Neutral Citation Number: [2025] CIGC (FSD) 60

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 108 OF 2025 (NSJ)

BETWEEN:

HANGZHOU LIANCHUANG YONGJUN KECHUANG EQUITY INVESTMENT PARTNERSHIP (LIMITED PARTNERSHIP)

Applicant/Plaintiff

AND:

ZAICHANG YE

Respondent/Defendant

Before:	The Hon. Justice Segal
Appearances:	Mr James Eggleton and Ms Kelsey Sabine of Harney Westwood & Riegels (Cayman) LLP for the Applicant/Plaintiff
Date of Hearing:	26 June 2025
Draft Judgment Circulated:	27 June 2025
Judgment Delivered:	30 June 2025

The Applications

1. This is my judgment dealing with two applications filed on 22 April 2025 by Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) (the ***Plaintiff***):

   (a). the first is an *ex parte* without notice application (made by a summons) (the ***Service Out Summons***) for service out of the jurisdiction of the Writ of Summons and Statement of Claim dated 22 April 2025 (the ***Writ***) on Mr Zaichang Ye (the ***Defendant***), at his usual or last known address in the People's Republic of China (***PRC***) (the ***Service Out Application***).

   (b). the second is an *ex parte* without notice application (made by a summons) (the ***Freezing Injunction Summons***) for a freezing injunction prohibiting the disposal of assets held by the Defendant in the Cayman Islands to the value of US$6,516,591.21 until further order of the Court, including in particular, the Class B ordinary shares owned or controlled by the Defendant in a Cayman incorporated company called SunCar Technology Group Inc. (***SDA***) (that is publicly traded and listed on the Nasdaq Capital Market (***Nasdaq***)) and for a further order that the Defendant must inform the Applicant's attorneys in writing of any other assets held by the Defendant in the Cayman Islands above the value of US$50,000 (the ***Injunction Application***). The Defendant was the Chairman, Director, and Chief Executive Officer of SDA and according to SDA's Form 20-F for the year ended 31 December 2023 the Defendant owned 47,000,902 shares of the Class B ordinary shares of SDA, representing approximately 87.7% of the total shareholder voting power. The Plaintiff does not have further up to date information and proceeds on the basis that the position remains as stated in the Form 20-F for the year ended 31 December 2023.

2. I refer to the Service Out Application and the Injunction Application together as the *Applications*. The Applications were heard remotely on 26 June 2025. The Plaintiff was represented by Mr James Eggleton of Harneys. At the conclusion of the hearing, I told Mr Eggleton that I was prepared to grant the relief sought by the Plaintiff in the Applications

subject to certain modifications to the terms of the draft orders filed by the Plaintiff and subject to giving my reasons in writing subsequently. This judgment now sets out my reasons.

3. The evidence filed in support of the Service Out Application is the Second Affirmation of Chaoyu Zhang (***Zhang 2***) and the evidence in support of the Injunction Application is the First Affirmation of Chaoyu Zhang (***Zhang 1***). Ms Zhang is employed as investment manager at Hangzhou Lianchuang Yongjun Equity Investment Management Co., Ltd, the executive partner of the Plaintiff.

4. The Court was asked by the Plaintiff to hear the Injunction Application on an *ex parte* without notice basis since the Plaintiff claimed that giving advance notice to the Defendant would risk frustrating the purpose of the relief sought (the normal procedure is for the Service Out Application to be dealt with on an *ex parte* basis). As I explain below, I was satisfied that it was appropriate to deal with the Applications on this basis.

The Background

5. The Applications relate to and are made following and to enforce a judgment made by the Shanghai Financial Court.

6. The Plaintiff was a party to agreements for the sale and repurchase of shares in a PRC company called Sun Car Online Insurance Agency Co., Ltd (the ***Target Company***). The Plaintiff originally purchased pursuant to an agreement dated 8 June 2018 (the ***Original Purchase Agreement***) 2,300,000 shares in the Target Company (the ***Transferred Shares***) for Chinese Yuan Renminbi (***RMB***) 29,900,000, which equates to US$4,515,115.82 (the ***Original Purchase Price***). The seller/transferor was another PRC company called Zhejiang Shengling Automobile Service Co. (***ZSAS***) (as Mr Eggleton explained at the hearing, ZSAS used to be called Shanghai Sun Car Services Group Co., Ltd, which is the name of the seller/transferor in the relevant transfer agreements). ZSAS at the time (and up until 30 June 2022) was a wholly owned subsidiary of a further PRC company called Shanghai Feiyou

Trading Co., Ltd (***Feiyou***). Feiyou was a wholly owned subsidiary of SDA (which as I have noted the Plaintiff claims is controlled by the Defendant). The Defendant was a party to the Original Purchase Agreement. He was described as the "*Transferor's Actual Controller*." He also signed the Original Purchase Agreement on behalf of ZSAS. Ms Zhang said at footnote 1 to Zhang 1 (without waiving privilege) that she understood that under section 265 of the PRC Company Law (as amended) an actual controller is a person who though not a shareholder of a company is capable of actually controlling the conduct of the company through investment relations agreements or other arrangements.

7. Shortly after the Original Purchase Agreement was entered into, the Plaintiff, ZSAS and the Defendant entered into a further agreement (the ***Supplemental Agreement***). Once again, the Defendant was a party to the Supplemental Agreement and was described as the "*Transferor's Actual Controller*" and signed the Supplemental Agreement on behalf of ZSAS.

8. Pursuant to Article 2.1 of the Supplemental Agreement ZSAS was required to repurchase the Transferred Shares from the Plaintiff (the ***Share Repurchase***) if, prior to 30 June 2021, the Target Company failed to either: (i) make an initial public offering of stock on the Main Board, Small and Medium Enterprises Board or Growth Enterprise Market (the ***Designated Markets***); or (ii) merge with or be acquired by a listed company (each ***a Repurchase Condition*** and, together, the ***Repurchase Conditions***). Article 2.2 of the Supplemental Agreement provides that the repurchase price for the Transferred Shares shall be the sum of the Original Purchase Price and guaranteed investment return of 10% per annum (calculated from the date the Plaintiff paid the Original Purchase Price until the date it receives payment of the Repurchase Price from ZSAS), deducting any dividends and payouts already distributed by the Target Company to the Plaintiff (the ***Repurchase Price)***. Article 2.3 of the Supplemental Agreement requires that ZSAS pay to the Plaintiff: (i) the Repurchase Price in full within six months after it receives a written request from the Plaintiff for payment, and (ii) for any amount of the Repurchase Price not paid when due, liquidated damages at a daily rate equal to 0.05% on the amount payable for each day of delay until payment in full. Pursuant to Article 2.4 of the Supplemental Agreement, in the event that a Repurchase Condition were to be triggered and ZSAS fails to pay the Repurchase Price to the Plaintiff,

the Defendant shall be held jointly and severally liable to the Plaintiff for the Repurchase Price.

9. On 26 November 2020 and 30 November 2020, the Target Company issued announcements confirming that it would not be able to make an initial public offering on the Designated Markets or merge with, or be acquired by, a listed company prior to 30 June 2021 (the ***Announcements***). The Target Company did not make an initial public offering on the Designated Markets or merge with, or be acquired by, a listed company by 30 June 2021. The Plaintiff says that the Repurchase Conditions were deemed triggered when the Target Company issued the Announcements on 26 November 2020 and 30 November 2020.

10. On 20 April 2021, the Plaintiff commenced an action against the Defendant and ZSAS in the Shanghai Financial Court to enforce the terms of the Supplemental Agreement (the ***Shanghai Proceedings***).

