Neutral Citation Number: [2026] CIGC (FSD) 63

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 9 OF 2026 (NSJ)

BETWEEN

MEX ATLANTIC CORPORATION
(A Cayman Islands company)

Plaintiff/Applicant

AND

NCM GLOBAL

(A Mauritius company)

Defendant/Respondent

REASONS FOR GRANTING LEAVE TO SERVE OUT AND INTERIM ANTI-SUIT INJUNCTION

Before:	**The Hon. Justice Segal**
Appearances:	**Alex Potts KC for the Plaintiff/Applicant**
Heard:	**23 January 2026**
Draft judgment circulated:	**12 February 2026**
Judgment handed down:	**16 February 2026**

Introduction

1. On Friday 23 January 2026 I heard an *ex parte* application made by Mex Atlantic Corporation (***Mex***) against NCM Global (***NCM***) brought on at very short notice. NCM is a company incorporated in Mauritius.

2. The application was made by an *ex parte* summons dated 19 January (the ***Summons***). In the Summons Mex sought (a) an order for permission to serve on NCM out of the jurisdiction (the ***Service Out Application***) *inter alia* the Writ of Summons and Statement of Claim dated 19 January 2026 (the ***Writ***) and (b) an anti-suit injunction (the ***ASI Application***) restraining NCM from commencing or continuing legal proceedings in any foreign jurisdiction (including Dubai and the UAE) against Mex arising out of or connected with or relating to (a) a client agreement arising out of a corporate account application made by NCM in connection with the use of services provided by Mex and its affiliates to facilitate dealings in margin contracts, CFDs and options which was executed on behalf of NCM on 28 October 2025 (the ***Client Agreement***); (b) a credit facility agreement between Mex and NCM also dated 30 October 2025 (the ***CFA***) or (c) the balance reflected in NCM's trading account with Mex. Mex explained that there was a dispute between NCM and itself arising in connection with the Client Agreement and CFA and related trades and asserted that NCM had threatened to take action against it and the staff employed by it or its affiliates which could properly be characterised as improper. This was because NCM was to be treated as having threatened to commence legal proceedings in Dubai or the UAE, which Mex asserted would be in breach of an exclusive jurisdiction clause (which on a proper interpretation of the CFA and the Client Agreement applied to disputes arising in connection with both agreements and also related trades). In addition, the threatened action included the threat of criminal proceedings and action against staff using improper means. In these circumstances, Mex sought urgent *qui timet* injunctive relief to restrain NCM from commencing any proceedings in breach of the exclusive jurisdiction clause, which it said was also likely to prevent NCM taking the other related action which had been threatened.

3. At the hearing Mr Alex Potts KC appeared for Mex. He took me carefully and comprehensively through the evidence and the relevant documents, dealt in detail with the matters that Mex considered needed to be disclosed to the Court in order to discharge its obligation of fair presentation and to make full and frank disclosure and through the applicable law. At the end of the hearing I confirmed that, subject to narrowing the scope of the anti-suit injunction set out in the draft order filed by Mex and requiring that the return date for the injunction be fixed for early February so that the interim anti-suit injunction would only have a short duration before a further hearing to reconsider the position (at which NCM could appear and seek the discharge or variation of the injunction), I was prepared to grant the relief sought by Mr Potts. In view of the lateness of the hour and the fact that the following Monday (26 January) was a public holiday in the Cayman Islands, an amended form of order was prepared and filed as a matter of urgency and rapidly reviewed and approved by me and sealed by the Court by 6pm.

4. A full recording of the hearing was prepared and served on NCM so that NCM was fully aware of the submissions and decisions made at the hearing. I now set out in summary form the grounds for my decision for the record and the benefit of both parties.

The background

5. In support of the Summons Mex filed the First Affidavit of Shah Athar (***Athar-1***) with its Exhibit SA-1, the First Affidavit of Louise Wright (***Wright-1***) and the First Affidavit of Naser Taher (***Taher-1***). Mr Athar is a director of Mex. Ms Wright is General Counsel of the MulitBank Group. Mr Taher is the founder and chairman of the MultiBank Group.

6. Mex is an exempted limited company incorporated in the Cayman Islands and is regulated by the Cayman Islands Monetary Authority (***CIMA***) as a broker dealer securities arranger under the Securities Investment Business Act (2020 Revision), although its base of operations is in Australia. Mr Athar said that Mex's business included operating an online trading platform and dealing with clients and counterparties within the framework of robust

risk management and accurate disclosures and in strict compliance with applicable regulations and contractual controls.

7. Mex is part of a group of companies headed by Mex Group Worldwide Limited (a company incorporated in Hong Kong but having offices in Dubai) which is the holding company of a number of regulated financial institutions.

