THE HIGH COURT

COMMERCIAL

[2025] IEHC 463

2024 No. 158 S

(2024 No 67 COM)

BETWEEN

PETERSEN ENERGÍA INVERSORA S.A.U.

PETERSEN ENERGÍA S.A.U.

ETON PARK CAPITAL MANAGEMENT, L.P.

ETON PARK MASTER FUND, LTD and

ETON PARK FUND, L.P.

PLAINTIFFS

AND

THE ARGENTINE REPUBLIC

DEFENDANT

JUDGMENT of Ms. Justice Eileen Roberts delivered on 18 August 2025

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A. Introduction

1. On 25 April 2024, the plaintiffs, comprising the First and Second plaintiffs (the **"Petersen Plaintiffs**"), and the Third to Fifth Plaintiffs (the "**Eton Park Plaintiffs**"), were granted leave by the High Court on an ex parte[1] basis pursuant to O. 11, Rule 1(q) of the Rules of the Superior Courts ("**RSC**") to issue intended proceedings and to serve notice of those proceedings outside the jurisdiction on the Argentine Republic (the "**Republic"**). These proceedings were then issued on 29 April 2024 and were duly served on the Republic. The Republic entered a conditional Appearance on 17 September 2024 without prejudice and solely to contest the jurisdiction of the Irish courts. The plaintiffs issued a motion on 7 October 2024 seeking summary judgment against the Republic and these proceedings were entered into the commercial list on 14 October 2024.

2. These proceedings seek recognition and enforcement in Ireland of a judgment of the United States District Court for the Southern District of New York (the "**SDNY Court**") entered on 15 September 2023 against the Republic (the "**New York Judgment**"). The New York Judgment is under appeal (the "**2023 Circuit Appeal**") to the US Court of Appeals for the Second Circuit ("**Second Circuit**"). The stay on enforcement of the New York Judgment has expired.

3. This court is now required to deal with two motions brought by the Republic in response to the initiation of these proceedings by the plaintiffs.

4. First, the Republic seeks an Order, pursuant to O. 12, rule 26 RSC and/or pursuant to the inherent jurisdiction of the court, setting aside the service of these proceedings, (the "**Set-Aside Application**"). In that same notice of motion the Republic seeks a declaration that this court has no jurisdiction to determine these proceedings. The Republic says this is entirely ancillary relief which flows from the application to set aside the service of the proceedings and is not, as was suggested by the plaintiffs, separate relief seeking a stand-alone finding in this application of lack of jurisdiction in the context of the Republic's status as a sovereign state. I will address this matter later in this judgment.

5. Second, and without prejudice to the Set-Aside Application, the Republic seeks a stay of these proceedings pursuant to O. 63A, rule 5 of the RSC and/or pursuant to the

[1] Only one side represented

inherent jurisdiction of the court, until such time as the 2023 Circuit Appeal and any subsequent appeal thereafter, is fully and finally determined (the "**Stay Application**").

6. It was agreed between the parties that the applications would be opened together and that the Set-Aside Application would be addressed first on the basis that this court's jurisdiction should be determined before it would move to consider the Stay Application.

7. In brief terms, the New York Judgment relates to a breach of contract claim which arose following the Republic's decision in 2012 to nationalise an Argentinian oil and gas company and for that purpose to take control of 51% of the shareholding (held by the then majority shareholder) without making a tender offer to the plaintiffs who were then minority shareholders.

8. The New York Judgment directs payment by the Republic of USD$14,385,449,737 to the Petersen Plaintiffs and USD$1,714,338,556 to the Eton Park Plaintiffs (plus post-judgment interest on these amounts said to be accruing at the approximate rate of USD$2.3 million per day). Thus, with accrued interest to the hearing of this application, the amount involved is over USD$17.5 billion. As such, it is the largest claim ever sought to be recognised and enforced by the Irish courts, and indeed is the largest judgment to date rendered by the SDNY Court. As will be seen, the size of the judgment is a relevant factor under both the RSC and in relation to the exercise of the court's discretion.

9. It is apparent from the above brief description that the applications before this court required consideration of the circumstances in which Irish courts should assume jurisdiction to recognise and permit enforcement in Ireland of foreign judgments. In addition to the usual factors that arise for consideration in such cases, this court was required to consider the relevance of the Republic's status as a nation state, thus raising issues regarding sovereignty and the act of state doctrine. Furthermore, there was argument (in the context of the Set- Aside Application) regarding the level of disclosure which had been made by the plaintiffs to the court at the hearing of the ex parte application, which it was alleged formed a stand-alone basis to discharge the ex parte Order. I deal with all of these matters in this judgment.

10. There are numerous other enforcement applications pending in other jurisdictions. The court has been advised of pending applications to enforce the New York Judgment in England and Wales, France, Luxembourg, Australia, Canada and Cyprus and the plaintiffs have reserved their entitlement to seek to enforce in other jurisdictions.

11. I move now to consider the background to the underlying dispute leading to the New York Judgment and to summarise the facts as can be ascertained from the extensive affidavits and exhibits exchanged between the parties.

(1) The parties and the background to this dispute

12. The Petersen Plaintiffs are sole shareholder corporations incorporated under the laws of the Kingdom of Spain and are part of a privately held group owned and controlled by an Argentine family by the name of Eskenazi. On 23 October 2012 the Petersen Plaintiffs were placed into court-ordered receivership by the Juzgados de lo Mercantil of Madrid No. 3, Kingdom of Spain (the "**Spanish Court**") and Mr Armando Betancor Alamo was appointed to act as receiver. By further order of the Spanish Court dated 2 September 2014 the Peterson Plaintiffs were placed in compulsory liquidation and Mr Betancor Alamo was appointed as liquidator and remains so.

13. The third plaintiff is a limited partnership organised under the laws of Delaware, USA. It is represented pursuant to a power of attorney by the fourth plaintiff (a limited liability company incorporated under the laws of the Cayman Islands). The fifth plaintiff is also a limited partnership organised under Delaware law and is represented by Eton Park Liquidating GP acting in the capacity of General Partner and Voluntary Liquidator of the fourth plaintiff. By order of the Spanish Court dated 2 September 2014 the Eton Park Plaintiffs were placed in compulsory liquidation and Mr Betancor Alamo was appointed as liquidator and remains so.

14. Mr Betancor Alamo was authorised by the Spanish Court in his capacity as liquidator to initiate and maintain these proceedings on behalf of the plaintiffs.

15. The Republic is a sovereign nation state.

16. As at 2012 both the Petersen Plaintiffs and the Eton Park Plaintiffs were minority shareholders in an Argentinian company, YPF S.A. ("**YPF"**), which had been founded on 3 June 1922 as the world's first entirely state-owned oil company, being wholly owned and operated by the Republic.

17. In June 1993 the Republic privatised YPF through an initial public offering ("**IPO**") of class D shares, issued and offered on both the Buenos Aires and New York Stock Exchanges. In anticipation of the IPO, YPF's by-laws were amended to require the Republic to offer to buy out minority shareholders at a specified price if the Republic ever reacquired a 49% or higher share of YPF. It is this aspect of the by-laws that is at

the heart of the dispute between the parties. The IPO prospectus confirmed that the by-laws were governed by Argentine law and that any action relating to their enforcement or a shareholder's rights thereunder was required to be brought in an Argentine court.

18. By the end of 2001, Spanish oil company Repsol S.A. ("**Repsol**") had acquired over 99% of YPF's capital stock. Over the following years Repsol sold part of its YPF shareholding, whilst remaining the controlling shareholder. In particular, the Peterson Plaintiffs acquired a 25% stake in YPF in transactions during 2008 and 2011, acquiring almost all of these shares directly from Repsol. The Petersen Plaintiffs financed this acquisition through loan facilities, which were required to be repaid from dividends in the shares in YPF and which were secured against those shares.

19. The Eton Park Plaintiffs acquired approximately 3% of YPF between 2010 and March 2012 with the result that the Eton Park Plaintiffs became the third largest shareholder group in YPF, after Repsol and the Petersen Plaintiffs.

20. The evidence is that the economic fortunes of YPF began to decline from in or about 2009. News reports exhibited to the court noted concerns regarding YPF's increased indebtedness, drop in both oil and gas reserves, disproportionate distribution of dividends with respect to income (largely to cover agreed commitments on shareholder loans), and net worth reduction. [2]

21. The evidence is that the general expropriation law of Argentina which dates from 1977, permits the Republic to expropriate property in the public interest upon the payment of compensation in certain terms with procedures for determining such compensation and for the resolution of disputes.[3] There is a dispute between the Argentine law experts instructed by the parties as to the effect of certain aspects of that general expropriation law on the tender offer provisions of the YPF by-laws – in particular Article 28 which provides that : *"No action by third parties may impede the expropriation or its effects. The rights of the Claimant shall be considered transferred from the thing to its price or to the compensation, leaving the thing free of any encumbrance."*

22. On 16 April 2012, the Argentine president submitted a bill to Congress seeking to authorise the expropriation of Repsol's class D shares in YPF representing 51% of YPF's total capital stock. As an immediate temporary measure, the Argentine president issued Decree number 530/2012 appointing a temporary YPF intervener to exercise the

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[2] Newspaper Article La Nación dated (21 March 2011) – exhibited Book 5 Tab 5

[3] Para 24 Affidavit of Andrés de la Cruz sworn 17 January 2025 and Law 21,499 - exhibited Book 7 Tab 10.

powers of the YPF board of directors and company president for 30 days (the "**Intervention Decree**"). The recitals to the Intervention Decree reflect the previously reported concerns regarding the performance of YPF noting, for example, that : *"Although YPF is the biggest company in the petroleum sector in our country, its actions over recent years show that the interests of the majority shareholder have been different from those of Argentine Republic, inasmuch as it has led to a reduction in investments, a fall in production, and a reduction in the reserve horizon that compromises energy sovereignty of the country,…."*.

23. On 3 May 2012, the Argentine Congress passed Law number 26,741 (the "**YPF Expropriation Law**"), which declared 51% of the equity of YPF represented by class D shares held by Repsol to be of "*public interest and subject to expropriation*". The YPF Expropriation Law became effective from 7 May 2012. It provided that "*achieving self-sufficiency in the supply of hydrocarbons*" was "*a national interest and priority for the Republic of Argentina*".

24. In May 2012, shortly after the YPF Expropriation Law passed, the Peterson Plaintiffs defaulted on the loans financing the acquisition of their YPF shares, and the lenders foreclosed. The Eton Park Plaintiffs sold their YPF shares in 2012 and 2013.

25. The Republic did not make a tender offer to, or compensate, the YPF minority shareholders after enacting the YPF Expropriation Law. Some minority shareholders (excluding the plaintiffs) brought claims in the Argentine courts alleging that the Republic had violated the YPF by-laws by not complying with the tender offer provisions. Litigation was also issued in the United States in circumstances where counsel advised (although it was not on affidavit) that the plaintiffs were part of a potential class of claimants for class action purposes. Ultimately, in 2014 and before the class of claimants was fixed in the United States, the Republic reached a global agreement with Repsol (who had sued in Argentina, the United States and Spain) for a payment of USD$5 billion in satisfaction of Repsol's compensation claims and to secure the discontinuance of all minority shareholders' filed claims related to the expropriation.[4] On payment of that compensation figure to Repsol on 8 May 2014,

[4] It was confirmed at the hearing of this application that the payment was not damages under the general Civil Code, but compensation under the expropriation regime that covers the effect of expropriation on third parties. The settlement of claims of minority shareholders was encompassed within the regime applicable to expropriation under Argentine public law (not civil or commercial law).

Repsol transferred title in the expropriated shares to the Republic and the expropriation of the 51% shareholding by the Republic was thus completed.

26. In March 2015, in the Peterson Plaintiffs' bankruptcy proceedings in Spain, litigation funder Burford Capital Limited ("**Burford**") through its subsidiary, Prospect Investments LLC, paid approximately €15 million for the exclusive right to prosecute whatever expropriation- related claims the Peterson Plaintiffs had. Burford is to receive 70% of any recovery, with the remaining 30% to be available for creditors. In 2016, three years after the Eton Park Plaintiffs had sold their YPF shares, Burford also acquired the right to prosecute whatever claim the Eton Park Plaintiffs had relating to the expropriation and Burford is to receive 75% of any recovery.

27. On 8 April 2015 the Peterson Plaintiffs, funded by Burford, sued the Republic and YPF in the SDNY Court for*, inter alia*, breach of contract alleging that the Republic had breached the YPF by-laws by acquiring a controlling stake in YPF without making a tender offer to them as a minority shareholder. The SDNY Court rejected a motion by the Republic to dismiss those proceedings in September 2016.

28. In November 2016 the Eton Park Plaintiffs, also funded by Burford (or one of its subsidiaries), issued similar proceedings in the SDNY Court against the Republic.

29. The New York Judgment arises from those proceedings brought by the Petersen Plaintiffs in 2015 and the Eton Park Plaintiffs in 2016, which the SDNY Court treated as related proceedings (together referred to in this judgment as the "**US Proceedings**").

(2) The US Proceedings

30. A detailed narrative regarding the US Proceedings is set out in the affidavits filed and in particular in exhibit TCW1 to the Affidavit of Thomas C. White sworn 18 March 2025. I do not propose to replicate that narrative in this judgment but instead will here summarise the most material aspects only.

31. The Petersen Plaintiffs issued their proceedings in the SDNY Court on 8 April 2015 alleging against both the Republic and YPF (1) breach of contract; (2) anticipatory breach; (3) breach of the implied duty of good faith and fair dealing and (4) promissory estoppel.

32. On 8 September 2015 the Republic filed its initial motion to dismiss the claim of the Peterson Plaintiffs. The Republic argued that the SDNY Court lacked jurisdiction to hear the claims under the Foreign Sovereign Immunities Act, 1976 ("**FSIA**") and

should also decline to exercise jurisdiction under the doctrine of *forum non conveniens*. The Republic also argued that the claims were barred by the act of state doctrine; that the claims violated New York's champerty law and that the Peterson Plaintiffs had failed to plead causation.

33. On 9 September 2016 the SDNY Court dismissed the promissory estoppel claims against both the Republic and YPF and dismissed the good faith and fair dealing claim against YPF. The SDNY Court denied the Republic's motion to dismiss on all other claims.

34. Specifically in relation to sovereignty, the SDNY Court determined that it had jurisdiction to hear the claim. It determined that the "particular conduct that constitutes the gravamen" of the claim was the Republic's failure to issue a tender offer, which the SDNY Court characterised as a decision not to perform a contractual obligation. Thus although the SDNY Court recognised that "*expropriation is a decidedly sovereign-rather than commercial-activity"*, it held that the act at issue was taken in connection with commercial activity. The SDNY Court also held that the failure to tender for the shares caused a direct effect in the United States because compliance with the tender offer would have required publishing tender offer notices in New York, making regulatory filings with the Securities & Exchange Commission, delivering materials to the New York Stock Exchange and potentially purchasing shares held in the United States.

35. On 23 September 2016 the Republic appealed the 9 September 2016 decision of the SDNY Court to the Second Circuit on the ground that the SDNY Court lacked subject matter jurisdiction over the alleged claims and personal jurisdiction over each defendant under the FSIA. The SDNY Court's ruling on the act of state doctrine was certified for inclusion in that appeal on 7 October 2016. The parties exchanged pleadings and oral argument was held on 15 June 2017.

36. On 3 November 2016 (after the Republic had given notice of its appeal, but before it filed its brief on appeal), the Eton Park Plaintiffs issued their proceedings in the SDNY Court against the Republic and YPF in almost identical terms to the earlier proceedings initiated by the Petersen Plaintiffs (save there was no claim for promissory estoppel). The Eton Park Plaintiffs were represented by the same lawyers as the Petersen Plaintiffs and were funded by a subsidiary of Burford. On 7 November 2016, the SDNY Court recognised that the cases advanced by the Petersen Plaintiffs and the Eton Park Plaintiffs were related, and, although not formally consolidated, the cases thereafter

proceeded together for the purposes of pretrial proceedings and trial. On 16 August 2017 both cases were stayed until the Second Circuit ruled on the Petersen interlocutory appeal.

37. On 10 July 2018, the Second Circuit upheld the SDNY Court's finding of jurisdiction under the FSIA and declined to hear the Republic's act of state defence, thus dismissing that portion of the appeal. [5]

38. On 31 October 2018, the Republic and YPF petitioned the United States Supreme Court for a writ of certiorari to review the ruling of the Second Circuit on the question as to whether the "commercial activity" exception of the FSIA is applicable to suits challenging conduct inextricably intertwined with a sovereign act of expropriation.

39. On 1 May 2019, the SDNY Court extended the stay of proceedings brought by both the Peterson Plaintiffs and the Eton Park Plaintiffs pending the decision of the US Supreme Court.

40. On 24 June 2019, the US Supreme Court denied the Republic's petition – it provided no written opinion or analysis of its reasons for the denial. This denial left the Republic with no further appeal as to jurisdiction under the FSIA.

41. The stay of proceedings was then lifted by the SDNY Court and the parties recommenced exchange of pleadings. The Republic continued to argue its position under the FSIA (on the basis that a fully pleaded record might raise a different position). It also raised other jurisdictional defences including that Argentina had exclusive jurisdiction in respect of disputes arising out of the YPF by-laws and/or the IPO documentation. It again raised the *forum non conveniens* argument based on a more developed record or a change of circumstances.

42. On 11 July 2019 the SDNY Court granted the Republic and YPF leave to file a renewed motion to dismiss only on the grounds of *forum non conveniens*. That motion was filed. In particular, the Republic submitted evidence that the Republic's prior investigation of the Petersen lawyers and litigation funders had been terminated and could not be revived. Additionally, the Republic submitted evidence that certain witnesses would be unable to leave Argentina to testify in the United States and that both Argentine law and the YPF IPO prospectus made clear that Argentine courts had exclusive jurisdiction over disputes arising under the YPF by-laws. The plaintiffs filed their evidence in response.

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[5] *Petersen Energia Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 212 (2d Cir. 2018)

43. On 5 June 2020, the SDNY Court denied the second dismissal motion. The SDNY Court considered the evidence of changed circumstances and determined that Argentina was now likely an adequate forum. However the SDNY Court concluded that because Eton Park, which had been headquartered in New York, had by then joined the litigation, considerable deference was owned to their choice of New York as a forum. The SDNY Court concluded that the balance of private and public factors tilted in favour of litigating in New York. The SDNY Court noted it was not concerned by having to apply Argentine law because it predicted that no "complicated questions" would arise. The SDNY Court declined to abstain on international-comity grounds, considering that no exceptional circumstances justified dismissal. The decision of the SDNY Court on this motion was not appealable as a matter of right under US law (not being a final judgment or a collateral order) and the Republic did not pursue an appeal at that time.