11. On 16 July 2021, the Plaintiff issued a written demand by way of a repurchase notice to ZSAS for payment of the Repurchase Price in exchange for the Transferred Shares pursuant to the terms of the Supplemental Agreement (the ***Repurchase Notice***). Despite being issued with the Repurchase Notice, ZSAS failed to pay any amount of the Repurchase Price to the Plaintiff.

12. On 14 February 2022, the Plaintiff, the Defendant and ZSAS participated in a mediation chaired by the Shanghai Financial Court. This mediation resulted in a settlement agreement in which the parties agreed to new terms for ZSAS to satisfy its obligation to pay the Repurchase Price to the Plaintiff. The settlement terms were recorded in a judgment of the Shanghai Financial Court dated 14 February 2022, an English translation of which has been adduced in evidence (the ***Shanghai Financial Court Judgment***).

13. The Shanghai Financial Court Judgment records that, "*During the hearing of this case, the parties voluntarily concluded the following agreement after mediation chaired by this Court…*" The Shanghai Financial Court Judgment (which as can be seen from the following

extract from the English translation refers to itself as a Mediation Agreement) goes on to set out the terms of that agreement as follows (my underlining):

> *"1. The defendant Sun Car Services Group Co., Ltd. shall pay the share repurchase price of RMB 3,160,000 to the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) prior to February 28, 2022 to repurchase the shares of the third party Sun Car Online Insurance Agency Co., Ltd. held by the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) with a value of RMB 3,160,000 (the single share price shall be calculated as 150% of the closing price of the previous trading day). The plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) and the defendant Sun Car Services Group Co., Ltd. shall, prior to February 28, 2022, declare and complete the transfer of the target shares through the NEEQ system by mutual reporting of the transaction confirmation and commission in accordance with the said stipulations, and handle the settlement of shares and funds through the registration and settlement system of China Securities Depository and Clearing Co., Ltd.;*
>
> *2. Prior to September 30, 2022, the defendant Sun Car Services Group Co., Ltd. shall repurchase all remaining shares (2.3 million shares – the number of shares repurchased in accordance with Item 1 of this Mediation Agreement) of the third party Sun Car Online Insurance Agency Co., Ltd. held by the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership), and the share repurchase price shall be calculated as follows: Share repurchase price = (RMB 29,900,000 - share repurchase price paid in accordance with Item 1 of this Mediation Agreement) + (RMB 29,900,000 × 10% × number of days from June 12, 2018 to February 28, 2022 / 360) + [(RMB 29,900,000 - share repurchase price paid in accordance with Item 1 of this Mediation Agreement) × 10% × number of days from March 1, 2022 to the date on which the plaintiff actually receives the share repurchase price / 360)] - cash bonus/dividend received by the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) from the third party Sun Car Online Insurance Agency Co., Ltd. (currently RMB 2,760,000 as of February 14, 2022); the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) and the defendant Sun Car Services Group Co., Ltd. shall, prior to September 30, 2022, declare and complete the transfer of the target shares through the NEEQ system by mutual reporting of the transaction confirmation and commission in accordance with the said stipulations, and handle the settlement of shares and funds through the registration and settlement system of China Securities Depository and Clearing Co., Ltd.; if it is unable to pay the share repurchase price in full through the online system due to the restrictions of the trading and settlement system, the defendant Sun Car Services Group Co., Ltd. Shall directly pay the difference to the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) offline;*

3. *If the defendant Sun Car Services Group Co., Ltd. fails to perform the repurchase or payment obligation of any phase as stipulated in Items 1-2 of this Mediation Agreement, the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) shall have the right to apply directly to relevant people's court for enforcement of requesting the defendant Sun Car Services Group Co., Ltd. to immediately perform all the repurchase and payment obligations stipulated in Items 1-2 above;*

4. *If the defendant Sun Car Services Group Co., Ltd. fails to pay up the share repurchase price (whether voluntarily performed or enforced by relevant people's court) by September 30, 2022, for each day of delay, the defendant shall also pay the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) the overdue interest at an annual interest rate of 5.4% based on the unpaid share transfer price principal (RMB 29,900,000 - the share repurchase price paid in accordance with Item 1 of this Mediation Agreement), and the payment of such overdue interest shall not affect the calculation of the share repurchase price in light of the method stipulated in this Mediation Agreement until the date of actual payment;*

5. *The defendant Ye Zaichang shall be jointly and severally liable for the repurchase and payment obligations of the defendant Sun Car Services Group Co., Ltd. to the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) as stipulated in Items 1-4 above of this Mediation Agreement, and shall have the right to recover the same from the defendant Sun Car Services Group Co., Ltd. after assuming the joint and several guarantee liability;*

6. *The case acceptance fee of RMB 230,016 (prepaid by the plaintiff) will be reduced by half and collected as the case is closed through mediation, i.e., RMB 115,008, and the plaintiff Hangzhou Lianchuang Yongjun Kechuang Equity Investment Partnership (Limited Partnership) and the defendant Sun Car Services Group Co., Ltd. shall assume RMB 57,504 respectively;*

7. *The parties have no other disputes for this case.*

The Agreement above does not violate the laws and is affirmed by this Court.

This Mediation Agreement shall have legal effect after all parties sign or seal on the transcript and it is affirmed by this Court."

The failure by ZSAS and the Defendant to comply with the Shanghai Financial Court Judgment and the claims made in the Writ

14. The Plaintiff stated that with the exception of the Initial Repurchase Price (RMB 3,160,000), the Plaintiff has not received any of the other payments required to be paid pursuant to the Shanghai Financial Court Judgment.

15. On 22 April 2025 the Plaintiff issued the Writ in this jurisdiction to which the Defendant was made the only defendant. The Plaintiff seeks an order that the Shanghai Financial Court Judgment be recognised and judgment in respect of the sums due and payable under the Shanghai Financial Court Judgment. [39] of the Writ seeks "*the entry of a judgment against the Defendants in this Court for the following amounts: (a) US$3,286,822.56 (or the Renminbi equivalent of 23,980,000 at the time of payment) as awarded under the [Shanghai Financial Court Judgment]; (b) US$1,545,950.33 (or the Renminbi equivalent of 11,278,944.44 at the time of payment) as awarded under the [Shanghai Financial Court Judgment]; c) guaranteed investment return on US$3,665,122.40 (or the equivalent of RMB 26,740,000 at the time of payment) at a rate of 10% per annum running from 1 March 2022 to the date of registration of the [Shanghai Financial Court Judgment] in the Cayman Islands, as awarded under the [Shanghai Financial Court Judgment]; and (d) interest on US$3,665,122.40 (or the equivalent of RMB 26,740,000 at the time of payment) at a rate of 5.4% per annum running from 1 October 2022 to the date of registration of the [Shanghai Financial Court Judgment] in the Cayman Islands, as awarded under the [Shanghai Financial Court Judgment]*."