8. Mex and NCM are both investment broking businesses and are in dispute regarding whether NCM is entitled to a credit balance (approximately US$21 million) in its trading account (being account number 895933) (the ***Trading Account***) with Mex. The credit balance derives from profitable trades made by NCM with Mex as the counterparty pursuant to the Client Agreement.

9. Mex claims that NCM is not entitled to be paid that sum because Mex was induced by fraudulent misrepresentations made by NCM to enter into the Client Agreement and the CFA (and the related trades) and is therefore entitled to rescind and set aside the agreements and the trades and thereby cancel NCM's entitlement to be paid and credited with the profits arising on those trades. In the alternative, Mex claims that even if the Client Agreement, the CFA and/or the trades are not rescinded (either because it is found that Mex does not have the right to do so or if it elects and chooses not to exercise its right to rescind) Mex has the right to cancel the relevant trades and deduct from and debit the Trading Account with the value of those trades or to deduct or set-off the amount of those trades against the balance in the Trading Account.

10. Mex seeks in the Writ declaratory relief confirming its rights so that, *inter alia*, the Trading Account can be closed and the balance in the Trading Account properly calculated and determined. The prayer in the statement of claim appended to the Writ seeks a declaration that the CFA, the Client Agreement and all trades between Mex and NCM have been validly rescinded with consequential relief; further or alternatively, a declaration that Mex is not liable to pay NCM any balance on or purported profits credited to the Trading Account other than the net balance resulting from NCM's deposited collateral; further or alternatively

damages for breach of contract or misrepresentation; further or alternatively interest on all sums payable by NCM to Mex and further or alternatively a permanent anti-suit injunction against NCM restraining NCM from commencing or continuing proceedings against Mex arising out, connected with or relating to the Client Agreement, the CFA or the balance in the Trading Account in any foreign jurisdiction (including Dubai and the UAE) other than the Cayman Islands. The statement of claim asserts (a) misrepresentation claims based on the alleged representation (which I discuss and explain further below) made by NCM that the client trades and flow that NCM would transfer to Mex would be retail flow as opposed to toxic flow and (b) a breach of contract claim based on breaches by NCM of its obligations under the CFA (and the Client Agreement). The breaches included NCM's asserted failure to transfer the agreed collateral sum of US$10 million on the due date; NCM's asserted failure to transfer at least 75% of its client trading flow to Mex; NCM's failure to implement the liquidity arrangements agreed with Mex and NCM's failure to pay certain fees owing to Mex.

11. Mex asserts that it needs and is entitled to urgent anti-suit injunctive relief because following Mex's refusal to comply with NCM's demand to withdraw funds from the Trading Account NCM has threatened to take damaging enforcement action in Dubai or the UAE in breach of the exclusive jurisdiction and choice of court agreements which Mex says apply to disputes arising out of both the Client Agreement and the CFA. Mex says that the Court should restrain NCM from committing such a breach of contract and that it will suffer irreparable harm because not only will it be at risk of normal litigation enforcement action taken by the courts in Dubai and UAE but the action threatened by NCM is likely to put the personal safety and liberty of its personnel in those countries at risk and will be difficult to reverse.

12. Mex asserts that NCM recently made these threats of hostile enforcement action. Mr Athar in Athar-1 said that he had been told by Mr Taher that on 22 December 2025 Mr Taher had had a meeting with Mr Firas Yaish of NCM. At that meeting Mr Taher told Mr Yaish that Mex considered that NCM had made serious misrepresentations about the type of trades that it intended to enter after becoming a client of Mex and that as a result Mex had been required to enter a series of unprofitable trades which had caused it substantial losses and generated

the profits which NCM now claimed. Mr Taher said that Mex was considering suspending the Trading Account pending legal advice and the completion of an investigation. In response Mr Yaish had "*stated words to the effect … that if [Mex] did not satisfy a withdrawal request [NCM] intended to commence legal proceedings in the UAE against [Mex], Mr Taher and those people responsible within the MultiBank Group located within the UAE, including the initiation of both civil and criminal proceedings and the prospect of imprisonment…*" Mr Athar said that Mr Taher had informed him that "*he believes that Yaish conveyed those statements in a manner that suggested an intention to apply improper pressure through the treat of criminal or civil proceedings in the UAE to procure the approval of withdrawals notwithstanding that there was a genuine and escalating dispute regarding misrepresentation, abnormal trading flow and losses sustained by [Mex].*" Mr Taher in Taher-1 confirmed that he agreed with Mr Athar's evidence (see [5]-[7]).

13. In Taher-1 Mr Taher noted that because of his level of concern about the threat Mex had complied with and satisfied NCM's initial transfer request of US$4 million made on 17 December 2025. On 29 December 2025, two further withdrawal requests, each in the sum of US$999,000, were made by NCM. These requests were also paid. Each of these payments had been made by Mex using collateral which had been provided and deposited by NCM under the CFA which had the effect of reducing the balance of the collateral to US$1.2 million. On 14 January 2026 NCM made a further withdrawal request in the sum of US$15 million. This has not been met or paid.

