payment is the place of performance for the purposes of art*

5(1). It seems to me that the attempt by Mr Males to characterise the obligation of CAI to accept the conforming documents as the principal obligation, with payment merely dependent upon (and therefore secondary to) it, must fail.”

85. Whilst I recognise, of course, that *Chailease* concerns article 5(1) of the Brussels Convention where the court is concerned with a single place of performance for the purpose of jurisdiction under article 5(1), I consider that nonetheless the reasoning of the two courts in *Chailease* set out above is of direct relevance to the present case. CTT’s claim is a contractual right to be paid under the bonds against the presentation of (here, admittedly) conforming written demands. The claim is based upon Santander’s failure to pay money; the obligation in question under the Bonds is Santander’s obligation to pay money; and the place of payment is the place of performance.

86. As Potter LJ stated at [19]:

“So far as the obligation of CAI to examine and take up documents is concerned, Chailease do not sue or otherwise base their cause of action upon an allegation of breach of that obligation; they base it simply upon the refusal to pay. As Mr Page put it in argument, provided CAI pays under the letter of credit, it is a matter of complete indifference to Chailease whether it takes up or examines the documents. It is the failure to pay which is ‘the real ground’, if not the only ground, of Chailease’s complaint.”

87. So too in the present case: CTT is only concerned to ensure that Santander honours its obligation to pay under the Bonds, CTT having presented it with its written demands, and it is a matter of complete indifference to it whether Santander examines the written demands or not. Indeed, there is in the present case no *obligation* at all upon Santander to do anything with the written demands (at least so far as CTT is concerned). Its only obligation is to pay against demands which are submitted by CTT substantially in the form of Annexure 2. At most, Santander’s consideration in Spain of the written demands and the steps taken there with a view to making payment, which process is described in a generic way in paragraph [14]-[16] of the witness statement of Mr. Lopez, are simply steps undertaken by Santander to put itself in a position to decide whether to honour its obligation to pay against conforming demands or not. In other words, these steps described by Mr. Lopez are at most steps which are preparatory to Santander’s performance of its obligation (payment), being steps whereby Santander equips itself

to perform its payment obligation under the Bonds. But performance of the payment obligation under the Bonds does not take place in Spain. It takes place in Mozambique.

88. The position here is, in my judgment, no different to that described by the Deputy Judge at first instance in *Chailease* in paragraph 82 above. Santander's contractual obligation, the performance of which is sought by CTT, is the obligation to pay CTT at the designated place of payment, being Mozambique. That is the place of performance.
89. It follows that the *Ralli Brothers* exception to the general principle (the general principle being that the enforceability of a contract governed by English law is determined without reference to illegality under any other law) is not engaged.
90. Mr. Beltrami takes issue with this analysis. His analysis is as follows.
91. There are two questions. The first question is to ask whether Spain is the place of payment because the demand was to be received and processed in Spain; or is the place of payment Mozambique? The second question is if the place of payment is Mozambique as a matter of contract, then is Spain nevertheless a place of performance because elements of performance are required in Spain.
92. The first question, Mr. Beltrami says, is a question of construction. He argues that the question of construction must be addressed in two stages. The first stage in respect of an on-demand instrument, he suggests, is to ascertain what is the "*normal or presumptive position*". The second stage is then to ask whether that normal or presumptive position is displaced by the specific terms of the contract.
93. He submits that the normal or presumptive position was set out by Bright J in *LLC EuroChem v Société Générale S.A* [2025] EWHC 1938 (Comm) ("**EuroChem**").
94. That case was concerned with six on-demand bonds, each governed by English law, issued by a French bank ("**the SocGen Bond**") and the Italian branch of a Dutch bank ("**the ING Bond**"). The original beneficiary was a Russian entity which assigned the bonds to its Swiss parent. The beneficiary made demands on the bonds but the banks declined to pay on the basis that to do so would be illegal because of EU sanctions.
95. The SocGen Bond provided in particular as follows:

“3.1 The Owner may from time to time make a written demand upon the Issuer stating that a contractor has defaulted in its obligations under a contract with respect to the advance payment or has failed to make any payment in accordance with a contract and the amount claimed by the Owner. This demand shall be sent to the Issuer through the Owner's bank which shall confirm that demand was signed by authorized signatories.

3.2 The Issuer shall immediately but in any case not later than four (4) business days upon receipt of any such compliant demand pay to the Owner the amount or amounts demanded up to the maximum sum.

4.3 Any demand made by the Owner in accordance with clause 3 and any sum or sums stated in such demand shall be conclusive evidence that such sum or sums are properly due and payable to the Owner under this bond.

10. Notice

Any notice or other communication to be given, served or made under this bond: (a) shall be written in English and shall be delivered ...to:

(i) the Issuer at:

Societe Generale Paris...

96. The bond contained no equivalent to clause 7 in this case and contained no contractual term specifying where payment was to be made by SocGen Bank.
97. The ING Bond was expressly subject to the ICC Uniform Rules for Demand Guarantees (**URDG**). Article 20(c) URDG provides for payment to be made at the branch or office of the guarantor that issued the guarantee or such other place as may be indicated in the guarantee¹¹. Bright J accordingly held at [447] that the place of performance could not be Russia, as it was agreed to be Milan (the guarantor's branch office).
98. The Judge held that EU sanctions (article 2(1) of Regulation 269 and Council Regulation No. 833/2014) prevented payment under the bonds to the beneficiary: see [401] and [434].
99. The Judge addressed the rule in *Ralli Brothers* at [436]-[461]. He first explained (at [436]) that payment would be illegal in France and Italy because the National Crime Agency in each country had determined that the bonds were frozen under Article 2(1)

¹¹ See *EuroChem* at [27].

of EU (sanctions) Regulation 269 and payment would require the banks to deal with the bonds as if they were not frozen. This would be illegal under the law of France and under the law of Italy.

100. The judge explained (at [440]) that two main issues arose:

(1) Whether performance by the banks would require an act to be done in a place where it would be unlawful to carry it out, bearing in mind the distinction between (i) performance and (ii) a mere preparatory step or “*equipping to perform*”.

(2) Whether the banks had taken reasonable steps to obtain a licence (or some analogous relief) or whether such steps, had they been taken, would have been taken in vain.

101. The Claimants argued that the place of performance was Russia. This was primarily on the basis that performance consisted of payment, and the general presumption under English law is that the debtor must follow the creditor, such that, where no express place for payment is specified, the place for payment will be where the creditor is located. Since the assignee was a Swiss company, the Claimants argued that payment could be made in Switzerland. The Claimants relied upon *The Eider* [1893] P 119 at 136-7 and *Litasco v Banque El Amana SA* [2025] EWHC 312 (Comm), [2025] 1 Lloyd’s Rep 285 (“**Litasco**”) for that proposition.

102. The Judge rejected this argument. He said:

“... the presumption¹² is, as the Claimants accept, only a presumption. It will be displaced if the express or implied terms of the contract so provide, or if the contract has relevant features or there are other circumstances that lead to this result. In the context of on-demand instruments, if the instrument specifies the place where the demand must be made, this is generally regarded as the place for payment, because the instrument requires payment on demand.”

103. The Judge said that that could not be disputed in the case of the ING Bond by reason of Article 20(c) of the URDG. In the case of the SocGen Bonds, the Judge said that *whilst there was no expressly stipulated place for payment*, they all provided expressly that demands had to be made at SocGen’s headquarters in Paris (see clause 10 of the Bonds (*supra*)). As a result, he considered the place of payment to be Paris.

¹² That the debtor must follow the creditor.

104. The Judge then referred to a number of legal authorities upon which he relied in coming to his conclusion as to place of payment for on-demand instruments. He stated that “*the authority that deals with the point in the context of an instrument closest in nature to the Bonds in this case is Britten Norman Ltd v State Ownership Fund of Romania [2000] Lloyd’s Rep. (Banking) 315, per Mr Peter Leaver QC*”, and he cited the passage in that judgment at p. 319 lhc as follows:

“In my judgment, the matter should be approached in the following way. Until a demand was made, Barclays was under no actual liability to SOF. Its liability was only a potential liability. When the demand was made, in conformity with the terms of the Letter of Guarantee, Barclays’ potential liability crystallised into an actual liability. That liability, absent any contractual term as to the place of payment, was to make payment at the place where the demand was made and where the liability crystallised. The fact that SOF, in its demand, requested that payment should be made into a stipulated account at a Romanian bank was simply an administrative, or mechanical, request, and not a contractual requirement. It would have been perfectly possible for SOF to have stipulated for payment in Romania, but it did not do so. While it is true that, in English law, a debtor is under an obligation to seek out his creditor in order to make payment of his debt, so that Barclays was under an obligation to seek out SOF, that obligation has little to do with the place of payment under a document such as the Letter of Guarantee.” (emphasis added)

105. In contrast to *Britten Norman*, in the present case it was a contractual requirement, pursuant to clause 7 of the Bonds, for the Bank to make payment to the account which CTT chose to specify in the relevant demand (namely ABSA Bank, Mozambique).
106. Bright J referred to the fact that *Britten Norman* was criticised in the judgment of Ramsey J in *Commercial Marine & Piling Ltd v Pierse Contracting Ltd* [2009] EWHC 2241 (TCC), where the judge suggested that *Britten Norman* might be inconsistent with the decision of the Court of Appeal in *Samcrete Egypt Engineers and Contractors SAE v Land Rover Exports Ltd* [2001] EWCA Civ 2019 – which was a case in respect of a guarantee. However, Bright J rightly observed that Ramsey J noted that the position is not clear, because the report in *Samcrete* does not make it clear whether or not there was an express provision as to the place of payment (as I have held that there is in the instant case).
107. In *EuroChem*, the Claimants also relied upon the fact that the demands instructed that payment should be made in Russia. However, the Judge said that that was irrelevant as

“The Banks were under no obligation to pay [the beneficiary] in accordance with those instructions”. That is again to be contrasted with the position in the present case.