The sale at an undervalue by ZSAS of all its shares in the Target Company

16. The Writ refers to the Shanghai Financial Court Judgment and avers as follows:

> *"24. In accordance with the [Shanghai Financial Court Judgment]*
>
> *a) ZSAS was required to purchase an initial tranche of the Transferred Shares from the Plaintiff for RMB 3,160,000 (approximately $500,546.48 (the **Initial Repurchase Price**) prior to 28 February 2022.*

*b) ZSAS was also required to repurchase the remaining balance of the Transferred Shares from the Plaintiff prior to 30 September 2022 at a price (the **Remaining Repurchase Price**) calculated as the sum of:*

i) the remaining principal amount, calculated by subtracting the Initial Repurchase Price (RMB 3,160,000) and the dividends and payouts already distributed by the Target Company (RMB 2,760,000 as of 14 February 2022) from the Original Purchase Price (RMB 29,900,000). This equals RMB 23,980,000;

ii) the guaranteed investment return of 10% per annum on the Original Purchase Price (RMB 29,900,000) from 12 June 2018 to 28 February 2022. This amount equals to RMB 11,278,944.44; and

iii) the guaranteed investment return of 10% per annum on the amount remaining from subtracting the Initial Repurchase Price (RMB 3,160,000) from the Original Purchase Price (RMB 29,900,000), from 1 March 2022 to the date the Plaintiff receives payment of the Remaining Repurchase Price in full.

c) In the event that ZSAS failed to pay the Repurchase Price in full before 30 September 2020, the Plaintiff was additionally entitled to interest at a rate of 5.4% per annum on the principal amount remaining from subtracting the Initial Repurchase Price (RMB 3,160,000) from the Original Purchase Price (RMB 29,900,000), calculated from 1 October 2022 to the date of receipt of the Repurchase Price payment in full.

25 The [Shanghai Financial Court Judgment] records that the Defendant is jointly and severally liable for the repurchase and payment obligations of ZSAS.

26. With the exception of the Initial Repurchase Price (RMB 3,160,000) set out in paragraph 24(a) above, the Plaintiff has not received any of the other payments awarded under the [Shanghai Financial Court Judgment].

27. The [Shanghai Financial Court Judgment] is final and conclusive and evidences a debt for a certain sum as detailed in paragraphs 24 above.

28. The debt evidenced by the [Shanghai Financial Court Judgment] remains due and payable by the Defendant to the Plaintiff."

17. The Writ also refers to the action taken by the Plaintiff to challenge a sale, entered into in December 2021 by ZSAS of its entire holding of shares in the Target Company, which the Plaintiff considered had been at an undervalue and intended to remove from ZSAS all of its assets so as to prevent it from being able to comply with its obligations under the Shanghai Financial Court Judgment (my underlining):

*"29. On 10 February 2022, four days prior to the issuance of the [Shanghai Financial Court Judgment], the Plaintiff learned by way of two public announcements that, on 3 December 2021, ZSAS had entered into an agreement to transfer the entirety of its ownership in the Target Company, approximately 70,445,000 shares—to Feiyou, a then wholly owned subsidiary of SDA (the **Suspect Transaction**).*

30. The share transfer agreement for the Suspect Transaction records that the shares were to be transferred at a value of RMB 4 per share for a total consideration of RMB 281,780,000. However, on 6 June 2023, Feiyou transferred RMB 300,000 to Sun Car, which was recorded as "equity transfer payment" in the transaction summary (approximately RMB 0.0042 per share).

31. The Suspect Transaction was a deliberate attempt by the Defendants to evade the terms of the [Shanghai Financial Court Judgment] as evidenced by the minimal consideration by Feiyou in return for the Target Company shares.

32. While ZSAS repurchased RMB 3,160,000 worth of the Transferred Shares from the Plaintiff by 28 February 2022, it failed to repurchase the remaining balance of the Transferred Shares as required by the [Shanghai Financial Court Judgment] because it was stripped of significant assets through the Suspect Transaction.

*33. In December 2022, following ZSAS's failure to comply with the [Shanghai Financial Court Judgment], the Plaintiff commenced proceedings against ZSAS in the Shanghai Songjiang District People's Court (the **Revocation Action**). By way of the Revocation Action, the Plaintiff sought orders reversing the Suspect Transaction so that the assets conveyed to Feiyou would be returned to ZSAS, enabling ZSAS to satisfy the Financial Court Judgment.*

34. ZSAS was duly served notice of the Revocation Action in accordance with the laws of PRC. ZSAS appeared in the Revocation Action, was represented by counsel, declined to contest jurisdiction, and presented evidence to the trial court.

*35. Following an unfavourable ruling in the first instance court, the Plaintiff filed an appeal to the Shanghai First Intermediate People's Court (the **Intermediate Court**). ZSAS was duly served notice of the appeal in accordance with the laws of PRC. ZSAS appeared as an Appellee in the Intermediate Court Action, was represented by counsel, declined to contest jurisdiction, and made arguments on its own behalf.*

*36. On 27 February 2024, the Intermediate Court overturned the first instance court and ruled in favour of the Plaintiff (the **Decision**), holding that the Suspect Transaction should be revoked. The Intermediate Court reasoned that the Suspect Transaction was a related party transaction. While the parties agreed*

on the price and value for the Transferred Shares (namely, RMB 281,780,000 or approximately US$39,145,353.76 for which Feiyou only paid RMB 300,000 or approximately US$41,676.51), the underlying agreement provided for neither the method nor the schedule of payment. As such, Feiyou could indefinitely delay the remaining payment for the Transferred Shares.

37. *The Intermediate Court ordered that within fifteen days of the Decision (i.e., on or before 13 March 2024), ZSAS and Feiyou must restore the shares transferred under the Suspect Transaction within the scope of the Plaintiff's right as a creditor so that ZSAS may fulfil its obligations to the Plaintiff under the [Shanghai Financial Court Judgment]. The Intermediate Court also ordered ZSAS to pay the Plaintiff's attorney's fees in the amount of RMB 150,000 (approximately $20,838.25) within ten days of the Decision (the* ***Intermediate Court Order****). The Intermediate Court Order is final and unappealable.*

38. *On 28 May 2024, Feiyou sent a letter to the Shanghai Songjiang District People's Enforcement Court. This letter stated that Feiyou is a wholly-owned subsidiary of SDA, a company whose securities are traded on the Nasdaq, that SDA is in the process of raising capital, and that it would not comply with the Intermediate Court Order to protect SDA's value*" (at the hearing Mr Eggleton told me that in fact Feiyou had not said that they would not comply with the Intermediate Court Order and that this reference, as well as [40d] of Zhang 1, would need to be corrected).

The Service Out Summons

The Plaintiff's submissions

18. By the Service Out Summons the Plaintiff seeks leave, pursuant to GCR O.11, r.1(1)(m), to serve the Writ on the Defendant at the usual or last known address of the Defendant at No. 656 Lingshi Road, Jin-An District, Shanghai in the PRC. Ms Zhang in Zhang 2 exhibited a copy of an opinion dated 11 April 2025 from Beijing W&H (Shanghai) Law stating that under PRC law service can be effected at this address via the PRC Ministry of Justice pursuant to the Hague Service Convention (see [24] of Zhang 2).

19. GCR O.11, r.1(1)(m) applies where a "*claim is brought to enforce any judgment or arbitral award ....*" The Plaintiff submitted that the purpose of the GCR O.11, r.1(1)(m) gateway was ultimately to put the judgment creditor in the position of being able to enforce against assets in the Cayman Islands or take some other step to enforcement. The Plaintiff relied on the

judgment of Justice Jones in *Munib Masri v Consolidated Contractors International Company SAL & Anor* [2011 (1) CILR 79] at [11] where the learned judge said as follows (my underlining):

> "*On any view Mr Masri has a good arguable case and if he does establish his cause of action, he will be entitled to his remedy, namely a money judgment, as of right. On this basis it could be said that Mr Masri has a perfectly proper case for service out of the jurisdiction. However, when the Court is asked to exercise a discretionary power, other considerations also come into play. Firstly, the Court's discretionary powers should be exercised, if at all, only for the purposes for which they were created. I agree with Mr Timms that the purpose of GCR O.11, r.1(1)(m) is not simply to allow foreign judgments to be domesticated. Its purpose is to put the judgment creditor in the position of being able to enforce against assets in this jurisdiction or take some other step towards enforcement. Secondly, the Court should decline to exercise its discretion, or to exercise it in a particular way, if to do so would be futile.*"

20. The Plaintiff pointed out that GCR O.11, r.4(2) provides that *"no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order"* and that the Court's power to make an order permitting service on a defendant outside of the jurisdiction is discretionary. The Plaintiff referred to the well-known principles applicable to applications to serve out to the effect that in order to obtain permission to serve, a plaintiff must satisfy the following three requirements (citing *George Allen Cowan v Equis Special LP,* unreported, FSD 22 of 2018 (IMJ), 3 October 2019) at [72]):

(a). there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law or both.