14. Mex claims that it entered into the Client Agreement and the CFA on the understanding (resulting from NCM's representations) that NCM's trading would relate to and represent retail flow rather than toxic flow. Mr Athar said that these terms are well understood and widely used by participants in the broker sector and in the market. Retail flow refers to diversified dynamic trading activity involving frequent opening and closing of positions across multiple instruments and sizes consistent with ordinary trading behaviour. Toxic flow by contrast refers to trading flow characterised by sustained, concentrated and often one-directional activity, frequently associated with institutional or sophisticated trading strategies that systematically create adverse selection against a counterparty operating a

principal market made model. As I understood it, there is a considerable difference in the risk associated with each type of flow and trading model. The risk profile associated with retail flow is lower or at least more manageable than that associated with toxic flow. The result of Mex's understanding being wrong and, Mex asserts, NCM's fraudulent misrepresentations, is that NCM's trading activity was considerably more favourable to NCM that expected and resulted in much higher profits for NCM than Mex was prepared to agree to.

15. Mr Athar in his evidence explained the circumstances in which the fraudulent misrepresentations had allegedly been made. He said that Mex had been told that NCM was part of a wider group of financial services companies and that the market-market function of the group was conducted exclusively through NCM and NCM UK. NCM had represented (*inter alia* in a slide presentation which was given to Mex (the ***NCM Deal Flow Presentation***) that clients of other NCM entities executed their trades with those other NCM entities and that those trades were then routed internally to NCM and NCM UK. NCM also engaged with external counterparties for hedging purposes. NCM had said that NCM UAE maintained relationships with external counterparties primarily to handle toxic client flows. Mr Athar said (at [40] of Athar-1) that the slides in the NCM Deal Flow Presentation taken together conveyed a clear message that retail trading flow would be routed internally for market making execution (by the two market making entities in the NCM group including NCM) whereas toxic flow would be segregated and routed via a separate pathway so as not to expose the principal market making counterparty (NCM) to that risk.

The relevant terms in the Client Agreement and the CFA - the scope and effect of the exclusive jurisdiction clause in the CFA

16. The Client Agreement (and related trades) are expressly governed by Cayman Islands law. Clause 35.1 provides, in particular, that "*This Agreement, and each margin FX contract, FS option contract and CFD between us and you will be governed by and construed in accordance with the law of the Cayman Islands*."

17. The CFA is also expressly governed by Cayman Islands law. The first part of Clause 4 states that "*This Agreement shall be construed and governed in accordance with the laws of the Cayman Islands*".

18. The Client Agreement contains a non-exclusive jurisdiction clause in favour of the Cayman Islands Courts (which is asymmetrically drafted in favour of Mex). Clause 35.2 provides, in particular, that:

> "*You and we submit, for the benefit of us only, to the non-exclusive jurisdiction of the courts of the Cayman Islands. For the avoidance of doubt this clause 35 will not prevent us from commencing proceedings in any other relevant jurisdiction*."

19. The Client Agreement also provides in Clause 36.1 that, subject to clause 36.2, "*notices*" will be sent to Mex at a Cayman Islands address.

20. The CFA (which as I have noted above was executed after the Client Agreement) contains an exclusive jurisdiction clause in favour of the Cayman Islands Courts. Under the heading Applicable Law, the second part of clause 4, after the words I have quoted above, states that:

> "*…. the parties hereby submit to the exclusive jurisdiction of the Courts of the Cayman Islands in relation thereto [this Agreement] and no other jurisdiction whatsoever.*"

21. In the recitals section (headed "*Background*") of the CFA the last paragraph states as follows (my underlining):

> "*The terms of this Credit Facility Agreement are supplemental to a Client Agreement dated 28 October 2025 … <u>The effect of agreeing to these terms shall make them an integral part of the existing terms that govern the Client Agreement</u>*"

22. Mex submitted that when read and interpreted together (a) the exclusive jurisdiction clause in the CFA superseded the non-exclusive jurisdiction clause in the Client Agreement or alternatively (b) that exclusive jurisdiction clause made it clear that the non-exclusive jurisdiction clause being asymmetrical in favour of Mex was subject to an implied term that prohibited NCM from bringing proceedings against Mex in any other jurisdiction without Mex's consent.

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The Service Out Application

23. Mex submitted that the legal principles relating to the Service Out Application were well established. To obtain leave to serve the relevant documents outside of the Cayman Islands Mex had to satisfy the Court that:

(a). the claims in the Writ fall within one or more classes of case in which permission to serve out may be given as listed in GCR O.11, r. 1(1) (i.e. the jurisdictional gateway). The standard here is that of a good arguable case.

(b). Mex has a good cause of action (see GCR O.11, r.4(1)(b)). The standard here is that there is a serious issue to be tried.