44. Upon completion of discovery, all parties filed motions for summary judgment on 14 April 2022. On 31 March 2023 and based on the materials filed by each side, the SDNY Court granted the plaintiffs' motion for summary judgment of liability on its breach of contract claim against the Republic but denied the plaintiffs' motion as to the amount of damages against the Republic and denied their motion against YPF. The SDNY Court granted the Republic's motion for summary judgment as to the plaintiffs claim for breach of good faith and fair dealing but denied the Republic's motion on all other grounds. This left for trial only certain issues as to the calculation of damages and the award of prejudgment interest. The SDNY Court granted YPF's motion for summary judgment as to all claims, finding it free from liability.

45. On 14 April 2023 the Republic sought reconsideration of the order of the SDNY Court, which was opposed by the plaintiffs. On 24 May 2023 the SDNY Court issued an order by granting in part and denying in part the Republic's motion for reconsideration. The SDNY Court denied the Republic's motion to reconsider its finding of liability and hear live testimony on issues of Argentine law. The SDNY Court granted in part the Republic's motion to reconsider its order regarding damages and permitting the Republic to submit certain evidence on the date that the Republic obtained control of YPF's shares at trial.

46. The damages trial took place between 26 and 28 July 2023. That trial did not address any jurisdictional or liability arguments.

47. The SDNY Court delivered its decision on 8 September 2023. On 15 September 2023 the SDNY Court entered its final judgment, being the New York Judgment at issue in these proceedings.

48. On 6 October 2023 the Republic filed a pre-motion letter with the SDNY Court regarding a stay of enforcement of the New York Judgment for the duration of its anticipated appeal.

49. The Republic filed an appeal on 10 October 2023 in respect of the New York Judgment and the interlocutory orders and rulings which merged into that judgment, including the *forum non conveniens* motion, the motions for summary judgment and reconsideration and the findings of fact and conclusions of law of the SDNY Court of 8 September 2023.

50. On 18 October 2023 the plaintiffs filed a notice of cross-appeal of the New York Judgment including the order of 31 March 2023 granting YPF's motion for summary judgment and the 9 September 2016 order granting in part the Republic's and YPF's motion to dismiss. YPF lodged a notice of conditional cross-appeal on 21 October 2023.

51. On 19 October 2023 the SDNY Court ordered the exchange of briefs regarding the Republic's motion for a stay of enforcement of the New York Judgment pending appeal. Under US law the evidence is that a party can obtain a stay pending appeal as a matter of right if it posts a bond for the full judgment.[6] The Republic argued that the SDNY Court should grant it a stay without a bond based upon: (1) the size of the judgment of $16.1 billion and the impossibility of securing a bond for that amount; (2) principles of international comity; (3) that requiring a bond would implicate the interests of other creditors; (4) the Republic having substantial grounds for appeal and limited ability to recoup any payments made to the plaintiffs in the course of execution proceedings; and (5) the balance of equity favouring a stay, namely that immediate execution would irreparably injure the Republic and its citizens and a temporary stay would not harm the plaintiffs.

52. The plaintiffs strongly opposed the Republic's motion for a stay without a bond.

53. On 21 November 2023, the SDNY Court entered an order granting a temporary stay without a bond which would continue beyond 5 December 2023 (later extended to 10 January 2024) only if certain conditions were met - namely that the Republic pledged to

[6] See para 62 exhibit TCW1 to the Affidavit of Thomas C. White sworn 18 March 2025

the plaintiffs its equity interest in YPF and its receivables under a dam project governed by a treaty with Paraguay and also sought expedited review of its appeal.

54. The Republic did not pledge these assets by 10 January 2024 (or seek an expedited review of its appeal) and the temporary stay on enforcement of the New York Judgment expired by its terms on that date – leaving the plaintiffs free to recommence enforcement activity.

55. Detailed pleadings were filed by the parties as the 2023 Circuit Appeal progressed. Briefing was completed on 6 September 2024. The Second Circuit has not yet set a date for argument on the appeals.

56. In summary, as at the date of these motions being heard by this court on 27 and 28 May 2025, the New York Judgment is final and conclusive and the temporary stay imposed on it by the SDNY Court has expired. The New York Judgment is subject to appeal with the Second Circuit. All appeal pleadings have closed and the Second Circuit has yet to allocate a hearing date to the appeal[7]. In the meantime, the plaintiffs have been pursuing enforcement-related discovery in the SDNY Court into the Republic's world-wide assets and the Republic has engaged with that discovery process. Furthermore, the plaintiffs on 22 April 2024 moved in the SDNY Court for an injunction and order requiring turnover of the Republic's shares in YPF in partial satisfaction of the New York Judgment. The SDNY Court had not ruled on the turnover motion as at the date of the hearing of the present application before this court.[8]

57. Because of the importance of the plaintiffs' enforcement related activity both to the determination of any practical benefit of applying to the Irish courts to enforce the New York Judgment and to the issue of alleged non-disclosure at the ex parte stage, I will now separately identify this activity in some detail.

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[7] On 29 July 2025 the court was advised that on 25 July 2025 the Second Circuit indicated by means of an update of the case information on the docket that the 2023 Circuit Appeal will likely be heard during the week commencing 27 October 2025 and that a final notice confirming the date of the hearing is expected in the coming weeks.

[8] The court was advised on 29 July 2025 that in a ruling on 30 June 2025 the SDNY Court ordered the Republic within two weeks thereafter to transfer its Class D shares in YPF to a global custody account at the Bank of New York Mellon and to instruct Bank of New York Mellon to transfer those shares to the plaintiffs within one business day in partial satisfaction of the New York Judgment. The Republic applied for a stay on this order on 1 July 2025 which was refused by the SDNY Court on 14 July 2025. The Republic appealed the Turnover Order on 10 July and applied for an emergency stay pending the appeal on the same date. No date has yet been fixed for the hearing of the motion for a stay on the Turnover Order or for the appeal against the Turnover Order.

(3) The Enforcement Activity

58. Specifically, the Republic refers to the following enforcement steps which had been taken by the plaintiffs in the SDNY Court prior to making the ex parte application to the Irish High Court. The Republic says the High Court ought to have been informed of this activity at the ex parte stage. It is argued that the plaintiffs' failure to disclose this activity amounted to material non-disclosure. It is also argued that the activity itself demonstrates that no practical benefit would be obtained by the plaintiffs in enforcing the New York Judgment in Ireland. Both arguments are considered separately in this judgment. The following is the enforcement related activity which is relevant to each analysis and, for convenience, is referred to as the "**Enforcement Activity**". It relates only to activity taken prior to the ex parte application to the High Court on 25 April 2024. The evidence confirms that there has been extensive further enforcement activity undertaken by the plaintiffs since that date.

October 16, 2023	Plaintiffs serve First Post-Judgment Requests for Production of Documents from the Republic (77 document requests). In the document request, the Plaintiffs sought documents relating to all assets held by the Republic worldwide.
November 3, 2023	Plaintiffs serve document subpoena on Bank of New York Mellon. The document subpoena specifically sought documents regarding the Republic's shares in YPF.
February 7, 2024	The Republic makes first tranche of document production.
February 16, 2024	The Republic makes second tranche of document production.
February 27, 2024	Plaintiffs file letter regarding their intended motion to compel the Republic to produce discovery regarding 17 of their document requests; in particular, they argue that the Republic should be compelled to produce documents regarding diplomatic, consular, and military assets in all countries (excluding the United States of America and Argentina), as well as information about the Republic's accounts at its central bank.
March 1, 2024	The Republic makes third tranche of document production.
March 11, 2024	Plaintiffs serve document subpoenas on multiple banks namely American Express National Bank, Banco Santander, S.A., Bank of America, N.A., Banco Bilbao Vizcaya Argentaria (BBVA), S.A., BNP

	Paribas, S.A., Deutsche Bank AG, HSBC North America Holdings Inc., JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Wilmington Trust, N.A. These document subpoenas also seek information as to any bank accounts held by the Republic worldwide, including those held in Ireland.
March 11, 2024	The Republic makes fourth tranche of document production.
March 13, 2024	Plaintiffs serve document subpoenas on further banks comprising Banco de Brasil, S.A., Barclays Bank, PLC, BlackRock International Holdings, Inc., BlackRock Inc., Citibank, N.A., Commerzbank Aktiengesellschaft, Credit Agricole CIB Corp., Industrial and Commercial Bank of China, Itaú Chile, Itaú Unibanco S.A., Natixis, Cooperatieve Rabobank U.A. New York, Société Générale S.A., Standard Chartered Bank, and UBS AG. These document subpoenas seek information as to any bank accounts held by the Republic worldwide, including those held in Ireland.
March 15, 2024	The Republic makes fifth tranche of document production
March 18, 2024	Court conference to discuss Plaintiffs' February 27, 2024 letter. The Court directed parties to meet and confer and submit a joint letter with a plan of action, which the parties did.
March 22, 2024	The Republic makes sixth tranche of document production.
March 25, 2024	Plaintiffs serve document subpoena on YPF. This document subpoena sought information about the Republic's shares in YPF and also about an alleged "alter ego" relationship, in furtherance of allegation that YPF is an "alter ego" of the Republic and as such, the Plaintiffs could attach assets of YPF in satisfaction of the New York Judgment.
March 25, 2024	The Republic makes seventh tranche of document production.
April 1, 2024	Plaintiffs serve document subpoena on Banco de la Nación Argentina ("BNA"). This document subpoena sought information about the Republic's account information with BNA and also about an alleged "alter ego" relationship.
April 12, 2024	The Republic makes its eighth tranche of document production. Documents produced include a number of deeds of the Republic's real estate worldwide, including for diplomatic/consular real estate in Ireland.

April 19, 2024	Plaintiffs serve document subpoenas on Banco Latinoamericano de Comercio Exterior, S.A. and The Clearing House Payments Company L.L.C. These document subpoenas also seek information as to any bank accounts held by the Republic worldwide, including those held in Ireland.
April 22, 2025	Plaintiffs move for turnover of the Republic's shares in YPF.
April 23, 2024	Plaintiffs serve document subpoenas on MUFG Bank, Ltd. and Bank of China. These document subpoenas also seek information as to any bank accounts and assets held by the Republic worldwide, including those held in Ireland.
April 25, 2024	The Republic makes its ninth tranche of document production.

B. The Set-Aside Application

59. The Republic's application to set aside the service out order granted by the High Court is advanced under O.12, rule 26 RSC.

60. As the plaintiffs recognised in their affidavit grounding the ex parte application it was neither necessary nor appropriate for the High Court to reach any definitive conclusion on recognition or enforcement of the New York Judgment in the context of that ex parte application, which merely sought liberty to issue and serve proceedings on the Republic.

61. The plaintiffs, as the parties who obtained the ex parte order for service out of the jurisdiction, bear the burden of demonstrating that the order in question was properly granted.

62. There are two main bases advanced by the Republic in support of the Set-Aside Application.

63. First, the Republic contends that the plaintiffs have failed to comply with the well-established test for service outside of the jurisdiction for cases falling within O. 11, rule 1(q) RSC. In particular they argue that the court should set aside service as there will be no practical benefit to the plaintiffs in enforcing the New York Judgment in Ireland; that the application fails the cost and convenience requirements for service out and that it is not a proper application to be made on the facts. Under this heading, the Republic also argues that non-disclosure by the plaintiffs at the ex parte leave stage constituted a

breach of the duty of candour owed to the court, which itself is a ground for setting aside service.

64. Second, the Republic contends that these proceedings engage the doctrine of sovereign immunity and the act of state doctrine, and therefore that they are non-justiciable.

65. These arguments will be considered in turn.

(1) Whether the plaintiffs meet the test set out in O. 11 RSC

66. If a foreign judgment is recognised in Ireland it can generally be enforced as though it were a judgment of the Irish court. In general terms, where an Irish court determines that the foreign judgment fulfils the criteria for recognition and enforcement, the Irish court will not review the merits of the foreign judgment.

67. The regime for the recognition and enforcement of any foreign judgment in Ireland depends on the jurisdiction in which the judgment was obtained. The New York Judgment does not emanate from an EU state party to the Brussels Regulation (EU) No.1215/2012 (recast) ("**Brussels (recast)").** Neither does it emanate from a state which is party to the Lugano Convention. Accordingly, enforcement of the New York Judgment is governed by standard common law principles and by the provisions of O.11 of the RSC. It is worth noting that O.11 was amended by S.I. No 362/2024 – Rules of the Superior Courts (Order 11) 2024- which came into effect on 31 July 2024. Because this amended version was not operative at the date of the ex parte application in April 2024 this judgment is drafted by reference to the version of O.11 that was in place at that time.

68. O.11, rule 1(q) RSC provides the jurisdictional basis for the plaintiffs to seek service outside of the jurisdiction. O.11, rule 1 states that the court may allow service out of the jurisdiction in certain prescribed circumstances one of which (being rule 1 (q)) is when proceedings are brought "*to enforce any foreign judgment*". As stated by Kelly J (as he then was) in *Yukos Capital S.A.R.L. v OAO Tomskneft VNK* [2014] IEHC 115, the list specified in O.11, rule 1 is "*an exhaustive one*". Even where an applicant falls squarely within a specified category, as is the case here, Kelly J confirmed in *Yukos* (at para 85) "*that does not create an entitlement as of right to succeed in an application for leave to effect service out of the jurisdiction. One must satisfy the court that the other considerations dealt with in O.11 have been met*". It is accepted that the jurisdiction under O.11 is a discretionary one.

69. O.11 RSC provides in material part as follows:

*"**1**. Provided that an originating summons is not a summons to which Order 11A applies, service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the Court whenever:...*

***(q)** the proceeding is brought to enforce any foreign judgment; ..*

***2.** Where leave is asked from the Court to serve a summons or notice thereof under rule 1, the Court to whom such application shall be made shall have regard to the amount or value of the claim or property affected and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence.....*

***5.** Every application for leave to serve a summons or notice of a summons on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a citizen of Ireland or not, and where leave is asked to serve a summons or notice thereof under rule 1 stating the particulars necessary for enabling the Court to exercise a due discretion in the manner in rule 2 specified; and no 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....."*

70. O.11, rule 2 is mandatory in its terms, referencing the word "*shall*". The effect, the Republic argues, is that the court must have regard to the matters set out in O.11, rule 2 namely the amount or value of the claim or property affected and to the separate matter of the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence (in this case Argentina). They say this provision does not mean a comparison between the costs of proceedings and the value of the judgment sought to be enforced, as was indicated by the plaintiffs at the ex parte hearing. Rather, it means this court must consider a comparison of the costs (and convenience) of enforcing the New York Judgment in Ireland or in Argentina.

71. The plaintiffs argue for a different interpretation of O.11, rule 2 pointing out that it is simply not possible to perform the relevant comparison in every case within O.11, rule 1, in particular in relation to sub-rules (a) *land situate within the jurisdiction (where the Irish courts would have exclusive jurisdiction) or (c) where relief is sought against a person domiciled or ordinarily resident in Ireland.* In the latter case they argue that no comparison can be carried out between bringing proceedings in Ireland and the jurisdiction or the place of ordinary residence, because they are both Ireland.

72. The express wording of O.11, rule 2 requires the court to "*have regard to*" the relevant comparison. It does not mean that an actual comparison must be carried out where that is not possible. The point is somewhat academic in this case where of course it is possible to make comparisons between different jurisdictions. The court is required to have regard to such a comparison in the present case. Under the amended version of O.11, rule 2 effected by S.I. 362/2024 (which postdates the ex parte application) the language of comparative cost and convenience has been replaced.

73. The requirement in O.11, rule 5 of the case being a "proper" one for service out is a separate mandatory requirement[9].

74. In *Yukos* Mr Justice Kelly at para 99 of his judgment stated that "*The wording of the relevant rules and the case law which I have quoted lead me to the conclusion that in considering both comparative cost and propriety, I have to have regard to the interests of both parties to the litigation and not merely the applicant*".

75. A three part test in cases concerning the recognition of foreign judgments was set out in the decision of the Court of Appeal (Hogan J.) in *Albaniabeg Ambient Sh.p.k. v Enel S.p.A. and others* [2018] IECA 46 – (upholding the ruling of the High Court (McDermott J)). where, at para 30 Hogan J stated :

"…one may agree with McDermott J. when he stated that a plaintiff such as the present one must generally establish (i) that it has a good arguable case; (ii) that it is likely to obtain a practical benefit from the proceedings and (iii) that it satisfies the comparative cost and convenience requirements of Ord. 11, r. 2."

76. There are a number of clear parallels between the facts in that case and the present one. *Albaniabeg* addressed the enforceability of a foreign (Albanian) judgment in Ireland outside the context of the Brussels/Lugano system. The evidence was that the defendants had no assets in Ireland and were not likely to have such assets in the near future. In the High Court, McDermott J concluded that *Albaniabeg* did not stand to gain any practical benefits if enforcement proceedings were to be commenced in Ireland and for that reason he refused to grant leave to serve such proceedings out of the jurisdiction, setting aside the order made at the ex parte stage.

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[9] Under the amended version of O.11 rule 2 effected by S.I. 362/2024 (which postdates the ex parte application) in a new sub-rule 5(2) the requirement is set out as a stand-alone provision in identical terms, specifying that : "(2) *No leave shall be granted unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order*."

77. The Albanian judgment was in the amount of €433million – a very significant sum which, although much less than the amount of the New York Judgment, would have far exceeded the costs of the enforcement proceedings. Enforcement of the judgment had been sought by Albaniabeg in a number of other jurisdictions, namely New York, the Netherlands, France and Luxembourg. This is also similar to the present case where the plaintiffs have sought enforcement in England and Wales, France, Luxembourg, Australia, Canada and Cyprus.

78. As in the present case, the defendants in *Albaniabeg* argued that the court "*should not lend its assistance to what is (they say) a fruitless and oppressive application*".

79. In *Albaniabeg* Hogan J approved the following summary by McDermott J in the High Court of the relevant factors the court should consider:

"*The Court must consider whether there is some other available forum which has competent jurisdiction and is appropriate for the trial of the action. It must consider whether the case may more suitably be tried there in the interests of the parties. It must take a broad view of this issue and take account of the relevant factors including convenience, expense, the availability of witnesses, the governing law and the place of residence and business of the defendants. There must be a sound basis for the hearing of the proceedings in Ireland and the application should not be granted if the initiation of proceedings in this jurisdiction is a "mere device" to ensure that the defendants are brought before Irish courts. In summary, the Court must be satisfied that the case is a fit, proper and suitable one for determination in this jurisdiction*".