(b). that the plaintiff has a good arguable case that the claim falls within one of the relevant gateways set out in GCR O.11, r.1(1). "*Good arguable case,*" in this context, means there is "*a plausible evidential basis"* that the claim falls within one of the gateways (citing *In the Matter of Raiffeisen Bank International* [2025] CIGC (FSD) 23 at [58], referring to *Brownlie v Four Seasons* [2018] 1 WLR 192 UKSC at [7]).

(c). that in all the circumstances, the Cayman Islands is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances, the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction (pursuant to GCR O.11, r.4(2)).

21. The Plaintiff submitted that these three requirements were clearly satisfied in the present case:

(a). there is a serious issue to be tried on the merits. The Shanghai Financial Court Judgment was a foreign judgment entered against the Defendant (as well as ZSAS) which was entitled to recognition at common law and which supported an action on the judgment in this jurisdiction. The Plaintiff can expect to obtain a summary judgment unless the order for service out of the jurisdiction is set aside (*Masri* at [9]).

(b). the claim clearly falls within GCR O.11, r.1(1)(m).

(c). in all the circumstances, the Cayman Islands is clearly the appropriate forum for the trial of the dispute as the Plaintiff is seeking recognition and enforcement of the Shanghai Financial Court Judgment against the Defendant's Cayman Islands assets.

22. The Plaintiff said that the domestication of the Shanghai Financial Court Judgment would put the Plaintiff in a position to take steps towards enforcement against assets held by the Defendant in this jurisdiction. The evidence showed that the Defendant was understood to hold 87.7% of the total shareholder voting power in a Cayman Islands exempted company (i.e. SDA). The Plaintiff said that upon obtaining a judgment on the Writ it intended to take enforcement steps against the Defendant in the Cayman Islands.

23. The Plaintiff said that in compliance with the requirements of GCR O.11, r.4(1), Zhang 2 recorded that (a) the grounds on which the Service Out Application was made; (b) her belief that the Plaintiff had a good cause of action; (c) in what place or country the Defendant is or probably may be found and (d) that the methods of service proposed comply with the laws of the countries in which service is to be effected. Ms Zhang noted that the legal opinion

from Beijing W&H (Shanghai) Law dated 11 April 2025 confirmed that PRC law would be complied with because (i) service of the Writ would be carried out on the Defendant under the Hague Service Convention and (ii) the PRC is a contracting party to the Hague Service Convention.

Discussion and decision

24. The Plaintiff brings proceedings in this jurisdiction to enforce the Shanghai Financial Court Judgment. It relies on the Court's jurisdiction at common law. At common law, a foreign judgment is enforced by bringing a fresh action in this jurisdiction. The Writ represents the fresh proceedings in the jurisdiction.

25. In its written submissions, the Plaintiff mentioned but only briefly (in the context of the good arguable claim requirement for the grant of a freezing injunction) the conditions for the granting of relief under the common law jurisdiction (see in particular [77] of the Plaintiff's skeleton argument which discusses what needs to be shown to establish that the foreign court was competent and had international jurisdiction to issue the foreign judgment or order in relation to *in personam* claims, citing *Banco Mercantil del Norte SA v Cabal Peniche* [2003] CILR 343 and *Ovaskainen v Ovaskainen* (GC) (***Ovaskainen***) (Unreported, FSD 138 of 2023 (MRHJ), 21 June 2023) together with Dicey, Morris & Collins on the Conflict of Laws (16th Ed.), Rule 47 at [14-059]-[14-101] and Rule 58 at [14R-198]). The Plaintiff submitted that the Shanghai Financial Court Judgment was final and conclusive, for a definite sum, and constituted a claim *in personam* and that the Shanghai Court had jurisdiction over the Defendant, a citizen of, and domiciled in, the PRC, in accordance with Cayman Islands private international law. In particular, the Defendant was present in the jurisdiction at the time the Shanghai proceedings were commenced and had voluntarily submitted to the jurisdiction by appearing in the proceedings.

26. The Plaintiff's skeleton did not refer to any PRC law evidence as to the nature and effect of the Shanghai Financial Court Judgment under applicable PRC law. However, at the hearing Mr Eggleton pointed out that the legal opinion from Beijing W&H (Shanghai) Law addressed not only the PRC law governing service but also the law governing mediation

judgments, of which the Shanghai Financial Court Judgment was an example (although the opinion does not deal with and explain the status of the Shanghai Financial Court and its position within the Shanghai judicial system). This opinion stated as follows (my underlining):

> *"Question 3: Under current Chinese law, can a civil mediation judgment be used as a basis for applying for enforcement?*
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> *Article 100 of the Civil Procedure Law states: when a mediation agreement is reached, the people's court shall prepare a mediation judgment. The mediation judgment shall state the claims, the facts of the case and the results of the mediation. The judges and the court clerk shall sign their names and the people's court shall affix its seal to a mediation judgment, which shall be served on both sides. Once a mediation judgment is signed by both sides, it shall become legally binding.*
>
> *Article 247 states: the parties must comply with an effective civil judgment or ruling. If a party refuses to comply, the opposing party may apply to the people's court for enforcement and the judges may also transfer the case to the enforcement personnel for enforcement. The parties concerned must comply with a mediation judgment and other legal instruments which shall be enforced by a people's court. If a party refuses to comply, the opposing party may apply to the people's court for enforcement."*
>
> *Therefore, under Chinese law, a civil mediation judgment is a legal basis for the parties to apply for enforcement."*

27. The nature and effect under PRC law and characterisation under Cayman law of the Shanghai Financial Court Judgment are relevant to an assessment of the merits of the Plaintiff's claim for the purpose of both Applications. This is because in order for the Shanghai Financial Court Judgment to be enforceable under the common law jurisdiction the judgment must meet certain requirements.

28. As is well known, there are various conditions that have to be satisfied in order for a foreign judgment to be enforceable at common law:

    (a). traditionally and still in England, to be enforceable at common law a judgment must be for a debt or definite sum of money and be final and conclusive. Whether a decision is final and conclusive will depend on the nature of the judgment.

(b). a foreign judgment is only enforceable under the common law regime if the original court was competent and had jurisdiction according to the rules which Cayman law applies in such cases. Broadly, this means that the foreign court must have had jurisdiction on a territorial or consensual basis. More specifically, a foreign court will be of competent jurisdiction to give a judgment *in personam* capable of enforcement in the Cayman Islands, if either: (a) the judgment debtor was, at the time the proceedings were instituted, present in the foreign country; (b) the judgment debtor was the plaintiff or counter-claimant in the proceedings in the foreign court; (c) the judgment debtor was the defendant and submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings and contesting them on the merits; or (d) the judgment debtor was the defendant and, before the commencement of the proceedings, agreed in respect of the subject-matter of the proceedings to submit to the jurisdiction of the foreign court.

