



Neutral Citation Number: [2026] EWHC 418 (Comm)

Claim No: CL-2019-000125

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Date: 27 February 2026

Before:
MR JUSTICE WAKSMAN

SOPRIM CONSTRUCTION SARL

Claimant and
Applicant on CO
Application

and

THE REPUBLIC OF DJIBOUTI

Defendant and
Respondent to CO
Application

and

DP WORLD DJIBOUTI FZCO

First Objecting Party and
Additional Respondent to CO Application

and

DORALEH CONTAINER TERMINAL S.A.

Second Objecting Party and
Additional Respondent to CO Application

Tim Akkouh KC and Edward Mordaunt (instructed by Marcus Parker Limited, Solicitors) for the
Claimant/Respondent

Niranjana Venkatesan KC and Jamil Mustafa (instructed by Quinn Emanuel Urquhart & Sullivan UK
LLP, Solicitors) for the First Objecting Party and Additional Respondent to CO Application/Applicant

JUDGMENT

Hearing dates: 18 and 19 February 2026

INTRODUCTION

1. This is my judgment on an application for security for costs. It is made by DP World Djibouti Fzco (“DPW”) against the Claimant, Soprim Construction Sarl (“Soprim”). These proceedings were commenced by Soprim on 26 February 2019 against the Defendant, the Republic of Djibouti (“the Republic”) in order to enforce arbitral awards obtained by Soprim against the Republic in the principal sum of US\$56 million plus interest and costs, amounting now to a total sum in excess of US\$135 million. By an order made on 21 March 2019 on the usual initial without notice basis, Teare J gave permission to Soprim so to enforce the awards (“the Enforcement Order”). Neither then nor later did the Republic ever seek to set aside the Enforcement Order.
2. On 26 February 2025, Dias J made an interim charging order (“ICO”) in favour of Soprim and against the Republic, once more on the usual initial without notice basis. There were many relevant events which took place between the making of the Enforcement Order and the ICO which are explained in detail below.
3. The ICO was made in respect of monies held at Standard Chartered Bank in London in the name of Doraleh Container Terminal S.A. (“DCT”). I refer to such monies as “the SCB Monies” and the relevant accounts at SCB as “the SCB Accounts”. Soprim contends that, notwithstanding that DCT was (and is) the account-holder, the beneficial owner of the SCB Monies is the Republic so that they constitute its assets for the the purposes of making a charging order. The hearing of Soprim’s application to make the ICO final was set for 9 June 2025. The Republic did not appear at that hearing and did not otherwise contest the making of a final charging order (“FCO”). In the light of that stance, the Republic was debarred from thereafter resisting the making of a FCO.
4. Prior to the hearing on 9 June 2025 both DCT and DPW had been notified of the making of the ICO. By an application made on 1 June 2025, DPW sought to set aside the arbitration claim form and the Enforcement Order and dismiss the claim, on the basis that the original arbitration claim was out of time (“the Set-Aside Application”). At the same time, DPW gave notice of its objections to the making of a FCO. The essence of its objections is that, contrary to Soprim’s submissions, the SCB Monies have always belonged to DCT beneficially so that they cannot be regarded as assets of the Republic. I should add here that DPW is a minority shareholder in DCT (but with contractual rights effectively to control it), and has its own claims against DCT as well as against the Republic, which will be explained in detail below.

5. At the hearing on 9 June, the Judge, Deputy Master Sabic KC did not make a FCO. She also refused to deal with the Set-Aside Application at that stage. Instead, she made a series of directions, pursuant to which DPW was joined as the First Objecting Party and Additional Respondent to the Charging Order. DCT was permitted to be joined on the same basis, provided it also gave notice of its objections, which it subsequently did. Its objections were to the same effect as DPW's. This explains how both of these companies are now party to these proceedings. In addition, statements of case were ordered. Soprim's Particulars of Claim were served on 18 July 2025, the Joint Defence of DCT and DPW was served on 19 August and Soprim's Reply was served on 16 September 2025. A draft Amended Defence was provided on 29 January 2026. Although not yet formally agreed, it can be regarded as the current statement of case for DCT and DPW for present purposes. Deputy Master Sabic KC also ordered that there be a trial of the issues between the active parties in June 2026, which would deal with the application for the FCO and the Set Aside Application.
6. On 8 September 2025, DPW made its present application for security for costs against Soprim. It contends that DPW is a "defendant to any claim" for the purposes of CPR 25.26 (1). Soprim agrees that for those purposes, there is a "claim" (being the one made by it for the FCO) but denies that DPW is a defendant to it. Accordingly, Soprim contends that this Court has no jurisdiction to entertain DPW's application for security for costs. However, Soprim does not contend that if the Court has jurisdiction, there is no available "gateway" for its exercise. This is because Soprim accepts that for these purposes, it is both resident abroad and impecunious. Nor does it contend that as a matter of discretion, any security should not be ordered because it would otherwise stifle a valid claim. However, for other reasons, Soprim contends that if the Court has jurisdiction to order security it should nonetheless exercise its discretion not to order it.
7. The evidence filed in respect of the application for security consists of the third, fourth and sixth witness statements ("WSs") of Mr Edward Greeno, a partner in Quinn Emanuel Urquhart & Sullivan UK LLP ("QE"), the solicitors acting for both DCT and DPW, dated 8 September and 14 November 2025 and 12 February 2026, and the second WS of Mr Abdourahman Boreh, the General Manager of Soprim, dated 31 October 2025. Mr Greeno's first WS dated 1 June 2025 (made in support of the Set Aside application and the objections to the charging order), and Mr Boreh's first WS dated 24 February 2025 (made in support of the charging order application) are also of some relevance. I shall refer to Mr Greeno's various WSs as "Greeno 1", "Greeno 3", etc.

BACKGROUND

8. There is a considerable substantive and procedural history which I shall summarise below. One thing is clear. Both Soprim and DPW have been extremely ill-served by the conduct of the Republic. Both justifiably describe themselves as its financial victims. That situation arose in the context of their involvement in the construction and then operation of a major new container terminal at the port of Doraleh in Djibouti (“the Terminal”) which became operational in December 2008.
9. The Djibouti-incorporated company which operates the Terminal is DCT. DPW is a one-third shareholder in DCT. The two-thirds shareholder is another Djibouti-incorporated company called Port de Djibouti SA (“PDSA”). (Soprim contends that the Republic is now the two-thirds shareholder due to legislative steps taken in Djibouti, but that does not matter for present purposes). 76.5% of the shares in PDSA are owned indirectly by the Republic, with the balance of such shares owned by another Djibouti company called China Merchants Holdings (Djibouti) FZE (“China Merchants”). In practical albeit indirect terms, therefore, the Republic is the majority shareholder in DCT.
10. The Terminal was a commercial success to the extent that by 2016 the total dividend of around US\$104 million was due to PDSA and DPW, around US\$69 million to the former and the balance to the latter.
11. In summarising the position of Soprim and DPW by way of background below, I have taken the relevant facts from the statements of case, the oral and written submissions and the evidence filed. While in certain cases one party or the other has not admitted certain factual allegations, I did not understand them to be controversial or challenged for present purposes.

The Position of Soprim

12. The Republic is a small sovereign state situated at the entrance of the Gulf of Aden, near the Horn of Africa, with a population of about 1 million people. The President of the Republic is Ismail Omar Guelleh (“the President”), who has held office since 8 May 1999, succeeding his uncle who had been President since Djibouti’s independence in 1977.
13. As already noted, Soprim’s General Manager is Mr Boreh. Prior to 2007, Soprim had become a leading construction company in Djibouti. It was the main contractor for the construction of the Terminal, and it was also instructed on other major construction projects in Djibouti, including

in respect of its oil terminal and dry port, the Kempinski Hotel, the new courthouse and the Presidential palace.