(c). the claims are proper ones for service out of the jurisdiction (GCR O.11, r.4(2)).

(d). the Cayman Islands is the appropriate forum in all the circumstances (based on the guidance in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460**.**

24. Mex also noted that GCR O.11, r.4 provides that an application for leave to serve out must be supported by an affidavit stating (a) the grounds on which the application is made; (b) that in the deponent's belief Mex has a good cause of action; (c) in what place or country the relevant defendant is, or probably may be found; and (d) if service is not to be effected personally, the methods of service which are in accordance with the law of the country in which service is to be effected.

25. Mex relied on the following jurisdictional gateways in GCR O.11, r.1(1):

> *"(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —*
>
> *…….*
>
> *(iii) is by its terms, or by implication, governed by the law of the Islands;*

> *(iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract."*

26. Mex submitted that it has a good arguable case that all of its claims as set out and as pleaded in the statement of claim (including its claims for rescission and associated remedies following misrepresentation, its claims for breach of contract, and its claims for a permanent ant-suit injunction) were brought with respect to the Client Agreement and/or the CFA both of which were contracts expressly governed by Cayman Islands law and subject to express jurisdiction agreements in favour of the Cayman Islands Courts.

27. Mex submitted that the requirement of there being a serious issue to be tried or a good cause of action was satisfied where the claims have "*a reasonable prospect of success on the merits*" (*Daiwa Capital Markets Europe Limited v Al Sanea* (unreported, Smellie CJ, 19 August 2019)). Mex submitted that the test is the same as the summary judgment test of *"a real as opposed to a fanciful chance of success"* (*Merkanti Holding v Raiffeisen Bank* [2022] 1 CILR 497 at [4] – [6]). Mex submitted that its evidence established that the claims set out and pleaded in the Statement of Claim, as supported by the evidence filed by Mex, clearly had a reasonable prospect of success on the merits and disclosed a serious issue to be tried.

28. Mex noted that GCR O.11, r. 4(1)(2) states that: "*No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order*." Mex argued that its claims as set out and pleaded in the Statement of Claim were proper ones for service out of the jurisdiction.

29. Mex submitted that in considering the most appropriate forum, the Court must "*identify in which forum the case could most suitably be tried for the interests of all the parties and for the ends of justice*" (*Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 at 468 and *Daiwa Capital Markets Europe Limited v Al Sanea* (unreported, Smellie CJ, 19 August 2019) at [19]). The Court must look for factors which connect a claim with a jurisdiction such as the nature of the dispute, convenience or expense, the legal and practical issues involved, the law governing any relevant transactions, and the places where the parties respectively reside or carry on business. Mex relied on the following extract from the

judgment of Lord Briggs in the UK Supreme Court in *Verdanta Resources plc and another v Lungowe and others* [2019] UKSC 20 at [66] discussing the meaning of "*the proper place in which to bring the claim*:"

> *"... [the] concept generally requires a summary examination of connecting factors between the case and one or more jurisdictions in which it could be litigated. Those include matters of practical convenience such as accessibility to courts for parties and witnesses and the availability of a common language so as to minimise the expense and potential for distortion involved in translation of evidence. Although they are important, they are not necessarily conclusive. Connecting factors also include matters such as the system of law which will be applied to decide the issues, the place where the wrongful act or omission occurred and the place where the harm occurred*."

30. Mex submitted that in this case the Cayman Islands was clearly or distinctly the most appropriate forum for the trial of the dispute primarily because (a) of the governing law provisions of the Client Agreement and the CFA; (b) the jurisdiction clauses in the Client Agreement and the CFA and (c) the fact that Mex was (as NCM well knew at all material times) a company incorporated and licensed in the Cayman Islands, regulated by CIMA, with its registered office located in Grand Cayman.

The ASI Application

31. Mex submitted that the law governing the grant of anti-suit injunctions was also well settled under Cayman Islands law and could be summarised as follows:

(a). the Court has the power, under section 11 of the Grand Court Act as under section 37(1) of the UK's Senior Courts Act 1981, to make injunction orders "*in all cases in which it appears to the Court to be just and convenient to do so":* see, for example, *Ust-Kamenogorsk Hydropower Plant JSC v ASES Hydropower Plant LLP* [2013] UKSC 35 at [41], [48] and [50].

(b). where there is a threatened or actual breach of a valid and binding exclusive jurisdiction agreement (or an arbitration agreement), an anti-suit injunction will ordinarily be granted unless there are "*strong reasons*" to the contrary: see *Donohue v Armco* [2001] UKHL 64.

(c). the jurisdiction to grant an anti-suit injunction should be exercised with caution, having regard to considerations of comity.

(d). the injunction applicant must ordinarily establish, with a "*high degree of probability*", that there is an exclusive jurisdiction agreement (or an arbitration agreement) which governs the dispute in question although the position may be different where the interim injunction is only very temporary and only long enough just to hold the ring pending a further hearing (Mex referred to the discussion in Raphael, *The Anti-Suit Injunction* (2nd ed.,2019) (***Raphael***) at [13.48]-[13.50]).