80. Hogan J was live to the need for the law to keep pace with modern business in its approach to developing common law principles. He noted expressly that "*Dublin has in the last three decades increasingly become a major financial centre ..*". Nonetheless he reiterated that O. 11 only permits the Irish courts to exercise a worldwide jurisdiction in the specific categories of cases clearly set out. He noted at para 23 of his judgment that "*..the exercise of a potentially exorbitant jurisdiction is tempered by the requirements of rr.2 and 5 which require the Irish courts to consider "the comparative cost and convenience of the proceedings in Ireland" and that they are satisfied the case is a "proper one" for service out of the jurisdiction."*

81. In relation to the three criteria referred to by Hogan J, I was urged by counsel for the Republic, to the extent that it was not already included in the concept of "convenience", to add a fourth and separate consideration expressly recognised by Hogan J at para 23 of his judgment in *Albaniabeg* and in O.11, rule 5, namely that the case is a proper one

in which leave should be granted. I do not believe it is necessary to elucidate a separate fourth limb to the test. That is because either the requirement of the case being a "proper" one is already encompassed within the concept of "convenience" and/or is in any event expressly required to be considered by the court in all cases by O.11, rule 5.

82. Authority for the former proposition can be found in the comments of Fitzgibbon L.J. in *McCrea v. Knight* [1896] 2 I.R. 619, approved in *Yukos,* where, at p626 he said "*I cannot limit the meaning of "convenience". It means fitness, propriety and suitableness – each and all three in the general sense*". In any event, it is clear that the requirement of a case being a "proper" case for service out must be satisfied on the express wording of O.11, rule 5.

83. The concept of a case being a "proper" one for service out is not in my view limited to a box-ticking exercise on compliance with the other aspects of the three part test set out in *Albaniabeg*. It is something more. It includes the requirement of the matter being a proper case to grant leave in the broader sense of "proper" - encapsulating the propriety and suitableness of the application being brought. It was described by Fennelly J in *Analog Devices BV v. Zurich Insurance Company* [2002] 1. I.R. 272 as a "*fundamental principle*". The discretion of the court must be exercised in a way that takes into account the fitness, propriety and suitableness of the case to be litigated in Ireland. O.11, rule 5 requires in terms that this court be satisfied in the exercise of its overall discretion that the application for service out is properly and actually aimed at enforcement of the foreign judgment in this jurisdiction and is not in the words of Hogan J in *Albaniabeg* a " *"mere device" to ensure that the defendants are brought before Irish courts".*

84. I propose now to consider each of the limbs of the relevant test in light of the evidence and arguments adduced before the court. All three limbs of that test must be satisfied if the service out order is to be affirmed. Furthermore the case must be a proper one for service out. At this stage there is much more evidence before me than was before the court at the ex parte stage.

(i) Good arguable case

85. In respect of the first limb of the identified test, Hogan J noted in *Albaniabeg,* at para 32, that at common law a foreign judgment delivered by a foreign court is generally unimpeachable on its merits, but that a range of defences to enforcement can be set up.

86. In the present case I am satisfied that the plaintiffs have a good arguable case that they are entitled to recognition and enforcement of the New York Judgment. Establishing a good arguable case is undoubtedly a low threshold, but nevertheless one that must be met. The plaintiffs have demonstrated that following a contested hearing they obtained the New York Judgment from the SDNY Court, being a court of competent jurisdiction. They have also demonstrated that the New York Judgment is final and conclusive (for the purposes of recognition and enforcement under principles of private international law) and is for a definite sum. Of course there are defences identified which the Republic says it will raise, not least what could be a significant defence of sovereign immunity (a factor absent from the fact pattern in *Albaniabeg*). I will deal later in this judgment with the question of sovereign immunity and act of state given the issues raised in relation to them.

87. For present purposes however I confirm my view that despite potential defences flagged, these are not relevant to determining whether the plaintiffs have a good arguable case for enforcement. In my view the plaintiffs clearly meet this limb of the relevant test.

(ii) Practical Benefit

88. The second aspect of the test is whether the plaintiffs will obtain a practical benefit from the enforcement proceedings. This test reflects the general principle that a court will not act in vain. There must therefore be some prospect that a judgment creditor will obtain some practical benefit from commencing enforcement proceedings in Ireland in respect of the foreign judgement it seeks to enforce here.

89. Hogan J in *Albaniabeg* (at para 24) stated :

"*The discretionary nature of the Ord. 11 jurisdiction has one further implication which is highly relevant to the present case, namely, that the courts will not generally grant leave for service out unless it is clear that the plaintiff has nonetheless at least some prospect of obtaining a benefit thereby. It reflects a more general principle, namely, that a court will not act in vain.*"

90. He referred to dicta of Mustill L.J. in *Insurance Corporation of Ireland v Strombus International Insurance Co*. [1985] 2 Lloyd's Rep 138, referring to the need for a "*solid practical benefit*" to ensue before the court should require a foreign party to appear as a defendant. He also referred to the observations of Sir Anthony Clarke M.R. in *Tasarruf*

v Mevduati Sigorta, Fonu v Demirel [2007] EWCA Civ. 799, [2007] 1 W.L.R. 2508, where he said :

"*We accept that the court should not automatically exercise its discretion in favour of permitting service out of the jurisdiction unless it is just do so and that it will ordinarily not be just to do so unless there is a real prospect of a legitimate benefit to the claimant from the English proceedings. We see no reason why that benefit should not be indirect or prospective.*"

91. In *Albaniabeg,* Hogan J. provided two main rationales for the requirement of practical benefit, (at paras 50-51):

"First, there are considerations of costs. The cost implications are obvious, because if Albaniabeg is correct, every foreign judgment creditor in whose favour an award has been made in a commercial dispute could – in principle, at least - seek enforcement in the Irish courts by reason of the status of Dublin as a global financial centre, regardless of whether there was any prospect of recovery or material benefit (even if indirect), thus increasing the costs for both themselves and the judgment debtor. Second, the courts are under a duty to manage their own affairs such that scarce judicial resources are conserved and are best utilised for the benefit of all litigants. Those resources are generally not well utilised where judicial energies are expended on an issue with no real connection with Ireland and where the prospects of a judgment creditor recovering assets in Ireland are remote or tenuous…."

92. If there were assets in this jurisdiction against which the New York Judgment could be executed in whole or in part, it would be easy to appreciate the solid practical benefit of enforcement proceedings here. The evidence is that the Republic has no assets in Ireland, apart from some diplomatic assets which are not amenable to enforcement.[10] All parties are agreed however that it is not a precondition to the exercise of this court's

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10 The uncontested evidence of Mr. José Ignacio García Hamilton, the Legal and Administrative Secretary of the Ministry of Economy of the Republic, on affidavit dated 6 December 2024 confirms:

(a) that the only assets of the Republic in Ireland relate to diplomatic and consular representation (§5);

(b) that there are no debt securities listed by the Republic in this jurisdiction (§7);

(c) that there is no prospect of any assets of the Republic coming into this jurisdiction in the near or medium future (§8)

jurisdiction that the Republic must already have assets in Ireland against which the New York Judgment may be enforced. Indeed this point is expressly acknowledged by Hogan J in *Albaniabeg* (at para 36). In *Tasarruf* the UK courts granted leave for service out although the proposed defendant had no assets in England at that time.

93. *Tasarruf* is a case on which the plaintiffs place some reliance. The plaintiffs point out that O.11 does not contain any reference to a requirement that there be assets in this jurisdiction before a party be permitted to seek enforcement here. The plaintiffs stress that assets in the jurisdiction is merely one way in which a party can establish that the proceedings will have a practical benefit. They point out that the courts in *Tasarruf* and in *Albaniabeg* accepted that the practical benefit in any given case can be prospective. The plaintiffs refer to the comments of the Master of the Rolls in *Tasarruf* where at para 40 of his judgment he said :

" *It is we think a reasonable possibility that one of these days Mr. Demirel will have assets in London, either in the form of physical assets or in the form of claims against other institutions. In these days of global business we should, in our opinion, be somewhat less parochial than once we were."*

94. The plaintiffs say a nation state such as the Republic is likely to engage in transactions on the international markets and seek to move money around the international banking system. While not producing any evidence to contradict the averment of Mr Jose Ignacio Garcia Hamilton that there is no prospect of any assets coming into the jurisdiction in the near or medium term, the plaintiffs say that that does not mean that assets would never come into this jurisdiction. They argue, relying on a commentary from Briggs on the *Tasarruf* decision that: "*If the judgment creditor wishes to obtain an order which he may not be able to execute, at any rate for the time being, there is no good reason to stand in his way. The modern mobility of assets and wealth make it prudent to be prepared."*[11]

95. The plaintiffs argue that if a party has to wait until the judgment debtor brings assets into the jurisdiction, they may very well be gone out of the jurisdiction again before a party could ever get the judgment recognised. Therefore, it is argued, the ability to take preparatory and pre-emptive steps is of real practical benefit to a judgment creditor.

96. I accept this as a general statement of principle but, because it could be said in every case, it is necessary to look at the evidence on the availability and prospective

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[11] Adrian Briggs QC, *Civil Jurisdiction and Judgments* (7th edn, Routledge 2021) page 825.

availability of assets in each case. Even accepting, as I do, that the benefit can be indirect or prospective, it must nevertheless be such as to constitute a practical benefit the likelihood of which is based on something more than mere possibility or speculation. As I later explain, I am not persuaded that the evidence in this case assists the plaintiffs on that point.

97. In distinguishing *Tasarruf* Hogan J held (at para 43) in *Albaniabeg* that *Tasarruf* "*…must be viewed as a case where on the facts of that case the English Court of Appeal thought that there was a real prospect that the plaintiff bank would obtain a real benefit by seeking to enforce the judgment in that jurisdiction. As McDermott J. noted, the decision appears to have been influenced by the finding of fraud and by deception in the hiding of assets from execution.*"

98. The same basis for distinguishing *Tasarruf* on the facts was applied by Kelly J (as he then was) in refusing leave to serve out in *Yukos* (at para 123). There is no suggestion of fraud or hiding of assets in the present case and I believe it therefore to be more aligned with *Albaniabeg* and *Yukos*.

99. What then, on the evidence, is the solid practical benefit(s) the plaintiffs would obtain from enforcement of the New York Judgment in Ireland? In assessing same it is relevant that the court has been advised of pending applications to also enforce the New York Judgment in England and Wales, France, Luxembourg, Australia, Canada and Cyprus.

100. In his affidavit grounding the ex parte application sworn on 18 April 2024, Mr Betancor Alamo (at paras 132-144) sets out his views of the benefits to the plaintiffs in obtaining recognition of the New York Judgment in Ireland. He notes the following considerations:

"*(a) The Irish courts are extremely highly regarded internationally, with a very strong reputation for predictability, impartiality and fair procedures;*

(b) Ireland is an English-speaking country, thereby reducing the necessity for translation of legal documents;

(c) Ireland has well-established legal principles concerning the recognition and enforcement of judgments under common law; and

(d) The High Court has a Commercial List which is well-known internationally for its speed and efficiency when dealing with both the procedural and substantive aspects of proceedings;

(e) Ireland's appellate courts are known for the same speed and efficiency, in particular in relation to appeals arising from the Commercial List of the High Court; and

(f) A series of procedural facilities exist under Irish law, which assist a judgment creditor in:- (i) establishing the methods by which a monetary judgment might be enforced; and (ii) seeking to enforce such a monetary judgment."

101. Of course, apart from the English language point, these observations are essentially also true of the courts in the other jurisdictions in which the plaintiffs have issued enforcement proceedings and indeed are true of the SDNY Court itself. These characteristics are not unique to the Irish courts, although of course we value them highly.

102. The grounding affidavit of Mr Betancor Alamo identifies the following specific benefits which he avers the plaintiffs "*might obtain*"[12] from obtaining recognition of the New York Judgment in Ireland:

(a) the plaintiffs would be able to avail of a series of procedural facilities to establish the existence of Irish assets against which to enforce the New York Judgment (including future assets);

(b) if assets were available in the jurisdiction (including in the future) there would be a range of options under Irish law which would allow the plaintiffs to enforce the New York Judgment;

(c) it is possible that the Republic might have assets in Ireland at some future point.

103. I now look at each of these suggested benefits in turn (taking (b) and (c) together) in light of the evidence and arguments advanced.

(a) <u>The availability of a series of procedural facilities to establish the existence of Irish assets</u>

104. This particular alleged benefit was explained in more detail by Mr Betancor Alamo who identified (at para 140 of his affidavit) that it included seeking *"(a) an order requiring the Argentine State to make discovery in aid of execution; and/or (b) an order requiring an appropriate representative of the Argentine State to give evidence on oath in relation to the ability of the Argentine State to satisfy any judgment which the Intended Plaintiffs might obtain. ."*

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[12] Para 132 affidavit of Armando Betancor Alamo sworn 18 April 2024

105. Certainly, as a matter of Irish law those procedures exist for the benefit of judgment creditors. However, the Republic says that not only are these options available in the US Proceedings but that the plaintiffs had in fact already availed of them in the SDNY Court at the time of the ex parte application. Furthermore there has been continued and extensive use of procedural facilities by the plaintiffs in the US Proceedings and these efforts are ongoing and will continue into the future. For present purposes the relevant argument is that these processes or practical benefits are already available to the plaintiffs and have in fact been and are being exercised elsewhere.

106. The evidence is that there has been and is ongoing enforcement related activity by the plaintiffs in relation to the New York Judgment. Such activity as had taken place as at the date of the ex parte application is set out in detail in this judgment as Enforcement Activity. Further enforcement activity took place and continues after that time. There is no bar on the plaintiffs doing so as a matter of US law as the stay on the New York Judgment has expired.

107. Specifically of relevance to the suggested potential benefit of Irish procedural processes, the plaintiffs have already sought discovery from the SDNY Court in relation to the Republic's worldwide assets. The court was advised that in connection with that enforcement discovery, the Republic had produced 9,671 documents to the plaintiffs relating to the Republic's assets all over the world, including in Ireland.

108. Furthermore, as evidenced by the Enforcement Activity, the plaintiffs had already, prior to the leave application, served numerous document subpoenas on a wide array of international financial institutions and entities seeking information as to any bank accounts and shares held by the Republic worldwide, including those held in Ireland.

109. At para 73 of Mr. Betancor Alamo's affidavit dated 14 February 2025, it is briefly averred that Irish enforcement processes would be available to the plaintiffs throughout the life of any judgment which might be obtained, and that "*the fact that the plaintiffs have previously obtained information and documentation in aid of execution by order of the New York court does not undermine this benefit*".

110. On this point the plaintiffs argue that because it may take some time for the New York Judgment to be enforced here, those procedural mechanisms in Ireland would only become available at that point in time and the asset position could have changed significantly in that period. They say there could very well be a practical benefit to having all of those procedures available at that point in time in order to ascertain the up to date asset position.

111. I am not persuaded by this argument. It is not necessary to seek enforcement proceedings in Ireland to benefit from these processes. In other words, they are duplicative of remedies already available to the plaintiffs. The processes engaged in the SDNY Court have fully dealt with any inquiry into the existence of assets currently held by the Republic in Ireland. Any change in the Irish asset position can be dealt with in the future by remedies already available to the plaintiffs in the US Proceedings and will remain available for the lifetime of the New York Judgment. I do not believe there is any solid practical benefit to permitting the plaintiffs to avail of Irish procedural remedies to ascertain the existence of assets where (a) the plaintiffs have already secured court orders elsewhere in these terms which are being complied with and (b) the plaintiffs already have the information they are seeking and an enforcement mechanism under court orders in the US Proceedings into the future to ensure continued compliance by the Republic. There is no practical benefit in this court making the same order in respect of information on assets held by the Republic. I am not persuaded that I should permit enforcement proceedings here on the basis that enforcement processes might possibly (but without any evidence to that effect) prove useful in the future to the plaintiffs on a different basis than the enforcement processes already available to them.

112. Insofar as there is an argument in relation to the lifespan of any judgment of this court in terms of prospective benefits, it is true than any Irish judgment would have a lifespan of twelve years. However, that is equally true in every case and was true on the facts of both *Albaniabeg* and *Yukos*, in which the service out orders were set aside. Furthermore, there is no evidence at all that the New York Judgment will expire (with its related procedural benefits) during the lifetime of an Irish judgment. The plaintiffs will, under the New York Judgment, have an ability to continue to make inquiries and seek further assistance from the SDNY Court for the lifespan of the New York Judgment.

(b) The availability of a series of procedural options to enforce the New York Judgment and **(c) the Republic might have assets in Ireland at some future point**

113. The plaintiffs specifically refer to the options which would be available to them to seek garnishee orders, charging orders over shares and/or to appoint a receiver by way of equitable execution to any asset in which the Republic holds a legal or beneficial interest. Of course these processes are available to parties who hold an Irish judgment

but they are of no practical benefit unless there are assets or may be assets in this jurisdiction against which such processes could be pursued.

114. The uncontested evidence is that the Republic has no assets in Ireland that could be enforced against.

115. Mr Betancor Alamo avers at para 142 of his affidavit sworn 18 April 2024 that *"..even if the Argentinian State does not currently have assets within the jurisdiction which would be liable to execution, it might well do so at some point during the life of any judgment obtained in the Intended Proceedings. By way of example only, I believe and am advised that Ireland is the place of domicile for 6% of world-wide fund investment assets, making it the third largest global centre of fund administration and the second largest in the European Union."*

116. He also points out that Ireland is an international listing hub for debt securities and that the Republic could list debt securities here.

117. In response, Mr De La Cruz in his affidavit sworn 17 January 2025 on behalf of the Republic (referring to Mr Garcia Hamilton's affidavit) confirms that the only assets of the Republic in Ireland relate to diplomatic and consular representation (namely its embassy building, 2 official vehicles and 2 diplomatic bank accounts) – none of which are subject to execution in Ireland. He also avers that there are no debt securities listed by the Republic in Ireland and he notes the averment in Mr Garcia Hamilton's affidavit sworn 6 December 2024[13] where at para 8 he states: " *Furthermore, I can confirm that to the best of my knowledge there is no prospect of any assets of the Argentine Republic coming into the Republic of Ireland in the near or medium future*".

118. The plaintiffs say that it is "*readily possible to envisage that many other asset classes might become present in Ireland.*"[14] No examples of those other asset classes are however suggested. The Republic says this is all completely speculative.

