

As the Middle East conflict continues, Iran has attacked key infrastructure, including the Ras Laffan liquified natural gas (LNG) complex, the Habshan Gas Processing Complex, the Bab Oil Field and the SAMREF Refinery. Simultaneously, Iran has effectively closed the Strait of Hormuz, upending the energy supply chain.

In response, the US president threatened to “obliterate” Iran’s power plants if the Strait was not reopened, leading to negotiations that are now taking place. The consequences of these actions are severe.

Our authors are monitoring the situation closely and have spoken to legal counsel situated in or operating across the region, discussing crisis management, *force majeure* clauses and war risk clauses, as well as advising on immediate actions and responses to contractual counterparts. The global Squire Patton Boggs team has also issued numerous insights during this conflict covering some of the key questions facing companies in the region (see [here](#) and [here](#)).

Sometimes, however, procedure is as important, if not more so, than the substantive dispute. This insight examines anti-suit injunctions; a procedural weapon used to protect contractual dispute-resolution rights, and one which has played a prominent role following the Ukraine war.

### Anti-suit Injunctions

Anti-suit injunctions (ASIs) are equitable orders seeking to prevent a party from starting or continuing legal proceedings in a foreign court.

ASIs bind the targeted party, not the foreign court. While foreign proceedings may therefore technically continue, an English court order can include:

- **A negative injunction** – Ordering a party to take no further steps in the foreign proceedings.
- **A mandatory injunction** – Ordering a party to take positive steps to alleviate the breach, such as discontinuing the foreign proceedings.
- **A penal notice** – By incorporating a penal notice, the enjoined party, and any third parties that might assist them, face severe penalties for failing to comply. This includes:
  - Imprisonment of up to two years
  - A fine (the court has broad discretion to set the financial penalty based on severity)
  - Seizure of assets

### Strategic Utility of ASIs

The most common reason to seek an ASI is to prevent a party from commencing or pursuing proceedings in a “friendly” jurisdiction that provides some substantive or procedural advantage they would otherwise not have.

Other key strategic reasons include:

- Preventing parallel proceedings that risk inconsistent outcomes
- Preserving non-substantive advantages of litigating in certain jurisdictions (e.g., preferable procedural, evidential or case management rules)
- Addressing enforcement concerns, particularly if accepting the offending proceedings would impact the chances of successful or cost-effective enforcement.

### The English Law Test

As a matter of English law, there are two distinct tests depending on the foundation of the ASI application.

#### 1. Contractual (Breach of a Jurisdiction or Arbitration Clause)

This test applies where a party commences foreign proceedings in breach of an exclusive jurisdiction or arbitration clause. An injunction will ordinarily be granted to enforce the contractual right, unless the respondent can show a “strong reason” to the contrary. The test asks:

- Is there a valid jurisdiction or arbitration clause governing relations between the parties?
- If so, have the foreign proceedings been brought in breach of that clause?
- If so, has the party in breach established a “strong reason” why discretion to issue an injunction should not be exercised? (For example, where it would expose parties, including nonparties involved in litigation abroad, to the risk of inconsistent findings).

Notably, a court may also grant an injunction enforcing a clause against a nonparty. This can arise where a nonparty seeks to enforce contract terms through a statutory right of direct action (as in *The Prestige*), or where a clause applies to disputes with a contracting party’s affiliates and proceedings are commenced against an affiliate in breach (as in *Dell Emerging Markets (EMEA) Ltd v IB Maroc SA*).

## 2. Noncontractual (Alternative Forum Cases)

Where no contractual clause exists, the English Courts may still grant an ASI, but the test is more stringent. It requires showing:

- That the English court is the most appropriate (or natural) forum for the dispute
- The pursuit of foreign proceedings is unconscionable, vexatious or oppressive, or that the ends of justice require the injunction

### The Evidentiary Burden and the Need to Act Fast

The evidentiary burden shifts depending on whether the ASI is sought on an interim or final basis, and whether it relies on contractual or alternative forum grounds. Contractual cases will be more straightforward, noncontractual cases less so.

For example, proving vexation or oppression depends on all the facts taken together. Simply demonstrating the existence of parallel proceedings is not typically sufficient. Other evidentiary proofs are necessary, which could include showing that:

- The foreign claim is doomed to fail
- The foreign proceedings were initiated to attack or evade justice (e.g., to circumvent an English claim)
- The foreign claim would expose the applicant to the risk of irreconcilable judgments, or duplicate cross-examination

### The Need to Act Urgently

ASIs are ordinarily made on notice, but must be brought promptly and before proceedings are too far advanced. There are circumstances where extreme urgency justifies an application without notice (*ex parte*). This is typically only granted where the court views it as genuinely justified due to insufficient time to give notice.

### Practical Steps

As matters develop quickly, there are several practical steps companies can take:

- Monitor dockets in jurisdictions where counterparties have a footprint to detect pre-emptive foreign filings
- Act promptly once threatened, notified of or served with foreign proceedings

- Apply for the ASI before the foreign court has the chance to decide on an application to stay or dismiss the foreign proceedings
- Consider also applying for damages in addition to the ASI in accordance with s50 of the Senior Courts Act 1981
- Avoid taking steps that would be deemed voluntary submission in the foreign proceedings, such as seeking to litigate the merits locally
- Leverage the protection available under s32 and s33 of the Civil Jurisdiction and Judgments Act to work with local counsel to carefully (a) challenge the foreign court's jurisdiction, (b) ask the court to dismiss or stay proceedings in favor of arbitration or the English courts or (c) protect property threatened with seizure, without being seen to voluntarily submit to the jurisdiction
- Commence proceedings seeking an indemnity, and/or damages for breach of the jurisdiction or arbitration agreement, counteracting the harm caused by the foreign proceedings
- Collate evidence of all costs and damage sustained as a result of the foreign proceedings, as well as the impact of any orders that court may issue
- Review additional weaponry available, including interim orders such as asset disclosure orders or worldwide freezing injunctions

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