(e). in a case where the relevant contract only contained a non-exclusive jurisdiction agreement, the Court still has the power to restrain foreign court proceedings that are, or will be, vexatious, or oppressive, or unconscionable (Mex referred to the summary of the relevant legal principles in *Raiffeisen International Bank AG v Scully Royalty Ltd et al* [2020 (2) CILR 968] at [48]-[49].

(f). a relevant factor in the non-exclusive jurisdiction context will be where the Cayman Islands is the natural forum, and the foreign jurisdiction is inappropriate for the determination of the dispute.

(g). other relevant factors or circumstances may include (a) where the threatened or actual foreign proceedings are brought in bad faith, or with the intention and effect of harassing the plaintiff; (b) where the threatened or actual foreign proceedings are not brought in a natural forum; (c) where the threatened or actual foreign proceedings contain alien and onerous remedies unavailable in the Cayman Islands; (d) where the threatened or actual foreign proceedings are designed to pre-empt the Cayman Island proceedings; and (e) where a threat has been made to manipulate the foreign judicial process inappropriately.

32. Mex submitted that it had shown that there was a good arguable case that the exclusive jurisdiction clause in the CFA covered and governed all disputes between Mex and NCM

arising out of or connected with *both* the CFA and the Client Agreement. The CFA was the later agreement and its recitals ("*The effect of agreeing to these terms shall make them an integral part of the existing terms that govern the Client Agreement*") made it clear that the terms of the CFA (including its exclusive clause in Clause 4) were to be read and incorporated into the Client Agreement and were to govern the whole (single and integrated) relationship between Mex and NCM. To the extent necessary a term should be implied into the Client Agreement to the effect that the non-exclusive jurisdiction clause in the Client Agreement - being asymmetrical in favour of Mex - was subject to an implied term that prohibited NCM from bringing proceedings against Mex in any other jurisdiction without Mex's consent.

33. Mex submitted that its evidence showed that NCM's threat appeared to have included a threat of foreign civil proceedings, foreign criminal proceedings, and a foreign police complaint, or some potential combination of them all. Mex noted that at [3.07] of Raphael it was said that "*no limit has been identified to the types of the foreign proceedings which may be affected by anti-suit injunctions … There are, however, no cases where foreign criminal or public law proceedings have been restrained by the English courts, and any attempt to do so would raise serious concerns as to whether the grant of an injunction would be consistent with comity.*" However, footnote 31 to that paragraph did identify at least one Australian case where an injunction was granted restraining a potential complainant from instituting or participating in foreign criminal proceedings in India. Furthermore, Mex said, there were authorities that indicated that in an appropriate case a court may restrain (a) the commencement or pursuit of local criminal proceedings (even by prosecutors) in favour of local civil proceedings, if the criminal proceedings were clearly vexatious (see *Thames Launches Ltd v Trinity House Corporation* [1961] 1 Ch 197 per Buckley J at 204 and (b) the commencement or pursuit of a civil claim within the context of foreign criminal proceedings (see, for example, *Sunland Waterfront (BVI) Ltd v Prudentia Investments Pty Ltd* [2012] VSC 1 in which the Supreme Court of Victoria restrained the pursuit of a civil claim in the context of Dubai criminal proceedings - the Victoria Court of Appeal then upheld that decision in *Sunland Waterfront (BVI) Ltd v Prudentia Investments Pty Ltd* [2013] VSCA 237).

34. Mex further submitted that this was an appropriate case for the Court to grant an interim anti-suit injunction given the nature and seriousness of NCM's threats, at least on a temporary basis pending a return date hearing or further order. In particular, NCM's express threat to bring claims in Dubai or the UAE, with the serious and draconian consequences such proceedings might entail for Mex and the officers of the MultiBank Group (as explained in Wright 1) should be seen as (a) being in bad faith, made with the intention of harassing or oppressing Mex; (b) invoking a jurisdiction which has alien and onerous remedies, particularly given the reference to having a connection to the Dubai police and (c) being a threat to manipulate the processes of a foreign judicial process.

35. Mex argued that damages would not be an adequate remedy in the event that it was obliged to respond to legal proceedings in Dubai or the UAE, especially in circumstances where (a) there were a range of potentially draconian, disproportionate, and unpredictable, consequences associated with the commencement of Dubai or UAE legal proceedings (including the risk of arrest, detention, the imposition of travel bans, and adverse publicity); (b) Mex was regulated by CIMA in the Cayman Islands; (c) although Mex did not consider itself, as a Cayman Islands company, to be susceptible to the jurisdiction of the Dubai or UAE Courts, a number of its representatives (or representatives of members of the MultiBank Group) maintained a presence or residence in Dubai; (d) Mex may therefore feel compelled, pressured, or coerced to settle any claims asserted by NCM in legal proceedings in Dubai or the UAE for commercial, regulatory or reputational reasons only (i.e. for reasons divorced from their merits, as a matter of Cayman Islands law).