119. That is as far as the averments go. There is nothing specific to suggest any real likelihood of relevant assets coming into this jurisdiction. As noted by Hogan J in *Albaniabeg* at para 50 :

"*…every foreign judgment creditor in whose favour an award has been made in a commercial dispute could - in principle, at least - seek enforcement in the Irish courts by reason of the status of Dublin as a global financial centre, regardless of whether*

[13] Mr Garcia Hamilton is the Legal and Administrative Secretary of the Ministry of Economy of the Argentine Republic

[14] Para 72 Affidavit of Armando Betancor Alamo sworn 14 February 2025

there was any prospect of recovery or material benefit (even if indirect), thus increasing the costs for both themselves and the judgment debtor."

120. A similar argument was considered by the court in *Yukos* (at para 107) where it was argued that enforcement of the award in Ireland *"would permit enforcement of the award against any future assets of the respondent in the jurisdiction, including any debts owed now or in the future to the respondent by any party present in this jurisdiction*". Kelly J (as he then was) characterised this argument at para 111 of his judgment as a "*forlorn hope based on little or no evidence that at some stage in the future, assets may become available against which execution could take place in this jurisdiction*".

121. Similarly I do not believe that the plaintiffs have established any solid practical benefit to enforcement in Ireland on the basis of these identified arguments. There are no assets in Ireland against which to exercise such procedural options nor on the evidence is there any real likelihood of relevant assets coming into this jurisdiction. Indeed, the situation regarding potential assets in this case is even weaker than in *Albaniabeg*, where debt securities had actually been listed on the Irish Stock Exchange, but service was still set aside by the Court of Appeal.

(d) Other potential practical benefits

122. Other practical benefits were suggested by the plaintiffs in the period since the ex parte application was made. While there was a suggestion that this court should be cautious in considering these additional matters which post-dated the ex parte application in light of the burden on the plaintiffs to establish that the ex parte order was correctly made, I will nevertheless consider these additional points in the exercise of this court's discretion.

123. One such further potential practical benefit is the benefit of an Irish judgment being more easily recognised and enforced across the EU under **Brussels (recast)**.

124. This matter was first mentioned in Mr Betancor Alamo's Affidavit sworn on 14 February 2025 where at para 75 he avers that :

"*..I believe and am advised that any order recognising and/or enforcing the New York Judgment in this jurisdiction would benefit from presumptive recognition throughout the European Union under the provisions of Regulation (E.U.) Number 1215/2012, in particular Article 36*."

125. In his later affidavit sworn 31 March 2025 Mr Betancor Alamo says at para 83 that other enforcement proceedings have encountered delays and that :
"*In view of the scale of the New York Judgment, and the rate of accrual of interest thereon, I believe and am advised that even if these proceedings were to be determined a matter of weeks prior to those of the Other Enforcement Proceedings that are within the European Union, this would confer a significant practical benefit on the Plaintiffs*."

126. The Republic argue that the same Brussels (recast) consequences would be achieved by obtaining judgment in any other state that is a party to it most particularly in France, Luxembourg and Cyprus where enforcement proceedings are also underway by the plaintiffs. Furthermore they say that there is no evidence to suggest that the enforcement proceedings in Ireland would finish ahead of other jurisdictions and that any suggestion otherwise is entirely speculative. They point to the high likelihood of an appeal against this court's judgment given the size of the New York Judgment and to the virtual certainty of complex plenary proceedings if enforcement is permitted here. They also point out that there is no evidence at all before the court as to whether there are assets or likely to be assets in any other EU jurisdiction – and thus no evidence of what real practical benefit would flow from the Brussels (recast) recognition. If there were assets in another member state it would be logical to issue enforcement proceedings there. The Republic also says that presumptive recognition does not deprive a party opposing enforcement from relying on one of the grounds for refusal in accordance with Article 45, including if recognition would be contrary to public policy in that member state.

127. The Republic says that this prospective benefit of Brussels (recast) recognition is another way of expressing a desire to obtain the imprimatur of a respected EU court. The plaintiffs say that the imprimatur of a respected court is something of practical benefit, and they rely on comments made by the courts in both *Yukos* and *Albaniabeg* to support that position.

128. In *Yukos,* where enforcement of a foreign arbitral award was sought, Kelly J (as he then was) stated at para 128:

"While enforcement usually takes place against assets, the seeking of recognition and enforcement of an award in a country where the losing party may have no assets in order to obtain the imprimatur of a respected court upon the award is acceptable." .

129. He also stated at para 127 however that if the applicant in that case had succeeded before the French courts (in respect of which no criticism of independence or impartiality had been advanced), "…*it is difficult to see what advantage would be obtained by seeking a similar recognition and enforcement order in this jurisdiction*". Kelly J noted at para 141 that " *There is little to demonstrate any "solid practical benefit" to be gained by the applicant. The desire or entitlement to obtain an award from a "respectable" court has already been exercised in the courts of France and is underway in the courts of Singapore*".

130. The desire of the plaintiffs in this case to obtain an award from Ireland as a "respectable" court must be viewed in the context that the SDNY Court which issued the New York Judgment is itself a highly respected court. Furthermore the plaintiffs are in the process of seeking orders from several other highly respected international courts for the same stated reason. It is difficult to see what further practical benefit would be obtained by having similar orders made by multiple respected international courts.

131. As noted by Hogan J in Albaniabeg, (at para 71):
"..while the court may well have a jurisdiction to grant leave for Ord. 11, r. 1(q) purposes where the sole purpose of the application is to ensure the imprimatur of the foreign judgment by an Irish court, even if there is no actual material benefit, cases of this kind are likely to remain unusual, even exceptional. Leave should not normally be granted in such cases where enforcement proceedings have already been determined or are pending in other third country jurisdictions".

132. The plaintiffs say I should consider the present case as an "exceptional" one in this regard because of the size of the New York Judgment. I do not however agree that the size of the judgment makes any difference to the practical benefit of multiple imprimaturs from various respected courts.

133. Brussels (recast) was not directly considered in *Albaniabeg* .

134. There is no doubt that Brussels (recast) is specifically designed to facilitate the presumptive recognition and thus easy enforcement and recognition of judgments as between the signatory states. If judgment is obtained in any one of the member states it would be easily enforced in another member state as a judgment for the purposes of Article 2(a). There is thus a benefit to obtaining judgment in any one signatory state insofar as enforcement in another signatory state is concerned. I accept therefore that enforcing a judgment in Ireland brings with it the benefit of presumptive recognition under Brussels (recast). However, that could be said in relation to every judgment

which is sought to be enforced here from any jurisdiction regardless of the circumstances. One cannot simply say that every judgment must be enforceable in Ireland simply because it would get the benefit of automatic recognition under Brussels (recast). The solid practical benefit has to be established on the facts of each case. There must be more than simply saying presumptive recognition per se is a practical benefit.

135. Furthermore, there is no additional benefit under Brussels (recast) in obtaining judgments in multiple signatory states. In the present case enforcement proceedings are already in being in three other signatory states, namely France, Luxembourg and Cyprus. The plaintiffs have reserved their right to seek enforcement elsewhere so enforcement may be sought in other signatory states in the future.

136. Although there is undoubtedly a benefit in principle to being able to easily enforce a judgment in relevant jurisdictions under Brussels (recast), I do not believe there is any solid practical benefit likely to flow to the plaintiffs as a result of recognition of the New York Judgment as an Irish judgment in the circumstances of this case. This is because there are already enforcement proceedings in place in at least three other EU jurisdictions, whose judgments would be enforceable throughout the EU in the same manner as any Irish judgment. It is speculative to suggest that the Irish courts would be first to deliver a judgment. It is impossible to say at this point which EU jurisdiction will be first to do so. In fact, enforcement proceedings commenced in two Brussels (recast) jurisdictions ahead of Ireland. There is no evidence at all of what assets (if any) the Republic has in any signatory state. If there are actual or potential relevant assets in any of those other jurisdictions or otherwise a connection to that jurisdiction then the process of seeking enforcement of the New York Judgment there may be relatively straightforward. It would be logical for enforcement proceedings to be brought in such a jurisdiction. Any such judgment would of course be recognised in Ireland under Brussels (recast) and could be enforced against any relevant assets in Ireland.

137. I accept that the quantum of the New York Judgment may of course require attempts to enforce in multiple jurisdictions. There is nothing wrong with that. Insofar as the plaintiffs seek to enforce in Ireland however they must show some solid practical benefit arising from enforcement here.

138. I am not satisfied on the evidence that the plaintiffs have demonstrated a solid practical benefit in this case such as should persuade this court to exercise its discretion to permit the service out order to stand.

139. I will nevertheless proceed to consider the other elements of the test and the provisions of O.11 RSC.

(iii) Comparative Cost and Convenience

140. The third limb of the test refers to the comparative cost and convenience of proceeding in Ireland.

141. The affidavit of Mr Betancor Alamo sworn 18 April 2024 grounding the ex parte application does not really address the question of comparative cost and convenience at all. At para 161 of his affidavit Mr Betancor Alamo says that :

"*I further believe and am advised that, having regard to the nature of the Intended Proceedings, the question of the "comparative cost and convenience" of proceedings before the courts of Argentina under Order 11, rule 2 of the Rules does not arise."*

142. It appears from the plaintiffs' submissions at the ex parte stage, at para 17, that the reason for this was that "*..the very premise of the Intended Proceedings is to seek recognition of the New York Judgment in Ireland*." It was also argued at the ex parte hearing that given the size of the New York Judgment, the cost of recognition or enforcement in any individual jurisdiction would be completely insignificant relative to the value of that judgment.

143. However, comparative cost and convenience is a matter which it is stated in O.11 the court "*shall*" have regard to. The Republic says that the relevant comparison must be the comparison between seeking to enforce the New York Judgment in Ireland and in Argentina or other relevant jurisdictions.

144. The plaintiffs referred to the UK decision in *Caterpillar Financial Services (Dubai) Ltd v National Gulf Construction LLC and other*s [2022] EWHC 914 (Comm) which was an application made to the Commercial Court in England to serve out of the jurisdiction to enforce two foreign judgments. The Court held that England was the appropriate, indeed the only, forum in which an application could properly be made for enforcement of a judgment in England. The Republic agrees but says that is not the test prescribed by the Irish rules, contrasting it with the English provisions in CPR r 6.21(2A) which provides that the English courts will not give permission to serve out unless satisfied that England and Wales is the proper place in which to bring the claim. Similarly the plaintiffs say that Ireland is the only place in which a party can seek to enforce a

judgment in Ireland. I find that however to be a circular argument not easily reconcilable with the wording of O.11, rule 2.

145. The Republic also takes issue with the enunciation of the test by the plaintiffs at the ex parte application where the plaintiffs said that the court should look at the question of comparative cost and convenience by reference to the amount or value of the claim when measured against the costs of the enforcement proceedings. In the present case because of the enormous size of the New York Judgment it is true that the cost of recognition or enforcement in any individual jurisdiction would be insignificant relative to the value of the claim. That however is not the exercise in the assessment of comparative cost and convenience that is prescribed in O.11. While the value of the judgment is itself a relevant factor to be considered by the court, it is a separate consideration to the comparative cost and convenience point.

146. It is accepted that no enforcement action has been taken in Argentina, although the Republic must obviously have assets there. The plaintiffs say there are strong reasons why no enforcement action has been taken in Argentina. They reference an attempt by the Republic to initiate criminal prosecutions in Argentina against various parties connected to the plaintiffs, including lawyers instructed by them. They say there is a court tax ("tasa de justicia") payable at the outset of proceedings equivalent to 3% of the damages claimed, which would be a prohibitive amount in this case- being over US$500 million. They also point to what they allege are significant delays in the Argentine court system, with no direct equivalent to discovery under Argentine law and a preferential evidence regime for the state. They express concern regarding judicial independence in Argentina. They say that the Government of Argentina is permitted to give evidence in writing through its counsel, without penalty of perjury and that enforcement actions against the state are extremely rare and have never been successful. They also say that the Republic has itself argued in the US Proceedings that the New York Judgment would not be recognised or enforced in Argentina given the exclusive jurisdiction of Argentine courts over these disputes and because the claims impermissibly challenge Argentina's sovereign activity and would be barred by Argentine public policy.

147. The Republic disputes these arguments and points to the fact that the SDNY Court recently held that Argentina was an appropriate forum having previously determined

that it was not. [15] The plaintiffs say this ruling related to a forum for trying the proceedings rather than a forum for enforcement proceedings.

148. The Republic argues that even if the court were to only analyse comparative cost and convenience by reference to Ireland and Argentina, it is obvious that to bring the Republic before the Irish Courts would be far more costly and inconvenient than if the proceedings were in Argentina.

149. In fact the court has really no evidence on comparative legal costs between Ireland and Argentina. Insofar as comparative convenience of jurisdictions is concerned I am more persuaded by the plaintiffs' argument on this point. The plaintiffs have raised multiple issues on the unsuitability of Argentina as a jurisdiction for enforcement of the New York Judgment. I am persuaded in particular by the Republic's own averments in the US Proceedings that the New York Judgment would not be recognised under Argentine law for a number of detailed reasons outlined. That in my view stretches the Republic's credibility in seeking to argue that Argentina is the more convenient jurisdiction in which to proceed. I hold that it is not.

150. I turn now to consider the question as to whether this is a proper case for service out of the jurisdiction.

(2) Proper case for service out

151. There was considerable debate as to whether the "proper case" requirement was an aspect of the third limb of the three part test, a separate freestanding fourth limb of the test or not part of the test at all. There was also disagreement between the parties as to what in fact was meant by this term – in particular whether it included notions of propriety and purpose or was simply confined to ensuring there had been compliance with the other limbs of the three part test.

152. The plaintiffs say that in considering whether there is a practical benefit from service out, the court is answering the question as to whether this is a proper case to grant leave to serve out. They say that to the extent that that doesn't answer the question completely, a proper case is bound up with considerations of cost and convenience.

153. I have set out my views on this aspect at paras 81-83 of this judgment.

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[15] Decision of SDNY Court Case 1:15-cv-02739-LAP (Petersen v Argentine Republic and Eton Park Capital Management LP v Argentine Republic) where Judge Loretta A. Preska held at page 28 "Accordingly, the Court concludes that Argentina is an adequate alternative for this dispute".

154. Whether under the third limb of the relevant test as an aspect of "convenience", or simply as part of the wording of O.11, rule 5 that : ".. *no 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*…", I believe that the notion of a proper case includes issues of propriety and suitableness and is not satisfied simply by reference to the court's conclusions on practical benefit and cost and convenience.

155. As Kelly J stated in *Yukos* at para 98 "*Apart from the provisions of Order 11 Rule 2 ..an applicant must also satisfy the provisions of sub-rule 5 where the court is enjoined*". The requirement that the case be a proper one for service out is not satisfied solely by reference to the provisions of O.11, rule 2.

156. Kelly J also stated in *Yukos* (at para 101) that in the context of considering whether the case is a proper one for the court to assume jurisdiction it is reasonable to ask what the prospect of recovery against assets here might be.

157. On the evidence in this case there is no reasonable prospect of recovery against assets in Ireland either now or in the foreseeable future.

158. What further then can be said about the propriety or suitableness of this application from the perspective of determining if it is a proper one to bring in Ireland?

159. While the evidence is that these enforcement proceedings (unlike the US Proceedings) are not being financed by Burford, there is a dispute between the parties as to the level of control which Burford may be exercising over them. I do not need to determine anything on that dispute for present purposes but I am satisfied from the evidence that Burford is clearly very knowledgeable in relation to these enforcement proceedings.

160. The court was referred to a transcript of Burford's Q3 2024 earnings call dated 9 November 2024 with its shareholders (which post-dates the ex parte application in this case). It is argued by the Republic that what was said on that call stands in stark contrast to the plaintiffs' averments to the effect that there will be extensive practical benefits to them from obtaining recognition and enforcement of the New York Judgment in Ireland. I agree that call appears relevant to the question of practical benefit. It is also in my view relevant as to whether the present application is a proper one in which to grant service out.

161. Referring to the US Proceedings, Burford's chief executive, Mr Bogart, outlines on this earnings call in some detail the areas of ongoing activity including the appeal to the Second Circuit and the enforcement and recognition proceedings taken in various jurisdictions. Regarding the latter he makes the following statements:

"*We're also engaged in global efforts. In order to enforce the judgment in other jurisdictions, we need first to have the local courts in those jurisdictions recognize the judgment. In other words, adopt it as though it was their own judgment. We have filed for recognition of the judgment in multiple non-U.S. jurisdictions, and those proceedings are winding their way through the procedural preliminaries in those local courts.*"

" Now, stepping back from the lawyering, it's important to bear in mind what enforcement is and isn't and its purpose. The goal of enforcement campaigns is to apply pressure and create friction so that a rational negotiation can occur."

"It is not in and of itself the goal to wander around the countryside, trying to pick up an asset here and an asset there and sell them at auction to pay off an enormous judgment. The law around enforcing judgments against sovereigns is complex and often unclear, and we will try many gambits that won't work as a strictly legal matter. That should not concern anyone."

"And as I said earlier, the purpose of our strategy is more about bringing Argentina to the table than it is about actually seizing and selling off assets."

"However, what is really going on here is that, Argentina is rebuilding its economy and resuming its place on the world stage. And to do that, it needs to rejoin the capital markets and participate in the global economy. Having a large unsatisfied U.S. court judgment and ongoing enforcement proceedings around the world that also sweep in third parties is sand in the gears for that normalization process. And it should, in our view, ultimately lead to a commercial resolution. Put simply, we are a nagging problem that Argentina needs to solve."

" ...In any event, this is just one motion in a broad multi-jurisdictional enforcement strategy. And as I said earlier, the purpose of our strategy is more about bringing Argentina to the table than it is about actually seizing and selling off assets. So that's the state of play on enforcement and recognition."

162. Mr De la Cruz avers in his affidavit sworn 17 January 2025 at para 101 that it :

"*.. appears that the intention of these proceedings is not actually to seize assets through the legal process in satisfaction of the New York Judgment, but instead to force the Republic to settle this matter*".

163. Counsel for the Republic says that it is not "proper" within the meaning of O. 11 to pursue an enforcement action which has nothing to do with enforcement against assets

in this jurisdiction but which is in fact part of a wider strategy whose primary purpose as described by Mr Bogart is "*putting sand in the gears*" of the Republic, across multiple jurisdictions, sweeping in third parties. It is argued that this stated aim of the enforcement campaign described by Mr Bogart completely undermines the seriousness of intent professed by the plaintiffs regarding the practical benefit of recognition in Ireland.

164. The plaintiffs response, as set out in the affidavit of Mr Betancor Alamo sworn 14 February 2025 at para 80 is that "*the fact that these proceedings, or indeed the Other Enforcement Proceedings, might motivate Argentina to negotiate with the Plaintiffs does not, in any way, render illegitimate either these proceedings or the Other Enforcement Proceedings*".