108. Bright J accordingly concluded on the facts of *EuroChem* that in the case of on-demand instruments *“Payment is intended to be the direct and immediate consequence of the demand. Absent any contractual indication to the contrary¹³, the place for the demand is the obvious place for payment.”* I consider that analysis to be sound, but the factual position in the present case is different from that which obtained before Bright J, as in this case there is indeed *“a contractual indication to the contrary”*.
109. Bright J could have ended his analysis there. However, he chose nonetheless to analyse, *obiter*, what he considered would have been the place of performance of the Bonds *had payment to be performed in Russia*. I respectfully part company with the judge in respect of his *obiter* analysis.
110. The Judge said this at [459]-[461]:
- “...even if I had been persuaded that payment had to be performed in Russia, I would not have accepted that no element of performance, but only preparatory steps, had to be taken in Paris and Milan. In the context of on-demand bonds, (i) the making of the demands for payment and (ii) the issuer’s response to such demands are both crucial. Even if these actions are treated as separate from payment, they are still essential to the obligations under such bonds and their performance. They are what it means to honour the obligations under an on-demand bond...*
- I therefore am not convinced that the Banks’ receipt of and response to the demands can or should be characterised as merely preparatory for the purposes of the Ralli Brothers rule, rather than being a necessary part of contractual performance.”*
111. The difficulty that I have with this analysis is that it appears to conflate the obligation of the bank with the obligation of the beneficiary under the bond. Whilst the making of the demand for payment may be said to be *“crucial”* or *“essential”* in the sense that a demand for payment is necessary in order to trigger the bank’s obligation (singular - not *“obligations”*¹⁴) to pay under the bond, it is the beneficiary who is obliged to make

¹³ Emphasis added.

¹⁴ The judge refers on three occasions to the contractual *“obligations”* (plural) of the Banks without specifying what they are, aside from the obligation to pay: see [458] – *“the Banks’ performance of their obligations under the Bonds”* and [459] – *“the obligations under such bonds and their performance”* and *“the obligations under an on-demand bond”*.

the demand if he wishes the bank to pay. Once the (conforming) demand is made, the bank must make payment to the account in the specified country (Russia) in order to perform its contractual obligation. Its “*response to the demand*” is to pay the money into the contractually specified account. That is the bank’s only contractual obligation which it must perform under the bond.

112. As Robert Walker LJ stated in *Ispahani v Bank Melli Iran* [1998] 1 Lloyd’s Rep. Banking 113 at 137, performance “*does not mean any activity required or contemplated by the contract; It has a relatively narrow and technical meaning.*” That is why in *Libyan Arab Foreign Bank* at 745, Staughton J explained that in identifying what constituted contractual performance, it would be “*immaterial whether one party has to equip himself for performance by an illegal act in another country*”. Thus in the present case, considering the bond and taking steps to get the funds ready to pay are illustrations of Santander equipping itself to pay; these are steps which are merely preparatory to the payment obligation and they do not constitute contractual performance on the part of Santander.

113. As William Day rightly states in his article in the CLJ at 73:

“This approach to performance may be said to be unfair on an obligor since it could expose it to liability -possibly criminal liability - in its own country where they necessarily have to take some preliminary steps in order to render contractual performance in another country. Yet the obligor can always bargain for protection by insisting that the governing law of the contract be its own law or that a force majeure clause be inserted into the contract which suspends or excuses performance due to illegality in the obligor's home country. By entering into a contract that does not contain either protection the obligor takes the risk that it could face contractual liability by refusing to do what it promised on the basis of illegality in its place of origin.”

114. That is so in the present case.

115. I consider that the clear and cogent analysis of Stephen Tomlinson QC (as he then was) sitting as a deputy judge in *Chailease* (at paragraph 82 above, followed by the Court of Appeal), which notably was not cited to Bright J, is to be preferred and provides the correct analysis in this respect. For the same reason, I do not accept the submission of Mr. Beltrami, based upon an article by Rhodri Davies KC¹⁵, that “*performance by the*

¹⁵ *Ralli Brothers: a defence in flux?* [2026] 6 JIBFL 385.

issuer under a demand bond constitutes a continuum from receipt of the demand through to making payment, which may, or may not, be made in the same place as where the demand is received. The Ralli Bros rule may apply if part of that continuum is affected by illegality.” I consider that submission to be overly broad and imprecise for the same reasons.

116. In his oral submissions, Mr. Beltrami argued that in *EuroChem* the judge should not be taken to be saying that the Bank has a number of separate obligations under the Bonds; rather he should be taken to be saying that there is a single divisible obligation albeit that it carries with it several elements or actions in the case of an on-demand bond. That is not how I read the judge’s *obiter* remarks, but in any event, I consider that there is only one obligation – the obligation to pay into the specified account – and the “*several elements or actions*” (receipt of the demand, consideration of the demand and the procuring of the funds) which, in practice, prepare or equip the bank to perform that single payment obligation, are not part of the contractual obligation itself.
117. It follows from this analysis that the answer to Mr. Beltrami’s two questions is as follows:
- (1) Spain is not the place of payment by reason of the fact that the demand was to be received and processed in Spain. The place of payment is Mozambique in accordance with the express terms of the contract.
- (2) The place of payment is Mozambique as a matter of contract, and Spain is not also a place of performance because elements of performance are required in Spain. No elements of Santander’s contractual performance (payment) are required in Spain; at most Santander might carry out in Spain acts preparatory to payment by it in Mozambique.
118. Nor do I accept Mr. Beltrami’s two stage test for the proper construction of the Bonds. I do not consider it is correct to begin by ascertaining what he terms the “*normal or presumptive position*” and then, at the second stage, to ask whether that normal or presumptive position is displaced by the specific terms of the contract.

119. Rather, the starting point must be a consideration of the parties' agreement – namely, the terms of the Bonds themselves¹⁶. That demonstrates that there is no room for any presumption in this case in light of the proper construction of the Bonds, and in particular clause 7 thereof. Indeed, Bright J himself recognised this, as the judge stated in paragraph 455 of his judgment “*Absent any contractual indication to the contrary, the place for the demand is the obvious place for payment.*” Indeed, the Judge also referred himself to the “*general presumption under English law ...that the debtor must follow the creditor, such that, where no express place for payment is specified, the place for payment will be where the creditor is located.*”¹⁷ That presumption works in the beneficiary's favour therefore, although once again, as the judge himself said, it is “*only a presumption. It will be displaced if the express or implied terms of the contract so provide...*”.
120. Mr. Beltrami argues that Spain is “*the only location of certainty*” and that this contract should not be construed as affording to the beneficiary an unfettered choice to change the legally relevant place of payment; and the presumptive position should only be displaced by clear wording demonstrating that the parties obviously intended it to have that contractual effect; and there is no such clear wording here.
121. I do not accept that submission. Santander chose *to agree with CTT* that all payments made by it under the Bonds had to be made to the account specified in the relevant demand. It did, therefore, afford the beneficiary with an unfettered choice to change the legally relevant place of payment (although in practice since CTT is a Mozambique entity, the bank must have foreseen that the place of payment might very well be Mozambique in any event) and it must live with the consequences of that agreement. It was open to the Bank to have insisted upon Spanish law being the governing law of the Bonds, or to have insisted on a clause which stated that the place of performance/payment was to be Spain, but it chose not to do so.
122. In all the circumstances, the place of performance under the bonds is Mozambique and Santander accordingly has no defence to this claim.

¹⁶ As William Day states in his article in the CLJ at p. 70, “*when applying the rule, the first step is to construe the terms of the contract itself.*”

¹⁷ Which is referred to in *Ralli Brothers* itself, per Lord Sterndale MR at p. 290.

IS THE SPANISH INTERIM INJUNCTION CAPABLE OF ENGAGING THE PRINCIPLE IN *RALLI BROTHERS* SO AS TO PROVIDE A DEFENCE TO THE CLAIM?

123. The Claimants contend (Opening Submissions [46]-[63]) that the rule in *Ralli Brothers* does not apply where the alleged unlawfulness derives from the breach of a court order¹⁸. They rely for this purpose on the decision of Louise Hutton KC in *Litasco* at [52]-[58], with which Simon Colton KC agreed in *Beneathco DMCC v RJ O'Brien Ltd* [2025] EWHC 3079 (Comm) at [125] (“**Beneathco**”). The Deputy Judge in *Litasco* considered (at [56]) that the rule in *Ralli Brothers* does not extend to acts of performance unlawful in the sense of being in breach of a court order “*as opposed to acts unlawful by reason of legislation or regulation in force*” in the foreign jurisdiction. Santander submits that both *Litasco* and *Beneathco* were wrongly decided to that extent.
124. In the light of my finding that Santander’s payment obligation under the Bonds is not unlawful by the place of performance (“*the Ralli Brothers point*”), even assuming that the rule in *Ralli Brothers* extends to court orders, this issue does not arise. However, in case it should subsequently be held that I am wrong about the *Ralli Brothers* point, in this section of my judgment I consider whether the *Ralli Brothers* exception extends to court orders and accordingly whether *Litasco* and *Beneathco* were wrongly decided.
125. It is worth noting at the outset that the distinction which the Claimants seek to draw (and which the Deputy Judge in *Litasco* drew), namely that the rule in *Ralli Brothers* does not extend to acts of performance which are unlawful in the sense of being in breach of a court order as opposed to acts which are unlawful by reason of legislation or regulation in force in the foreign jurisdiction, has not been one that has been drawn in the authorities until the decision in *Litasco*. There is no direct support in the authorities for the suggestion that a breach of a foreign court order is a type of unlawfulness which is excluded from the operation of the *Ralli Brothers* rule. I appreciate that it is the case, of course, that the courts in earlier cases where *Ralli Brothers* was an issue were not specifically addressing the question whether the rule

¹⁸ In argument Mr. Houseman KC appeared to put the Claimants’ case on three alternative bases namely (1) all court orders fall outside the scope of *Ralli Brothers*; (2) interim court orders fall outside the scope of *Ralli Brothers*; (3) court orders which are not capable of recognition fall outside *Ralli Brothers*.

also applied in the case of foreign court orders. The context in which the court makes its statement of principle concerning the *Ralli Brothers* defence in these cases is always fact dependent.

