ENGLISH COURT REFUSES TO SET ASIDE ORDER ENFORCING ARBITRAL AWARD ON SANCTIONS-RELATED PUBLIC POLICY GROUNDS

In *OWH SE i.L. v RTI Ltd & Anor [2026] EWHC 1015 (Comm)*, the English Commercial Court refused to set aside an order enforcing an LCIA arbitration award worth approximately €214 million on sanctions-related public policy grounds.

The judgment is particularly important for parties involved in arbitrations and the enforcement of arbitral awards where payment is affected by sanctions concerns or links to designated persons. It clarifies that public policy considerations relating to sanctions legislation will not always override those associated with the enforcement of arbitral awards.

I. FACTS

The dispute arose out of currency swap transactions between OWH (a German credit institution, almost wholly-owned subsidiary of the sanctioned Russian bank, VTB Russia) and RTI (an indirect Jersey subsidiary of the Russian aluminium group, Rusal), carried out under an ISDA Master Agreement ("Master Agreement") governed by English law and subject to LCIA arbitration, with Rusal guaranteeing RTI's obligations.

In February 2022, RTI declined to pay a margin call issued by OWH, citing concerns that payment might make funds indirectly available to VTB Russia. In response, OWH declared an event of default, terminated the transactions, and commenced LCIA arbitration against both RTI as principal debtor and Rusal as guarantor.

Following the Russian invasion of Ukraine, VTB Russia had become a designated person under English and Jersey sanctions legislation. OWH was not a designated person, but both sanctions regimes prohibited making funds available, directly or indirectly, to designated persons. Both regimes also provided that a person is protected from civil liability in respect of an act or omission undertaken in the reasonable belief that it complies with sanctions regulations. In other words, a person has an immunity defence to a claim for payment where it has a reasonable belief that payment would contravene sanctions regulations. Under English law, this immunity defence is found under s.44 of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"). Under Jersey law, it is found under Article 46A of the Sanctions and Asset-Freezing (Jersey) Law 2019 ("SAFL"), but that provision only came into force in early June 2022.

In the arbitration, the tribunal upheld the validity of the termination notice and held RTI and Rusal liable to pay approximately €214 million. As regards sanctions, RTI did not specifically raise a defence based on Article 46A of the SAFL and the tribunal did not determine whether payment pursuant to the margin call would have contravened any applicable sanctions legislation. Instead, it held that RTI was not entitled to rely on certain provisions in the Master Agreement that could have relieved it of its payment obligation. First, it held that RTI was contractually precluded from relying on an Illegality clause because it had failed to give the prompt notice, with such notice being a condition precedent to entitlement. Second, it held that the definition of Relevant Sanctions Event under the Master Agreement, the effect of which might be to suspend RTI's payment obligation, did not include the Jersey sanctions regime.

Following the award, RTI and Rusal pursued a series of unsuccessful challenges. In enforcement proceedings in Jersey, RTI argued that Article 46A of the SAFL protected it from civil liability. The Jersey courts rejected that argument. The Jersey Royal Court and Court of Appeal both held that Article 46A did not apply retrospectively to RTI's non-payment, which pre-dated the entry into force of that Article, and that no equivalent public policy protection had previously existed at the time of non-payment. The Jersey Privy Council has refused RTI permission to appeal on 8 July 2026, bringing the Jersey proceedings to a close.

Meanwhile, OWH obtained permission from the English Commercial Court to enforce the award. Rusal applied to set aside that order, arguing that the English court should give effect, as a matter of public policy, to the immunity defence said to be available to RTI under Article 46A of the SAFL. It was not argued that payment of the margin call would have been a breach of sanctions or illegal. Nor was it disputed that the SAMLA did not apply directly to RTI or Rusal. Instead, Rusal's case was that the English court should give effect to Article 46A of the SAFL as matter of English public policy, because the two sanctions regimes in Jersey and England were aligned.

II. THE COMMERCIAL COURT'S DECISION

The Court dismissed Rusal's application to set aside the order permitting enforcement of the LCIA award.

According to the Court, there were "competing public interests" between (i) upholding the finality of arbitration awards and enforcing them, and (ii) the public policy underlying the sanctions regime. In order to identify the prevailing interest, the Court drew a distinction between primary sanctions prohibitions that make payments unlawful and ancillary provisions, such as those under s.44 of the SAMLA or Article 46A of the SAFL, holding that the latter do not necessarily carry the same public policy weight as the former.

The Court took the view that the public policy underlying the ancillary provision, while important, was not "sufficiently important to require enforcement here to be refused" and provided three reasons: (a) the defence is not obligatory – unlike actual illegality, it does not prohibit payment; (b) no actual breach of English or Jersey sanctions law was alleged; and (c) the point was not raised before the tribunal and there was no evidence to support it or to explain why it was not raised. Although this last point was not in itself a bar to being able to take a point on English public policy at the enforcement stage, it was a factor that could be taken into account when balancing the competing public interests.

The Court also emphasised that Rusal was not a Jersey company and was not itself entitled to rely on Article 46A. Even if the award were ultimately held unenforceable against RTI in Jersey, that would not establish an English public policy reason for refusing enforcement against Rusal as guarantor.

III. KEY TAKEAWAYS

1. Public interest in the finality of arbitral awards remains paramount but is not absolute. Where sanctions related public policy is invoked, the court will assess the nature and weight of the particular policy engaged against the strong interest in enforcement. Ancillary sanctions provisions do not necessarily carry the same public policy weight as primary sanctions prohibitions. A provision prohibiting payment (making it illegal) will carry greater public policy weight than a statutory defence based on a party's reasonable belief that sanctions may be breached.
2. Parties should raise and evidence any available sanctions defence before the arbitration tribunal. Although a later public policy argument may not be procedurally barred where this is not done, the failure to raise the underlying defence may weigh against it at the enforcement stage.
3. Parties should comply strictly with any contractual notice requirements when invoking sanctions-related illegality.
4. A statutory protection potentially available to a principal debtor will not necessarily protect a guarantor incorporated in another jurisdiction. The position of each award debtor must be considered separately.

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