165. Of course I accept that there is nothing improper in liquidators and creditors generally taking whatever actions they think are lawfully and reasonably open to them to try and recover debts or create pressure to negotiate a settlement. The plaintiffs say there is nothing exceptional or improper in what Mr Bogart said or in the strategy and aims he outlined. Properly read and understood in its context, they say these remarks do not support the Republic's proposition that the plaintiffs in fact are not interested in enforcing the New York Judgment here.

166. I find that Mr Bogart's analysis is both detailed and well-informed. There is no suggestion the transcript does not accurately record his words. It is clear to the court that Mr Bogart's account correctly explained the then current status of the US Proceedings including the timing and next steps for the appeal to the Second Circuit and the ongoing activity in the SDNY Court. Given his detailed and accurate presentation on these aspects, I do not believe he would have misrepresented the position on the enforcement and recognition strategy and activity. His comments were not made casually or inadvertently but on a scheduled earnings call attended by persons who expected to be informed of the detail of the strategy being adopted in relation to enforcement of the US Proceedings funded by Burford. I therefore attribute some weight to his comments.

167. This court must not grant leave under O. 11, rule 5 unless satisfied that it is a proper case in which to do so. I believe this requires this court to be satisfied that the application for enforcement is made with the bona fide expectation of actual or likely enforcement related activity in this jurisdiction. Mr Bogart's comments do not sit

easily with that or with the reality of a solid practical benefit accruing to the plaintiffs from seeking enforcement in the Irish courts.

168. I turn now to consider the remaining aspect of challenge by the Republic under this general heading, namely their contention that the plaintiffs failed in their duty of candour to the court in the ex parte application. This ground would, if successful, potentially form a stand-alone basis for setting aside the service out order.

(3) Alleged Material non-disclosure

169. The Republic says that certain materially relevant matters were not brought to the attention of the High Court at the ex parte hearing in breach of the duty of candour owed to the court and that this should of itself persuade this court to now dismiss the order made by the High Court in favour of the plaintiffs.

170. The evidence is that there has been and is ongoing enforcement related activity by the plaintiffs in relation to the New York Judgment. There is no bar on doing so as a matter of US law as the stay on the New York Judgment has expired. The relevant enforcement activity is set out in detail in this judgment under the heading Enforcement Activity. It is the plaintiffs' alleged failure to disclose the specifics of the Enforcement Activity to the court at the ex parte stage that is the basis of the Republic's claim of material non-disclosure.

171. Complaint is made that the plaintiffs presented their case at the ex parte hearing by relying on the benefits of a possible order against the Republic for discovery in aid of execution and/or an order requiring the Republic to give evidence on oath in relation to their ability to satisfy the New York Judgment. At the same time, it is said that the plaintiffs failed to disclose to the court that they were actually engaged in similar post-execution processes in the SDNY Court designed to ascertain the whereabouts of the Republic's assets worldwide, including in Ireland, and had in fact obtained information on foot of those processes. The Republic says that the non-disclosure goes to the heart of the question of "practical benefit".

172. In summary, it is argued that the plaintiffs failed to inform the Irish court that New York discovery processes had been availed of in relation to assets of the Republic in Ireland, amongst other jurisdictions. They also point to the turnover motion issued by the plaintiffs in the SDNY Court on 22 April 2024 seeking to access the Republic's YPF shares in partial satisfaction of the New York Judgment. They say this was not

mentioned to the High Court when the plaintiffs moved their ex parte application three days later on 25 April 2024.

173. The Republic says that, in recognition of the importance of this information, it was communicated by Burford to their investors in the earnings call on 9 November 2024. On that call Burford's Chief Executive Mr Bogart advised investors that :
"*We are pursuing post-judgment discovery from Argentina, YPF and the third parties in the New York Court, and we have been doing that actively, including engaging in motions to compel information where necessary. We're also seeking substantive enforcement assistance from the New York Court. For example, we have filed a motion seeking to have Argentina's shares in YPF turned over to us."*

174. The Republic says this is the level of disclosure that ought to have been made to the Irish High Court. Of course it is important to point out that this communication with investors was seven months later and arose in the context of the more extensive enforcement related activity which had taken place by that date. It is also important to distinguish between information that is relevant to financial prospects and information that is relevant in legal terms.

175. The ex parte application was made to the High Court on the 25 April 2024. Up to and including that date, as set out in the Enforcement Activity, the evidence is that the plaintiffs had initiated extensive discovery efforts to identify and potentially seize assets held by the Republic worldwide, including diplomatic, consular, military, and central bank holdings. Numerous document subpoenas had been served on a wide array of international financial institutions and entities targeting information on the Republic's bank accounts and shares, including those in Ireland. The Republic had responded with multiple tranches of document production. Furthermore a motion had been initiated by the plaintiffs at that time seeking turnover to them of the Republic's shares in YPF.

176. The plaintiffs emphatically deny that they were guilty of any form of material non-disclosure to the court at the ex parte hearing.

177. Mr Betancor Alamo's affidavit sworn 14 May 2025 avers that his grounding affidavit "*...did not convey any suggestion to the effect that the Plaintiffs were not taking steps to enforce the New York Judgment, both before the New York Court and in other jurisdictions. On the contrary, it confirmed precisely the opposite*." It is not identified by him however where the grounding affidavit so confirmed.

178. The Republic says that while details were given of the other jurisdictions in which enforcement proceedings were being taken, the High Court was not provided with the details of the Enforcement Activity taken in the SDNY Court. The Republic says that the duty of uberrima fides required disclosure of this information at the ex parte leave application as it was information relevant to the exercise of the court's discretion.

179. While there was some reference in legal submissions to the possibility of intentional non-disclosure, it was, in my view rightly, conceded by counsel for the Republic at the hearing that there is no case being made against the plaintiffs that it was their intention to mislead the High Court. Rather the case is made, relying on certain UK authorities, that the plaintiffs' failure to disclose the Enforcement Activity was conscious and deliberate as that phraseology is to be understood in those authorities, which I will later refer to.

180. As the plaintiffs deny that there was any non-disclosure and still less any material non-disclosure, I must consider whether there was sufficient and proper information provided to the court at the ex parte stage regarding the Enforcement Activity underway at that time. Four questions thus arise: (a) did the plaintiffs fail to make disclosure; (b) if so was any non-disclosure material (c) if material, how culpable was it and (d) what consequence should follow.

181. Before addressing these questions I will consider the current state of the law in relation to the duty of disclosure at ex parte applications.

(i) **The law on non-disclosure at ex parte stage**

182. It is well settled law that any party seeking to invoke the jurisdiction of the court ex parte is bound by a duty of candour and utmost good faith towards the court. The courts can set aside an order granting leave to serve proceedings outside the jurisdiction where the order was made on foot of an affidavit that is misleading, even if it is not intentionally misleading, if the facts that ought to have been disclosed were material to the exercise of the Court's discretion.

183. As the court noted in *Yukos* (at para 120) quoting from the decision of Farwell L.J. in *The Hagen* [1908] P. 189. :

"*..in as much as the application is made ex parte, full and fair disclosure is necessary, as in all ex parte applications, and a failure to make such full and fair disclosure would*

justify the court in discharging the order even though the party might afterward be in a position to make another application."

184. The question of non-disclosure at ex parte stage was considered by Mr Justice Clarke (as he then was) in *Bambrick v Cobley* [2006] 1 ILRM 81. In *Bambrick* an order was made by the High Court on an ex parte application for an interim Mareva injunction restraining the defendant from reducing her assets in the jurisdiction below €100,000. At the interlocutory hearing it was claimed that the plaintiff had failed to disclose, when applying for the interim order, that the defendant's solicitors had undertaken to hold €50,000 on trust. On the facts Clarke J held (at page 89) that : *".. the non-disclosed facts were of significant materiality. ...there is a very real possibility that the court would either have made no order or potentially required short service and considered an order only in respect of a significantly lesser sum had it been apprised of the full facts".* The interim order was discharged. While Clarke J was not prepared to hold on the evidence that the plaintiff had deliberately misled the court, he found that as a solicitor the plaintiff ought to have been aware of his duty to disclose all material facts and must be regarded as *"significantly culpable"* in failing to do so in that case.

185. Clarke J stated as follows (at page 87) :

"..the courts have noted that in particular in heavy commercial cases *the borderline between material facts and non-material facts can be a somewhat uncertain one and that, without discounting the heavy duty of candour and care which falls upon persons making ex parte applications, the application of the principle of disclosure should not be carried to extreme lengths.*

.....it would seem that the test by reference to which materiality should be judged is one of whether objectively speaking the facts could reasonably be regarded as material with materiality to be construed in a reasonable and not excessive manner."

186. He also noted that the consequences of non-disclosure are not automatic, finding that (at page 89): *" ..it seems to me that the court has a discretion, in cases where failure to disclose has been established, to refuse to grant the interlocutory injunction and to discharge the already granted interim injunction but is not necessarily obliged to do so.".*

187. He identified the relevant criteria to be applied by the court as follows (at page 89):

"It is therefore necessary to consider, in general terms, the criteria which the court should apply in the exercise of such discretion. Clearly the court should have regard to

all the circumstances of the case. However the following factors appear to me to be the ones most likely to weigh heavily with the court in such circumstances:

1. The materiality of the facts not disclosed.

2. The extent to which it may be said that the plaintiff is culpable in respect of a failure to disclose. A deliberate misleading of the court is likely to weigh more heavily in favour of the discretion being exercised against the continuance of an injunction than an innocent omission. There are obviously intermediate cases where the court may not be satisfied that there was a deliberate attempt to mislead but that the plaintiff was, nonetheless, significantly culpable in failing to disclose.

3.The overall circumstances of the case which lead to the application in the first place...."

188. The court was also referred to the High Court decision (Noonan J) *in Cutler v. Azur Pharma International III Limited and others* [2015] IEHC 355. In that case the plaintiff had obtained an order ex parte giving effect to a request for international judicial assistance made by letters rogatory. One of the grounds on which the applicant sought to set the order aside was that the plaintiff's affidavit grounding the ex parte application did not refer to the discovery process in the United States proceedings. Specifically, it was claimed that the plaintiff had failed to disclose that many of the documents sought from the applicant were in the possession of the defendants who were at that stage in the process of completing extensive discovery and in fact had already discovered some relevant documents. It was alleged this was material information that ought to have been disclosed and that there had been a lack of candour on the part of the plaintiff.

189. Accepting that the US discovery process had not been referred to at the ex parte stage Noonan J held at para 34:

"...I do not think it is a matter that is sufficiently serious to warrant a refusal of the request. There is no suggestion that the omission was in some way deliberate or calculated to mislead, particularly in circumstances where the court would be likely to assume in any event that discovery would be part and parcel of the United States proceedings. There is also the fact that no actual advantage was derived from the ex parte order and thus no prejudice was suffered by KPMG, unlike the situation that might arise, for example, if an injunction was obtained ex parte. As Clarke J. remarked in Bambrick v. Cobley the application of the principle of disclosure should not be carried to extreme lengths."

190. Noonan J refused the application to set aside the ex parte order. However he did vary the request to the extent of finding it both unnecessary and oppressive for the applicant to be required to produce documents which were in the possession of the defendant and which were the subject matter of the discovery order in the United States proceedings. The plaintiffs say this is clearly analogous to the present case in terms of the court assuming that there would be enforcement of the judgment in the US.

191. The Republic relied on several UK authorities in particular the judgment of Sir Geoffrey Vos in the decision of *Punjab National Bank (International) LTD v. Srinivasan and others* [2019] EWHC 3495 (Ch). In that case PNB sought to appeal an order of the Chief Master setting aside the permission which had been granted to serve proceedings out of the jurisdiction. One of the grounds on which the service out order had been set aside related to the failure by PNB to inform the court about two sets of proceedings it had brought in South Carolina. The plaintiffs stress that this was a serious non-disclosure in that case and would be analogous to a failure in this case to disclose the other jurisdictions in which enforcement is being sought – which of course was fully disclosed to the court at the ex parte stage.

192. On the facts before him Sir Geoffrey Vos held at paras 71 and 73 that:
"In my judgment, PNB's failure to alert the Chief Master to the US proceedings, and the Deputy Master to the US and the Chennai proceedings was a serious default. It was deliberate in that PNB and its solicitors were fully aware of those proceedings. The relevance of the foreign proceedings must have been obvious to any lawyer. The English proceedings were in large part duplicative of the US and the Chennai proceedings. It is of little importance that the duplication might have been justified. PNB had a duty to tell the court the full story and it failed to do so. The Chief Master was absolutely right to conclude that the normal consequence of such a default was that the orders made should be set aside.....I assess the degree and extent of PNB's culpability, as did the Chief Master, at a high level. I have no doubt that disclosure of the foreign proceedings would have given each of the Chief Master and the Deputy Master cause to reconsider whether the orders sought were appropriate."

193. In addressing the appeal on the point of material non-disclosure the court in *Punjab* cited with approval the following dicta approved by Bryan J at paras 90-123 in *Libyan Investment Authority v. JP Morgan* [2019] EWHC 1452 (Comm):

"(1) If the Court finds that there have been breaches of the duty of full and fair disclosure

on the ex parte application, the general rule is that it should discharge the order obtained in breach and refuse to renew the order until trial.

(2) Notwithstanding the general rule, the court has jurisdiction to continue or re-grant the order.

(3) That jurisdiction should be exercised sparingly, and should take account of the need to protect the administration of justice and uphold the public interest in requiring full and fair disclosure.

(4) The Court should assess the degree and extent of the culpability with regard to non-disclosure. It is relevant that the breach was innocent, but there is no general rule that an innocent breach will not attract the sanction of discharge of the order. Equally, there is no general rule that a deliberate breach will attract that sanction.

(5) The Court should assess the importance and significance to the outcome of the application for an injunction of the matters which were not disclosed to the court. In making this assessment, the fact that the Judge might have made the order anyway is of little if any importance.

(6) The Court can weigh the merits of the plaintiff's claim but should not conduct a simple balancing exercise of which the strength of the plaintiff's case is allowed to undermine the policy objective of the principle.

(7) The application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice.

(8) The jurisdiction is penal in nature and the courts should have regard to the proportionality between the punishment and the offence.

(9) There are no hard and fast rules as to whether the discretion to continue or re-grant the order should be exercised, and the court should take into account all relevant circumstances."

194. The Republic also referred to the judgment of Bryan J In *Libyan Investment Authority* as authority for what they refer to as the concept of conscious non-disclosure – i.e. non-disclosure of a fact that the party was well aware of but did not disclose. This does not require an intention to mislead the court – simply that the non-disclosure be conscious and deliberate. They say this categorisation is on all fours with the test in *Bambrick* of intermediate wrongs between the two extremes of inadvertent and intentional non-disclosure. I did not however find the categorisation of deliberate and conscious non-disclosure particularly helpful to my analysis, nor do I believe that it is the same test as

propounded in *Bambrick.* Given the fact specific nature of non-disclosure it is preferable in my view to adopt the more general approach outlined in *Bambrick* which contemplates a range of intermediate cases between deliberate misleading of the court and innocent omission. It is noted by the court that the non-disclosure in *Libyan Investment Authority* was the failure to disclose to the court an actual defence which the plaintiffs were aware was going to be relied on. This would be similar in the present case to the plaintiffs failing to disclose that the Republic was going to rely on the sovereign immunity defence – which of course was fully disclosed to the court at the ex parte stage.

195. In *Honniball v. Cunningham* [2010] 2 IR 1, the court had made a charging order and appointed a receiver by way of equitable execution. Complaint was made that the plaintiff at the ex parte stage had not disclosed the various means to which he had previously resorted to secure payment of the judgment debt, and in particular that he had registered a judgment mortgage. Laffoy J held at para 26 of her judgment that *"....the failure of the plaintiff to disclose a process of execution which he has embarked on, which, in any event, the plaintiff, through his counsel, asserted was inadvertent, is immaterial when, as I have found, it is open to him to pursue any process of execution available to him at law until his debt is satisfied. The existence of the judgment mortgage is of no materiality in the context of the issue whether a charging order should be made under s. 23 of the Act of 1840".*

196. The plaintiffs say this is a closely analogous authority to the present case. Laffoy J found that the judgment creditor was lawfully entitled to take whatever processes of execution were open to the judgment creditor and that was not a matter of any materiality on the ex parte application.

197. The plaintiffs say that the test for non-disclosure under Irish law is different in some respects to that outlined in *Libyan Investment Authority* or *Punjab*. In particular they say that there is no general rule in Ireland that the court should start from the position that the order be discharged - there are no automatic consequences, instead the court has a discretion and will decide how to exercise that discretion The plaintiffs also say that the Irish test differs in that an Irish court considers whether there is a real possibility that the court might have made a different order. The Republic denies that the relevant test of material non-disclosure under Irish law requires any finding that it would have or probably would have altered the court's conclusions.

198. In my view, there is no general default rule in Ireland that the court should, in cases of non-disclosure, start from the position that the order should be discharged. The court retains a discretion as to how to deal with non-disclosure in the overall circumstances of the case. Materiality is to be construed in a reasonable and not excessive manner. An assessment of the materiality of undisclosed information requires the court to consider whether there is a real possibility that the information might either have been taken into account by the court in deciding the matter or whether the information might reasonably have influenced the court in respect of the order it made. A party is not however required to establish as a matter of proof that the court would have or would likely have reached a different decision had the information been disclosed.

199. Looking at the facts of the present case I now look at each issue I have identified in turn.

(ii)Did the plaintiffs fail to make disclosure

200. The plaintiffs point to what they say is the very belated assertion of non-disclosure made against them. There was argument as to precisely how clearly this issue had been flagged on affidavit - with the plaintiffs arguing that the issue had only first featured squarely as an issue in the Republic's written legal submissions. However one looks at it, two propositions appear clear. First, the Republic was provided with a full copy of the written transcript of the ex parte hearing the day after it took place. This demonstrated a high level of transparency by the plaintiffs as to how that ex parte application had been conducted. Second, there was no immediate reaction or objection by the Republic to the level of disclosure made. The issue gradually gained momentum in the course of exchange of affidavits but had clearly crystallised as an issue by the time of the hearing of this application.