14. Prior to 2007, Mr Boreh had a good relationship with the President and with the First Lady. That relationship broke down in around 2007/08 after Mr Boreh refused to support the President's proposal to run for a third term in office (where the Djibouti Constitution only provided for two terms); and after Mr Boreh refused to build mansions for three of the President's children and the First Lady (Mr Boreh's previous experience suggesting that he was unlikely to get paid).
15. From around 19 October 2008 onwards, the President started a campaign of persecution against Soprim and Mr Boreh. This included issuing unjustified tax demands to Soprim and Djibouti Mix (another company owned by Mr Boreh) in ever-increasing sums, seizing Soprim's equipment on a temporary basis, instituting unjustified legal proceedings against Soprim and those with whom it was doing business, suspending the licence of one of Mr Boreh's businesses on a false basis, imprisoning and/or deporting from Djibouti three of Mr Boreh's associates, unlawfully removing Soprim's equipment from the Terminal, taking it to a police facility (selling it at an undervalue, and not accounting to Soprim for the sale proceeds), convicting Mr Boreh and an associate on charges of embezzlement of which they were unaware, and Mr Boreh on terrorism charges on the basis of evidence that was demonstrably false and concocted.
16. The net effect of all this was to destroy the value of Soprim's business and to make Mr Boreh a *persona non grata* in Djibouti. He has not returned there since 2008.
17. On 10 July 2012, Soprim commenced an LCIA arbitration against the Republic with Sir Gordon Langley as the sole arbitrator ("the Langley Arbitration"). This was stayed pending the proceedings referred to below.
18. In October 2012, the Republic brought proceedings against Mr Boreh and some of his companies in the Commercial Court here. On 11 September 2013, the Republic obtained a freezing order against Mr Boreh, but this was discharged by Flaux J on 23 March 2015 who found that he had been deliberately misled by the Republic's evidence, in particular as to Mr Boreh's terrorism conviction. That conviction was quashed by the Djibouti Supreme Court on 5 December 2015 not long after Flaux J had expressed the view that it could be quashed if the President desired it.

19. On 2 March 2016 all of the Republic's claims were dismissed. Flaux J found that all the decisions concerning the new port were taken by the President personally who was the sole effective ruler of Djibouti, that witnesses at the trial called by the Republic were in fear of him, that relevant government officials were clearly complicit in the concoction of false evidence and concealment from the Court, and that there was a concerted campaign against Mr Boreh and his businesses.
20. Following the dismissal of the Republic's proceedings, the Langley Arbitration recommenced, in the course of which various costs orders were made against the Republic, whose then-solicitors stated on 31 July 2017 that they were no longer instructed, and that the Republic did not intend to participate further in the Langley Arbitration.
21. By his award dated 17 May 2018, Sir Gordon Langley ordered that Soprim was entitled to recover US\$56 million from the Republic with compound interest. By a further award dated 6 July 2018, he ordered that the interest on the principal sum was some US\$28 million, and that Soprim was entitled to its legal costs in the amount of just under £4.5m. All of this is the basis for the sums currently claimed against the Republic by Soprim of around US\$135 million.
22. In the meantime, in around May 2017, Mr Boreh learned that around US\$200 million of profits from the Terminal had accumulated in accounts held by DCT with SCB in London, and further, that a previous block on the payment of dividends imposed by DCT had been lifted. This meant that those monies, or part of them, might now be paid to the Republic (via PDSA), which of course was, on Soprim's case, liable to it in very large sums.
23. Accordingly, Soprim applied for a worldwide freezing order against the Republic. This was granted by Leggatt J up to the value of US\$39 million ("the WFO"). This order covered the monies in the SCB Accounts insofar as the Republic had the right to deal with them as if they were its own. DCT subsequently applied to vary or discharge the WFO insofar as it operated in respect of the monies in the SCB Accounts on the basis that such funds belonged to it, not PDSA or the Republic and that it was entitled to use those funds as it saw fit. That application was refused by Knowles J on 29 August 2017. Because the Republic subsequently failed to comply with asset disclosure orders made against it, it was debarred from contesting the WFO which remains in force.

The Position of DPW

24. DPW is a Dubai-incorporated company. It is part of the DP World Group, a successful international port operator. DCT was incorporated as a joint venture company for the purpose of building and operating the Terminal. As already noted, its shareholders are DPW and PDSA. The joint venture was regulated by a joint venture agreement between DPW, PDSA and DCT dated 22 May 2007 (“the JVA”). Notwithstanding DPW’s status as a minority shareholder, the JVA gave it extensive rights of control in respect of the management of DCT and the operation of the Terminal. Thus DPW had the right to appoint a majority of the directors to DCT’s board and had determinative voting rights in relation to various “Reserved Matters” including the appointment of an administrator or liquidator over DCT, and the exclusive right to manage the port free from interference by the Republic.
25. There was also a concession agreement made on 30 October 2006 between DCT and the Republic pursuant to which DCT had the right to operate the Terminal for 30 years (“the CA”).
26. As with Soprim, things began to “go sour” between the Republic and DPW and/or DCT. This was from about 2012.
27. In July 2014, the Republic and PDSA and others commenced an LCIA arbitration against DPW, DCT and others, seeking to rescind the CA on the basis of the alleged bribery of Mr Boreh (“the Aikens Arbitration”). Those claims were rejected by an award dated 20 February 2017.
28. Then, on 8 November 2017 legislation was enacted in the Republic which entitled the government to renegotiate or terminate all strategic infrastructure contracts that were “contrary to the fundamental interests of the Republic”. In fact, it was only ever invoked in respect of the CA, which was purportedly terminated by decree, along with a purported compulsory transfer of all DCT’s assets on 22 February 2018 to a new company called SGTD. The Republic also physically seized control of the terminal and expelled DPW’s expatriate personnel in February 2018. The Terminal has not operated as a trading entity since then. The Republic also purported to terminate the JVA on 28 July 2018.
29. On 9 August 2018, the Republic attempted to replace DPW’s directors on DCT’s board. On 27 September 2018 the Republic purported to appoint an interim administrator to DCT, being Ms Chantal Tadoral. This was by means of the decision of the Djibouti Court of First Instance on an

ex parte basis and so without notice to DPW or DCT. This was challenged unsuccessfully by DCT in Djibouti's Court of Appeal and Supreme Court.

30. In the meantime, on 20 February 2018, DPW and DCT commenced their own LCIA arbitration against the Republic, seeking a declaration that the CA remained valid and binding ("the Douglas Arbitration"). By an award dated 31 July 2018, the arbitral tribunal so found, notwithstanding Djibouti legislation and presidential decrees to the contrary. By a further award dated 10 January 2020, the Republic was ordered to perform its obligations under the CA and restore the Terminal to DCT and DPW. By a further award dated 20 January 2022, the Republic was ordered to pay damages to DCT and DPW caused by the unlawful seizure of the Terminal in the respective sums of US\$36 million and \$165 million. All of those awards have been disregarded by the Republic.
31. On 5 September 2018, DPW commenced further arbitration proceedings, this time against PDSA, seeking a declaration that the JVA remained valid and binding, despite PDSA's earlier purported termination of it. A declaration was also sought to set aside an attempt by PDSA to change the constitution of DCT's board by removing the DPW-nominated directors and replacing them with directors nominated by PDSA. That purported change interfered with DPW's rights in respect of the "Reserved Matters". PDSA had purported to give effect to this nonetheless, by a shareholders meeting to take place on 9 September 2018. This arbitration was "the Scherer Arbitration".
32. Before commencing that arbitration DPW had applied for an *ex parte* injunction under section 44 of the Arbitration Act 1996, requiring PDSA to refrain from treating the JVA as terminated or causing DCT to give any instructions in relation to any of its bank accounts with SCB other than through the instructions of the presently authorised signatories (which had been mandated through the DPW-appointed board). The injunction sought was also to prevent PDSA from voting in favour of any resolution to remove the directors nominated by DPW or causing DCT to act on any of the "Reserved Matters". On 31 August 2018, Bryan J granted that injunction ("the Bryan Order"). The Bryan Order was continued by Teare J on 14 September 2018 who extended its ambit so as to cover PDSA's "Affiliates" (as defined in the JVA) including the Republic.
33. In the meantime, on 9 September 2018, being the date of the originally convened shareholders meeting, PDSA abandoned its plan to pass the relevant shareholder resolutions. Instead, PDSA and the Republic attempted to transfer PDSA's majority shareholding in DCT to the Republic by

Presidential Ordinance No. 2018-001/PRE. That attempted transfer then itself became the subject of a claim within the Scherer Arbitration.