29. In this jurisdiction, there is first instance authority that even a foreign non-monetary judgment may be enforced under the common law jurisdiction. In *Miller v Gianne* [2007] CILR 18 Chief Justice Smellie (as he then was) reached the conclusion that *Sadler v Robins* had been disapproved by the Privy Council (in *Pattni v Ali* [2007] 2 A.C. 85) and should not be followed in the Cayman Islands, preferring instead to adopt the approach taken by the Supreme Court of Canada (in *Pro Swing Inc. v. Elta Golf Inc.* [2006] S.C.R. 52). The Chief Justice noted that: "*There the majority of the court [decided] … that the traditional common law rule that limits the recognition and enforcement of foreign orders to final money judgments should be changed. Further, that the appropriate modern conditions for recognition and enforcement can be expressed generally as follows. The judgment must have been rendered by a court of competent jurisdiction and must be final and conclusive, and it must be of a nature that the principles of comity require the domestic court to enforce. Comity does not require receiving courts to extend greater judicial assistance to foreign litigants than it does to its own litigants, and the discretion that underlies equitable orders can be exercised by Canadian courts when deciding whether to enforce one. … This invocation by the Canadian Supreme Court of equitable principles is derived from an examination of the history of the traditional common law limitations set now against the realities of modern day commerce and the global mobility of people and assets. Those are realities which exist no*

less so in our jurisdiction." The judgment in *Miller* has been followed by Justice Henderson in *Bandone v Sol Properties* [2008] CILR 301. However, the Plaintiff did not refer to or rely on this line of authority.

30. Ms Zhang deposes that the Shanghai Financial Court Judgment is "*final and unappealable*" (see [8] of Zhang 2). The Writ also states that the Shanghai Financial Court Judgment is "*final and conclusive and evidences a debt for a certain sum as detailed in paragraph [24] above*" (at [27]). The Plaintiff's evidence (Zhang 2 at [14]) also shows that the Defendant's last known address was in Shanghai although Ms Zhang only states that "*the Defendant is a citizen of and domiciled in the PRC and is or probably may be found there*" ([see [13] of Zhang 2). However, the Plaintiff's evidence does not state specifically that the Defendant was present in the PRC or Shanghai at the time of the Shanghai Proceedings. But that evidence does confirm that the Defendant appeared and was represented in the proceedings before the Shanghai Financial Court. At [21] of Zhang 1, Ms Zhang states that the Defendant "*appeared in the Financial Court Action, [was] represented by counsel and did not contest jurisdiction*." The Defendant also "*participated in the mediation chaired by the Shanghai Financial Court*" ([24] of Zhang 1). It appears that the Defendant also agreed to be bound by and signed the Shanghai Financial Court Judgment (see [24] of Zhang 1). During the hearing, Mr Eggleton confirmed that it was the understanding of the Plaintiff's evidence that the Defendant did actively participate in the proceedings on the merits.

31. So I take the Plaintiff's position to be that the Shanghai Financial Court Judgment satisfies the conditions for common law enforcement because it is, properly understood, a money judgment (being a judgment requiring payment of a specified and calculable sum of money), which is issued by a competent foreign court (because the Shanghai Financial Court is a proper court and part of the Shanghai judicial system and had international jurisdiction in accordance with Cayman law in respect of the Shanghai Proceedings because *inter alia* the Defendant appeared before it on the merits and submitted to its jurisdiction) and is final and conclusive.

32. I accept these submissions. The legal opinion from Beijing W&H (Shanghai) Law indicates and supports the view that as a matter of PRC law (pursuant to articles 100 and 247 of the Civil Procedure Law) the Shanghai Financial Court Judgment as a mediation judgment is treated as a court judgment which is binding on the parties once signed by them and the judge and enforceable as a court judgment or order (by an application to the People's Court for enforcement). For this reason, it appears to satisfy the requirement of being final and conclusive (although Beijing W&H (Shanghai) Law did not use those terms or directly address that issue).

33. The Shanghai Financial Court Judgment appears to be the PRC equivalent of, or similar to, a Tomlin order and [3] of the Shanghai Financial Court Judgment is similar to the wording in a standard Tomlin order to the effect that the parties have permission to apply to the court to enforce the relevant settlement terms without the need to commence fresh proceedings.

34. I also accept that it is at least seriously arguable (and that the Plaintiff has a good arguable case) that the Shanghai Financial Court Judgment satisfies the requirement of being a judgment for the payment of a definite or liquidated sum. [1] and [2] create clear obligations to pay certain sums with [2] incorporating a formula so that the share repurchase price can be readily calculated. [4] provides for the payment of interest, once again with a formula allowing the calculation of the amount owing. While the Shanghai Financial Court Judgment can be treated as an order for specific performance of the agreement to repurchase the Transferred Shares, and includes an obligation on the parties to effect the requisite share transfers in addition to the payment obligations, these elements of the judgment can be treated as ancillary to the payment obligations and ministerial.

35. I can see that it might be said that [3] of the Shanghai Financial Court Judgment imposes a condition at least to the foreign enforcement of the Shanghai Financial Court Judgment by requiring an initial application for enforcement to the relevant People's Court and that this could preclude it from being treated as a final and conclusive judgment in this jurisdiction. Mr Eggleton accepted that there was no evidence that the Plaintiff had made any application for enforcement under [3] of the Shanghai Financial Court Judgment but argued that the Plaintiff could be seen as having commenced the enforcement process because the

Revocation Action was a necessary preliminary step in enforcing the Shanghai Financial Court Judgment since ZSAS would have no or only limited assets unless and until the Suspect Transaction had been set aside and unwound. But Mr Eggleton submitted, and I accept that his argument is right on the current state of the PRC law evidence, that [3] should not be construed as a condition or limitation on the enforceability or finality of the Shanghai Financial Court Judgment but rather the means and procedural route by which the final judgment is to be enforced. I would also note that I also asked Mr Eggleton whether he had found any authority which dealt with the common law recognition of a Tomlin order and he said that he had not.

36. It is obviously critical that the Plaintiff can show that the Defendant has assets in the jurisdiction. The information relied on for this purpose is, as I have noted, the US SEC Form 20-F for the year ended 31 December 2023. This is an out of date public filing and therefore of only limited probative weight. There is clearly a concern that the position may have changed. However, it appears that there are no more recent public filings and that there is nothing more that the Plaintiff reasonably can be expected to do to obtain more up to date information. It seems to me that the stale state of the evidence as to the Defendant's holding of shares in SDA should not prevent the Plaintiff from being able to rely on such holding for the purpose of the Applications although it is relevant to the assessment of the need for a cross-undertaking.

37. In light of all these considerations and for the reasons I have given, I am satisfied that the Plaintiff has shown that there is a serious issue to be tried on the merits of its claim for the relief sought in the Writ, that the Plaintiff's claim falls within GCR O.11, r.1(1)(m) and that in all the circumstances the Cayman Islands is clearly or distinctly the appropriate forum for the trial of the dispute.

The Injunction Application

Is an ex parte application justified?

38. The Plaintiff relied on the general principles relating to *ex parte* applications made without notice as explained by Justice Doyle in *Cathay Capital Holdings III LP v Osiris International Cayman Limited*:

> *"It is a basic general principle of justice and fairness that an order should not normally be made against a party without giving such party an opportunity to be heard. As with all general principles there are exceptions including (1) where the genuine and exception urgency of the situation requires the matter to proceed immediately and without notice. These are very rare cases and (2) where it appears likely that if notice is given the defendant or others would take action which would defeat the purpose of the application before any order could be made and any damage, which may be compensated under the cross undertaking, or the risk of uncompensatable loss is outweighed by the risk of injustice to the plaintiff if the order is not made without notice."*

39. The Plaintiff also relied on the following dictum of Justice Kawaley in *Re Atom Holdings*: "*The most clear-cut generally applicable justification from proceeding ex parte without notice is 'when there is a risk that were notice to be given this would defeat the purpose of the injunction': Re Cathay Capital Holdings III, LLP, FSD 245 of 2021 (DDJ)*."