The timing of and justification for an *ex parte* application

36. Mex submitted that there was a material risk that the giving of advance notice to NCM of the Summons (or even Mex's intention to commence Court proceedings in the Cayman Islands) was likely to defeat the purpose of its applications (and the proceedings themselves) since NCM was likely (given its threats) to seek to commence legal proceedings in Dubai or the UAE pre-emptively in response, unless first restrained from doing so.

37. As regards the timing of the Summons and its applications, Mex said that although it had first started to notice some of the issues of which it now complained in the period between late November and late December 2025, its concerns had considerably escalated recently (especially in light of the threats made by NCM on 22 December 2025 and the high withdrawal request made by NCM on 14 January 2026). Mex considered that there was now a material risk that NCM will take steps to frustrate or interfere with the determination of its Cayman Islands legal proceeding before trial (and before any foreign enforcement process), unless first restrained from doing so. Mex also noted that it had taken some time to obtain the legal advice it needed. It had been necessary for it to instruct Cayman Islands attorneys and, through them, to instruct Leading Counsel (having regard to the Christmas and New Year public holidays, and the limited availability of specialist lawyers in the relevant jurisdictions); and to prepare the necessary papers in support of the Summons.

Cross undertaking in damages

38. Mex pointed out that **c**onsistently with the usual principles, and as set out in Athar-1 it had offered to give and would provide an undertaking to the Court to pay any damage suffered by NCM by reason of the interim anti-suit injunction that may be granted, in the event that the Court makes an order that it must do so.

39. Mex submitted that no security, or fortification, should be required for its undertaking at this preliminary stage (although Mex confirmed that it was willing to revisit the issue of security in due course as the Court may think fit). It said that there were two primary reasons why no security should be required at this stage. First, there was no real basis for considering that Mex, a Cayman Islands company regulated by CIMA, was not capable of satisfying any liability under a cross-undertaking in due course. Secondly, given the nature of the dispute, there was a limited risk of NCM suffering any material damage of its own, as a result of the interim anti-suit injunction being granted. There was no evidence to suggest or basis for believing that a delay in NCM commencing proceedings in Dubai or the UAE would cause it any material prejudice (which could not be compensated by the cross-undertaking). If Mex was unable to show that it was entitled to and to maintain its anti-suit injunction, NCM would

be able to commence such proceedings and the delay in doing so was only likely to be relatively short.

Full and frank disclosure and fair presentation

40. Mex confirmed that it understood that it had a duty on its *ex parte* applications to make full and frank disclosure to the Court, and a fair presentation, of all matters relevant to the issues to be determined on each application. Athar-1 addressed (in section L) certain matters which were also acknowledged in Taher-1 and in Wright-1 which were summarised in Mex's skeleton argument at [43]-[49]. Mr Potts also went through these matters in some detail at the hearing. One particular issue is worth highlighting. Mr Athar referred in Athar-1 to various other proceedings between members of the Multibank Group and Mr Taher have been involved in various unrelated proceedings (not involving NCM) in various jurisdictions, in particular in England and Wales, the BVI and this jurisdiction. In these proceedings judgments have been handed down in which negative and critical comments have been made about the MultiBank Group and Mr Taher (and the reliability and truthfulness of his evidence) including interlocutory findings of failures to give full and frank disclosure in the context of *ex parte* applications to the relevant foreign Court. Mex submitted that the contents of those foreign judgments were likely to be irrelevant to (and/or inadmissible in evidence at trial in) these proceedings (having regard to the rule in *Hollington v Hewthorn* [1943] KB 58722), and/or that the critical judicial comments were either unfair, wrong, or capable of explanation in due course. However, Mex considered it important to draw these judgments and the adverse and critical comments to this Court's attention.

The law governing the grant of anti-suit injunctions

41. I am satisfied that Mex's brief outline of the applicable law relating to the jurisdiction to make and the approach adopted to exercising the discretion to grant anti-suit injunctions is broadly accurate but it is worth setting out the principles derived from the extensive case law in a little more detail and clarifying certain points.

42. The Cayman Court may restrain a party over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court. In particular, the Court may restrain a party over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court in breach of a contract to refer disputes to a Cayman Court.

43. In addition, even where there is no exclusive jurisdiction clause and a contractual obligation to submit all disputes to adjudication in this Court, the Court may restrain a party (once again over whom it has personal jurisdiction) from the institution or continuance of proceedings in a foreign court where the foreign proceedings are "*oppressive or vexatious*."