34. On 6 October 2018, DPW and DCT filed a request for interim relief in the Douglas Arbitration which resulted in an order requiring the Republic to refrain from taking any steps that resulted in any interference with DCT's ability to pursue its claims against the Republic in that arbitration.
35. On 19 November 2018, Ms Tadoral sought a stay of the Aikens Arbitration purportedly on behalf of DCT but that application was rejected on 3 January 2019. This was on the basis that the final hearing in that arbitration had taken place and no further party participation was required until the award on DCT's counterclaims had been given. That award was given on 29 March 2019 (with a supplemental award on interest on 1 July 2019) in favour of DCT in the amount of US\$485.7 million. It remains unpaid.
36. On 7 July 2021, the tribunal in the Scherer Arbitration upheld DPW's claims against PDSA on both the JVA termination issue and the purported share transfer. PDSA's application to set aside that award under section 67 of the Arbitration Act 1996 was dismissed by Henshaw J on 22 May 2023. The Scherer Arbitration is in its second phase now, dealing with its assessment of damages due to DPW, and a further award was issued on 29 September 2025.
37. On 20 December 2023, following a further *ex parte* application to the Djibouti Court of First Instance, this time by Ms Tadoral, and with the support of the Republic, Mr Youssoff Omar Youssoff was appointed liquidator to DCT. This was in the context of an application that DCT itself should be dissolved which was also granted. DPW sought to appeal that decision before the Djibouti Court of Appeal, but that appeal was dismissed on the basis that it was out of time by one day. The inadequacies in these Djibouti court proceedings alleged by DPW are set out in some detail at paragraph 57-60 of Greeno 1. The relevance of this is that DPW will contend at the trial in June 2026 that insofar as Soprim seeks to rely upon the dissolution of DCT for the purposes of its argument about who is the true owner of the SCB Monies, the Court here should not recognise any such purported dissolution. Nor, for that matter, should it recognise as effective the appointments of Ms Tadoral or Mr Youssoff.
38. Finally, DCT brought proceedings against the Republic in the Washington DC District Court, for the purposes of enforcing its various arbitral awards against the Republic ("the DC Proceedings"). The main issue was whether Ms Tadoral had authority to act on behalf of DCT in

circumstances where, as alleged by QE, who were acting or purporting to act for DCT in those proceedings, she was an “agent or instrumentality” of the Republic. The court held that she was, so that her actions should be disregarded so far as authority to act for DCT was concerned, and the court made an order to enforce the awards. It also held that a separate question as to whether QE had been validly appointed by DCT to act as its lawyers was irrelevant. The Republic appealed and the Court of Appeals held that the question of QE’s authority was relevant and remitted it back to the first instance court. In the event, QE did not seek to re-argue the question of its authority and in late 2024, the DC Proceedings were settled.

The Position of DCT here and the SCB Monies

39. Notwithstanding the appointments of Ms Tadoral and Mr Youssoff, DCT still has a board of directors, the majority of whom are those nominated by DPW. Moreover, whatever may be the position in relation to DCT’s bank accounts in Djibouti, DPW remains in control of the SCB Accounts because SCB recognises as valid the current authorised signatories, being the directors whose appointment was nominated by DPW. This is why DPW was able to procure the transfer of around US\$10 million from the SCB Accounts so as to pay for legal fees incurred in relation to the various legal proceedings taken by DCT and referred to above.
40. DPW’s share of the 2017 dividend declared by DCT was just under US\$35 million. Although it appears that PDSA received its share of the dividend, DPW’s share remains unpaid. Given its control over the SCB Accounts, DPW would have been able to procure payment to it of that dividend share, provided that the WFO could be varied to the extent necessary. The reason why DPW was able to procure the payment of the US\$10 million for legal fees referred to above is because there was a sufficient margin in the SCB Accounts beyond US\$39 million to enable that sum to be paid. It is not clear precisely how much is presently held in the SCB Accounts. I say more about this in paragraphs 99-101 below.

Soprim’s claim to the SCB Monies

41. On the face of it, the SCB Monies belong to DCT, it being the relevant account holder and the sums held derive from its prior operation of the Terminal and its collection of revenue earned by the Terminal.
42. Soprim’s case as to why the Republic was and is the beneficial owner of the SCB Monies was set out in its Particulars of Claim as follows:

“71. There was an agreement or understanding (express or implied) between the Republic (acting through the President) and DCT (acting in its own right or by its administrator or liquidator) that DCT would hold the SCB Amount on behalf of the Republic (the Agreement/Understanding).

72. The Agreement/Understanding was entered into in or around late 2018, alternatively in or around December 2023, and can be inferred from:

72.1. The President’s control over Djibouti in general and all matters relating to the operation of the Terminal...

72.2. ...the facts that (i) the President passed decrees transferring ownership of DCT’s assets to SGTD and the Djiboutian state; (ii) the President passed a decree transferring PDSA’s shareholding in DCT to the state; (iii) the President procured the Djiboutian Courts to make an order transferring all powers formerly held by DCT’s board to Ms Tadoral, who has thereafter acted at his behest; and (iv) the President procured the Djibouti Courts to make an order appointing Mr Youssouf as liquidator of DCT, who has thereafter acted at his behest.

72.3. The failure of DCT to apply since 2017...to demonstrate its separate legal existence.

72.4. Ms Tadoral’s failure to take any steps to enforce DCT’s substantial awards (totalling over US\$474 million in damages and legal costs) against the Republic...

72.5. Ms Tadoral’s steps to prevent enforcement of those awards by arguing Quinn Emanuel did not have authority to represent DCT in the D.C. Proceedings.

72.6. Mr Youssouf’s statement that he intends to attempt “to repatriat[e] the funds held” by SCB (via letter to DPWD dated 13 May 2025). By this statement, Mr Youssouff meant that he wished to return the funds held in the SCB Accounts to Djibouti so that they could be dealt with in accordance with the President’s instructions; and/or

72.7. Mr Youssouf’s repetition of his stated intention of repatriating the SCB Amount in a letter dated 25 May 2025 including that he had also communicated this to SCB.

73. In the premises:

73.1. DCT holds the SCB Accounts on bare trust or as nominee for the Republic because the Republic has the right to call for the SCB Account, and DCT (via its administrator or liquidator) would comply with that request; and/or

73.2. The Republic has de facto control over DCT to such a degree that DCT does not have any discretion as to what it does with the SCB Accounts.”

43. In so contending, Soprim relied upon the matters which I have recounted above by way of background in respect of the Republic’s actions taken against or in respect of DCT.

44. At paragraphs 76 and 77 of the Particulars of Claim, Soprim contended in the alternative that either under English or French (Djibouti) law, DCT had no legal existence separate from the Republic for enforcement purposes (including in relation to the SCB Monies), again relying upon the Republic’s alleged hostile acts towards it.

45. On that basis, Soprim alleged that the Republic had an equitable interest in the SCB Monies. Further, by paragraph 79, Soprim contended that the choses in action constituted by the SCB Accounts should be treated as debts accruing to DCT and thereby the Republic on the basis that the former had no separate corporate existence, in which case, Soprim was entitled to a third-party debt order in respect of the SCB Monies.
46. I shall refer to these contentions compendiously as “the Trust/Control Claim”.
47. By their Amended Defence, DCT and DPW deny the Trust/Control Claim. In particular, they plead as follows:
- “...64.1.1 SCB can deal with monies in the SCB Accounts only upon the instructions of the Authorised Signatories in accordance with the terms of the Mandate...
- 64.1.2 At all material times, the signatures of two Authorised Signatories have been (and are) required to authorise payments from the SCB Accounts, and neither the Republic nor any person associated with the Republic (save for Mr Boreh the single director appointed to DCT’s board by PDSA from time to time) is, or has ever been, an Authorised Signatory...
- 64.1.3 Neither the interim administrator nor the liquidator are (or were) authorised to act on behalf of DCT...
- 64.1.4 Neither the interim administrator nor the liquidator of DCT is are or ever have been, an Authorised Signatories...
- 64.1.5 The English Court has not recognised the authority of either the interim administrator or liquidator to act on behalf of DCT, neither of whom ever applied to the English court for recognition of their appointments, which, in any event, are incapable of recognition, and whose acts are therefore not recognisable...
- 64.1.7 In the premises, the Republic has no right to call for the SCB Amount and DCT would not comply with any request for the SCB Amount from the Republic.
- 64.2 ... Further, ... none of the Authorised Signatories acts or at any material time has ever acted upon the instructions of the Republic or recognises or at any material time has ever recognised the authority of the Republic to give instructions in relation to the SCB Accounts...
- 64.3 In any event, the alleged right to call for the SCB Amount...and/or the Republic’s alleged de facto control over DCT, even if proved, are not capable as a matter of law of establishing that the Republic has a beneficial interest in the SCB Accounts under any trust.”