126. *Ralli Brothers* itself concerned the passing of a supervening Spanish law decree after the contract had been entered into, making it unlawful to charge freight in excess of a certain amount. Nonetheless the court in that case described the requisite “unlawfulness” in the following broad terms:

(1) “A contract... is, in general, invalid in so far as....the performance of it is unlawful by the law of the country where the contract is to be performed...” (Per Lord Sterndale MR at 291 and per Warrington LJ at 295);

(2) “I think on principle and on authority that the charterers are not bound to perform that part of the contract, that is, the payment of freight above the maximum allowed by Spanish law, which has become illegal by the law of the place of its performance” (per Lord Sterndale MR at 292);

(3) “I think it must be held that it was an implied condition of the obligation of the charterers that the contemplated payment by Spaniards to Spaniards in Spain should not be illegal by the law of that country” (per Warrington LJ at 296)

(4) “I should prefer to state the ground of my decision more broadly and to rest it on the ground that where a contract requires an act to be done in a foreign country, it is, in the absence of very special circumstances, an implied term of the continuing validity of such a provision that the act to be done in the foreign country shall not be illegal by the law of that country. This country should not in my opinion assist or sanction the breach of the laws of other independent States” (per Scrutton LJ at 304).

127. To like effect in *San Juan*, Cockerill J expressed the rule as follows: “It provides that an obligation under an English law contract is invalid and unenforceable or suspended in the case of a payment obligation insofar as the contract requires performance in a place where it is unlawful under the law of that required place of performance.”

128. As did Falk LJ in *Celestial*: “A distinction has been drawn in the case law between situations where performance is illegal in the jurisdiction where performance must take place, where the principle applies, and cases where the illegality relates to a preparatory step to performance, or “equipping to perform” ... where the illegality does not excuse non-performance.”

129. The starting point in considering whether *Litasco* and *Beneathco* were rightly or wrongly decided on this issue must be to determine the rationale for the rule in *Ralli Brothers*. The parties are agreed (and I consider) that the rationale is international comity: see *Regazzoni v KC Sethia* [1958] AC 301 at 318-319 per Viscount Simonds:

“It is ... nothing else than comity which has influenced our courts to refuse as a matter of public policy to enforce, or to award damage for the breach of, a contract which involves the violation of foreign law on foreign soil....Just as public policy avoids contracts which offend against our own law, so it will avoid at least some contracts which violate the laws of a foreign state, and it will do so because public policy demands that deference to international comity.”

Indeed, in *Ralli Brothers* itself Scrutton LJ at 300 stated that the rule was concerned with “the obligations of international comity as now understood.” See also *Toprak Mahsulleri v Finigrain* [1979] 2 Lloyd’s Rep 98 at 107 per Robert Goff J and *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm) at [307] per Cockerill J.

130. In a thoughtful article in the *Cambridge Law Journal* (2020) CLJ 79, William Day (barrister and Fellow in Law at Downing College, Cambridge) also considers the rationale of the rule to be international comity:

“This article offers a new perspective on Ralli Brothers. It argues that the rule should be understood neither as a choice of law rule nor as part of the rules discharging a contract for frustration but rather as a public policy rule favouring judicial abstention for reasons of comity... That abstention reflects the common law’s deep seated respect for the territorial sovereignty of other states...”

Comity is deeply interconnected with territorial theories of sovereignty. It is not to be confused with reciprocity or deference. It is best defined in relatively narrow terms. It justifies why a court may or must refrain from taking a step which it would otherwise be entitled to take in its own territory out of respect for the territorial sovereignty of another state. Comity is thus a public policy of the lex fori which acts as a self-denying ordinance...

It is suggested that emphasis on respecting the territorial sovereignty of another state is what also underpins Ralli Brothers. The only difference is that, in the case of contracts rather than property, that respect is expressed by the court not enforcing performance, whether specifically or requiring the payment of damages as a substitute for performance, when such performance would be illegal in the place where it is contractually stipulated.”

131. The rationale being the application of the principle of comity, in explaining the principle in *Lilly Icos LLC v 8PM Chemists Ltd* [2010] FSR 4 at [263] Arnold J saw no need to

distinguish between foreign legislative and executive acts on the one hand and decisions of foreign courts on the other:

“As counsel for the claimants emphasised both [of Ralli Bros and Foster v Driscoll] are underpinned by the principle of international comity that is to say, respect for the laws and courts of other nations.” (emphasis added)

132. Likewise, in *Dicey, Morris and Collins on the Conflict of Laws* (16th edn) at 7-002 under the heading “comity”, the authors state:

*“The United Supreme Court famously said in *Hilton v Guyot* (159 U.S. 113, 163-164 (1895)), a case on the recognition of foreign judgments: “‘Comity,’ in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.”* (emphasis added)

133. That stated, in paragraph 32-255 of *Dicey*, where the authors specifically deal with *Ralli Brothers*, they state:

“When the illegality arises under foreign law, the principal concern is comity, that is to say deference to the legislative authority of the foreign State to treat as lawful or unlawful conduct taking place in its own territory, and judicial restraint as regards assisting or sanctioning the breach of the laws of a friendly foreign country.”

134. Whilst the authors do not mention judicial acts in this context, nor do they mention executive acts, and I do not consider that they should be taken as intending in this passage to be circumscribing the rule so as to limit it just to legislative acts. Indeed, the cases referred to in the footnote to this passage do *not* support the suggestion that the rule in *Ralli Brothers* only applies to legislative acts, as one would expect.

135. Mr. Houseman also points out that the authors of *Chitty on Contracts* (36th Ed, 2025) do state in a footnote to paragraph 27-027 that ““illegal” here means contrary to legislation or a regulation enacted in the foreign jurisdiction: it does not extend to an act which would be contrary to an order made by a foreign court which has rendered performance unlawful: *Litasco SA v Banque El Amana SA* [2025] EWHC 312 (Comm) at [52]–[58].” However, the authors provide no reasoning or analysis as to why this should be so. They are simply citing *Litasco* for this proposition.

136. I would add that there has also been some academic debate as to the juristic nature of the rule in *Ralli Brothers*, specifically whether it is a rule of the conflicts of law or of domestic English private law. As explained in *Dicey* Vol II [32-257] – [32-263], the latter view has prevailed: see *Dana Gas PJSC v Dana Gas Sukuk Ltd* [2017] EWHC 2928 at [79] per Leggatt J.
137. The rule in *Ralli Brothers* having been derived from international comity - namely respect for and deference to the laws of other nations to treat as lawful or unlawful conduct taking place within their own sovereign territory - I do not consider that supervening court orders of the foreign state should be treated any differently to its supervening legislative acts. Each of these measures – namely court orders, legislative and executive acts - are an exercise of sovereign authority by the state concerned¹⁹. That that is so is established by the Supreme Court's judgment in *Deutsche Bank*, which I consider below.
138. It is next necessary to consider the court's decisions in *Litasco* and in *Beneathco* to see if there is anything in the court's analysis in each of those cases which justifies this apparently unprincipled distinction, in the light of the rule's rationale, between legislative and executive acts on the one hand and court orders on the other. In my judgment there is not.
139. In *Litasco* the Deputy Judge granted summary judgment to the claimant upon a claim by a Swiss company under an English law standby letter of credit which had been provided as security for a loan agreement, relating to the construction and development of a liquified petroleum gas distribution network in Guinea.²⁰ The defendant bank, invoking *Ralli Brothers*, relied on interim orders made by the Mauritanian courts as preventing it from paying against a compliant demand under the standby letter of credit in Switzerland. It said that it would be subject to civil and criminal penalties if it did not comply with the Mauritanian orders. This was not challenged.²¹
140. The Court rejected the argument that the *Ralli Brothers* exception was applicable on various bases, including a conclusion that it is inapplicable to acts of performance

¹⁹ I note that this is also the conclusion of Rhodri Davies KC in his short article in the *Journal of International Banking and Financial Law* (2026) 6 JIBFL 385.

²⁰ *Litasco* at [1]–[5], [12]–[22].

²¹ *Litasco* at [11].

which are unlawful by reason of a breach of a foreign court order.²² The Deputy Judge appears to have accepted the submissions of Mr. Day, counsel for the claimant, for her conclusion in that respect. However, I do not consider that those submissions support the Deputy Judge's conclusions:

(1) At [53] of the Deputy Judge's judgment, she refers to the fact that there was no authority to support the argument that a foreign court order could give rise to a *Ralli Brothers* defence. As a matter of fact, that is wrong: see *AES-3C Maritza East 1 EOOD v Credit Agricole Corporate and Investment Bank* [2011] EWHC 123 (TCC) ("**Maritza**") (which I address below);

(2) At [54(i)] of the Deputy Judge's judgment it is suggested that the authorities and text books are inconsistent with the *Ralli Brothers* rule applying to court orders and are only consistent with it applying to legislation and regulation. That too I consider to be wrong. Reliance is placed upon *Kleinwort v Ungarische* [1939] 2 KB 678, but as I have explained in paragraph 65 above that case concerned Hungarian legislation making payments out of Hungary illegal. So that was necessarily the context – supervening foreign legislation - in which the court considered the application of the rule in *Ralli Brothers* (see *du Parc* LJ at p. 699). It was not considering a court order. In any event, the court described the rule in broad terms as follows:

At [693-4] per MacKinnon LJ: "*That contention is based on a suggestion that, if a contract is made to do something in London which becomes illegal by the law of one of the parties in his own country, the English Courts will not enforce it. For that proposition two authorities were relied on: Ralli Brothers v. Compañia Naviera Sola y Aznar (1) and de Beêche v. South American Stores (Gath & Chaves), Ltd...*

The whole principle is stated by Scrutton L.J. ... "I should prefer to state the "ground of my decision more broadly and to rest it on the "ground that where a contract requires an act to be done in" a foreign country, it is, in the absence of very special circumstances, an implied term of the continuing validity of such a provision that the act to be done in the foreign country shall not be illegal by the law of that country."