40. The Plaintiff submitted that it was appropriate for the Court to deal with the Freezing Injunction Summons *ex parte* and without notice to the Defendant on the basis that providing advance notice to the Defendant would or might frustrate the purpose of the Injunction Application. If the Defendant was given advance notice of the application for a freezing injunction there was a real risk that he would seek to transfer or dispose of his shares in SDA. The Plaintiff argued that the Court could infer from the sale at an undervalue by ZSAS of all its shares in the Target Company, in circumstances where the Plaintiff asserted that ZSAS was controlled by the Defendant and the sale was clearly effected shortly in advance of the finalisation of, and to avoid ZSAS being able to discharge its obligations under, the settlement agreement (and the Shanghai Financial Court Judgment), that the Defendant was likely to take steps and dispose of valuable assets in order to evade his liability under the

Shanghai Financial Court Judgment and make himself judgment proof in this jurisdiction, so that dealing with the Injunction Application on an *ex parte* without notice basis was justified.

41. I accept this submission although I have had some concerns about the delays in bringing the Cayman proceedings and seeking injunctive relief. Under the Shanghai Financial Court Judgment the second payment was due prior to 30 September 2022 and the Revocation Action was commenced in December 2022 with the Intermediate Court judgment being handed down on 27 February 2024. As the Plaintiff acknowledged when making disclosures pursuant to its duty of full and rank disclosure, it could be said that the Defendant has and must have known since the end of December 2022 that he was seriously at risk of the Shanghai Financial Court Judgment being enforced in this jurisdiction and of a Cayman judgment being executed against his shares in SDA, so that if he has not already taken steps to dispose of the SDA shares by now it can be assumed that it is unlikely that he will now do so. But I do not think that such speculation would be sufficient to justify a refusal to allow the Injunction Application to be heard on an *ex parte* without notice basis (or indeed to justify the conclusion that there is no real risk of the Defendant dissipating his assets). The Defendant, assuming that the Plaintiff can make good its claim that the Defendant was in control of ZSAS at the time of the Suspect Transaction, has shown a willingness to engage in activity to try to evade court judgments and there clearly remains a real risk that once he finds out that the Plaintiff has taken the step of brining proceedings in this jurisdiction, his position and previous inactivity may well change.

The test for granting a freezing injunction

42. The Plaintiff submitted that the legal test for granting a freezing injunction is also well-established. As set out by the Cayman Islands Court of Appeal in *Scully Royalty Ltd v Raiffeisen Bank International Ltd* at [47]:

> *"It is well established that, in order to grant a freezing order, the court must be satisfied that:*

> *(a) the applicant for the order has a good arguable case on the merits of his claim; [referred to as the 'merits test']*
>
> *(b) there is a real risk that any judgment would go unsatisfied by reason of the dissipation of his assets by the defendant unless he is restrained by the court from disposing of them; and*
>
> *(c) it would be just and convenient in all the circumstances to grant the freezing order."*

43. The Plaintiff said that more recently, the first limb of this test—the merits threshold—was reconsidered by the Court of Appeal in England in *Isabel dos Santos v Unitel SA* [2024] EWCA Civ 1109 (***Dos Santos***). In that case, Lord Justice Popplewell clarified that the "*good arguable case*" standard, in the context of freezing injunctions, is to be treated as equivalent to the "*serious issue to be tried*" test applied in interim proprietary injunctions, as originally formulated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. The judgment provides that there is no longer a higher threshold applicable specifically to freezing injunctions. This development has already been recognised and applied by the Cayman courts on several occasions, including very recently indeed in *Target Global Growth Fund II, SCSP-RAIF and Anor v Liu Xun* [2025] CIGC (FSD) 45 (Doyle J) (see paragraphs [37]-[38]) (***Target***) (see also my judgment in *Productivity Media Inc. v Santor and Others* (Unreported, FSD 360 of 2024 (NSJ), 18 December 2024) at [28]-[31] and the Chief Justice's judgment in *In the Matter of Lakeshore Biopharma Co. Ltd* [2025] CISG (FSD) 24 (21 March 2025) at [39]).

44. As regards the second element in the *Scully* test the Plaintiff submitted that in order to obtain a freezing injunction, an applicant must demonstrate a real risk that any judgment obtained in their favour at trial will go unsatisfied due to the unjustified dissipation of assets during the interim period. It was not necessary to establish that enforcement will be entirely defeated. Rather it was sufficient to show that recovery would be materially more difficult (citing *Congentra AG v Sixteen Thirteen Marine* [2008] EWHC 1615 (Comm) at [49] and *Metropolitan Housing Trust Ltd v Taylor* [2015] EWHC 2897 (Ch) at [28].) This was an evaluative exercise, requiring the Court to infer the likelihood of future conduct by reference to the defendant's alleged past and present behaviour and circumstances. The risk must be real and judged objectively: that is, there must be a genuine danger that the defendant will dissipate assets unjustifiably such that a judgment will not be met. In respect of whether

there is a real risk of dissipation, this is defined as "*something which is more than fanciful"*; there was no requirement to show that there is a high probability of dissipation or even that dissipation is more likely than not. Not every possibility of non-payment sufficed. Solid evidence must support the conclusion that such a risk existed. What qualified as solid evidence will depend on the context and facts of each case, but where multiple factors were relied upon, they must be assessed cumulatively. The Plaintiff submitted that it was important to distinguish between two types of defendants: (a) those who may be unwilling to pay debts unless compelled to do so and (b) those who are actively intent on avoiding payment by transferring, concealing, or otherwise dissipating assets. Only in the latter case is freezing relief justified. There must be cogent evidence from which such intent can reasonably be inferred.

45. The Plaintiff also relied on the Chief Justice's judgment in *Ovaskainen* which is a case directly on point because the application before the Chief Justice involved the common law enforcement of a foreign judgment. The applicant had obtained a judgment in Switzerland which it sought to enforce in this jurisdiction. To do so it commenced a new action here by writ. It appears that the applicant sought injunctive relief pursuant to section 11A of the Grand Court Act in reliance on the foreign proceedings. The Chief Justice considered, in my respectful view rightly, that where the foreign judgment creditor had commenced a separate domestic action to enforce the foreign judgment, the application for a freezing injunction was to be treated as being made in the domestic proceedings and in respect of the prospective domestic judgment. The Chief Justice set out the applicable law and her analysis as follows (which seems to me to apply equally in this case):

> *"8. W now seeks to enforce the judgment of the Swiss Court in the Islands. The judgment cannot be recognised and enforced pursuant to the Foreign Judgment (Reciprocal Enforcement) Act (1995 Revision) as the Governor has not by order extended the provisions of the law to Switzerland. The judgment may, however, be enforced at common law, the Court treating the foreign judgment as a debt due from the judgment debtor to the judgment creditor.*
>
> *9. Such judgments are enforceable where the judgment is made by a competent foreign court, is for a definite sum of money and is final and conclusive.*

10. In that regard, I note the decision of Levers J in Banco Mercantil Del Norte S.A (Grupo Financiero Banorte) v. Cabal Penich 2003 CILR 343, and to [8] of the judgment where she said this:

'At common law the court will enforce the judgment of a foreign court in a claim in personam provided that the foreign court had jurisdiction over the judgment debtor in accordance with the rules of private international law…

(a) if the judgment debtor was, at the time the proceedings were instituted, present in the foreign country; or…

…

(c) if the judgment debtor was the defendant and submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings and contesting them on the merits;…'

11. H was present in Switzerland when the proceedings were instituted and has participated fully in them, contesting the judgments of the Courts below all the way to the Federal Supreme Court on two occasions until the judgment handed down on 10 January 2023 brought the proceedings to a conclusion. The judgment of the Federal Court is a final judgment making an order making an order dealing capital arising from the 'liquidation of the matrimonial property regime' as distinct from a maintenance order which may be subject to variation by the foreign court.