THE LAW

48. As already noted above, the key question here is whether DPW is a “defendant” for the purposes of being an applicant for security for costs. There is a body of case law about this, and the related question as to what constitutes a “claim”. Since the latter is conceded by Soprim I shall concentrate on those cases dealing with “defendant” together with the cases on “claim” which nonetheless offer some insights on the “defendant” question. Having set out the cases in

chronological order, and what they decide (and do not decide), I shall then endeavour to extract the principles which I believe they demonstrate.

49. I should add here that, unlike some of the cases, DPW makes its application for security firmly on the basis of CPR25.26. It does not argue, whether in the alternative or otherwise, that I could and should order security pursuant to the inherent jurisdiction of the court.

50. *Taly International v Terra Nova Insurance and others* [1985] 1 WLR 1359 concerned claims made by the plaintiff against various defendant insurance companies for monies due under the policies. The defendants subsequently joined the brokers as a third party. The plaintiff obtained orders for specific discovery and interrogatories against the third party, which then applied for security for costs against the plaintiff. The Court of Appeal held that the third party was not in the position of being a defendant to the plaintiff's claim. Rather it was a defendant to the actual defendants' claim over against it for an indemnity. The fact that it was ordered to provide discovery to the plaintiff pursuant to the plaintiff's interlocutory application against it did not mean that it was a defendant to a claim made by the plaintiff. As matters stood, the only defendants vis-à-vis the plaintiff were the insurers. The plaintiff was not seeking any remedy directly against the third party. Those points were sufficient to dispose of the application for security. However, DPW relies upon the following statement made by Parker LJ at page 1362A:

"If a third party is given leave to defend the action alone, plainly he then becomes in the position of a defendant in the action. If he is given leave to defend jointly with the defendant, in my view, he would also become a defendant. In such circumstances, I have no doubt that it would be open to him to apply for security for costs. But when he applied for directions that he should be given leave to defend the action, the plaintiff would be entitled to be heard and might be able to persuade the judge that no such direction should be given.

In the present case no such order has been made, and this court cannot know whether any application for such an order will be made much less whether any such application would be successful."

51. Strictly, these observations were *obiter*, and in any event the situation contemplated by Parker LJ had not arisen. Moreover, it is hard to see why a broker in the position of the third party here would ever be joined as a defendant to the plaintiff's claim unless the plaintiff somehow had a direct claim for relief against the broker as well as the insurers. If that were the case, as sometimes happens, then of course the broker would be a direct defendant and it would be difficult to disagree with Parker LJ's observation, which seems to contemplate just such a situation. If, on the other hand, the submission is that *Taly* is authority for the proposition that whenever a party is joined to proceedings, and is permitted to challenge the substantive claim, they are, without

more, a “defendant” for the purposes of an application for security for costs, I would disagree. Not only does such a conclusion not arise from *Taly* but it would be inconsistent with the much more nuanced and contextual approach displayed by the later authorities to which I now turn.

52. The decision of the Court of Appeal in *Bowring v Corsi* [1995] 1 BCLC 148 arose in the context of a claim by the defendant for damages pursuant to the plaintiff’s cross-undertaking given in support of a freezing injunction which was later discharged by consent. The plaintiff sought security for costs from the defendant, arguing that in relation to its claim for damages, it should be regarded as the plaintiff, and the plaintiff as the defendant. The Court of Appeal rejected that contention, notwithstanding that the defendant was making a discrete claim for damages against the plaintiff.

53. The following passages from the judgment of Millett LJ (see pages 163 and 165-167) are material:

“Policy considerations support the same conclusion. The purpose of the jurisdiction to order security for costs is to prevent the injustice which would result if a plaintiff who was in effect immune from orders for costs were free to litigate at the defendant’s expense even if unsuccessful. Such an order can be made only against a plaintiff; it cannot be made against a defendant. That is because a plaintiff institutes proceedings voluntarily. If he chooses to bring proceedings against an insolvent company with limited liability, he does so with his eyes open; he takes the risk that he may not recover his costs even if successful, but it is his own decision to take that risk. The defendant, however, has no choice in the matter. He is compelled to litigate or submit to the plaintiff’s demands. He must be allowed to defend himself without being subjected to the embarrassment of having to provide security for the plaintiff’s costs. This involves being free to take whatever steps and make whatever applications are necessary in order to enable him to defend the proceedings.

“It has long been firmly established by authority that the court cannot award security for costs against a defendant, and that in considering whether a party is a plaintiff or a defendant the court must have regard to the substantial and not the nominal position of the parties. The question in every case is whether the party against whom an order for security is sought is in the position of plaintiff in the proceeding in question....

If attention is concentrated on the defendant’s application to enforce the plaintiff’s cross-undertaking in damages, the defendant certainly has the appearance of a plaintiff. It claims that it has suffered loss for which the plaintiff is responsible and it seeks compensation for that loss. If the plaintiff recognises that it is likely to be ordered to pay something, though not as much as the defendant claims, it can protect its position by making a payment into court. It certainly looks like a defendant. But...it is necessary to consider the whole litigation between the parties in order to determine which of them is really in the position of a plaintiff and which a defendant. If the proceedings are considered as a whole, then it is apparent that the parties have never exchanged roles, and that the defendant has done nothing to justify being treated as a plaintiff.

It was the plaintiff which chose to bring the proceedings and take the risk of failing to recover its costs even if successful. It was the plaintiff which chose to apply for interlocutory relief and to offer the court a cross-undertaking in damages as the price of obtaining such relief. It must have

known that the injunction which it obtained might cause the defendant loss, that it might subsequently be established that the injunction should not have been granted, and that the defendant might seek to recover its loss by applying to enforce the cross-undertaking. It must have known that, if it chose to resist such an application, it might incur further irrecoverable costs. It did not qualify its cross-undertaking by making its enforcement conditional on the defendant providing security for costs. Had it attempted to do so, its cross-undertaking would have been rejected and its application for an injunction refused. Having offered the court an unqualified cross-undertaking, it now seeks to protect itself against a situation which it must have been able to foresee. That it should succeed is not an attractive proposition.

As for the defendant, it has had no choice in the matter. It has done nothing beyond reacting to the steps which the plaintiff has taken against it. The plaintiff brought the proceedings; the defendant has been compelled to defend them. The plaintiff obtained an injunction against it which the defendant claims ought not to have been granted; the defendant has obtained its discharge. The defendant claims that the existence of the injunction caused it loss; it seeks to recover the loss. It seeks only to be restored, so far as compensation can achieve it, to the position it was in before the proceedings began. The defendant must counter-attack to recover ground lost by an earlier defeat, but it makes no territorial claim of its own; it cannot fairly be described as an aggressor.

Although the defendant is claiming monetary compensation for loss which it alleges it has sustained as a result of the injunction, it has no independent cause of action to recover such loss. It cannot bring separate proceedings, whether by writ or counterclaim in the existing proceedings. Its claim arises out of and is wholly dependent upon the plaintiff's cross-undertaking. Its only remedy is to enforce the cross-undertaking by applying under the liberty to apply in the proceedings in which the cross-undertaking was given."