And at [697] per *du Parc* LJ : "*No doubt it is also the law, as stated by Professor Dicey, that a contract is in general invalid so far as the performance of it is unlawful by the law of the country where the contract is to be performed.*"

²² *Litasco* at [52]–[59].

It follows that the Deputy Judge is wrong, in my judgment, to state at [56] of her judgment in *Litasco* that to extend the *Ralli Brothers* principle to acts of performance in a foreign jurisdiction which are unlawful in the sense of being in breach of an order made by a court in that jurisdiction, as opposed to acts unlawful by reason of legislation or regulation in force in that foreign jurisdiction, would be not only an extension of the principle but inconsistent with the formulation of the principle in *Kleinwort*. It is not an “extension” of the principle, rather, it is an application of it. Nor is it “inconsistent” with *Kleinwort*, in which (unlike *Litasco* and this case) the court was concerned with a legislative measure and not a court order.

(3) At [54(ii)] of the Deputy Judge’s judgment, she refers to the passage in *Dicey* which I have dealt with above in paragraphs 133-134. I do not consider that it affords any real support for the Deputy Judge’s conclusion.

(4) At [55] and [57] of the Deputy Judge’s judgment, she accepts Mr. Day’s submission that if the *Ralli Brothers* principle were to extend to cases where a foreign court had made an (unrecognised) order which rendered performance unlawful, not by the *lex loci solutionis* but by the law of the relevant foreign state, that would be entirely inconsistent with the rules governing the recognition of foreign judgments and orders.

However, I respectfully consider the Deputy Judge’s reasoning in this respect to be inconsistent with this suggestion. Having said that an extension of the rule to court orders would be inconsistent with well-established rules on the recognition of foreign court decisions, the Deputy Judge then herself explains why that is not so: because (as she accepts) “the *Ralli Brothers* principle is part of the rules concerning governing law, and not the rules concerning the recognition of foreign court orders – hence the frequent reference in the textbooks and authorities discussing the *Ralli Bros* authorities to the *lex loci solutionis*...”

141. The Deputy Judge appears to be suggesting in this passage that the rules on the recognition of foreign court decisions and the *Ralli Brothers* principle, whilst different, ought to be the same. But why should that be so? As Mr. Beltrami rightly submitted, they are different rules serving different purposes. Indeed, the rationale for each of the rules is different. In the case of recognition of foreign court decisions, the rationale is

not international comity in recognising the territorial sovereignty of a state, but rather as Blackburn J stated in *Schibsby v Westenholz* (1870) LR 6 QB 155 at 159²³:

“the true principle on which the judgments of foreign tribunals are enforced in England is... that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce...”

142. It follows that the rules are concerned with different things. The *Ralli Brothers* exception requires the court, in order to ensure international comity, not to grant judgment to the claimant for the period of unlawfulness in the foreign state where the relevant contractual obligation is to be performed. It is not concerned, as is recognition, with finally determining the rights and obligations of the parties. It follows that there is no reason for the rules to be aligned.
143. In all the circumstances I consider that in so far as *Litasco* suggests that court orders, including interim injunctions, cannot as a matter of principle fall within the scope of the *Ralli Brothers* exception, that it is clearly wrong.
144. The Deputy Judge in *Beneathco* followed, obiter, the Deputy Judge’s conclusion in *Litasco* on this issue at [125] “for the reasons which she gave”. He then added an additional reason said to support that conclusion, namely that “[t]he respect given, as a matter of comity, to the sovereign acts of a state within its territory, including executive acts, does not extend equally to court decisions: see, for example, *Deutsche Bank AG London Branch v Receivers Appointed by the Court* [2021] UKSC 57, [2023] AC 156 at [136(3)]” (“**Deutsche Bank**”).
145. It is accordingly necessary at this stage to consider precisely what the Supreme Court in *Deutsche Bank* decided in order to determine whether, as the Deputy Judge suggests, it assists in determining whether judicial acts fall within the scope of the *Ralli Brothers* rule.
146. In *Deutsche Bank* the Central Bank of Venezuela (“**the bank**”) was entitled to gold reserves in London. An issue arose as to who was entitled to give instructions on behalf of the bank, which turned on who was the legitimate President of Venezuela and so entitled to appoint the board of the bank, namely Mr. Maduro or Mr. Guaido. Mr.

²³ Cited with approval in *Lewis v Eliades* [2004] 1 WLR 692 at 703.

Guaido's claim was confirmed by a Transition Statute in Venezuela ("**the statute**") and he made appointments by reason of the authority granted to him under the statute. The UK Foreign and Commonwealth Office recognised Mr. Guaido *de jure*. However, the Venezuelan Supreme Tribunal of Justice (a Venezuelan court) gave several judgments holding that the statute was null and void. Mr. Maduro relied upon this in himself appointing board members. The central issue for the Supreme Court was one of recognition: which board was to be recognised in England so as to enable the bank to give instructions about the gold reserves and to represent the bank in an LCIA arbitration? The appeal accordingly raised fundamental issues concerning the recognition of a foreign head of state, the foreign act of state doctrine and their inter-relationship. In particular it raised the following two issues:

(1) The recognition issue: does Her Majesty's Government ("**HMG**") (formally) recognise Mr. Guaido or Mr. Maduro? and

(2) The act of state issue: can the English court consider the validity and or constitutionality under Venezuelan law of the statute and various decrees issued by Mr. Guaido or must it regard those acts as being valid and effective without inquiry?

147. As to (1), HMG had since February 2019 recognised Mr. Guaido as the constitutional interim President of Venezuela until credible presidential elections could be held and accordingly that was the outcome on the recognition issue.
148. As to (2), at [111] the Supreme Court (per Lord Lloyd Jones JSC) stated that "*One consequence of this outcome on the recognition issue is that interim President Guaido's appointments of public officials are sovereign acts of the Venezuelan state. On behalf of the Guaido Board it is submitted that, the acts of appointment having taken place within Venezuela, those acts are not open to challenge as to their validity under Venezuelan law in a court in this jurisdiction and, as a matter of English law, must be treated as valid and effective without inquiry. So much, it is said, is the result of the foreign act of state doctrine*".
149. At [113] Lord Lloyd Jones referred in particular to two rules which had been treated as part of the act of state doctrine:

(1) the courts of this country will recognise and will not question the effect of a foreign state's legislation or other laws in relation to any acts which take place or take effect within the territory of that state; and

(2) the courts of this country will recognise, and will not question, the effect of an act of a foreign state's executive in relation to any acts which take place or take effect within the territory of that state.

150. At [135], the Court agreed with point (2) above:

“It appears therefore that a substantial body of authority, not all of which is obiter, lends powerful support for the existence of a rule that courts in this jurisdiction will not adjudicate or sit in judgment on the lawfulness or validity under its own law of an executive act of a foreign state, performed within the territory of that state. The rule also has a sound basis in principle. It is founded on the respect due to the sovereignty and independence of foreign states and is intended to promote comity in inter-state relations. While the same rationale underpins state immunity, the rule is distinct from state immunity and is not required by international law.”

151. Then at [136] Lord Lloyd Jones explained the limitations and exceptions to foreign act of state in English law, which include that judicial acts will not be regarded as acts of state for the purposes of the act of state doctrine. It follows that *for act of state purposes*, there is a distinction between legislative, executive and judicial acts. However, as explained by the judge at [155], court decisions are still an act of sovereign power:

“Where it applies, the foreign act of state doctrine holds national courts incompetent to adjudicate upon the lawfulness or validity of the sovereign acts of a foreign state. However, within most modern states sovereign power is shared among the legislative, executive and judicial branches of government and it cannot be assumed that the conduct of the executive is the sole manifestation of sovereign power or that it should necessarily prevail over the position taken by the legislature or the judiciary. As a result, in seeking to respect the sovereignty of a foreign state, it will not always be appropriate for courts in this jurisdiction to focus exclusively on acts of the executive”.

152. At [157]-[159] the Judge further explained:

“157. Although judicial rulings of a foreign state are manifestations of state sovereignty, it is now clear that they do not themselves attract the operation of any rule of foreign act of state applicable in this jurisdiction and, as a result, are not entitled to the deference which may be shown to legislative and executive acts of a foreign state”. So much was established by Lord Collins JSC delivering the judgment of the Judicial

Committee of the Privy Council in Altimor Holdings [2012] 1 WLR 1804, para 101:

*“The true position is that there is no rule that the English court (or Manx court) will not examine the question whether the foreign court or the foreign court system is corrupt or lacking in independence. The rule is that considerations of international comity will militate against any such finding in the absence of cogent evidence. That, and not the act of state doctrine or the principle of judicial restraint in *Buttes Gas & Oil Co v Hammer (No 3)*... is the basis of Lord Diplock’s dictum in *The Abidin Daver*... and the decisions which follow it. Otherwise the paradoxical result would follow that, the worse the system of justice in the foreign country, the less it would be permissible to make adverse findings on it.”*

*158. Rix LJ was able to build on this foundation when delivering the judgment of the Court of Appeal in *Yukos Capital (No 2)* [2014] QB 458, which held justiciable the issue whether judicial acts had been part of a “campaign waged by the Russian state for political reasons against the Yukos group and its former CEO” (paras 29(ii) and 90). This difference of approach does not reflect any hierarchical inferiority of judicial acts but rather reflects a shared understanding of how courts should behave under the rule of law. As Lord Mance JSC put it in *Belhaj v Straw* [2017] AC 964, para 73(ii): “If one believes in justice, it is on the basis that all courts will or should subscribe to and exhibit similar standards of independence, objectivity and due process to those with which English courts identify.”*

159 As a result, courts in this jurisdiction are more willing to investigate whether a foreign court is acting in a way that meets the standards expected of a court and whether there has occurred or is likely to occur a failure of substantial justice. For this reason, foreign judgments fall to be assessed under different rules from those applicable to legislative and executive acts and are simply less impervious to review.”