201. It is instructive to look at precisely what was disclosed to the court at the ex parte hearing. The grounding Affidavit of Mr Betancor Alamo sworn on 18 April 2024 is a detailed one running to 164 paragraphs. At para 86 he confirmed that the New York Judgment is "*not subject to any extant stay on execution or enforcement*". At para 98 he noted that the SDNY Court "*has determined that the New York Judgment should be immediately enforceable in the United States of America*". At para 138 he confirmed that the plaintiffs "*continue to investigate the nature and extent of the assets of the Argentine State in various jurisdictions*". At para 133 Mr Betancor Alamo averred that

the plaintiffs *"..have already taken steps to have the New York Judgment recognised in England, France, Luxembourg and Australia.."*

202. The plaintiffs say that the ordinary meaning of these averments is that the plaintiffs were taking steps to enforce the New York Judgment both before the SDNY Court and in other jurisdictions. The Republic says this was insufficient to amount to proper disclosure of the Enforcement Activity. The Republic argues that neither the grounding affidavit of Mr. Betancor Alamo nor the transcript of the ex parte leave application disclose a single reference to the extensive enforcement efforts which were already underway at the date of the ex parte application.

203. The plaintiffs accept that Mr Betancor Alamo's affidavit does not contain specific information about the document production processes that were ongoing in the US at the time nor the turnover motion which had issued. However they say it does make abundantly clear that there had been a very significant contest in the US about the entitlement of the plaintiffs to execute there on foot of the New York Judgment. The affidavit deals with this aspect in some detail at paras 74-83 inclusive. The plaintiffs say that it would have been obvious from this information that the plaintiffs wished to and were taking steps to enforce the New York Judgment in the SDNY Court.

204. At para 83 of his grounding affidavit Mr Betancor Alamo averred that :
"Accordingly, while the New York Judgment remains the subject of the 2023 Circuit Appeal as of the date of the initiation of these proceedings, it is not subject to any stay on execution or enforcement and the New York Court has specifically determined that enforcement of the New York Judgment against Argentina is permissible with immediate effect".

205. This averment, the plaintiffs say, clearly flagged for the Irish court that the plaintiffs had tried to achieve a situation where they could enforce the New York Judgment at the earliest possible opportunity and that is what they intended to do. The precise means by which that was to be done, they say, was neither here nor there, but it must have been assumed to include taking routine steps such as seeking documents to establish the whereabouts of assets. Relying on *Cutler* the plaintiffs say that this is undoubtedly a situation where the court would be likely to assume that discovery in that case, or enforcement steps in this case, would be part and parcel of the US Proceedings. That is why the plaintiffs say that there was no non-disclosure.

206. The best way to avoid a claim of non-disclosure is to clearly and directly set out a point in a straightforward way. There are of course matters that may not need to be said

expressly because they are obvious or would necessarily be implied or understood from what has been said. It cannot be assumed however that a busy judge in an ex parte list will appreciate matters not expressly disclosed or indeed matters that are contained somewhere in exhibits that are not opened to him or her. A judge who raises questions at an ex parte hearing beyond the contents of a grounding affidavit must be confident that the information they are given in response is complete and accurate in all material respects.

207. In the present case there was a generalised disclosure that the plaintiffs were entitled to undertake enforcement steps in the US and that they were continuing to investigate the nature and extent of the Republic's assets in various jurisdictions. However, there was no disclosure of the specifics of the Enforcement Activity. That being so I must now consider whether this non-disclosure was material.

(iii)Was the non-disclosure material

208. It is not sufficient simply to identify a matter that was not disclosed. Rather a party must demonstrate the materiality of the non-disclosure to the decision required to be made by the court.

209. The plaintiffs point to the belated challenge taken by the Republic on disclosure, which they say supports the plaintiffs' position that there was no material non-disclosure. They also say that the enumeration of any particular enforcement step would not have altered the conclusion reached by the High Court regarding the service out application.

210. The plaintiffs also say that, relying on *Cutler*, this court is entitled to have regard to the procedural nature of the service out application and the assumptions which would logically have been drawn from the evidence before the court at ex parte stage. They argue that this court, as per the comments of Noonan J in *Cutler,* should be satisfied that the court at ex parte stage would be likely to assume that discovery and other enforcement steps would be part and parcel of the US Proceedings.

211. The Republic says that had the High Court been told that the plaintiffs had already sought discovery in aid of execution through the New York process on a worldwide basis, including in relation to Ireland, and that they had already received substantial documentation, including in relation to the asset position in Ireland, the court would at a minimum have queried the alleged benefit of the Irish procedural orders referred to

and potentially reached a different decision on the application for service out. To that extent it is said that the failure to disclose this information was material. A similar point is made in relation to the failure to disclose the turnover application to the court. Without prejudice to that position however the Republic denies that the relevant test of material non-disclosure is that it would have altered the conclusions reached by the court.

212. The Republic says that *Cutler* is entirely distinguishable, particularly in relation to the question of prejudice. Furthermore they say that the High Court in the present case could have made no similar assumptions as Noonan J did, especially regarding the existence of the turnover motion of which the court was entirely unaware.

213. An allegation of material non-disclosure is a serious matter. In this case the Republic did not call out any such allegation until some months after it had received not only the grounding papers but also a full transcript of the ex parte hearing itself. Mr Betancor Alamo's affidavit is lengthy and expressly references his duty of candour. The disclosure in general terms that enforcement activity had taken place and was ongoing in specified jurisdictions was further updated orally to the court at the ex parte hearing to include newly issued enforcement proceedings in Canada.

214. Taking the two categories of alleged material non-disclosure separately I find as follows:

(a) The failure to disclose the turnover motion was not material in the context of the service out application. This is an enforcement step particular to US litigation. The Irish court was aware that the plaintiffs were free to enforce the New York Judgment in the US. This specific step taken to attempt to seize assets in the US to partially satisfy the New York Judgment was of no materiality or relevance to the Irish service out application. Furthermore, the motion was issued after Mr Betancor Alamo swore his affidavit.

(b) The failure to identify the specific steps that had already been taken by the plaintiffs to locate the Republic's assets throughout the world on foot of procedural orders issued by the SDNY Court requires to be looked at in more detail because this was identified as a potential benefit of permitting enforcement in Ireland. It is clear from Mr Betancor Alamo's affidavit and the transcript of the ex parte hearing that the High court was told (a) that there was no stay on enforcing the New York Judgment in the US; (b) that investigations were ongoing into the extent of the Republic's assets; (c) that no assets of the Republic had been identified in Ireland as

at that time and (d) that enforcement was being pursued in other named jurisdictions.

Based on those disclosures I consider the court would have reasonably understood as follows:

(1) The plaintiffs could and would enforce the New York Judgment in the US and indeed that they were already attempting to do so.

(2) The plaintiffs were actively investigating what assets were held by the Republic in various jurisdictions. Those investigations must have involved the assistance of the SDNY Court who had granted the New York Judgment and had lifted the stay on enforcing it.

(3) Investigations into the location and extent of debtor assets include such routine matters as (a) requiring a debtor to disclose the existence of assets; (b) producing documents relating to such assets; (c) answering questions about assets and related issues and (d) inquiries with third parties who may hold relevant assets or have information regarding them.

(4) The plaintiffs were supplementing those investigation efforts by attempting to also enforce the New York Judgment in Ireland and in a number of other named jurisdictions.

215. The general disclosure made by the plaintiffs would undoubtedly have been enhanced had there been reference to the specifics of the Enforcement Activity. However I do not believe that the omission of those specifics amounted to material non-disclosure when regard is had to the actual disclosure made and what the court could reasonably understand and infer from that.

216. The overlap of procedural remedies in Ireland and the US/elsewhere is highly relevant to the question of the practical benefit of granting enforcement here. However, that relevance should not be conflated with a requirement to have to expressly identify each and every procedural remedy availed of.

(iv) If material, how culpable was the non-disclosure

217. Because I have found that the failure to disclose the Enforcement Activity was not material in the circumstances, I do not need to determine the extent of any culpability on the part of the plaintiffs in failing to so disclose.

(v) The court's ruling on the non-disclosure alleged

218. I do not find that there was material non-disclosure in the circumstances of this case. Even if I had so found however I would have exercised my discretion so as not to set aside the service out order for that reason. Disclosure of the Enforcement Activity would not in my view have influenced the court or altered the outcome of the ex parte application given the information which was disclosed and noting the multiple other grounds advanced in support of the application. Furthermore, there is no suggestion being advanced of any intention to mislead the court.

219. I therefore decline to set aside the service out order on the grounds of material non-disclosure.

I turn now to the second general heading on which the Republic seeks to set aside the ex parte order for service out, namely that the issues raised are non-justiciable by reason of the doctrines of sovereign immunity and act of state.

(4) Sovereign Immunity and Act of State

(i) Sovereign Immunity

220. The doctrine of sovereign immunity refers to rules of public international law which establish the circumstances in which foreign states and their agents are entitled to immunity from jurisdiction in other countries' courts. It is an issue that goes to jurisdiction. It is the Republic's submission that by virtue of this doctrine, the Irish courts may not implead the Republic in these proceedings.

221. *In* ***Government of Canada v. Employment Appeals Tribunal*** [1992] 2 I.R. 484, a case subsequently approved by the Supreme Court in ***McElhinney v. Williams*** [1995] 3 I.R. 382, O'Flaherty determined that under international law, the doctrine of absolute state immunity (if it had ever in fact been conclusively established as a doctrine), under which a sovereign was at all times entitled to resist joinder to proceedings in a foreign court, had been departed from to reflect the engagement by sovereign states in matters of ordinary commerce. He noted however that "… *if the activity called in question truly touches the actual business or policy of the foreign government then immunity should still be accorded to such activity.*"

222. There are exceptions to the general principle of sovereign immunity for foreign states including waiver, submission to jurisdiction and claims based on commercial rather than sovereign activity. It is the latter ground that is the centre of the dispute on

sovereign immunity in the present case. The Republic has maintained its objection to US jurisdiction despite defending the US Proceedings.

223. In fact, the question of sovereign immunity has been fully and finally determined against the Republic in the US Proceedings as a matter of US law. However, the question of sovereign immunity in the present proceedings will have to be separately determined by the Irish courts according to Irish law. Jurisdiction must exist before enforcement can be considered. There is therefore a question as to the sequencing in which the issue of sovereign immunity should be considered.

224. In ***Brady v Choiseul t/a Potato Services*** [2016] 2 I.R. 337 ("***Brady***"), Noonan J in the High Court held that the court lacked jurisdiction to hear the plaintiffs' claim against the Department of Agriculture and Rural Development of Northern Ireland on the grounds of sovereign immunity and he set aside the service of the plenary summons and statement of claim on the Department under O. 12, rule 26 RSC. Noonan J stated at paras.19-20:

"The primary issue is whether DARD is entitled to the benefit of sovereign immunity in our courts. That is a question of Irish law. ... It seems to me to be clear ... that once the actor concerned can properly be regarded as an agent of the state, the only question to be answered is whether the activity concerned is of a public rather than private nature. In the present case, it cannot be doubted that DARD was at all material times engaged in governmental activity…… in a public law capacity and is not engaging in trade or commerce."

225. In *Government of Canada,* O'Flaherty and McCarthy JJ. approved the dicta of Lord Wilberforce in the House of Lords decision in ***I Congreso del Partido*** [1983] 1 A.C. 244, where he held at p.267:

"The conclusion which emerges is that in considering, under the "restrictive" theory whether state immunity should be granted or not, the court must consider the whole context in which the claim against the state is made, with a view to deciding whether the relevant act(s) upon which the claim is based, should, in that context, be considered as fairly within an area of activity, trading or commercial, or otherwise of a private law character, in which the state has chosen to engage, or whether the relevant act(s) should be considered as having been done outside that area, and within the sphere of governmental or sovereign activity."

226. Lord Wilberforce continued, at p. 269B-C, that the "*ultimate test*": "*...is not just that the purpose or motive of the act is to serve the purposes of the state, but that the act is*

of its own character a governmental act, as opposed to an act which any private citizen can perform."

227. The parties were agreed that in seeking to enforce the New York Judgment in Ireland the question of sovereign immunity is a matter of Irish law to be judged by Irish legal principles. However they were not agreed on what the outcome of that assessment should be or how much evidence would need to be adduced to determine sovereignty as a matter of Irish law.

228. Article 29.3 of the Constitution, obliges the Irish State to accept "*the generally recognised principles of international law as its rule of conduct in its relations with other States*". These principles include the doctrine of sovereign immunity.

229. The plaintiffs say that this court, while having to carry out its own assessment on whether the Republic was acting as a sovereign in relation to the matters at issue, will nevertheless find that it does not need to go beyond the definitive ruling on this point by the US courts. They say it is neither permissible nor appropriate for the High Court to revisit the substance of the conclusions reached in the context of the US Proceedings. They say that all of the sovereignty arguments that the Republic wishes to make in these proceedings have been considered in detail and conclusively decided against it in the US. Without prejudice to that general contention, the plaintiffs argue that the concept of sovereign immunity under Irish law does not extend to private commercial activities of a sovereign state, such as the activities to which they say the US Proceedings relate.

230. The assessment of sovereignty carried out by the US courts was made by reference to the tests set out in the FSIA, being the applicable US statute. In broad terms, the FSIA provides that a foreign state shall be immune from the jurisdiction of the courts of the United States save in specified circumstances. The relevant circumstance for present purposes is where "*the action is based ... upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States*".

231. In the US Proceedings, the Republic argued that the "commercial activity" exception in the FSAI was not met because the activity at issue was the Republic's intervention into YPF and the expropriation of YPF shares in Argentina's national interest which the Republic said were indisputably sovereign acts and not commercial activity. The Republic also argued that even if there was commercial activity all actions occurred in

Argentina and had no direct effect in the United States. The US courts did not agree with the Republic on either point.

232. There appears to be agreement between the parties that the expropriation itself was a sovereign act, and indeed the US courts agreed with that. The plaintiffs' case rests on the idea that the expropriation can be separated from the obligation to tender which they say is a separate and stand-alone contractual commitment falling within the commercial activity exception to sovereign immunity. The Republic argues that once there is an expropriation under Argentine law then any private obligations no longer subsist. They say that resolution of the Argentine law position is an essential part of that analysis and of the *I Congresso* "whole context" test approved by the Irish Supreme Court in *Government of Canada*. The plaintiffs say there is no basis for suggesting that the "whole context" has not been looked at in the US Proceedings and there will be no need for further evidence on this point.

233. It appears to this court that sovereign immunity must be assessed in this, as in any other relevant case, as a matter of Irish law, applying generally recognised principles of international law and that this approach is mandated by Article 29 of the Constitution. Ireland does not have a statute such as the FSIA setting out the test for sovereign immunity under Irish law – instead it applies generally recognised principles of international law. No particular statute (including the FSIA) can be said to conclusively and fully represent generally recognised principles of international law. Thus the relevant test under Irish law cannot necessarily be said to be identical to the test provided for under US law. The plaintiffs say that the exception under the FSIA is actually narrower than that under Irish law so that if one comes within the US exception for commercial activity then they would certainly come within the Irish exception. I do not accept however that the assessment an Irish court would have to carry out in compliance with Article 29 of the Constitution is necessarily as simple as that, although of course it may come to the same conclusion as was reached in the US Proceedings.

234. The Republic says that there may be different evidence put before an Irish court in recognition of the need to consider the "*whole context*" in which the claim arises and the mandate of recognised principles of international law. The Republic argues that an Irish court would need to factually determine the dispute between experts on Argentine law as an important part of the overall context of the expropriation, citing as an example of potentially new evidence, the need for expert evidence of political background as part of the whole context test applicable under Irish law.

235. I also note the recent decision of the UK Court of Appeal in *Hulley Enterprises Limited v. Russian Federation* [2025] EWCA Civ 108 where Males LJ confirmed that issue estoppel can apply to a determination of sovereignty under English law.

236. The plaintiffs say that the US courts have decided the question as to whether the Republic was engaged in commercial activity in this case. They say that is the same question an Irish court would have to consider. Therefore, they say that an issue estoppel arises so it necessarily follows that an Irish court will find likewise, with the result that it is not open to the Republic to resist recognition or enforcement of the New York Judgment on the basis of sovereign immunity or the act of state doctrine. The Republic disputes that issue estoppel arises as they say the questions for the Irish and US courts are not the same in each case.

(ii) Act of State

237. The act of state doctrine has been determined against the Republic by the SDNY Court. It is not part of the 2023 Circuit Appeal so is therefore finally and conclusively determined in the US Proceedings.

238. The general principle underpinning the act of state doctrine is that "*the courts of one state will not, at least generally speaking, inquire into or pronounce upon the validity of the actions jure imperii of another state*", per Hogan J. in ***Costello v. Government of Ireland*** [2022] IESC 44, at §159. This principle may also be referred to as the principle of judicial restraint, or comity of courts. The doctrine comprises a general principle of public international law. The plaintiffs say this is an issue that goes to justiciability rather than jurisdiction- so it is in the nature of a substantive defence where applicable. The Republic says it is a matter of jurisdiction similar to sovereign immunity.

239. In *Brady*, where service was set aside under O. 12, rule 26 RSC, the court was satisfied that the substance of the act of state doctrine was implicated, along with sovereign immunity. Noonan J. held at §21:

"..._As pointed out by Fennelly J. in Short v. Ireland (No. 2)[2006] IESC 46, [2006] 3 I.R. 297 and McGuinness J. in Adams v. Director of Public Prosecutions [2001] 1 I.R. 47, the courts of this jurisdiction are not competent to adjudicate upon the validity of such administrative and executive acts by the agent of a foreign sovereign state acting solely within its own jurisdiction."

240. While I was referred to UK caselaw[16] to the effect that where a State makes a claim to immunity, it is necessary for the court to determine, on a final and not merely interlocutory basis, whether the ground for immunity/loss of immunity exists, I was more persuaded by the comments and approach of Barniville J (as he then was) in *Trafalgar Developments Ltd & Ors. v. Mazepin & Ors*. [2022] IEHC 167. In *Trafalgar* the court noted (at paras 249 and 250) that :

"*… while the precise parameters of the "act of state" doctrine and its close cousin, the related doctrines of non-justiciability and judicial restraint, have not yet been considered and determined by the Irish courts, the plaintiffs have… demonstrated at least a good arguable case that they are not precluded from maintaining the allegations which have been challenged on the basis of those doctrines… I have concluded, therefore, that the plaintiffs are not precluded from advancing, and the court is not precluded from considering, the impugned allegations on the basis of either or both of those two doctrines. A definitive decision on whether or not the doctrines apply to preclude any aspect of the plaintiffs' case must await trial.".*

241. On the evidence before him Barniville J held that the defendants in that case had not put forward an "unanswerable response" to the plaintiff's case that the doctrines did not apply. Accordingly he held that it would be a matter for the trial judge to determine whether the plaintiffs should succeed on them.

242. The plaintiffs say that act of state is a matter of defence, and it is not possible to revisit that when enforcing or recognising a foreign judgment. They say this issue has been conclusively and finally determined in the US Proceedings and cannot be reargued by the Republic in an enforcement application as that would be to impeach the merits of the judgment. The Republic disagrees and says act of state must be treated in the same was as sovereignty – both going to jurisdiction and both having to be determined as a matter of Irish law.