44. In all cases the Court has a discretion. The fundamental principle is that an anti-suit injunction can be granted where the ends of justice require it. As Dicey, Morris & Collins (16th ed., 2022) puts it (at [12-128]) "*the underlying principle is that the jurisdiction is exercised "where it is appropriate to avoid injustice", or, as it was once put, where the foreign proceedings are "contrary to equity and good conscience.*"

45. Although the injunction operates only *in personam* against the party to the foreign litigation, the remedy cannot avoid being seen as an indirect interference with the process of the foreign court. The jurisdiction must therefore be exercised with caution out of considerations of comity (particularly if the overseas claimant, the respondent to the application, is suing in its own court).

46. As regards anti-suit injunctions to enforce exclusive jurisdiction clauses, the position is summarised in Dicey, Morris and Collins (at [12-145]) as follows (my underlining):

> *"Where the basis for the exercise of the court's discretion is that the defendant has bound itself by contract not to bring the proceedings which the defendant threatens to bring, or has brought, in the foreign court, the principles which guide the exercise of the discretion of the court have special characteristics, which are, in summary, that there is no need for the applicant to show that there is oppression or vexation, nor that England is the natural forum for the claim; comity plays little or no part; the injunction will be granted unless strong reason to the contrary is shown; and there is no obligation upon the applicant to first seek relief from the foreign court."*

47. Where there is no exclusive jurisdiction clause and a remedy is available to the respondent both in Cayman and in the foreign court, this Court will only restrain the claimant from pursuing proceedings in the foreign court if the pursuit would be vexatious or oppressive and this Court must be the natural forum for the action. Whether this Court is clearly the most appropriate forum is a starting point or threshold question. If the threshold question is answered in favour of this Court, then the Court considers whether the pursuit of the foreign proceedings is vexatious oppressive, or unconscionable, or whether the ends of justice require the granting of the injunction. Unless this further element is present an injunction will be refused.

48. The Court must take account of the injustice to the respondent if the claimant is allowed to pursue the foreign proceedings, and also the injustice to the claimant if it is not allowed to do so. If a *prima facie* case of oppression or vexation has been made out by the applicant the respondent will be entitled to show why it would nevertheless be unjust for an injunction to be granted: the interests of both parties must be borne in mind. The respondent may point to substantive or procedural advantages, available in the foreign court, which will be lost if the injunction is granted. But if these advantages are available to the respondent only in a forum which is not the natural forum, they will be given little weight, and may even be themselves seen as evidence of oppression.

49. As regards the meaning of vexatious and oppressive, the English courts and this Court adopting the same approach have refrained from giving a comprehensive or limiting definition of these expressions. However, it is clear that parallel proceedings are not of themselves regarded as unacceptable, even if they may lead to inconsistent judgments. Dicey, Morris & Collins (at [12-133]) summarises the position as follows:

> *"It has been held that vexation or oppression may be indicated by the following: subjecting the other party to oppressive procedures in the foreign court, especially a party with no substantial connection with that jurisdiction bad faith in the institution of the proceedings, or the institution of foreign proceedings which are hopeless or bound to fail (but not simply weak); extreme inconvenience caused by the foreign proceedings; multiplicity of actions, especially where the foreign action might spawn further consequential litigation which might not be reconcilable with the foreign*

> *decision; bringing proceedings which interfere with or undermine the control of the English court of its own process; bringing proceedings which seek to undermine, or frustrate the enforcement of, an English judgment given in proceedings in which the respondent played a full part; bringing proceedings which seek to undermine or hamper the enforcement of an English arbitral award; bringing proceedings which could and should have formed part of an English action brought earlier; bringing proceedings for no good reason in a court which will disregard an express choice of English law."*

50. In determining an application for an anti-suit injunction, there is no general presumption that, where there is a contractual non-exclusive jurisdiction clause, parallel proceedings commenced in a non-contractual jurisdiction are to be regarded as vexatious or oppressive unless the prosecuting party could justify them on grounds of matters unforeseeable at the time of the contract or other exceptional circumstances. By contracting for non-exclusive jurisdiction, parties had to have anticipated and accepted the possibility of some parallel proceedings, and the Court must exercise its discretion in deciding whether or not to grant an anti-suit injunction (see *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2010] 1 WLR 1023).

51. Applications for interim anti-suit injunctions are not generally governed by the standard principles for interim injunctions derived from *American Cyanamid* (which are aimed at preserving the status quo until trial). The applicant for an interim anti-suit injunction must show, subject to the inherent evidential limitations of an interim hearing, that he is entitled to anti-suit relief and it will not be sufficient merely to establish some level of probability of having such a right later at trial. This is particularly appropriate where the grant of the anti-suit injunction will effectively have the same effect as a permanent injunction.