54. It can be seen, therefore, that the "defendant" question must be approached as a matter of substance and in the context of the proceedings as a whole. Much attention was focused in the hearing before me on the investigation as to whether the applicant for security was "compelled" to litigate having no real choice in the matter, or otherwise. It is worth noting that in this context, what Millett LJ clearly meant by "compulsion" (in explaining the policy behind the rule that security cannot be ordered against a defendant), was where the relevant party was facing a claim made directly against it so that either it defended the claim against it, or in practice let the claim go by default. In *Bowring* itself, the defendant was indeed compelled to litigate in that sense, and the fact that it later made a claim for damages, by way of "counter-attack" (the risk of which the plaintiff took by seeking the freezing order in the first place) did not alter the position.
55. The next case is the decision of the Privy Council in *GFN v Bancredit Cayman Ltd* [2010] Bus LR 587. This was a "claim" case. The original party was only Bancredit Cayman which had been made the subject of a compulsory winding-up order and placed into liquidation. Three of the company's creditors submitted proofs of debt within the liquidation, but these were rejected by the liquidators. Under the relevant insolvency rules, they then had a right to appeal to the court against that rejection, which they exercised. The liquidators then applied for security for costs

against the creditors. The first instance court granted the liquidators application and the Privy Council agreed.

56. In his opinion, Lord Scott made clear that when considering whether the creditors' appeal amounted to "proceedings" for the purposes of the jurisdiction to order security for costs, it is the substance of the process initiated by the applicant which needs to be considered, rather than its form. This means that where the process initiated by the applicant consisted of an interlocutory application within existing proceedings, that did not necessarily mean that the court had no jurisdiction to order security. As he put it at paragraph 26:

"An interlocutory application designed to regulate or assist in some way the conduct of the substantive action between the parties would not, in my opinion, constitute "proceedings" for the purposes either of section 74 or Order 23. On the other hand, an application which, although interlocutory in form, raised issues as to the rights of the parties which were in substance independent of the issues in dispute in the parent action would, in my opinion, normally constitute in substance "proceedings" for those purposes.

57. At paragraph 27, he stated that the applications there were unquestionably interlocutory in form, but it was accepted on behalf of the creditors that they were nonetheless in substance originating applications. They required the court to consider what the true state of indebtedness (or otherwise) to the creditors was at the commencement of the winding up. While they were made in the context of the liquidation, the order for winding up could not and did not purport to determine the state of indebtedness as between the company and any particular creditor. Thus a submission of a proof of debt required a new factual platform on the basis of which substantive issues between creditors and liquidators might arise. The commencement of litigation (by the creditors) to determine such issues itself amounted to "proceedings".

58. In his concurring opinion (agreed by the other members of the Privy Council apart from Lord Scott), Lord Neuberger agreed that the matter had to be approached as one of substance not form. At paragraph 31 he agreed that it was the practice of the court not to order security for costs against a defendant in relation to any steps which were reasonably necessary to enable him to resist the claim brought against him. He then said this at paragraph 32:

"The applications in the present case were originating applications falling within the expressions I have just quoted. They brought before the court issues which were not previously before the court, and which would not otherwise have been before the court; and, although brought in the context of a winding up ordered by, and under the ultimate supervision of, the court, these applications were essentially free-standing... The winding up proceedings merely provided the forensic framework in which the applications were made, or the procedural launch pad from which the applications were issued."

59. Again, this therefore emphasises the need to examine the overall context of the proceedings and how the "claim" brought by the applicant for security arose and what it entailed.

60. I should add that there is a brief reference in *Bancredit* to *Taly*, including the passage quoted at paragraph 50 above. However, it was not considered in any detail and certainly did not suggest that *Taly* was authority for some general rule. The real reason for the reference to *Taly* here was in the context of considering whether there was a relevant “claim” as opposed to whether the applicant was a relevant “defendant”.
61. The decision of Rose J (as she then was) in *Re Dalnyaya* [2017] 1 WLR 4264 involved a “defendant” case. Here, the company had been placed into liquidation by a court in the Republic of Kalmykia, part of the Russian Federation. The company was a subsidiary of a Guernsey unit trust called the Hermitage Fund. The liquidator appointed was Mr Nogotkov. He then applied to the English court pursuant to the Cross-Border Insolvency Regulations 2006 for the Russian liquidation to be recognised here. On that *ex parte* application, Registrar Barber made the recognition order. Mr Nogotkov then applied pursuant to section 236 of the Insolvency Act 1986 for the managers of the Hermitage Fund to produce information and documents and attend court for questioning. Those managers themselves subsequently applied to set aside the recognition order. Both of those applications were listed to be heard in November 2017. In the meantime, the managers applied for an order for security for costs pursuant to what was then CPR 25.12.
62. The basis for the managers’ application to set aside the recognition order was that this was made in respect of a second Russian liquidation which was itself unlawful and ineffective and served no legitimate purpose, and it was part of a long and abusive campaign on the part of the Russian Federation to attack the Hermitage Fund managers, one of which had been critical of corruption and fraud within prominent Russian companies, for which he was expelled. They alleged that the Hermitage Fund was itself the victim of a US\$230 million tax fraud instigated by the Russian Interior Ministry. On the basis of all of that, they contended that the recognition order should be set aside as being against public policy.
63. As a preliminary point, Rose J held that there had been material non-disclosure on the part of Mr Nogotkov at the original *ex parte* hearing before Registrar Barber. This was because no mention was made of the position of the Hermitage Fund and the substantial allegations of abuse of conduct towards it by the Russian Federation; in fact Counsel at the time said that there were no public policy considerations arising. Indeed, the managers also relied upon this non-disclosure as a further reason for setting aside the recognition order.

64. Rose J first held that the recognition application brought originally by Mr Nogotkov constituted a “proceeding” for the purpose of CPR 25.12. She then turned to whether the managers, in seeking security for costs, could properly be described as “defendants”. In this regard she first noted that if some of the background concerning the Russian Federation and the Hermitage Fund and its managers had been disclosed to Registrar Barber, she might well have adjourned the recognition application to an *inter partes* hearing at which the managers could be heard on the question of recognition. If this had happened, there could be little doubt that the managers would be regarded in substance as the defendants to the recognition application and would have been entitled as such to seek security.
65. In this context, it was argued that the application by the managers to set aside the recognition order had implications beyond the consequent inability of Mr Nogotkov to obtain information and documents from them under section 236. He would be prevented from having the power to proceed against anyone here. Rose J took the view that the possibility of such further consequences did not mean that the managers were not defendants here. It remains the case that they were not seeking any separate relief themselves and the application to set aside the recognition order was a purely defensive stance, where the main if not sole purpose of obtaining the recognition order was so that Mr Nogotkov could then use section 236 against them.
66. Further, as Rose J explained at paragraph 76:
- “... The application to set aside the recognition order is part and parcel of the proceedings or claim that was commenced by Mr Nogotkov when he applied for the recognition order. The set-aside application cannot be regarded as free-standing, entirely separate from the order which it seeks to challenge. Whether or not the Hermitage parties were defendants to Mr Nogotkov’s claim or proceeding at the moment it was initiated, they have certainly become defendants now that they challenge the making of the recognition order. They should not be deprived of the status of defendants for the purposes of the security for costs jurisdiction by the fact that Mr Nogotkov failed to mention what he knew about the troubled history of DSL at the *ex parte* hearing before the registrar. Mr Nogotkov must have realised that a subsequent application under section 236 against the Hermitage parties would be stoutly resisted, rightly or wrongly, on the grounds on which they now rely.”
67. What this decision demonstrates, first, is that again, the proceedings as a whole must be examined including the purpose behind the process initiated by the applicant for security. Second, this was a case where the underlying proceedings were commenced with the main or sole purpose of then seeking relief (under section 236) directly against the parties who then sought security for costs.
68. I should add that in the course of argument, Mr Venkatesan KC submitted that, apart from helping his case generally, *Re Dalnyaya* was also authority for the proposition that whenever an interested

party is entitled to and does intervene in proceedings, which such intervention then leads to the need for a hearing to determine issues between that party and the party which commenced the proceedings, the intervening party must always be regarded as a “defendant” for the purposes of what is now CPR 25.26. (He added that it was doubtful that such cases would arise very often). I do not agree. There is nothing in the decision of Rose J which indicates that she was intending to lay down a general rule of that kind and, of course, it was not necessary for her to do so.