(iii) The court's ruling on sovereignty and act of state in this application.

243. Sovereign immunity is a matter in respect of which the Irish courts must satisfy themselves, as a matter of Irish law, that they have jurisdiction. If the plaintiffs are

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[16] *VTB Capital plc v. Nutritek International Corp and others* [2013] 2 AC 337;
JH Rayner (Mincing Lane) Ltd v. Department of Trade and Industry [1989] 1 Ch 72

correct that act of state goes to justiciability rather than jurisdiction, a different approach applies. But if the Republic is right and act of state is also a matter that goes to jurisdiction then it too will be a matter where the Irish courts will need to be satisfied of their jurisdiction as a matter of Irish law.

244. I do not believe that in the context of this service out application I am required (nor indeed would it be appropriate) to reach any definitive conclusion on the issues of sovereign immunity or act of state under Irish law as pertain to this dispute. I do not agree, as was suggested by the plaintiffs, that the wording of the relief sought by the Republic in this application requests a stand-alone finding of lack of jurisdiction in the context of the Republic's status as a sovereign state.

245. The issues of sovereign immunity and act of state would best be addressed by the trial judge if enforcement proceedings were permitted. I say this without expressing any view as to (1) the necessity for a preliminary or modular hearing on sovereignty or act of state issues or (2) to the likely success of these defences as a matter of Irish law, in any substantive action to enforce the New York Judgment.

246. In conclusion, therefore, on this second ground advanced by the Republic I would not set aside the service application as non-justiciable. Equally however I do not accept that the analysis on sovereignty or act of state in the US Proceedings is necessarily identical to the analysis required under Irish law. Neither side has convinced me that these questions are so clear at this stage that this court should determine them in this preliminary application, or indeed that there is any necessity to do so. It seems clear that if enforcement of the New York Judgment was to be permitted here, both sovereign immunity and act of state would have to be determined as a matter of Irish law. Additional evidence may be required to do so – accepting that foreign law is a matter of fact to be determined by the court but also noting that the Republic cannot generally ask an Irish court to revisit the merits of the New York Judgment. This conclusion does not in any way seek to undermine the conclusive determinations as a matter of US law made in the US Proceedings on these matters.

247. Finally in relation to the Set-Aside Application, it is worth briefly considering what proceedings to enforce the New York Judgment would likely entail were they to be permitted here. This requires a brief consideration of the potential defences which have been flagged by the parties.

(5) Potential defences

248. Recognition or enforcement of the New York Judgment would be refused if the Irish courts were to conclude that such a step would be contrary to the "public policy" of Ireland. The threshold for the "public policy" exception to recognition and enforcement will only be satisfied where the public policy against recognition is so strong that it outweighs the policy in favour of recognition. It is not necessary in this judgment to determine any issue of public policy but, as part of the exercise of this court's discretion on this service out application, it is useful to consider in very general terms what arguments might be raised at any application to enforce the New York Judgment.

249. On the basis of submissions made by the parties the potential defences likely to be raised by the Republic in a summary judgment application include:

(1) That the funding arrangements saver of champerty and so the judgment should not be enforced in Ireland as it is contrary to Irish public policy. The plaintiffs stress that these proceedings will not be funded by litigation funding but rather by the plaintiffs themselves. Nevertheless this general line of potential defence is expanded upon by Mr De La Cruz in his affidavit sworn 9 December 2024 at para 89 where he says this issue is likely to include whether the litigation funding agreement for the New York Judgment constituted assignments of the claims to Burford; whether there has been onward trading of Burford's interest in the New York Judgment and enforcement campaign and whether Burford is directing these enforcement proceedings in Ireland;

(2) That the Republic is as a matter of Irish law entitled to resist enforcement in this case as a sovereign state;

250. The evidence of US law provided by Mr White is that pursuant to rule 12 (b) of the US Federal Rules of Civil Procedure jurisdictional defences are not waived by joining them with one or more other defences or objections in a response pleading or motion. Therefore the Republic's jurisdictional rights and arguments were preserved by raising them in its motion to dismiss[17]

251. The Republic says that an Irish court would have to resolve the differences of interpretation between legal experts in relation to the nature of any funding arrangements and would also need evidence on the correct interpretation of various matters of Argentine law to assess the overall context relevant to a consideration of the

[17] Para 13 TCW1 to Affidavit of Thomas C. White sworn 18 March 2025

claim to sovereign immunity/act of state. This would require the court to permit the respective experts to give oral evidence and be cross-examined, thereby involving the attendance of multiple foreign witnesses here. It is argued by the Republic that it is a certainty that plenary proceedings would have to take place with all that entails by way of discovery and generally.

252. The plaintiffs dispute that enforcement proceedings would be costly, protracted or complex as the Republic suggests. They reference the very recent decision of the Supreme court in *Scully v. Coucal* [2025] IESC 20 citing it as authority for the proposition (although admittedly in the Brussels (recast) context) that if a judgment has been regularly obtained in accordance with the processes and procedures in another jurisdiction, including in relation to funding, then it is not contrary to Irish public policy to enforce that judgment in Ireland. They also point to the exception for liquidators selling causes of action in a liquidation scenario, citing *Norglen Limited (In Liquidation) v. Reeds* [1999] 2 A.C. 1. They also say that there should be no particular dispute on the issues of sovereign immunity or act of state – which have been conclusively determined against the Republic in the US Proceedings. While recognising that the Irish court would have to consider sovereignty as a matter of Irish law the plaintiffs say that the same issue (of commercial versus sovereign activity) has already been fully ventilated and ruled in the US Proceedings and they rely on the Court of Appeal decision in *Hulley* as authority for the proposition that the court can base its decision as to the existence of state immunity on an issue estoppel arising from the decision of a foreign court. They say the same considerations apply to act of state. The plaintiffs say that the Republic has no bona fide defence on the merits to these proceedings and that on that basis summary judgment has been sought and should be granted.

253. In *Albaniabeg* Hogan J noted on the facts that if leave were granted for the enforcement of the Albanian judgment an Irish court would have to consider a number of matters in light of the prospective defences that the defendants would propose to raise. He held that this would entail the necessity to hear witnesses and consider evidence concerning the underlying dispute, including evidence as to matters of fact (including foreign law). He was of the view (in para 65) that "*a relatively lengthy and costly enforcement hearing cannot be excluded*". He agreed with the High Court that it would not be fair in the circumstances to require the defendants to attend in yet another foreign jurisdiction to defend yet another round of enforcement proceedings having regard to the overall

cost implications of such fresh proceedings and the lack of any real prospect of achieving any practical benefit.

254. The Republic says that similar to the position in *Albaniabeg,* this court could not exclude a lengthy and costly enforcement hearing were the plaintiffs to be permitted to seek to enforce the New York Judgment in the Irish courts. They refer to the champerty defence linked to the financing of the US Proceedings by Burford in respect of which there is disputed evidence which the Republic says is likely to require discovery. The Republic also refers to the issue of sovereign immunity which they say is an issue of some complexity and which, it is agreed, must be decided as a matter of Irish law.

255. Even if these were the only those issues involved, they could in my view spawn a hearing of some complexity. Given the legal test applicable to remitting matters to plenary hearing in this jurisdiction and acknowledging the relatively low bar which applies to such remittal, being that the defendant can establish an arguable defence, I believe that, regardless of the actual merits of any proposed defences, it is more likely than not that a plenary hearing would be required in this case. As such, one must factor at a minimum substantial legal argument, perhaps discovery and the potential for expert witness to be required to travel to Ireland, language and translation issues and disputes between experts on matters of foreign law, as well as the possibility of appeals. Accordingly, I am satisfied that, in the words of Hogan J in *Albaniabeg*, a relatively lengthy and costly enforcement hearing could not be excluded in this case.

256. These are matters which this court takes into account in its assessment of all the circumstances of this case. Such matters inform the exercise of this court's discretion regarding the Set- Aside Application. Courts are under a duty to manage their resources so they are best utilised for the benefit of all litigants using our courts. A lengthy and costly enforcement hearing in Ireland - a jurisdiction with which the substantive proceedings have no connection whatsoever - would, in my view, place a significant burden on the Irish courts. Submissions to the court recognised that three years could be optimistic in terms of how long it would take to bring these proceedings to a conclusion here if they were fully defended and appealed. Permitting such an action in this case would divert scarce judicial resources away from cases where the court's intervention would have a real and meaningful practical impact on the outcome of the litigation before it.

(6) <u>This court's conclusions on the Set- Aside Application</u>

257. For all the reasons set out in detail in this judgment, it is the decision of this court that the service out order made by the High Court on 25 April 2024 should be set aside.

258. These proceedings have absolutely no connection with Ireland. Furthermore I am not satisfied that there would be any practical benefit to the plaintiffs in permitting enforcement of the New York Judgment in this jurisdiction. In particular:

(i) none of the parties or the underlying events or the substance of this dispute has any Irish connection;

(ii) the evidence confirms that the Republic has no assets in this jurisdiction other than diplomatic and consular assets not amenable to enforcement;

(iii) there is uncontested sworn evidence of the unlikelihood of any assets of the Republic coming into this jurisdiction in the near or medium future. All that is suggested in response is a generic possibility of future assets becoming available given Ireland's position as a global international market. Such a generic statement could be made in every case and would be a gateway for a plethora of cases with no connection to Ireland being litigated here. Such a vague assertion unsubstantiated by evidence is not sufficient to constitute a likely prospective practical benefit to enforcement here;

(iv) there are no procedural remedies potentially available to the plaintiffs in this jurisdiction which are a) not premised on the presence of assets here and/or b) are not duplicative of the US enforcement efforts already undertaken and available into the future. The same procedural facilities are available to the plaintiffs and indeed have been and are being availed of by them elsewhere. No new benefit would arise from the Irish courts permitting the same procedures;

(v) the plaintiffs' desire to obtain the imprimatur of a respected court is an insufficient practical benefit in the circumstances of this case and has to be conditioned by the fact that Ireland is one of seven jurisdictions where enforcement proceedings have been initiated and where the SDNY Court is itself a highly respected court. Enforcement proceedings are pending in six other highly respected jurisdictions, namely the UK, Cyprus, France, Luxembourg, Australia and Canada. Were enforcement to be permitted in France, Luxembourg or Cyprus such judgment would itself be easily recognised in Ireland (and indeed throughout all signatory states) under Brussels (recast) were assets ever to arrive into Ireland. There is no evidence that judgment

would first be given in Ireland ahead of those other jurisdictions. There is no evidence at all as to what assets (if any) the Republic has in any of those other jurisdictions.

259. Furthermore, the essence of an enforcement action as contemplated by our rules is to assist recovery on foot of a judgment. Enforcement action may of course bring about a settlement and undoubtedly that is generally part of the strategy in pursuing enforcement proceedings. However that desire or strategy (unconnected with the recovery of assets) does not in itself constitute the solid practical benefit which this court must find would flow from a decision to permit enforcement here. I believe that Mr Bogart's transcript supports the court in its view that there is no real practical benefit likely to be obtained from permitting enforcement proceedings to be taken in Ireland. Nor does the strategy as expressed by him sit easily with the requirement that these proceedings are taken to enforce against assets here or likely to be here so that this court can be satisfied that the case is a proper one in which to grant leave for service out of the jurisdiction.

260. While recognising that it is not a precondition to the exercise of the discretion to permit service out of the jurisdiction that the proposed defendant must have assets within the jurisdiction, nevertheless as there are no assets, no real prospect of assets, and as no solid or legitimate practical benefits have been identified by the plaintiffs, I do not believe that there would be any solid practical benefit to the plaintiffs in permitting enforcement of the New York Judgement here. The plaintiffs have failed to discharge the burden of proof to be met by them on this point. For that reason this court sets aside the service out order made on an ex parte basis on 25 April 2024.

261. I am further supported in this view by the reality that, were enforcement proceedings to be permitted here, it would likely result in litigation of some cost and complexity before the Irish courts, arising in the context of a claim in which no practical benefit would ensue for the plaintiffs, even if successful. It would be unfair to require the Republic to have to litigate in this country in those circumstances.

262. I believe that the correct test of comparative cost under O.11 is the comparison of likely costs as between proceedings in Ireland and in the place of the defendant's residence (in this case Argentina). The court can also consider other potentially relevant jurisdictions. The court in fact has very limited evidence on that cost comparison. To the extent that the plaintiffs suggested to the court at the ex parte hearing that the

relevant comparison on cost was the comparison between the size of the judgment and the costs of enforcement, that is not the test to be applied.

263. The test of comparative convenience (in the more limited sense of that term) is one where I find in favour of the plaintiffs, mainly because of the difficulties averred to by the Republic in the US Proceedings in seeking to enforce the New York Judgment in Argentina.

264. Insofar as the term "convenience" however also comprises the broader concept of propriety, fitness or suitability, and, in any event having regard to the express requirements of O.11, rule 5, I am not satisfied that this case is a proper one for service out of the jurisdiction. Enforcement actions brought in Irish courts must be directed to an expectation of actual or potential enforcement in this jurisdiction or where the assistance of the Irish courts could uniquely aid enforcement elsewhere.

265. I have considered the enormous size of the New York Judgment and whether that factor should persuade the court to permit enforcement proceedings here. While I am sympathetic to the argument that it is likely there would need to be multiple jurisdictions at play in order to recover assets to satisfy a judgment of this magnitude, that matters little where the evidence is that there are simply no relevant assets at all in Ireland or likely to be here. *Albaniabeg* involved a significant judgment sum in the hundreds of millions of euro and yet service was set aside by the Court of Appeal. From the perspective of the Republic the size of the New York Judgment is so enormous (being equivalent to 20% of its annual budget)[18] that it is certain it will be defended – thus reinforcing my view of the likelihood that any enforcement proceedings in Ireland would, if permitted, be lengthy, costly and complex. This court must not act in vain. It must also manage judicial resources to prioritise those proceedings where the outcome will make a practical difference to the parties. This is not such a case.

266. I would not set aside the service out order on the grounds of material non-disclosure.

267. Determinations on the doctrines of sovereign immunity and act of state are matters which should best be dealt with by a trial judge as part of any substantive application for enforcement and thus are not matters for the court to determine on this preliminary application. I would not set aside the ex parte order for service out on the basis of the Republic's argument that the issues raised are non-justiciable by reason of the doctrines of sovereign immunity and act of state.

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[18] Para 36 Affidavit of Mr Stampalija sworn 18 March 2025

C. The Stay Application

268. As I have already determined that the order for service out of these proceedings should be set aside, there is strictly no requirement for me to consider the question as to whether a stay should be granted on these proceedings. However, despite my finding in favour of the Republic on the Set Aside Application, I propose nevertheless to also deal with the Republic's Stay Application in this judgment. I do so in the interests of efficiency and to avoid piecemeal appeals in case I have erred on the Set- Aside Application, and in recognition of the fact that the parties argued this matter before me at some length.

269. The Republic's notice of motion seeks to stay these proceedings until such time as the 2023 Circuit Appeal and any subsequent appeal thereafter, is fully and finally determined.

270. Because the New York Judgment issued from the SDNY Court which is neither a court of an EU Member State or a party to the Lugano Convention, the Stay Application is governed by common law principles, and the court's general jurisdiction to stay proceedings before it. This position must be contrasted with the unique system of enforcement under the Brussels (recast), the objective of which was noted by Murray J in ***Brompton Gwyn-Jones v. McDonald (No.2)*** [2021] IECA 303 (at para 57) to be : "*… the objective of ensuring the rapid enforcement and free circulation of judgments of Member State courts, the principle of mutual trust as between those courts and the fact that it is the courts of the Member State of origin before which issues on the merits between the parties are properly resolved".*

271. Even if an appeal is pending, a foreign judgement can still be considered final and conclusive and thereby enforceable, provided that the appeal does not have the effect of staying the judgment. It is common case that the temporary stay of execution imposed by the SDNY Court on the New York Judgment expired on 24 January 2024 and that the New York Judgment is not currently subject to a stay of any kind, notwithstanding the 2023 Circuit Appeal. While the New York Judgment is currently under appeal, it is final and conclusive on its substance and is not subject to variation by the SDNY Court. It is also not subject to any extant stay on execution or enforcement. To that extent it is final and conclusive for the purpose of the common law test. The availability of a stay in these proceedings is a question to be determined in accordance with Irish legal principles.

272. The SDNY Court granted a limited stay to the Republic on condition that certain assets were pledged to the plaintiffs. This pledge was not made by the Republic – allegedly because to do so would require an act of the Argentine Congress and because the size of the New York Judgment would, according to Mr White's narrative, "*cause great strain on the country and new presidential administration".* The stay expired due to non-compliance with these conditions on 10 January 2024.

273. The 2023 Circuit Appeal is fully briefed and ready to be allocated a hearing date. The Second Circuit had not, at the date of hearing this motion, yet set a date for argument on the appeals. However all parties appeared to be in agreement that they had expected a hearing date to be set by then and the consensus is that a hearing date should be set in the near future, though not before 27 October 2025 – although it may take between 3 and 6 months for decisions to issue after the Second Circuit hears the legal arguments.

274. Thereafter there would be the possibility of further appeals to the Supreme Court. Mr White's narrative confirms that " a *party requesting review would have 90 days from the date of the entry of the Second Circuit's judgment to file a petition for a writ of certiorari, absent extension. Typically, the Supreme Court decides whether to grant a petition within approximately six weeks of filing of a certiorari petition, though the period can be much longer. If the Supreme Court were to grant the petition, merits briefing would follow: It is usually at least three months from the grant of a petition for certiorari before a case is ready to be argued. Once the case is argued, a decision is typically issued 3 to 6 months later".* Of course there could well be slippage on this estimate.

275. There does not appear to be any dispute that the 2023 Circuit Appeal has the potential to either reverse the New York Judgment (if fully successful) or very significantly reduce the amount of the New York Judgment (if successful only on the recalculation of damages ground).

276. There are therefore two potential scenarios in which the New York Judgment might be either significantly reduced or reversed. Of course it is also entirely possible that the Second Circuit will uphold the SDNY Court and reaffirm the New York Judgment in full. It is fair to say however that the outcome of the 2023 Circuit Appeal (and indeed any later appeals in the US Proceedings) is highly material to any enforcement proceedings in Ireland.

277. In deciding how best to approach the question of a stay the court must seek to balance the competing interests of the parties. The court has a wide discretion in that regard based on all the circumstances before it.