153. It followed that, as Lord Lloyd Jones stated at [161]: “There is therefore no rule requiring an unquestioning acceptance by courts in the United Kingdom of the validity or legality of a foreign judgment. Rather, the status of a foreign judgment is left to be determined in accordance with domestic rules on the recognition and enforcement of foreign judgments.”
154. It follows, in my judgment, that the Supreme Court’s decision in *Deutsche Bank* does not provide any support for the Deputy Judge’s suggestion in *Beneathco* that the *Ralli Brothers* principle does not apply to acts of performance in a foreign jurisdiction which are unlawful in the sense of being in breach of a foreign court order. It simply confirms that judicial rulings do not themselves attract the operation of *any rule of foreign act of*

state applicable in this jurisdiction and, as a result, are not entitled to the deference which may be shown to legislative and executive acts of a foreign state.

155. However, what *Deutsche Bank* does establish or make clear is that judicial rulings of a foreign state are nonetheless manifestations of *state sovereignty* and it cannot be assumed that the conduct of the executive is the sole manifestation of sovereign power nor that it should necessarily prevail over the position taken by the legislature or the judiciary. This lends support to the argument that foreign judicial acts also fall, in principle, within the scope of the rule in *Ralli Brothers*, as underpinning that rule is respect for the territorial sovereignty of another state, and judicial acts are just as much an exercise of state sovereignty as are legislative or executive acts. Respect for territorial sovereignty of a state, founded on international comity, should logically apply to all manifestations of that sovereignty.
156. My conclusion is strengthened by the fact that the binding nature of court orders in the foreign state will frequently be derived from that state's underlying legislation in any event. In other words, breach of the court order may be unlawful by reason of a legislative act (a statute).
157. Thus, in the present case, in his first expert report at paragraphs [27]-[29], Professor Faustino Córdón Moreno ("**Professor Córdón**") explains that:

"[27] Article 118 of the Spanish Constitution provides that "it is compulsory to comply with the judgments and other final decisions of Judges and Courts, as well as to provide the cooperation requested by them during the course of trials and in the enforcement of what has been resolved".

[28] This constitutional provision speaks of the binding effect of final decisions, which makes it necessary to ask whether an order granting interim measures is likewise binding. In this regard, the second paragraph of Article 733.2 of the CPA states that "no appeal of any nature may be lodged against the court order adopting injunctions without prior hearing of the defendant", and in this sense it may be argued that it is a final court decision. But, even if it were considered not to be final and, therefore, not to fall within the literal wording of Article 118 of the Constitution, I understand that the Spanish Interim Injunction is undoubtedly enforceable, which means that it must be complied with by the relevant entity or individual pursuant to Article 17.2 of the Organic Law of the Judiciary.

According to this article: "Public Administrations, authorities and officials, corporations and all public and private entities, and

individuals, shall respect and, where appropriate, comply with judgments and other judicial decisions that have become final or are enforceable under the law”.

Consequently, the binding effect of the court order applies, even if it is not regarded as a final decision, because it is enforceable.

[29] The Constitutional Court has long emphasized the importance of this principle, noting that the obligation to comply with judicial decisions constitutes “one of the most important guarantees for the functioning and implementation of the Rule of Law”, and that the effectiveness of judicial protection would be nullified if compliance with the injunction ordered by the court were left to the discretion of the obligor.”

158. Whilst there is a dispute between the parties’ respective Spanish law experts as to the effect of *Article 118 of the Spanish Constitution*, there is no dispute in respect of *Article 17.2 of the Organic Law of the Judiciary*. Moreover, the experts also agree (see paragraphs 9 and 9d of their Joint Report on Spanish law) that as a matter of principle, non-compliance with the injunction could lead to criminal liability being imposed on the non-complying party, in which case any criminal liability would be for the offence of *desobediencia* under *Article 556 of the Spanish Criminal Code*.
159. It will frequently be the case that the binding nature of a foreign court’s order (e.g. an injunction) will be derived from a legislative rule. In these circumstances it is arbitrary and unprincipled to have a rule that court orders do not fall within the *Ralli Brothers* principle but legislative acts do; or a rule that court orders do not fall within the *Ralli Brothers* principle *unless* they derive their binding force from a legislative act, in which case they do²⁴.
160. Mr. Houseman’s response to this point was, first, that for the *Ralli Brothers* principle to apply there must be supervening illegality. He then argued that *Article 17.2 of the Organic Law of the Judiciary* did not supervene: it was there all along, such that the only supervening illegality here is the court order. He said “*it is an elision without principle to say that because the binding effect of that court order is found in Spanish statute therefore it's a statutory illegality. Nice try but it doesn't work.*”

²⁴ It is possible to think of other unprincipled and arbitrary applications of the *Ralli Brothers* rule if the Claimants’ argument on this were correct. As Mr. Beltrami rightly submitted, by reference to comity or territorial sovereignty, there is similarly no reason to draw a distinction between a legislative crime, for example, and a common law crime. Both are unlawful.

161. I do not think that is an answer to the point. The point is that once the order is granted by the court, the relevant act becomes unlawful or illegal in the place of performance when it was not unlawful before. The very making of the order carries with it binding effect by reason of the underlying legislation (in this case *Article 17.2* of the relevant legislation). If the addressee of the order disobeys it they consequently breach the relevant legislation. To seek to distinguish this exercise of sovereign power by the foreign court on this basis and thereby determine that it cannot fall within the *Ralli Brothers* principle seems to me to be arbitrary and unprincipled.
162. Mr. Houseman also submitted that *Article 17.2* “*imposes a duty on everybody under the sun to comply with court orders*” and does not impose any consequence for non-compliance; non-compliance is catered for under separate civil and criminal regimes. But that again is not an answer to the point: the point is that a breach of the order is also a breach of the underlying legislation and so drawing a distinction for the purposes of the *Ralli Brothers* rule between supervening legislative acts and supervening judicial acts is arbitrary and lacks principle.
163. Finally on this topic, I come to the judgment of Ramsey J in *Maritza*, which I mention in paragraph 140(1) above. That case was concerned with an application for summary judgment by the claimant against the defendant French bank in respect of two demands made under an on-demand bond provided to the claimant under an EPC contract between the claimant and two Alstom companies. The bond was governed by English law and the English courts had jurisdiction to settle any dispute in connection with it. After the claimant made two demands on the bond Alstom obtained interim injunctions in France from the President of the Tribunal de Commerce in Nanterre preventing the defendant-bank from making payment under the bond until a further hearing, which was fixed for some 2 months later. The claimant then issued its application for summary judgment in England.
164. Ramsey J held that the bank had raised an arguable defence to the first demand on the bond. In respect of the second demand, the bank put forward no defence and accepted that the demand was a conforming demand. The Judge held that the bank had no real prospect of defending the claim in respect of the second demand.

165. In respect of the relief sought by the claimants, the bank argued that the court might grant a declaration as to its obligations under the bond but it should not grant judgment against the bank because of the existence of the President's interim injunctions which the Judge said were equivalent to interim injunctions of the French Court.
166. The defendant bank submitted that by reason of *Ralli Brothers* it is a well-established principle of English law that the English Courts will not enforce performance of an English law governed contract that requires a party thereto to perform actions, the performance of which would be illegal under the law of the country of their place of performance. This point was not challenged by the claimant but it argued that this should not prevent the grant of summary judgment for the sums due under the second demand.
167. Ramsey J accepted that "*What Ralli Bros establishes is that the English court will not, in such circumstances, require [the bank] to act in a manner which is illegal under French law because of the existence of the injunctions.*" The Judge's reasoning appears to have been, therefore, that the place of performance of the bond was France, and that the French injunctions made performance by the bank in France unlawful. Accordingly, applying *Ralli Brothers*, that the English court would not, in such circumstances, require the bank to act in a manner which is illegal under French law because of the existence of the injunctions. The Judge therefore awarded the claimant summary judgment but ordered that that judgment was not to be enforced so long as the bank was prevented from complying with that judgment by an Order of the French Court.
168. It follows that Ramsey J considered that *Ralli Brothers* does extend to acts of performance which are unlawful in the sense of being in breach of a court order in the place of performance (although it is fair to say there appears to have been little or no argument about it). Whilst that provided the bank with a complete *Ralli Brothers* defence to the claim, what the judge then did, as a practical way of ensuring that the English Court did not require an act to be done by the French bank in a place where it would be unlawful by reason of the French injunction, was to grant a stay of execution for as long as the French injunction remained in effect. The present case is of course factually different, in that I have found that the bank's performance under the bonds, which are governed by English law, is *not* unlawful by the place of performance. This fact is relevant to the stay application which I deal with below.

169. *Maritza* was not cited before the judge in either *Litasco* or *Beneathco*. Indeed, the Deputy Judge in *Litasco* said at [53] that: “Mr Day [for the claimant] submitted, however, that none of the cases in the *Ralli Bros* line of authority involved unlawfulness by reason of court order rather than the legislative authority of a foreign state and Mr Power [for the defendant-bank] was not able to point to any authority to disprove that assertion.” In fact, *Maritza* is such a case albeit I accept that the reasoning in that case is sparse.
170. In all the circumstances I consider that the Spanish interim injunction is capable of engaging the principle in *Ralli Brothers* so as to provide a defence to the claim. However since the place of performance under the Bonds is Mozambique, on the facts of this case it does not.

IS SANTANDER ENTITLED TO RELY UPON THE PRINCIPLE IN *RALLI BROTHERS* IN CIRCUMSTANCES WHERE IT HAS NOT TAKEN ANY STEPS IN SPAIN TO SEEK TO DISCHARGE THE SPANISH INTERIM INJUNCTION, NOR ESTABLISHED THAT ANY SUCH STEPS WOULD HAVE BEEN UNSUCCESSFUL?