69. The decision of Andrew Henshaw QC (as he then was) sitting as a Deputy High Court Judge in *JSC VTB Bank v Skurikhin* [2019] BPIR 75 concerned an order to appoint receivers by way of equitable execution which had been made in favour of VTB and against Mr Skurikhin whose assets were the subject of the receivership. VTB had obtained various judgments against him in the Russian courts on the basis of his liability as guarantor for the debts of various companies. At the time when the receivership application was still pending but after it had been made against Mr Skurikhin and others, certain additional parties were joined as Respondents. They included a Lichtenstein foundation called Berenger. Its economic founder was Mr Skurikhin. VTB’s argument was that notwithstanding that Berenger was the formal owner of the assets concerned, in reality the true beneficial owner was Mr Skurikhin. Despite the joinder of Berenger, it did not file any evidence in opposition to the receivership application nor did it attend the hearing following which the receivership order was made. It subsequently contended that it could not do so because of a lack of funds.
70. Three years after the receivership order was made, Berenger applied to discharge it. By that stage, Mr Skurikhin had been declared bankrupt in Russia and took the position that he no longer had any beneficial interest in the assets. Berenger’s grounds for the discharge of the receivership order were that the assets did indeed belong beneficially to it and in particular, the factual basis for the finding at the hearing of the receivership application that Mr Skurikhin controlled Berenger through a mandate agreement was wrong, that Mr Skurikhin had lost his status as a discretionary beneficiary of Berenger and that the receivership order served no purpose because the assets were not amenable to execution by a creditor of a discretionary beneficiary (i.e. VTB) in any event.
71. Pending determination of Berenger’s discharge application, VTB applied for security for costs against Berenger. This was therefore the opposite of the position which obtained in *Re Dalnyaya*, where the application for security was made by the joining parties (i.e. the managers) against the receiver (i.e. Mr Nogotkov). In considering whether VTB was a “defendant” for these purposes,

the Judge considered in some detail *Bowring*, *Bancredit* and *Re Dalnyaya*, among other cases. He held that VTB was not in substance a defendant to a claim brought by Berenger. This this was essentially for the following reasons:

- (1) The receivership application had been initiated by VTB against Berenger among others for the purpose of enabling VTB to enforce the judgments it had obtained against Mr Skurikhin, against assets held by Berenger. Berenger had not chosen to become a party to the receivership application or the proceedings;
- (2) Berenger's discharge application was in substance itself a defensive measure to enable it to be removed from the proceedings and regain control of its assets; it did not seek any positive relief or finding against VTB in the nature of a counterclaim; its application had no independent vitality of its own and was simply part and parcel of the claim or proceedings commenced by VTB;
- (3) Berenger's discharge application did not in any relevant sense raise issues that were not previously before the court, the question being whether the original receivership order had been properly made and should continue to stand. The principal issue remained, which was whether Berenger's assets should in equity be regarded as belonging to Mr Skurikhin.

72. It is worth pointing out that the Judge analysed the position of VTB and whether it was a "defendant" for the purposes of its application for security for costs, principally by considering whether Berenger was such a defendant. In other words, as if it was Berenger which was seeking the security against VTB. Of course, it was not, but the implication of the Judge's decision is that had Berenger been the applicant (as were the managers in *Re Dalnyaya*), the Court would have had jurisdiction to grant security to it. Analysing this way hardly makes the Judge's decision in *VTB* wrong, although for my part, I find it more helpful to focus directly on the true status of the applicant, in other words as to whether it is properly to be considered the defendant.

73. *JSC Karat-1 and others v Tugushev* [2021] EWHC 743 (Comm) was another case about security for costs being claimed against a defendant seeking damages pursuant to the cross-undertaking given by the claimant in respect of a freezing order which was then discharged. Here, Cockerill J (as she then was) followed *Bowring* and refused the claimant's application for security for costs, essentially for the same reasons. At paragraph 48 she characterised the "defendant" test as one which seeks to define whether the position of the applicant is (or is not) "simply defensive by reference to the overall context and substance."

74. *Consort Health Care v Tameside NHS Trust* [2024] EWHC 1702 (Ch) involved a company whose object was the development of a hospital under a PFI scheme which now sought approval for a restructuring plan. That had arisen in circumstances where the NHS Trust which was a party to the contract with the company had obtained an adjudication decision against it, and where the NHS Trust now objected to the restructuring plan. It was joined to the proceedings and then applied for security for costs. The debate before Richards J focused on whether the NHS Trust had demonstrated the relevant “gateway” for an order for security and also whether any such order would stifle the company’s application for the restructuring plan. In the event, Richards J ordered that security up to a particular amount be provided. DPW rely upon this case to show that where a party has been joined in order to protect an interest it would follow that it should be regarded as a “defendant” for the purposes of security for costs. However, I disagree, because there was no issue here but the NHS Trust was “a defendant to any claim”. The Company did not take the point that it was not such a “defendant” but in effect conceded that it was. That being so, this case does not really assist me.
75. *New Lottery Company v The Gambling Commission* [2025] Costs LR 1175 was another “defendant” case. This was a procurement challenge brought by the claimant (“NLC”) which had been the unsuccessful tenderer in a competition to decide the next operator of the National Lottery. The contracting authority was the Gambling Commission. As often happens in such cases, the party which had been awarded the new contract (“Allwyn”) applied to join the proceedings as an Interested Party. Both it and the Gambling Commission then applied for security for costs against NLC.
76. At the hearing before Joanna Smith J, it was expressly conceded on behalf of Allwyn that CPR 25.26 did not apply because Allwyn was not a “defendant”. That being so, it confined its application to one made under the inherent jurisdiction of the court. Joanna Smith J held that there was no basis for finding that the ambit of the inherent jurisdiction was in this regard any wider than that of CPR 25.26. It followed that there was no jurisdiction to grant security in favour of Allwyn.
77. Obviously, that case is different from this one, not simply on the facts, but also because of the concession made that the applicant was not a “defendant”. Nonetheless, the observations made by Joanna Smith J are of some significance and they are invoked by Soprim as against DPW. It should be noted that *Re Dalnyaya* was not cited to her.

78. At paragraph 27 and in reference to the concession made by Allwyn, Joanna Smith J said that it would have been difficult for Allwyn to bring itself within CPR 25.26 on the basis of a “substance not form” argument because an interested party which has applied to participate in proceedings is quite obviously not in the same position as a defendant. Then, at paragraph 38, and in the context of CPR 3.1 (2) (which was the basis for Allwyn’s inherent jurisdiction argument) which referred to the exercise of the court’s powers thereunder “except where these Rules provide otherwise” she then referred back to CPR 25.26. She stated that if the draftsmen of that provision had intended that interested parties should be able to obtain security for costs, they would have said so. However, there was no existing procedure for interested parties to obtain security for costs and the specific rules were carefully and restrictively drafted to exclude anyone other than a defendant from making an application for security. In that regard, she cited the observations made by Millett LJ in *Bowring* referred to at paragraph 53 above. She added that neither of the parties before her had found any authority in which security for costs had been awarded in favour of an interested party. That may have been true so far as interested parties akin to Allwyn were concerned, but of course in *Re Dalnyaya*, security was ordered in favour of the managers who had joined the proceedings in order to apply to set aside the recognition order. As already noted, however, this case was not cited to her.
79. In my judgment, *NLC* is of relatively little assistance, because of the concession made by Allwyn that it was not within CPR 25.26 and the already well-established reluctance of the courts to exercise their inherent jurisdiction to go beyond the ambit of the express rules. For those reasons, *NLC* cannot be taken as authority for the proposition that interested parties can never qualify as “defendants” for the purposes of CPR 25.26. To be fair to Soprim, that was not its key point. Rather, it was that DPW cannot be regarded as a “defendant” in this particular case.
80. Finally, I refer to *Jones v Persons Unknown and others* [2025] EWHC 977 (Comm) a decision of Louise Hutton KC, sitting as a Deputy High Court Judge. In this case, summary judgment had been granted in favour of the claimant, Mr Jones, against the First and Second Defendants for sums quantified in bitcoin, and against the Fourth Defendant for holding the relevant bitcoin as constructive trustee. Two years later, a company called Kyrrex applied to set aside the judgment. This was on the basis that Mr Jones’ original claim involved saying that a particular bitcoin wallet was owned by Kyrrex, whereas in fact the wallet had been assigned for bitcoin customer deposits made by Kyrrex on their behalf. Kyrrex became aware of the judgment because the Fourth Defendant removed over 98 bitcoin from Kyrrex’s account without discussing it with the latter

first. Kyrrex wanted the summary judgment to be set aside and Mr Jones claim instead to be determined at a trial at which Kyrrex would defend the claim.