278. The Republic has an interest in not facing enforcement of the New York Judgment if it is ultimately set aside or significantly reduced as a result of the 2023 Circuit Appeal. In either scenario the Republic would wish to avoid the undesirability of conflicting and inconsistent judgments by this court enforcing the New York Judgment and the Second Circuit vacating or reducing it. The plaintiffs have an obvious interest in obtaining the benefit of the New York Judgment which they obtained in the SDNY Court and which has already been the subject of multiple appeals in the context of the US Proceedings. The plaintiffs stress that the New York Court and Second Circuit have ruled conclusively against the Republic on the issues of sovereign immunity and the act of state doctrine. Those decisions are not amenable to further review, whether by means of the 2023 Circuit Appeal or otherwise.

279. The Republic says that the interests of justice require the grant of a stay on these proceedings. The Republic says that without a stay, there is a real risk of inefficiency, inconvenience, and waste of both judicial resources and the parties' resources, if enforcement proceedings are pursued and then transpire to be unnecessary or if the proceedings will require further judicial attention, and corrective steps to be taken upon the delivery of the appeal judgment(s) in the US Proceedings.

280. In the affidavit of Mr. Betancor Alamo sworn on 22 April 2025 the plaintiffs rely on the following matters to persuade the court against granting a stay:

- **a.** The unsatisfactory and procedurally irregular circumstances in which the Stay Application was issued. The plaintiffs say that the Republic did not even mention the prospect of the Stay Application until 18 March 2025, more than seven months after the proceedings had been served and almost one year after the plaintiffs had confirmed their intention to pursue these proceedings.;
- **b.** The "pedestrian approach" taken by Argentina to the 2023 Circuit Appeal;
- **c.** The enormous scale of the New York Judgment and corresponding premium on efficient recognition and enforcement;
- **d.** The approach taken by Argentina to litigation in which it is involved, most notably the proceedings before the SDNY Court;
- **e.** The narrow scope of the 2023 Circuit Appeal – sovereignty and act of state questions having already been finally decided against the Republic;

f. The complete failure of Argentina to offer any form of security as a condition of any stay, whether in Ireland or elsewhere ; and

g. The prospective impact of the determination of the 2023 Circuit Appeal on these proceedings. This argues that even if the third limb of appeal (recalculation of damages) was successful the Republic would still have to pay something to the plaintiffs so there would be no prejudice to the Republic arising from the continued prosecution of the enforcement application. This argument does not however address the prejudice to the Republic if the other grounds of appeal were successful and the New York Judgment was vacated.

281. The plaintiffs are correct that the Stay Application was brought late in the day. Nor was the possibility of this application signalled to the Commercial Court at the entry application stage. However, the pleadings were managed in such a way as to tie in with the Set- Aside Application so there was no additional delay caused by the hearing of the Stay Application. All directions of this court have been complied with and there has been no delay by either side. The Republic has brought similar applications in all other jurisdictions in which enforcement has been pursued by the plaintiffs and so the Stay Application in this case was unlikely to have come as a surprise to the plaintiffs in those circumstances. There is no suggestion that the plaintiffs had insufficient time to prepare to meet the Stay Application.

282. It is true that the Republic has not made an offer to provide security in relation to any stay on enforcement.

283. The Republic argues that there is no material prejudice to the plaintiffs in granting a stay because :

(1) There is no risk of dissipation of assets by the Republic, in circumstances where no assets have been identified by the Plaintiffs within this jurisdiction.

(2) In the event that the New York Judgment is upheld in the US Proceedings, the plaintiffs can be compensated by way of interest for any delay occasioned by a stay.

(3) There are other extensive enforcement efforts ongoing against the Republic in the US which can and are continuing.

(4) Any delay caused by a stay would not be inordinate when considered against the fact that the US Proceedings commenced in 2015.

284. The plaintiffs point out that the Republic did not comply with the terms attached to the stay they were granted by the SDNY Court, as a result of which that stay expired. They

refer to comments of Mr Justice Clarke in *Ranbaxy Laboratories & Ors v. Warner-Lambert Company* [2009] 4 IR 584 at para 54 where he said:

"The principle of the comity of courts requires that the courts in one jurisdiction should not lightly depart from a decision on the same issue made by a court of competent jurisdiction in another country which had to deal with that issue as part of litigation properly under its consideration."

285. This court must seek to balance the competing interests of the parties by considering (a) the prospects of success of the 2023 Circuit Appeal; (b) whether the 2023 Circuit Appeal is a bona fide challenge or merely a delaying tactic and (c) how best to balance the justice between the parties including delay and prejudice to the respective parties. I will consider these matters in turn.

(1) <u>Does the 2023 Circuit Appeal have a reasonable prospect of success?</u>

286. Establishing that a party has a reasonable prospect of success on appeal is a key issue in the context of a stay application. In reality it is akin to a threshold question as it is difficult to envisage a stay being granted to a party with no reasonable prospects of success on appeal.

287. The Republic relies on evidence from Professor Pamela Bookman[19] which indicates that the 2023 Circuit Appeal "*is not frivolous or fanciful, and has a realistic prospect of success*".

288. Professor Bookman is not an expert in Argentine law. However the Republic says that she is eminently qualified as an expert in US law to express a view about the prospects of success before the Second Circuit, a US court.

289. Mr. Stampalija's affidavit sets out the three grounds of appeal being pursued by the Republic. There are two alternative grounds advanced by the Republic objecting to the exercise of jurisdiction by the US courts, namely *forum non conveniens* and international comity abstention. Under those general headings arguments are advanced that the plaintiffs' claims are not cognisable under Argentine law because (1) Argentine law does not recognise shareholder breach-of-contract claims for damages; (2) the plaintiffs' claims for damages are barred under Argentine law both because the YPF bylaws contain an express penalty clause, which under Argentine law is treated as

[19] Professor Pamela Bookman, tenured professor of law at Fordham Law School in New York, provided an expert report dated 13 December 2024 in the context of the Plaintiffs' enforcement proceedings in the United Kingdom. It was exhibited to the affidavits of Mr. Juan Ignacio Stampalija sworn on 28 and 31 March 2025, at Tab 1 of JIS1 and Tab 4 of JIS2.

exclusive and because of the plaintiffs' failure to seek specific performance; (3) under Argentine law the plaintiffs were no longer shareholders when the supposed breach occurred and (4) Argentina's general expropriation law required the plaintiffs to seek compensation through the country's expropriation process.

290. The third ground of appeal relates to the calculation of damages. This ground arises due to the fact that the SDNY Court calculated damages based on the value of the peso on the day of the breach. The Republic argues that New York law requires that when damages are measured in a foreign currency — like Argentine pesos — the judgment amount must be converted into dollars by reference to the value of the local currency on the day judgment is entered. Because the peso has depreciated against the dollar over the 12 years since 2012, a calculation of damages based on the date of the judgment would produce an award vastly smaller than USD$16.1 billion and this would obviously also impact on the accruing interest calculations. The (uncontradicted) view proffered by counsel for the Republic is that if the Republic was successful on the recalculation of damages argument the amount of the New York Judgment would be reduced to a figure in the hundreds of millions rather than billions. While that is still an enormous figure it is significantly less that the current judgment amount of USD$16.1 billion plus interest This ground if successful would significantly reduce rather than eliminate the New York Judgment.

291. Professor Bookman in her report at S95 expands on her opinion as to the prospects of success of the 2023 Circuit Appeal and she confirms :

"I have been asked whether the Republic's arguments have a "realistic prospect of success", where that term is defined, as described in Schedule 3 of my Instructions, as meaning that "the prospects of success must be more than 'fanciful' and must be more than 'merely arguable'."

292. In dealing with the three specific grounds of appeal Professor Bookman states :

"The Republic's arguments about the District Court's interpretation and application of Argentine law are based on novel questions of Argentine law that are issues of first impression before U.S. courts, meaning that these are legal issues that have not previously been addressed by the Second Circuit. The Court of Appeals will consider for itself, without deference to the District Court's interpretation of that law, the meaning of Argentine law and how it applies to the facts in this case.

The Republic's arguments that the damages award should be reduced also involve some questions of law subject to de novo reviews, as well as contested issues regarding the

proper standard of review. These arguments turn on several questions regarding the proper calculation of damages that could be subject to reversal or adjustment on appeal."

293. This leads Professor Bookman to conclude that:

"Especially given the novel or unresolved nature of many of these legal issues in the Second Circuit, the appeal is not frivolous, and under the definition in Schedule 3 of my Instructions, has a "realistic prospect of success"."

294. On the arguments on *forum non conveniens*, Professor Bookman says:

"While the abuse-of-discretion standard is a high standard of review, it is not insuperable."

295. On the international comity abstention, she opines that:

"*The question of the proper legal standard for evaluating international comity abstention in the Second Circuit is a question of law subject to de novo review."*

296. The plaintiffs say that the wording of Professor Bookman's report must be looked at closely – it is couched they say in highly caveated language referring to the prospects of success as not merely fanciful or merely arguable. They say the only basis upon which Professor Bookman can reach the conclusion that there is a reasonable prospect of success is because it has been defined against a threshold of frivolity.

297. They say that Professor Bookman doesn't actually express any view on the prospects of success of the second ground of appeal but merely sets out the legal standard and that these issues have not been decided before. The plaintiffs say that the upshot of Professor Bookman's report is that it is possible that the SDNY Court's analysis could be reversed, without in any way explaining the basis in which that could occur or the likelihood of that occurring. This they say does not sustain a finding that there is a reasonable prospect of success on the appeal.

298. The Republic says that the description of reasonable prospect of success used by Professor Bookman comes from English case law and that is why her report is drafted as it is. Reliance was placed on the UK Court of Appeal decision in *Elite Property Holdings Ltd -v- Barclays Bank PLC* [2019] EWCA Civ 204 where at para 41 of her judgment Lady Justice Asplin held that

"*For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction*."

299. This formulation of course arose in the context of a test to be applied for the amendment of pleadings, which is by any standards a low bar to be met by a party seeking such an amendment. The Republic likened it however to the bar of "arguable defence" in summary proceedings in this jurisdiction and says this is the appropriate test on which to measure a realistic prospect of success for a stay.

300. The plaintiffs rely on an expert report from Dean David Levi dated 10 January 2025. He specifically addressed only the issue of the *"prospects of success of Argentina's pending appeal on grounds…of forum non conveniens and…international comity*." He concludes on both grounds that the Republic is "*most unlikely*" to succeed in overturning "*..the considered and carefully reasoned decisions of a highly respected district judge on a matter committed to the court's discretion after a huge expenditure of time and resources on motion practice and trial, and the entry of a final judgment*."

301. His report while appearing on its face perhaps to be more detailed and reasoned, does not deal at all however with the third ground of appeal.

302. The court is thus faced with a situation where two US law experts disagree on the realistic prospects of success of the 2023 Circuit Appeal on the grounds of *forum non conveniens* or international comity. Dean Levi does not comment at all on the prospects of success of the third ground of appeal, namely the calculation of damages, and so the only evidence available to this court on that point is the evidence of Professor Bookman who attributes a reasonable prospect of success to it, albeit against the definitional framework set out in her report.

303. Of course neither expert can predict with certainty what will in fact happen to the 2023 Circuit Appeal. Neither can this court do so. The test however is not certainty – but rather whether there is a reasonable prospect of success. I do not have to prefer one report over another to determine which is the best one. Rather I have to be satisfied that looking at all the evidence on the point I can be satisfied that there is a reasonable prospect of some success on appeal. The Republic bears the burden of proof on this Stay Application. Whatever criticism might be levied on Professor Bookman's report by the plaintiffs, I have no evidence at all to contradict her opinion on the calculation of damages point, being the third ground of appeal. I find that the Republic has established that they have a reasonable prospect of success on appeal. I am supported in that view by the fact that the 2023 Circuit Appeal will be a de novo hearing on some legal issues that have not previously been addressed by the Second Circuit and because no contrary expert view at all has been produced by the plaintiffs on the calculation of damages

ground of appeal which, if successful, would vastly reduce the size of the New York Judgment.

(2) <u>Is the 2023 Circuit Appeal a *bona fide* challenge or merely a delaying tactic?</u>

304. The Republic does not accept that it has delayed matters as argued by the plaintiffs. In that regard the Republic distinguishes deliberate delay from their entitlement to issue appeals on various rulings. The plaintiffs say that the Republic has taken every appeal possible on every application and should not now be permitted to use that yardstick of delay against which this Stay Application should be assessed.

305. The Republic argues that the Eton Park Plaintiffs did not commence their proceedings in the US until 3 years after they had sold their YPF shares and says that the court should take that delay into account in assessing the plaintiffs' complaint that the appellate process will considerably delay matters or that the Republic has done so to date. The plaintiffs deny there was any delay on their part, referencing the insolvency and liquidation of the plaintiffs.

306. I fully accept that delay in the ability of the plaintiffs to enforce the New York Judgment is itself a form of prejudice regardless of whether or not it can be compensated by an award of interest. Against that, I must weigh the Republic's point that such a delay would not be inordinate in the context of how the US Proceedings have advanced generally. I will separately consider these matters in the context of a consideration of the delay and prejudice to the parties regarding the outcome of the Stay Application.

307. Mr Betancor Alamo at para 58 of his affidavit sworn on 22 April 2025 avers that : *"It is noteworthy that the Stampalija Stay Affidavit contains no commitment whatsoever on the part of Argentina to accept the final determination of any Appeal against the New York Judgment. In particular, and without prejudice to the generality of the foregoing averment, Mr Stampalija offers no commitment on the part of Argentina not to pursue any of the various issues raised in the December DLC Affidavit should the 2023 Circuit Appeal be dismissed. The height of what Mr Stampalija carefully avers, at paragraph 28 of the Stampalija Stay Affidavit, is that the High Court could "assess the enforcement proceedings by reference to a conclusive judgment which is not subject to appeal".*

308. Mr Betancor Alamo also avers that he believes the Republic will continue to avail of all means open to it to oppose the US Proceedings even if all its appeals against the New York Judgment are rejected in their entirety. I do not however believe that the evidence

of the strenuous efforts of the Republic to avail of all appellate processes open to it establishes that the Republic is pursuing the 2023 Circuit Appeal with a lack of good faith.

309. I find in the circumstances that I do not have evidence that the 2023 Circuit Appeal should be regarded as being brought otherwise than in good faith. While not applying for an expedited hearing, the evidence nevertheless is that the Republic has engaged with the 2023 Circuit Appeal and that the allocation of a hearing date by the Second Circuit is believed to be imminent.

(3) <u>Delay and prejudice to the respective parties</u>

310. I have to weigh up the competing considerations for and against granting the Stay Application, noting that the enormous size of the New York Judgment has implications for both parties. I consider that the relevant factors include the following:

(a) The fact that the plaintiffs have secured the New York Judgment for a very significant sum, and that the New York Judgment is a final and conclusive judgment for the purposes of enforcement;

(b) The prejudice to the plaintiffs arising from being delayed in the enforcement steps they could otherwise take in Ireland (were they to be permitted to enforce the New York Judgment here).

(c) The fact that the Republic was given an opportunity to avail of a stay in the US Proceedings but did not meet the conditions attaching to it such that the stay has now expired.

(d) The fact that the Republic had the option of applying for a stay to the Second Circuit, and did not avail of that option.

(e) the fact that there are appeals possible beyond the 2023 Circuit Appeal which cannot yet be understood in terms of impact on the time they may take to conclude.

(f) The fact that the Republic has offered no security for a stay.

(g) The fact that on certain aspects, the US courts have ruled finally and that no further appeal is possible on those aspects.

(h) Conversely, the fact that on the evidence before the court there are no assets in Ireland or likely to be in Ireland against which enforcement steps could be taken and thus no risk of dissipation of assets by the Republic,.

(i) The fact that interest is continuing to accrue on a daily rate on the New York Judgment, thereby increasing the amount of the New York Judgment which may

ultimately be recovered by the plaintiffs. On this ground however I recognise that there may be little practical reality to the recovery by the plaintiffs of ongoing interest at the current rate of $2million per day.

(j) The fact that the 2023 Circuit Appeal has, on the evidence of Professor Bookman and in my view, a reasonable prospect of success on at least some grounds, and is not being pursued merely as a delaying tactic or for bad faith reasons.

(k) The fact that the 2023 Circuit Appeal is fully briefed and is expected to be allocated a hearing date shortly with a judgment expected within a number of months thereafter.

(l) The fact that the plaintiffs are entitled to and are in fact pursuing enforcement in the US against the Republic's assets there and are pursuing enforcement elsewhere in jurisdictions in which there may be assets.

(m) The advantage of avoiding the risk of inconsistent decisions between Irish and US courts on the same issues – recognising that the Republic did not provide the security for the stay in the SDNY Court and thus made it possible for foreign enforcement proceedings to be pursued against it.

(n) The risk of inconvenience and inefficiency for the parties, the court and other court users and the cost and expense of these proceedings in circumstances where the 2023 Circuit Appeal may be successful in whole or to a significant degree – recognising that the Republic could largely however be compensated for that by way of a costs order.

311. Having considered all these matters in the round I have come to the view that I should grant a limited stay on enforcement proceedings in Ireland (had I decided to permit enforcement here). I would not grant the stay in the terms sought by the Republic in the Stay Application. The order I would have proposed instead would be to require the parties to continue with the exchange of pleadings in relation to the application for summary judgment and once those pleadings/affidavits were closed and the parties were ready to apply for a hearing date, to then impose a stay on further enforcement proceedings pending the conclusion of the 2023 Circuit Appeal.

312. That order would ensure that the enforcement proceedings would be advanced in the short term to the point of being ready to apply for a hearing date for the summary judgment application. It would ensure that enforcement would not be delayed for an indefinite period. As soon as the 2023 Circuit Appeal is determined the stay would be lifted. In the event that the Republic sought a further stay beyond the 2023 Circuit

Appeal determination this would require a complete re-evaluation of the evidence at that time regarding the prospects of success for any further appeals in light of the decision of the Second Circuit. It would also be clearer at that stage as to how long any further appeals might be expected to take and how the Republic intended to deal with matters. Those important factors might well persuade the court that a further stay would be inappropriate.

313. Had I decided to permit enforcement here and granted that more limited stay, I would also have given liberty to the plaintiffs to apply to lift the stay if there was a material change in circumstances prior to the conclusion of the 2023 Circuit Appeal.

D. Conclusion and orders to be made

314. For the reasons identified in this judgment I set aside the order of the 25 April 2024. The court thus declines to accept jurisdiction to enforce the New York Judgment in Ireland.

315. Had this court determined that the order of 25 April 2024 be affirmed, I would have granted a limited stay on terms as set out at paras 311 and 313 of this judgment.

316. I will list this matter for mention before me on Tuesday 7 October at 10.30am to deal with final orders and to hear the parties in relation to costs and any other matters arising from this judgment.