12. On 29 May 2023, W duly issued a Writ of Summons seeking to enforce the judgment of the Swiss Federal Supreme Court at common law to recover a debt now due to her which stands at CHF 125,490. 337 including interest up to 9 May 2023 and interest accruing thereafter at the daily rate of CHF15,872.79 as a debt.

This Application

The Freezing Order

13. In this ex parte application, W seeks a freezing order in the following terms to preserve H's assets until her claim on the debt can be determined by this Court:

13.1 An injunction prohibiting the disposal of assets in the draft terms enclosed, including removal of assets up to the value of CHF125,664.938;

13.2 An injunction preventing the disposal charging or diminishing in value of s. 801 Seafire Residence, 45 Tanager Way, more particularly known as WBBN Block 11B Parcels 88H70 and 88H53; and

13.3 The registration of an inhibition against title of the Property pursuant to s 124 of the Registered Land.

14. The application was made on the basis that if the relief were not granted, H would dissipate the assets in this jurisdiction to defeat W's claim on the debt due to her arising from the judgment of the Swiss Court. This same concern prompted the application on an ex parte basis, W contending that if H had notice of the application, he would seek to put his assets out of W's reach before the application could be heard.

15. Although the application was made pursuant to section 11A of the Grand Court Act (2015 Revision) which gives the Court power to grant interim relief in support of foreign proceedings, in the circumstances where a Writ has issued out of the Grand Court Registry seeking the judgment of this Court on the debt created by the foreign judgment, the Court's jurisdiction arises under section 11.

16. Section 11 of the Grand Court Act provides that,

> *'(1) The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject to this and any other law, the like jurisdiction within the Islands which is vested in or capable of being exercised in England by*
>
> *(a) Her Majesty's High Court of Justice; and*
> *(b) the Divisional Courts of that Court, as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act….'*

17. Section 37 of the English Senior Courts Act 1981 relevantly provides that,

> *'(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.'*

18. W's application was for interim relief ancillary to the Writ, seeking to restrain H, a party to the proceedings, from removing or otherwise dealing with assets within the jurisdiction of the Court, if the Court were satisfied it was just and convenient to grant it.

19. In the recent judgment of the Privy Council in Broad Idea International Ltd (Respondent) v Convoy Collateral Ltd, [2021] UKPC 24, an appeal from the British Virgin Islands, Lord Leggatt set out the current practice for granting a freezing injunction at [101] summarized as follows:

> *(1) A good arguable case for the payment of a sum of money that will be enforceable through the process of the court;*

> *(2) The existence of assets belonging to or under the control of the defendant against which judgment could be enforced; and*
>
> *(3) A real risk that the defendant will dissipate those assets and the judgment will be left unsatisfied if the order is not given.*
>
> *20. The authorities are clear that there must be cogent evidence to show that there is a risk of dissipation. As it was put by Doyle J in Trezevant v Trezevant (Unrep) 10 November 2021 at [19] and [20] adopting the comments of Chadwick P in AHAB v Saad Investments Company Limited 2011 (1) CILR 178 at [69], the applicant must provide, ''solid evidence' to the effect that, without such relief, there was a real risk that the judgment would not be satisfied by some process of enforcement' noting that '…in appropriate cases it is possible to infer the risk from evidence of surrounding circumstances.'*
>
> *21. I was satisfied that W has a good arguable case that there is a debt due to her which is enforceable by this Court for the reasons set out at para 11 supra. There is no doubt that H holds assets against which the judgment could be enforced, including the assets within the jurisdiction of the Court which belong to H against which W has identified.*
>
> *….*
>
> *23. In the circumstances, it was both just and convenient to grant the injunction to ensure that any judgment of this Court was not frustrated."*

46. The Plaintiff submitted in its written skeleton argument that this was a case of an application for a post-judgment freezing order and referred to the judgment of Justice Kawaley in *Banco International De Costa Rica, S.A. v Banana International Corporation* (Unreported, 7 August 2018, IKJ) at [11]-[14] holding *inter alia* that the evidential bar that an application had to meet in terms of showing a risk of dissipation of assets will generally be somewhat lower in the post-judgment context and that where it may be shown, based on evidence, that the defendant was a "*non-cooperating judgment debtor"* that may go some way towards supporting a post-judgment risk of dissipation finding.

47. However, during the hearing Mr Eggleton accepted that this was not a post-judgment case. There had been no domestic judgment in relation to the proceedings commenced by the Plaintiff in these proceedings (as the Chief Justice held in *Ovaskainen* where a freezing order is sought when and after a foreign judgment creditor has issued domestic proceedings, the

application is to be treated as an interlocutory application in the domestic proceedings to protect the integrity (and avoid the frustration of) the prospective judgment of this Court. Of course, the existence of the foreign judgment is directly relevant to the merits test and can also be taken into account by the Court when exercising its discretion and assessing whether the granting of the freezing injunction is just and convenient.

48. The Plaintiff also noted that when determining whether to grant a freezing injunction the Court must be satisfied that the likely effect of the injunction will be to promote the overall interests of justice, and that it will not operate in a manner that is unfair or oppressive to the defendant. This requires the court to weigh the interests of both parties and to consider carefully the likely impact of the injunction on the defendant. Even where the applicant establishes a good arguable case and a real risk that, absent injunctive relief, any judgment may go unsatisfied, the court may still refuse to grant the injunction if it concludes that it would not be just and convenient to do so.

The Plaintiff's submissions

49. The Plaintiff submitted that the conditions (requirements) for the grant of a freezing injunction were satisfied in the present case and that it was just and convenient that the freezing injunction be granted. The Plaintiff submitted that:

(a). it had established a good arguable case that there is a debt due to it by reason of the Shanghai Financial Court Judgment which was enforceable by this Court.

(b). it had also established that it was likely that the Defendant had assets in this jurisdiction which he owned against which judgment could be enforced.

(c). there was cogent evidence to support a finding of a real risk of dissipation. The evidence indicated that it was likely that the Defendant controlled, and was responsible for the Suspect Transaction entered into by, ZSAS and therefore the Defendant had a propensity and was willing to evade, and had a track record of seeking to evade, the Plaintiff's efforts to recover sums ordered to be paid and to enforce the Shanghai

Financial Court Judgment. The Plaintiff referred to and relied on the findings of the Intermediate Court in the Decision (see in particular the findings set out at internal page 11 of the Decision, page 1042 of the Hearing Bundle, including the finding of the following: "*In summary, this Court holds that although the appellee [ZSAS] and the original third party [Feiyou] completed the share transfer through the NEEQ system, it is a related party transaction, and no agreement has been made on the payment time of the equity transfer price, which, in essence, is no different from a transfer with no consideration or a transfer of property at a clearly unreasonable low price*").

(d). while there had been some delay since the handing down of the Shanghai Financial Court Judgment the Plaintiff had behaved reasonably in first seeking to take enforcement action against ZSAS and had done nothing which suggested that it had waived its rights against the Defendant or was prejudicial to the Defendant. Nor did any delay indicate that the risk of dissipation and of the Defendant taking steps to dispose of his rights in the SDA shares was remote (because it could be said that if the Defendant intended to do so he had had sufficient time to do so and would have done so already). As I have noted above, the Plaintiff argued that the Defendant's attitude was likely to be affected by and change when he became aware of the commencement of enforcement proceedings in this jurisdiction. As Mr Eggleton put it during his oral submissions "*action often provokes a reaction*."