81. Mr Jones applied for security for costs against Kyrrex. This was a “claim” case. The Judge held that Kyrrex’s application to set aside the judgment was in substance an application in existing proceedings, as opposed to being a new claim and thus an interlocutory application rather than an originating proceeding. Therefore there was no basis for ordering any security for costs. In the event, apart from reiterating that the approach to such questions should be one of substance, not form, *Jones* does not materially assist on the “defendant” issue before me.
82. In the light of the case law considered above, I would derive the following principles which apply when the court is asked to determine an issue as to whether the applicant for security for costs is a “defendant”:
 - (1) The analysis must look at substance, rather than form; therefore, the formal label given to any particular party within the proceedings is not determinative;
 - (2) There is no general rule that a party which joins the proceedings and applies for security for costs can never be a “defendant”; equally, there is no general rule that such a party must always be so considered; in particular, the fact that the applicant satisfies any particular test for being joined (for example because it has interests which are or may be affected by the proceedings) does not entail without more that it is a “defendant”;
 - (3) The exercise to be undertaken is highly contextual and fact-sensitive, and will include a consideration of the following matters (which I do not claim to be exhaustive):
 - (a) the nature and purpose of the “claim” brought by the respondent to the application for security;
 - (b) who or what is the “target” of the claim;
 - (c) the existence and nature of the parties to the proceedings other than the applicant for security and the respondent;
 - (d) the nature of the applicant, and how it became joined to the proceedings;
 - (e) the purpose for which it was joined;
 - (f) its role in the proceedings, including any relief sought by or against it.

- (4) To ask whether the applicant was forced (i.e. compelled) to join the proceedings or whether it did so “voluntarily” may be of limited assistance; that is because the notion of compulsion in its original form, invoked by Millett LJ in *Bowring* in the context of explaining the policy of the rules about security for costs (see paragraph 53 above), was used to describe a “true” defendant in other words someone against whom a direct claim was being made, which claim it ignored at its peril; further, while, any party which successfully joins the proceedings is likely to be able to say that it considered that such joinder was necessary or at least desirable from its point of view, it can equally be said that any such joinder is voluntary, in the sense that the joining party has a choice whether to join or not; put in this way, such questions are not particularly useful; a more useful or further question might be whether the joinder was objectively necessary, so that one looks beyond the applicant’s subjective point of view; here, the nature and purpose of the joinder and the role played by the other parties in the proceedings will be particularly relevant;
- (5) Finally, in a “defendant” case, I think that it is generally more productive to concentrate on the position of the applicant, rather than to ask whether the respondent should itself be characterised as a “defendant” on the basis that if it should be, that itself is an indication that the applicant is not a defendant (cf *VTB* and paragraph 72 above).

ANALYSIS

83. This can in fact be undertaken relatively shortly, given the detailed background set out above, and the legal principles to be applied.
84. The first point to note is that the party which is the target of Soprim’s claim for the charging order is obviously the Republic. It has to be, because it is only its assets which can be charged. The fact that the Republic did not (and cannot now) challenge the making of the FCO does not alter the position. By way of contrast, the assets of DPW are not under attack from Soprim. That is because, on any view, the SCB Monies do not belong to DPW.
85. Of course, on the case advanced jointly by DCT and DPW, if accepted, the Trust/Control Claim must fail, but if it fails, it simply means that the beneficial owner of the SCB Monies is not the Republic, but rather DCT. But DCT is not the applicant for security for costs. Moreover, and importantly, as DCT is also resisting the making of the FCO, it is objectively questionable why it was necessary for DPW to be joined at all. After all, these two companies have a parity of interests; were it otherwise, they could not be jointly represented or have submitted a joint

defence. In addition they jointly resist the making of an FCO. Accordingly, it is wrong for DPW to suggest that if it did not oppose the FCO application, Soprim could take all the SCB Monies, because DCT would still be opposing it. For the same reason, to say that DPW had been obliged to oppose these proceedings “in order to protect the only funds available to DCT” (see Greeno 3 at paragraph 16) is not accurate, because of the presence of DCT.

86. DPW here submits that it makes sense for it to seek security rather than DCT because all the legal costs (whether of DCT or DPW) are being defrayed by DPW. However, that does not mean that DCT could not itself incur a liability for legal costs, as in fact it must have done already, irrespective of how they have been paid to date. In any event, if in truth it was not necessary for DPW to be joined as well as DCT, the question of DPW being the correct party to seek security would not arise. Mr Greeno has said (at paragraph 13 of Greeno 4) that any costs incurred by DPW in resisting the FCO application are incurred in the interests of DCT as well. However, again, that just begs the question as to whether the joinder of DPW was really necessary. (There is a further aspect of the question of the need for DPW to be joined which I deal with at paragraph 93 below.)
87. DPW further contends that the role in these proceedings of DCT is insignificant. This is because, on the basis of Soprim’s case, DCT has been “captured” by the Republic and therefore it would not pursue any adverse interest as against Soprim. However, that is a false point because DCT’s role has to be assessed by reference to its case. On that basis, DCT clearly has an adverse interest to protect since Soprim is claiming what DCT says are its own assets.
88. In this context, *Re Dalnyaya* is clearly distinguishable. That is because the actual targets of the liquidator there, Mr Nogotkov, were indeed the Hermitage Fund managers. The sole or main purpose of obtaining the recognition order was so that information and documents from the managers could be obtained under section 236; further, the obtaining of such relief against them would be a precursor to possible substantive claims against them thereafter. There were no targets other than them.
89. One then turns to the nature and extent of DPW’s involvement now in these proceedings. This relates to what Mr Venkatesan KC called his “Narrow Point” in support of DPW’s position. DPW (like DCT) is an objecting party and an Additional Respondent to the charging order application. It is thus recognised as formally contesting that application, even though there is no claim made against it by Soprim. Moreover, the issue between Soprim and DPW (and DCT) is recognised by

the fact that statements of case were ordered here, specific disclosure against DPW was sought and has now been ordered, there is provision for expert evidence, and there is to be a trial of these issues in June. Looked at by itself, I accept that this is one factor in favour of treating DPW as a defendant. However, it has to be remembered that it is joined by DCT in this regard, and so my observations about the role of DCT made in paragraphs 85 - 87 above are pertinent here also. Further, the overall context needs to be considered. After all, it is not unusual for interested parties who are joined to proceedings then to be subject to procedural orders including as to statements of case and disclosure, and to play what may be a significant role at trial. However, that does not by itself entail that they must be regarded as “defendants” for these purposes.

90. I then turn to Mr Venkatesan KC’s “Wider Point” which relates to the substance of DPW’s interest in these proceedings, and how and why it seeks to protect them. First, I need to recall that on DPW’s case, all of its contractual rights in respect of the operation of DCT remain intact. Mr Venkatesan KC has given a detailed exposition of how various different tribunals have made points or findings to that effect. Much of this has been described in paragraphs 24 - 38 above. By way of example,

- (1) The Douglas Arbitration held that DPW had the right to control DCT and to cause it to declare dividends; further, although not a party to the CA, DPW had rights thereunder by reason of the Contracts (Rights of Third Parties) Act 1999;
- (2) That arbitration also held that the Republic had interfered with DPW’s contractual rights by appointing Ms Tadoral;
- (3) The section 44 relief granted by Bryan J in the Bryan Order (see paragraph 32 above) showed that the English Court regarded DPW’s contractual rights as its assets.