171. I have already decided that Santander cannot rely upon the principle in *Ralli Brothers* and so this issue does not arise. I accordingly keep my conclusions relatively short on this issue, which typically arises in the context of one party to the financial instrument failing to obtain the necessary licence to allow it to make payment, where without it sanctions prevent payment. In *Banco San Juan*, Cockerill J said as follows:

“[84] ... the party relying on the [*Ralli Brothers*] doctrine will in general not be excused if he could have done something to bring about valid performance and failed to do so.

[90] ... where a supervening prohibition may be lawfully circumvented by obtaining a licence, a party is not excused from performance of a contractual obligation affected by that prohibition unless and until they make reasonable efforts to apply for and are refused a licence, or prove that, even had such efforts been made, a licence would actually have been refused. It does not suffice for the non-performing party to show that it reasonably believed a licence would have been refused had such efforts been made: see *Dalmia Dairy Industries Ltd v National Bank of Pakistan* [1978] 2 Lloyd’s Rep 223 at 253 per Kerr J; and *GH Treitel Frustration and Force Majeure* (3rd edn, 2014) paras 8–051 and 8–054.

[102] *While it would be open to [the non-payer] to adduce evidence that no licence would be granted, it has not done so. Mr Malek’s assertion that this is ‘totally unrealistic ... The US treasury is not about to accede to a request from [the non-payer] to make its life easier and make this litigation go away’ is not evidence.”*

172. Similarly, in *Celestial* Falk LJ explained as follows:

“[106] ... it is not in dispute that a party will not be excused if performance would be legal if a licence was obtained, unless that party shows that they either made reasonable efforts to obtain a licence or that any such efforts would have been in vain because a licence would have been refused.”

“[120] It was not disputed that a principle exists to the effect that a party seeking to rely on the *Ralli Bros* doctrine may be precluded from doing so if they could have done something to avoid illegality in the place of performance.”

173. Crucially, the burden is on the promisor (the non-payer) to establish that it made reasonable efforts to take steps to bring about valid performance or that, even if such steps had been taken, they would have failed. Thus, as Moore-Bick LJ stated in *Libyan Investment Authority v Maud* [2016] EWCA Civ 788 at [25]:

“If a person has promised to perform a certain obligation, whether it be to pay money or deliver goods, and fails to do so, the burden is on him to show that he was prevented from doing so by some cause for which he is not responsible”.

174. Mr. Beltrami accepted in oral submissions that Santander has the burden of persuasion to establish that it was not unreasonable not to intervene.

175. I accept Mr. Houseman’s submission that the principle is not limited to licences, and applies generally where the defendant could have done something to bring about valid performance, or avoid illegality in the place of performance. Mr. Beltrami also accepted that this is so in his oral submissions, although he submitted that there is a considerable difference between the reasonableness of applying for a licence and the reasonableness of engaging in contested legal proceedings of uncertain outcome.

176. The Claimants argue that the *Ralli Brothers* defence should be unavailable to Santander because it did not join CTT’s challenge to the Spanish injunction when it was procedurally possible for it to do so. Mr. Houseman contends that Santander has itself *done nothing* to seek to discharge the injunction. That is despite it being common ground that, as a matter of Spanish law, Santander not only had the ability to apply (by

way of an appeal) to discharge the injunction by itself, but could also have applied at least jointly with CTT to discharge it by way of an opposition at first instance (as CTT did at the 19 January Hearing). Mr. Houseman submits that Santander has therefore not taken all reasonable steps (or indeed any steps) to bring about valid performance.

177. He adds that Santander has not adduced evidence to discharge its burden of establishing that intervention by it in the Spanish proceedings would not have led to the discharge of the injunction, or that such intervention would not, at a minimum, have increased the prospects of the injunction being discharged. In these circumstances, it is not open to Santander to rely upon *Ralli Brothers* in any event.
178. There are two questions here which require to be answered:
- (1) First, has Santander discharged its burden of establishing that it took reasonable steps to have the injunction discharged; and
 - (2) If not, has Santander discharged its burden of establishing that, even if reasonable steps had been taken, the injunction would still not have been discharged (i.e. the position would not have been any different)?
179. As to the first point, Mr. Beltrami submits that CTT was challenging the Spanish injunction and it was able to make all of the arguments as to why the injunction should be discharged by reason of Article 740 of the Spanish Civil Procedure Act without Santander needing to join the application to discharge:
- “The party lodging an objection to the injunction may put forward as grounds for the objection any facts and reasons contrary to the appropriateness, requirements, scope, type and other circumstances of the measure or measures actually adopted, without any limitation whatsoever.”*
180. It is true that, as I have explained above (see in particular paragraphs 37 and 38 above), CTT’s challenge to the injunction appears to have been thorough. It included references to the autonomous nature of the Bonds, the English law obligation on Santander to comply with the terms of the Bonds against presentation of the conforming demands, as well as the conflicting obligations placed on Santander by reason of the Spanish injunction and the obligation upon it to pay under the Bonds.

181. There is a dispute between the Spanish law experts as to the allowable scope of Santander's intervention, had it applied to join the proceedings. Professor Cordon, Santander's Spanish law expert, opines that Santander could only have intervened as a "*simple adhesive intervener*", meaning that it would not be able to oppose the injunction on its own. Dr de Benito, CTT's Spanish law expert, disagrees. He considers that Santander could have intervened as a "*litisconsortial adhesive intervener*" which would mean that it could request the discharge of the injunction on its own. But the experts agree that this dispute is of no materiality as CTT did apply to discharge the injunction and so Santander could indeed have intervened in support of CTT by adducing evidence and making submissions.
182. Mr. Beltrami submits that in the context of intervention in court proceedings, where, as a matter of evidence, (i) CTT were able to oppose and did oppose the granting of an injunction; (ii) CTT took extensive points in opposition to the grant of the injunction; (iii) Santander's rights of intervention were limited and in any event no greater than those of CTT; and (iv) neither Spanish law expert has suggested any reason to think CTT's submissions did not cover all of the relevant arguments for discharge, then there is plenty of evidence for the court to conclude that there is no case that Santander acted unreasonably in failing to intervene in the proceedings.
183. Mr. Beltrami further submits that neither Spanish law expert identifies any particular evidence or submissions that Santander could have made over and above those already made by CTT. He argues that "*neither expert suggests the remotest reason why the bank should have intervened or should even have thought about intervening or should have considered that it might be a useful expenditure of time and money. They only deal with the technicalities, not the practicalities of actual intervention in on the facts of the case.*"
184. However, these submissions effectively reverse the burden of proof. The burden rests firmly upon Santander to prove, by evidence, that (i) it made reasonable efforts to have the injunction discharged and (ii) had it intervened in the injunction proceedings it would have made no difference to the outcome. As Mr. Houseman submits, it has failed to do so. It has adduced no factual or expert evidence to support the argument that intervention by Santander in its home court, as the debtor under the Bonds, would have made no difference. It does not suffice for Santander, as the non-performing party,

merely to assert through Mr. Beltrami that it reasonably believes that its intervention would have made no difference.

185. The fact is that Santander made no effort at all to have the injunction discharged. I consider that it has not discharged its burden, by evidence, of showing that had it intervened in the injunction proceedings it would have made no difference to the outcome. Santander's case has been, from the outset, that the Spanish Court's injunction prevented it from honouring its obligation under the Bonds. This is therefore a case where a Spanish Court has, on a without notice basis, issued an injunction against Santander, the largest Spanish banking corporation, which prevents it from honouring its obligation to pay some US\$90m under on-demand bonds, which are the lifeblood of international commerce, where the failure to pay could have a seriously adverse effect on the bank's international reputation. Yet Santander at no stage sought to intervene to persuade the Spanish Court to discharge the injunction.
186. Had Santander joined CTT before the Spanish Court in support of CTT's discharge application and had it made submissions to the court, supported by evidence, it cannot be asserted with any confidence that that would have made no difference to the outcome. Indeed, the very fact that Santander stood by and did not join in the application to discharge the injunction may well have made it *more* likely that the injunction would be maintained by the Spanish Court, faced as it was with Santander's apparent indifference to the effect of the court's order on its payment obligation under the Bonds. In any event, Santander's failure to support CTT in its application to have the injunction discharged leads me to the conclusion that Santander has failed to discharge its burden of establishing that it took reasonable steps to have the injunction discharged; and that it has failed to discharge its burden of showing that, even if it had joined in the discharge application, the application would have failed.
187. In view of the fact that the burden lies upon Santander, as Ms Shah KC submitted on behalf of the Claimants, I do not think it is an answer to the foregoing for Santander to assert that CTT did not ask it to join it in the Spanish proceedings. The burden rested on Santander, and at the very least it ought to have engaged in a dialogue with CTT about it assisting CTT and joining it in the proceedings with a view to the discharge of the injunction. But it did nothing.

188. In short, I agree with Mr. Houseman that there is no evidence that the intervention of Santander would not have materially increased the prospects of the application for discharge. Indeed, one might reasonably consider that had the Spanish Court heard from Santander on the discharge application, explaining as a bank often does in such a situation the prejudice caused to it by the injunction, then that would have been a powerful factor in favour of its discharge.
189. In the circumstances, I consider that Santander cannot rely upon the *Ralli Brothers* defence for this reason as well.

IS SANTANDER ENTITLED TO RELY ON THE PRINCIPLE IN *RALLI BROTHERS* IN CIRCUMSTANCES WHERE SANTANDER COULD HAVE PAID BEFORE NOTIFICATION OF THE SPANISH INTERIM INJUNCTION ON 10 APRIL 2025?