(e). while the evidence regarding the Defendant's ownership of the SDA shares was dated, it was sufficiently recent and the most recent publicly disclosed information available and sufficient in the circumstances to support the Plaintiff's claim that the Defendant had assets in the jurisdiction.

(f). it was just and convenient to grant the freezing injunction having regard to the risk of prejudice to and the interests of the Plaintiff and the Defendant.

50. I accept these submissions (I have already discussed many of the issues when dealing with the Service Out Application).

Cross-undertaking in damages

51. The Plaintiff noted that where an application was made *ex parte* without notice a plaintiff will be expected to provide a cross-undertaking in damages to the defendant and to any innocent third parties who might foreseeably suffer loss as a result of the order. But the Plaintiff submitted in its written skeleton that in the circumstances of this case a cross-undertaking in damages was unnecessary given that the application was for a post-judgment freezing injunction, and the Defendant (jointly and severally with ZSAS) was indebted to the Plaintiff for a total amount of US$6,516,591.21 with there being no legitimate grounds for setting aside or appealing the Shanghai Financial Court Judgment. The Plaintiff said that it considered that any damage occasioned by reason of the Freezing Injunction would be far less than the Debt owed by the Defendant.

52. Nonetheless, the Plaintiff confirmed that if required to do so by the Court it was prepared to give a cross-undertaking and Ms Zhang in Zhang 1 (at [52]-[56]) had given evidence as to the Plaintiff's financial position (the Plaintiff being a limited partner, its financial position was to be determined by reference to that of the partners responsible for the limited partnership's liabilities). She confirmed that, "*The [Plaintiff's] audited statements dated 19 April 2024 [which was exhibited to Zhang 1] record that …[the Plaintiff had] total net assets attributable to its partners of RMB 158,746,354.75 (approximately US$21,758,594.64)….. The [Plaintiff's audited financial report for the period ending 31 December 2024 will not be completed until late April 2025 [it is unclear whether it has been completed by now]. However, I understand that the [Plaintiff's] financial position is not expected to be materially different from the position detailed above*."

53. The Plaintiff submitted that fortification should not be ordered in this case in circumstances where it would be "*most unusual*" to require it. The Plaintiff referred to the judgment of Mr Justice Burton in *Nomihold Securities Inc v Mobile Telesystems Finance SA* [2011] EWHC 337 at [24] where the learned judge said as follows:

> *"I happen to believe that it is always appropriate to give a cross-undertaking in damages but that it would be most unusual to have to fortify such cross- undertaking, however poor or unwell-heeled the Claimant is, where it is owed a substantial sum of*

> *money under the judgment because there may be circumstances in which, albeit that a judgment debt is owed and is unpaid, the effects of a freezing order, particularly a worldwide freezing order, may be overly damaging and overly prejudicial and that even if, at the end of the day, the judgment is paid up, there may fall to be set off some damage which is shown to have flowed as a result of the inappropriate obtaining of the freezing order."*

54. It seems to me, as I explained at the hearing, that this is a case in which a cross-undertaking must be given. Where a freezing injunction is sought *ex parte* and there is any (realistic) possibility that it may be said that the injunction was wrongly granted or that loss may be caused by the relief which ought to be compensated, a cross-undertaking is required (see Gee, *Commercial Injunctions*, 7th ed., at [11-061]). In this case there is such a possibility, particularly because of the only limited evidence as to the nature and effect under PRC law of the Shanghai Financial Court Judgment and the issue of how it is to be characterised for the purpose of common law enforcement in this jurisdiction. However, I accept that fortification is not required in view of the Plaintiff's evidence as to its substantial financial means (although the evidence is not yet fully up to date). *Nomihold* was a case in which the court had already made an order that an arbitration award could be enforced in England and Wales as a domestic judgment and to that extent is distinguishable, although I accept that the existence of an unchallenged foreign judgment which records that the Plaintiff is owed and the Defendant is jointly and severally liable to pay a substantial sum is a relevant consideration when deciding whether to order fortification.

International effect of the freezing injunction

55. At the hearing I pointed out to Mr Eggleton that while this was a case of a domestic freezing injunction in that it related only to the Defendant's assets in the jurisdiction, it was a case with significant foreign elements and I was concerned to ensure that the injunction contained the usual protections for action taken by third parties abroad before court orders were obtained in the relevant jurisdiction declaring the injunction enforceable there. I indicated that I would require the form of the freezing injunction to be amended to incorporate the standard *Babanaft* wording from GCR Form 65.

56. The final form of the freezing injunction contained the following wording:

> *"Effect of this Order outside the Cayman Islands – The terms of this Order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a court in the relevant country and then they are to affect such person only to the extent they have been declared enforceable or have been enforced UNLESS such person is:*
>
> *(a) a person to whom this Order is addressed or an officer or an agent appointed by power of attorney of such a person; or*
>
> *(b). a person who is subject to the jurisdiction of this Court and (i) has been given written notice of this Order at that person's residence or place of business within the jurisdiction of this Court and (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order."*

Disclosure order

57. The Plaintiff also, as I have noted, sought a disclosure order for the purpose of making the freezing order effective in the following terms:

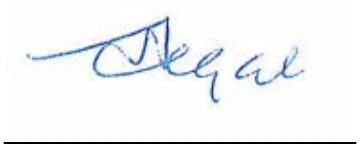
> *"Within [three] business days of service of this Order, the Defendant must inform the Plaintiff's attorneys in writing of any other assets held by the Defendant in the Cayman Islands above the value of US$50,000, whether cumulatively or discretely."*

58. The Chief Justice neatly summarised the applicable law in her judgment in *Ovaskainen* as follows:

> *"24. Although no application was made for an order for disclosure in the summons, W did seek such an Order in the terms set out in the draft Order at paragraph 9:*
>
> > *'The Defendant must inform the Plaintiff in writing at once of all the Defendant's assets in the Cayman Islands whether in the Defendant's own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an Affidavit which must be served on the Plaintiff's attorneys within 7 days after this Order has been served on the Defendant.'*
>
> *25. In Trezevant's case, Doyle J noted at [42] that,*
>
> > *'…it is…well established that when granting freezing orders…the Court also has jurisdiction to grant disclosure orders where necessary to 'police' or give effect to the asset freezing order.'*

> *26. Referring to the disclosure obligations in a proposed freezing order Smellie CJ in Classroom Investments Incorporated v China Hospitals Incorporated and Chine Healthcare Incorporated (Unrep) 15 May 2015, observed at [68] that,*
>
> > *'…the disclosure obligations in the proposed Mareva order (as in the proprietary injunctive order) are also vitally important aspects of a freezing order. Disclosure has long been a standard feature of freezing orders.'*
> >
> > *Adding at [69] that,*
> >
> > *'I accept that the imposition of disclosure obligations which really makes the order effective, enabling the plaintiff to see, and if necessary take steps to protect…the assets claimed. As Goff, J. observed in A v. C ([1981] Q.B., at 959–960), "without information about the state of each account it is difficult, if not impossible, to operate the Mareva jurisdiction properly.'"*

59. I am satisfied that a disclosure order in the terms sought is appropriate and should be made. Indeed, I indicated at the hearing that in my view it was appropriate to include in the disclosure order a requirement for the Defendant to notify the Plaintiff of the number and class of shares he currently holds in SDA (and the associated voting rights).



The Hon. Justice Segal

Judge of the Grand Court, Cayman Islands

30 June 2025