91. Further, as a shareholder in DCT, DPW is entitled to dividends and on its case, the 2017 dividend has not been paid to it although it had been paid to PDSA. In addition, as matters stand, the only asset of DCT which could and would (subject to the WFO) source the dividend payment to DPW consists of the SCB Monies. Any other assets would now appear to be under the control of the Republic or at least on any view, neither DPW nor DCT can take any steps to deploy them for that purpose. In practice, therefore, if there was granted an FCO in favour of Soprim, much of the SCB Monies would be (legitimately) taken by Soprim and to that extent DPW would be left “high and dry” so far as its own claims against DCT were concerned. That is the essential reason why DPW wishes to be able to resist the FCO.

92. I entirely accept that DPW's interests are likely to be adversely affected if the FCO is made because of its impact on the SCB Monies. However, and again, that will probably be the case with most interested parties.
93. However, DPW also submits that in being joined to these proceedings, it is also seeking to protect the contractual rights which it says it has in relation to DCT and which various tribunals have said still exist and enure to its benefit. Therefore, it is said that if a FCO was made it would be interfering with those rights, and indeed even contradicting what Bryan J held about such contractual rights being DCT's assets (see paragraph 90(3) above). I do not see that this adds anything or that it means that this case is not, at heart, "all about the money". It may be that if the Court upholds the Trust/Control Claim such that a FCO is made, it would follow that, by successfully "capturing" DCT, the Republic has caused DPW's rights to be interfered with. In particular, on the basis that DPW has an accrued contractual right as against DCT (which DCT must be taken to agree with for present purposes), if the FCO is made over the SCB Monies, then to a greater or lesser extent, that right will have been prejudiced in real terms. However, the key point is still the money. So I do not think that the reference to all of DPW's various contractual rights adds anything to the question of whether it is to be regarded as a "defendant" here. They may be relied upon as part of the argument as to why the Court should reject the Trust/Control Claim but that is a different matter and in any event, it is not suggested that DCT could not run those arguments itself.
94. It is also correct to say that DPW (and DCT) maintain their application to set aside the Enforcement Order and the underlying arbitration claim entirely. The question then is whether this amounts to some further relief being sought by DPW which indicates that its role here is not "simply defensive". I do not think that it does so indicate here, because that application is simply part and parcel of DPW's attempt to remove the prospect of the FCO, and alternative forms of relief which Soprim has sought by means of enforcement of its arbitral award against the Republic. To this extent, the position is analogous to that of the managers in *Re Dalnyaya*. So the fact that DPW and DCT have sought to set aside the Enforcement Order as well as directly resisting the making of the FCO is not a point against them.
95. Nonetheless, taking into account all of the factors discussed above, it is in my judgment plain that DPW is not a "defendant" for the purpose of any application for security for costs. That being so, the Court has no jurisdiction to make any order for security. It follows that DPW's application must fail.

96. I should add that two further points were made by Soprim in this context:
- (1) First, it was said that it was an abuse of process for DPW to seek security in a context where it could have sought to litigate its own claims against DCT in these proceedings, but has failed to do so, instead relying upon its putative claims for the future; I do not think that this is an abuse but it does not matter, because I have already found that there is no jurisdiction here without reference to this particular argument;
 - (2) Second, Soprim says that it had always been open to DPW to make its claims against DCT, and hence have access to the SCB Monies, in fact ever since the 2017 dividend became due for payment to it; yet it chose not to do so. I consider that there is a point here, but it arises not on the question of jurisdiction but rather discretion.

DISCRETION

97. In the light of my conclusion above, this does not arise. However, if I had concluded that DPW was a “defendant” so that the Court did have jurisdiction, I would not then have exercised my discretion to award any security.
98. This is not because, as Soprim contended, it had been “persecuted” by the Republic. The fact is that on DPW’s account of matters, it, too, has been persecuted and there is no suggestion that it is responsible for any of the hostile actions taken by the Republic against Soprim.
99. Rather, the reason for not exercising my discretion so as to award security is as follows: on DPW’s own case, and it appears to be correct on the facts, it has always had the ability to control the SCB Monies by reason of the authorised signatories to the SCB Accounts which it itself has procured by exercising its rights of control here in London. It would have been well within its rights (on its case) to procure DCT to not only declare but also remit to DPW the outstanding dividend monies.
100. Of course, in so doing, DCT and DPW would have to apply to vary the WFO to the extent necessary to enable the dividend payment to be made (assuming it would have encroached upon the US\$39 million secured by the WFO). It is not suggested that this course of action would have been impossible and it is settled law that the grant of a freezing injunction does not confer any priority upon the beneficiary of the injunction as against any other creditors.

101. In those circumstances, it is likely that it would have been able to collect the dividend payment owed to it, in which case there would no longer have been any putative interest for it to preserve by joining these proceedings.
102. I confess that I found it difficult to understand why DPW had not taken this course earlier on.
103. At paragraph 24 of Greeno 4, Mr Greeno says that:
“...it has not been considered in my clients’ interest to apply to vary or discharge the WFO while proceedings elsewhere are ongoing against the Republic and PDSA. From DPW’s perspective, the WFO protects the SCB Amount from being accessed by the Republic and its affiliates. In other words, DPW has remained content in the knowledge that DCT was in funds to pay DPW’s share of the 2017 dividend when convenient.”
104. However, this does not really explain the position. It was then said in the course of argument (but not in fact addressed in evidence) that there may have been good commercial or operational reasons to leave the money in DCT rather than have it paid out to DPW. However, that does not make much sense when, on any view, and regardless of the rights or wrongs of the Trust/Control Claim, the position “on the ground”, as it were, is that DCT has ceased to trade as a company since about 2018. It is not, for example, contended that dividends could have been declared from that point on. In any event, whether or not to collect the dividend would have been a commercial decision to be made by DPW. If the reality is that it does not want to collect that dividend, then its arguments about needing to preserve the SCB Monies because it has putative claims against DCT sound somewhat hollow.
105. What all of this means is that in reality, DPW could have avoided the current situation whereby it considered it necessary to join these proceedings (quite apart from the fact that DCT itself could make all the arguments without the need for DPW’s presence). Instead, as I see it, it was content to rely upon the preserving effect of the WFO, obtained and maintained by Soprim no doubt at considerable expense. It only became involved once it appreciated that there was another claimant which had progressed its own claims and now had the benefit of an order enforcing the relevant awards here. I should add that although it was submitted in argument that DPW was relying on its own injunction against PDSA, granted under the Bryan Order, to protect its interests, that does not appear to be right – see for example the clear references to the already-granted WFO in paragraph 24 of Greeno 4.
106. Although, technically, DPW is not here asserting its rights as creditor of the Republic (although it is) because it is challenging the claim that the SCB Monies belong to the Republic, the position of Soprim and DPW is somewhat akin to the situation where there are competing creditors in

relation to the assets concerned. See also paragraph 80 of DPW's skeleton argument for the hearing on 9 June 2025 and the suggestion that:

"Soprim should not be allowed to steal a march on other victims of the Republic's conduct as it is seeking to do by keeping the US\$39m for itself and further undermine DPW's efforts to enforce its rights under and in relation to the joint venture."

107. But in my view, the fact that another creditor comes along, as it were, to object to the relief being sought by the claimant does not mean that it is entitled to seek security for costs against the claimant, even if there were jurisdiction to do so. This is so whether (as Soprim contends) when another creditor claims that the grant of a FCO would be prejudicial to it, it would have to show some particular prejudice rather than that engendered because the creditor claiming the FCO was the first past the post, or whether (as DPW contends) the position is somewhat more nuanced.
108. For all those reasons, and although in the vast majority of cases, the Court's discretion is unlikely to be invoked against the applicant for security, it can, and should be, here.
109. In the event, of course, the question of discretion is academic.

CONCLUSION

110. For those reasons, the application for security for costs made by DPW is dismissed. I am most grateful to counsel for their lucid and helpful submissions.