190. Mr. Grimm argued this part of the case for the Claimants in a succinct and measured way.
191. He first submitted that Santander had failed to make payment under the Bonds when it was not restrained by the Spanish interim injunction, and accordingly Santander cannot discharge its burden that it took reasonable efforts to effect valid performance, such that it cannot rely upon the *Ralli Brothers* doctrine. Mr Grimm relied upon *Chitty* at [27-027]: “A party relying on frustration by the *lex loci solutionis* must generally show that the illegality covered the whole of the period within which performance was due”.
192. Mr Grimm points out that CTT sent the Demands on Friday 4 April 2025.²⁵ The Spanish interim injunction was issued on Thursday 10 April 2025 (*i.e.* a day before the deadline by which Santander was to effect payment under the terms of the Bonds). Mr Grimm argues that Santander could have paid in the intervening period, particularly as Santander was not permitted to undertake any investigation beyond reviewing whether a demand complies with the terms of the relevant bond: see clause 3.
193. I do not accept this submission. The short answer to the point is that the Demands were made on the 4 April 2025. By the terms of the Bonds they were required to be paid

²⁵ Santander had received the Demands by, at the latest, 18:42 hours on Friday 4 April 2025.

within 5 business days namely by 11 April. It follows that Santander was not in default before 11 April and no claim could have been made against Santander before that date. Since there was no obligation on Santander to pay anything before the Spanish interim injunction was granted there is no basis to contend that it was unreasonable for it not to pay earlier than the contractually agreed long stop date. If the Claimants were right, the requirement that Santander should pay within 5 business days would be redundant, as Santander would have to make payment at the earliest possible date in order to avoid the (unforeseen) risk of the Spanish Court granting interim relief at any time within the window of 5 business days.

194. Indeed, when pressed by the court, Mr Grimm accepted that if a debtor has a period within which to comply with his obligation under a bond and half-way through that period it has not complied, it is not in breach of contract. Despite this, he submitted that if illegality arises at that half-way point by reason of a supervening injunction of the foreign court, then the debtor cannot rely upon the *Ralli Brothers* exception.
195. But that cannot be right. As Moore-Bick J stated in *Libyan Investment Authority v Maud* (supra), the principle with which we are here concerned is that “*If a person has promised to perform a certain obligation, whether it be to pay money or deliver goods, and fails to do so, the burden is on him to show that he was prevented from doing so by some cause for which he is not responsible*”.
196. On the facts posited by Mr. Grimm, the debtor has *not yet* failed to perform his obligation at the time when the Spanish Interim injunction is granted.
197. Mr. Grimm also sought to rely upon the case of *Ross T Smyth v WN Lindsay* [1953] WLR 1280 in support of his submission that the Bank should have paid before 11 April.
198. *Smyth v Lindsay* was a case where a contract for the sale of horse beans dated 14 September 1951 provided for shipment from a Sicilian port. The contract provided that “*should the fulfilment of this contract be rendered impossible by prohibition of export... any unfulfilled part thereof to be cancelled.*” At the date of the contract the export of horse beans was permitted, but by an Italian regulation, dated October 20, 1951, as and from November 1, 1951, export was only allowed under specific licence. The sellers failed to ship the contract goods and the buyers declared them in default. The sellers relied on the prohibition of export clause and alternatively, upon frustration, and the

matter was referred to an arbitration tribunal. The tribunal made no express finding of fact that the sellers had used any diligence to effect shipment between October 20 and November 1.

199. Devlin J held that had the prohibition of export been instantaneous on October 20, it *would* have been the effective cause of the sellers' inability to ship, but the prohibition having given them ten days in which to ship, in the absence of a finding that during that period the sellers had exercised diligence and that shipment was impossible notwithstanding, they were not excused from performing the contract, and were liable in damages to the buyers.
200. This case is readily distinguishable from the present case, as in *Smyth* the seller had 11 days' notice that the Italian regulation was to become effective and yet they did nothing to ship in that 11 day period. The effect of the Regulation was to reduce the period of the option. In the present case, within the payment window, the Spanish Court issued its injunction without any notice to Santander. Indeed, I have found as a fact that there is no evidence to suggest that Santander knew of TSK's application for an interim injunction until 10 April 2025 (see paragraph 19 above).
201. Indeed, I consider that the present case is on all fours with that which obtained in *Anglo-Russia Merchant Traders* [1917] 2 KB 679 at 688 which was expressly referred to by Devlin J in his judgment as follows:
- "There is a qualification to be made to a rule of that sort, which is illustrated by In re Anglo-Russian Merchant Traders and John Batt & Co. [London] Ltd. to which Mr. Mocatta referred me. In that case, the period of shipment was December, 1915, to January, 1916, and the prohibition on shipment came down on December 7th, 1915, and came into operation forthwith. On that aspect of the case, Viscount Reading C.J., at the end of his judgment, said: " The result is that it would have been illegal for the sellers to have shipped the aluminium from America on or after December 7, 1915. Their obligation under the contract was to ship during December 1915, or January 1916. They were entitled to the whole of that time to perform the contract. They were not in default on December 7. By reason of the operation of regulation 30A they were unable to ship after December 7, 1915. There was therefore no breach by them of their obligation to ship to Vladivostok during December 1915, or January 1916, and upon that defence, which is now open to them, they succeed."*
202. As Mr. Beltrami rightly points out, the Claimants can point to no authority to support the proposition that a debtor can only rely upon the principle in *Ralli Brothers* if he

pays before the debt is due, or that he may be found to have acted unreasonably by not paying before the debt is due because of the risk of a supervening court order that might be made by the time the debt does become due.

203. In the circumstances, this factor of itself would not have prevented Santander from relying upon the principle in *Ralli Brothers*.

STAY OF EXECUTION?

204. Finally, Santander argues that if the court concludes that it is liable to make payment notwithstanding the Spanish Injunction (and the court has so concluded), enforcement of any order should be stayed for a sufficient period to permit Santander to seek the discharge or variation of the Spanish Injunction in light of this court's judgment (or alternatively that the court should make a deferred payment order Under CPR 40.11).

205. The primary basis for that relief is said to be CPR 83.7. That provides that

“(1) At the time that a judgment or order for payment of money is made or granted, or at any time thereafter, the debtor or other party liable to execution of a writ of control or a warrant may apply to the court for a stay of execution...”

(4) If the court is satisfied that—

(a) there are special circumstances which render it inexpedient to enforce the judgment or order; ...

Then ... the court may by order stay the execution of the judgment or order, either absolutely or for such period and subject to such conditions as the court thinks fit.”

206. On the basis of this rule, Santander invites the court to impose an “*initial stay*” of four months, against an undertaking that Santander will make the relevant application promptly to the Spanish Court and prosecute it with reasonable expedition²⁶, with liberty to either party to apply. That period is supported by Professor Cerdón's expert evidence that an application for discharge on this basis could take between two and four months to determine, always depending ultimately on the Spanish Court's workload.

²⁶ Dr de Benito is of the view that Santander could make this application on its own but Professor Cerdón considers the point to be uncertain. Santander says that it may be assumed that CTT will make its own application, to which Santander can adhere, and so, it argues, nothing turns on this area of disagreement.

207. Mr. Houseman points out that Santander has not issued an application for a stay and so the matter is not formally before the court. Had it been, he said that CTT would have put evidence before the court of the alleged prejudicial effect upon its business should a stay be granted and he referred the court to a letter from Greenwoods to A&O Shearman dated 16 September 2026 in which it outlined its case in that respect.
208. Mr. Beltrami disputes this: he submits that given that (a) Santander notified the Claimants, by letter of 16 January 2026 that, in the event that the court finds that the rule in *Ralli Brothers* does not provide a defence “*Santander will request that the Court exercise its discretion to stay any such payment until the Spanish Interim Injunction is lifted*”; (b) this was reiterated by Santander in its CMC skeleton argument; and (c) the question of a stay is on the List of Issues, this is not a point that should trouble the court.
209. As to this last point, whilst it is true that paragraph 29 of the List of Issues reads:
- “If the Ralli Bros principle is not applicable by virtue of the Spanish Interim Injunction, should the Court order a case management stay, a stay of execution, or an extended period of compliance with such an order pending the discharge of the Spanish Interim Injunction”,*
- sub-paragraph 29.1 expressly states:
- “Is Santander entitled to suggest that there should be a case management stay or extended period of compliance in circumstances where this was first suggested on 20 March 2026 and no application or evidence in support has been filed?”*
210. It follows that Santander was on notice of the Claimants’ contention that it needed to file an application but it failed to do so.
211. However, I have heard full submissions on whether I should grant a stay or not at the time of handing down my judgment. Mr Beltrami said that his primary position was that it is efficient to decide the stay question now and this is the best time to do it. As Mr. Beltrami said, dealing at the same time, when giving judgment, with the substantive *Ralli Brothers* issue and whether there should be a stay is frequently the way in which our courts approach this question²⁷ as it is the efficient way of dealing with everything. I agree, and since I am dealing with the issue of stay at the same time as giving

²⁷ See for example *Spliethoff’s Bevrachtungskantoor BV v Bank of China* [2016] 1 All ER (Comm) 1034 at [200]-[201ff]; *National Infrastructure Development Co Ltd v BNP Paribas* [2016] EWHC 2508 (Comm) at [16].

judgment, I do not consider that the lack of an application notice should mean that I refuse to consider the application²⁸.

212. It was open to the Claimants to serve a witness statement setting out the prejudice which they allege they would suffer were a stay to be granted long before this trial took place. They knew from Professor Córdón's expert evidence, served on 16 January 2026, that an application to discharge the Spanish injunction, by reason of an order of this court, could take between two and four months to determine, depending on the Spanish Court's workload. And they knew from Santander's skeleton argument for the CMC on 27 March 2026 that Santander was applying for "*a stay of execution, alternatively an extended period of compliance with any order of this court, so as to enable it to seek a relevant discharge of the Spanish order on grounds of change of circumstance... Professor Córdón confirms this could be an available route, with a relatively short time frame.*"²⁹
213. Accordingly, I turn next to the merits of the stay application. Every case, so far as an application for a stay is concerned, turns on its own facts. However, where the court has granted judgment under an on-demand bond governed by English law, it will be a special case where the court nonetheless stays execution of that judgment simply by reason of the grant of an injunction by the debtor's home court on the ground of illegality or unlawfulness. Mr. Beltrami submits that there are nonetheless "*special circumstances*" in this case which support his application for a stay.
214. As Foxton J (as he then was) stated in *Macquarie Bank Ltd v Banque Cantonale Vaudoise* [2024] EWHC 114 (Comm):

"The consequences of the parties' choice of English law as the governing law of the [Standby Letters of Credit]

28. The legal effects of a letter of credit governed by English law are clear. As noted in Edward Owen Engineering Ltd v Barclays Bank International Ltd [1979] QB 159, 169:

²⁸ I note, for what it is worth, that CPR 83.7.2 states "*Unless the application is made at the time the judgment is entered, the application must be made in accordance with Part 23 (i.e. by the issuing of an application notice etc).*"

²⁹ In the event the point is academic, because I have determined that I should refuse the stay application regardless of any further evidence from the Claimants.

“It has been long established that when a letter of credit is issued and confirmed by a bank, the bank must pay it if the documents are in order and the terms of the credit are satisfied. Any dispute between buyer and seller must be settled between themselves. The bank must honour the credit. That was clearly stated in Hamzeh Malas & Sons v British Imex Industries Ltd [1958] 2 QB 127, Jenkins L.J. giving the judgment of this court, said, at p. 129:

‘... it seems to be plain enough that the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not.

An elaborate commercial system has been built up on the footing that bankers' confirmed credits are of that character, and, in my judgment, it would be wrong for this court in the present case to interfere with the established practice.’

To this general principle there is an exception in the case of what is called established or obvious fraud to the knowledge of the bank.”

29. Even where the courts of the bank's domicile have granted an injunction seeking to prevent a bank from paying out under a letter of credit, that will not provide it with a basis for refusing to do so. As Lord Denning MR noted in *Power Curber International Ltd v National Bank of Kuwait Sak* [1981] 1 WLR 1233, 1241-42:

“If the court of any of the countries should interfere with the obligations of one of its banks (by ordering it not to pay under a letter of credit) it would strike at the very heart of that country's international trade. No foreign seller would supply goods to that country on letters of credit — because he could no longer be confident of being paid. No trader would accept a letter of credit issued by a bank of that country if it might be ordered by its courts not to pay. So it is part of the law of international trade that letters of credit should be honoured — and not nullified by an attachment order at the suit of the buyer.

Added to this, it seems to me that the buyer himself by his conduct has precluded himself from asking for an attachment order. By opening the letter of credit in favour of the seller, he has implicitly agreed that he will not raise any set off or counterclaim — such as to delay or resist payment. He has contracted under the terms of the Uniform Customs and Practice by which he promises that the bank will pay without regard to any set off or counterclaim: and implicitly that he will not seek an attachment order ...”

30. *The substantive characteristics of a letter of credit have important procedural implications, which are intended to prevent the payee's substantive rights being circumvented by procedural means...*

32. *Second, it is well-established that the Court will not stay the enforcement of a judgment under a letter of credit pursuant to its procedural stay jurisdiction: Continental Illinois v National Bank Trust Company of Chicago [1986] 2 Lloyd's Rep 441, 445:*

"We can see no relevant distinction between the guarantee in that case and the guarantees presently under consideration. The purpose of both was to ensure immediate payment if the principal debtor did not pay. Indeed the present cases make it the more necessary that the court should not interfere, for here the parties have specifically provided both in the loan agreement and the guarantees that payment should be made free of any set off or counterclaim. It would defeat the whole commercial purpose of the transaction, would be out of touch with business realities and would keep the bank waiting for a payment, which both the borrowers and the guarantors intended that it should have, whilst protracted proceedings on the alleged counterclaims were litigated. We do not doubt that the court has a discretion to grant a stay but it should in our view be "rarely if ever" exercised, as Lord Dilhorne said in relation to claims on bills of exchange. Guarantees such as this are the equivalent of letters of credit and only in exceptional circumstances should the court exercise its power to stay execution."

215. To like effect in *National Infrastructure Development Coy Ltd v Banco Santander SA* [2016] EWHC 2990 (Comm)³⁰, Knowles J refused a stay of execution of the court's award of summary judgment under a standby letter of credit in circumstances where a Brazilian court had granted an injunction to the effect of requiring that the standby letters of credit should not be honoured for the time being. The Judge stated as follows:

"28 The defendant also seeks a stay of execution in the event that summary judgment is to be ordered. The defendant may face, it is true, financial consequences if it acts pursuant to a judgment of this court in [sic] a way that is contrary to the injunction granted in Brazil.

29 I consider it important on principle that I decline the stay. I mean no disrespect to the Brazilian court. However, the effect of a stay would be to undo the straightforwardness for which the parties, in my judgment, bargained. There may be consequences for the defendant now by reason of the Brazilian injunction that a stay for a period could avoid, but that is part of the risk that one commercial party - here, in my judgment, the defendant - has taken...

31 Whether described as 'the life blood of commerce' or as 'equivalent to cash' or as in the nature of a secure payment, or for some in the

³⁰ See also *Power Curber International Ltd v National Bank of Kuwait SAK* [1981] 1 WLR 1233.

present context as the equivalent of retention money, standby letters of credit must work in accordance with their terms, and that includes working on time.”

216. The position is no different in the present case and I agree with Mr. Houseman that any such stay or extension would be contrary to the Bonds and their underlying purpose. There is no burden upon CTT to demonstrate further prejudice above and beyond the prejudice that it will suffer by reason of it being unable to obtain payment under its on-demand Bonds. Santander should have made payment at the latest by 11 April 2025. It has made no attempt to persuade the Spanish Court to discharge its injunction since it granted it as long ago as 10 April 2025.
217. There has therefore already been very substantial delay on the part of Santander in making payment under the Bonds. I cannot be sure that any further delay would be short³¹; Santander itself requests what it terms a four month “*initial stay*”. Any application to discharge the injunction may take longer to determine³², and may be dependent upon TSK’s co-operation (as to listing and the like) which is uncertain. Moreover, any application to discharge the injunction, if successful, might be met with a further appeal. And what if the application to discharge is unsuccessful? Whilst the Spanish law experts state, in paragraph 11 of their Joint Report, that an order of this court that Santander must pay under the Bonds would constitute a supervening circumstance “*capable*” of grounding an application for the discharge of the Spanish injunction, whether that application would succeed or not is uncertain and unknown.
218. The highest it is put is by Dr de Benito who refers in [67] of his first report to an order of this court being a “*persuasive*” ground for a Spanish Court to discharge or modify the measure. It follows that, as Santander itself states in paragraph 71 of its skeleton argument, a stay of execution would, at most, “*permit the Spanish Court to consider whether the prohibition on payment should remain in force in light of the authoritative determination of the court chosen by the parties to determine Santander’s obligations under the Bonds*” (emphasis added).

³¹ See, for example, what happened in respect of the application to discharge - paragraph 39 above.

³² Mr. Beltrami accepted in oral argument that there was “*no guarantee*” that the application could be disposed of within the suggested time frame.

219. Given the crucial commercial function of demand bonds as ‘akin to cash’ or the ‘lifeblood’ of commerce, any further delay and uncertainty should not be facilitated by this court. That is especially so in circumstances where, as Mr. Houseman points out, Santander has itself stated that it is “*wholly unrealistic, and plainly absurd*” to suggest that it would choose not to satisfy an English judgment debt against it³³; and where the Spanish law experts are agreed that if Santander were to make payment under the Bonds in compliance with an order of the English Court, but before the procedural sequence available to Santander had been exhausted in Spain to seek the discharge of the Injunction, the risk of imposition of (i) civil and/or (ii) criminal liability on Santander would only be “*limited*”³⁴.
220. Mr. Beltrami also sought to rely upon the judgment of Ramsey J in *Maritza* and pointed out that the Judge in that case granted a short stay of execution of his order as described in paragraph 167 above. However, that case is different to this case. As I have said above, the present case is factually different in that I have found that the bank’s performance under the Bonds, which are governed by English law, is *not* unlawful by the place of performance (which was not the case in *Maritza*, in which the place of performance of the bond was France, and the French injunctions made performance in France unlawful). Moreover, in *Maritza* the application to discharge the injunction before the French Court was scheduled for a hearing just two days after Ramsey J’s order, and accordingly one can readily understand why the Judge took the pragmatic course that he did in that case by granting a stay.
221. I would add, finally, that I do not accept Mr. Houseman’s unrealistic suggestion (based upon paragraph [86] of Dr de Benito’s expert report) that no stay is warranted because Santander could choose not to comply with the order of the English court and instead allow CTT, pursuant to that order, to enforce against its assets, which would not on its own be a breach by Santander of the Spanish interim injunction; and that if Santander would rather pay under the English Court’s order instead of allowing CTT to enforce against Santander’s assets, then “*that is a matter for it*”. That is not realistic. As

³³ Letter from A&O Shearman dated 11 March 2026.

³⁴ Prof Cordon says (at [78]): “*Consequently, the likelihood of Santander receiving criminal sanctions in Spain, and in particular a sanction for the crime of contempt of court, if it complies with a possible judgment from the English court ordering payment, is limited. The more plausible legal consequence would be civil liability for the resulting damages, the existence and amount of which would have to be proven in the corresponding proceeding.*” See also Dr de Benito at [80]-[84].

Santander has very properly indicated, if the English court orders it to pay under the Bonds, it will honour that order to pay, as it should. To do otherwise could have very serious reputational consequences for the bank. That fact cannot be used as a reason to refuse a stay *per se*.

222. However, for the reasons which I have set out above, in all the circumstances I refuse Santander's application for a stay of the court's judgment and order under CPR 83.7. For the same reasons, I refuse the application for a deferred payment order under CPR 40.11 by specifying a later date for payment.