52. However, where the interim anti-suit injunction is sought only to hold the ring for a short period pending a further hearing so that the grant of such relief will not be practically determinative of the question of forum, reasoning akin to *American Cyanamid* is more appropriate. It may then be appropriate to grant relief on the basis of there being a sufficient probability of success pending a further hearing. The case law is not settled in this area. It seems to be clear though that the *American Cyanamid* tests will still require modification

because the grant of the injunction will still pose problems of comity (see Raphael, *The Anit-Suit Injunction*, 2nd ed., [13.48] - [13.50]).

53. Further, if there is some disputed issue of fact (or a difficult point of law) which cannot properly be resolved at the interim stage, which is central to the grant of interim relief, and the grant of the injunction is likely to be practically determinative of forum, the applicant must show a high degree of probability that he is right on the relevant point and that he would be entitled to anti suit relief at trial. But where this is not the case, a lower standard may be applied [See Raphael, *The Anit-Suit Injunction*, 2nd ed., [13.44]-[13.48])

Discussion and decision

54. I was (and am) satisfied that Mex has justified for the reasons summarised above making an *ex parte* application without notice to NCM.

55. I was (and am) satisfied that Mex had satisfied the requirements for an order for leave to serve out and that the Service Out Application should be granted. The method of service proposed was appropriate and in accordance with the law of Mauritius in view of the opinion of Mr Khavi S Chetty, a barrister qualified in England and Wales and Mauritius.

56. I was (and am) also satisfied, having regard to the nature of Mex's claims as set out in the statement of claim annexed to the Writ, the evidence adduced by Mex and its submissions, and taking into account the matters disclosed in discharge of its duty of full and frank disclosure and fair presentation, and having regard to the applicable law as summarised above, that I should grant an interim anti-suit injunction to restrain NCM from commencing civil proceedings outside this jurisdiction (including in Dubai and the UAE) but on narrower terms than those sought by Mex and for a short duration. This would ensure that the interim anti-suit injunction operated only to hold the ring for a short period and would not be practically determinative of the question of forum.

57. The final form of the interim injunction that I was prepared to grant was in the following terms:

> *"1. **'The Dispute'** means any and all disputes or claims between the Plaintiff and the Defendant (and their respective servants or agents) arising out of, or in connection with, or related to the Defendant's requests to make withdrawals of any monies from the Defendant's trading account maintained with the Plaintiff (with account number 895933).*
>
> *2 Until further Order made on or after the Return Date, the Defendant shall not, whether by itself, or by its directors, officers, employees or agents or in any other way, commence or pursue any civil claims, actions, or proceedings (whether for monetary, declaratory, injunctive, substantive, or supplemental relief), relating to the Dispute in any foreign Court or foreign Tribunal or other dispute resolution forum (including, for the avoidance of doubt, any Court or Tribunal located in Dubai or the United Arab Emirates), other than by way of litigation before the Grand Court of the Cayman Islands in accordance with the jurisdiction agreements contained in the Credit Facility Agreement and/or the Client Agreement.*
>
> *3 There will be a further remote hearing of the Applications and in respect of this Order on 16 February 2026 at 9:00am (Cayman time) (the Return Date)."*

58. Mex's primary case is that this is an exclusive jurisdiction case. It argued that the exclusive jurisdiction agreement in the CFA is to be interpreted as governing and applying to the claims and foreign proceedings which NCM has threatened to commence. Mex relied, as I have explained, on the terms and what it says is the proper construction of the CFA and the Client Agreement (and alternatively on the implication of an implied term). Mex argued that all disputes arising out of the agreements and relationship between it and NCM including the underlying trades are subject to a/the Cayman exclusive jurisdiction clause.

59. Mex's case on this critical issue has only been set out in preliminary terms and the evidence to support it (including the factual matrix evidence relevant to the interpretation of the terms of the CFA and the Client Agreement) has yet to be set out in full. It is not an entirely straightforward claim and there are a number of issues which will need careful review. However, I was (and am) satisfied that Mex has established a strong case based on the natural meaning of the wording in the CFA and the terms of the CRA and the Client Agreement that the effect of the CFA was to incorporate the key terms of the CFA into the Client Agreement and that the core terms in the CFA including the exclusive jurisdiction

clause in Clause 4, were to govern all aspects of the Mex-NCM relationship. The CFA's exclusive jurisdiction clause, which as drafted only related to disputes arising in relation to the CFA, would be understood as having been amended to cover all agreements between Mex and NCM including the Client Agreement and the trades. The claims made in the statement of claim relate to misrepresentations in relation to and the validity and/or breach of the Client Agreement, the CFA, and the trades (and Mex's liability in respect of the Trading Account which relates to those trades) and therefore appear to be covered by the exclusive jurisdiction clause so interpreted. Based on the position as disclosed at the 23 January 2026 hearing I was (and am) satisfied that Mex's case on this point certainly satisfies the serious issue to be tried test and has a real prospect of success, meaning it can survive a summary judgment application. It therefore seemed (seems) to me that the ASI Application could properly be granted on the basis that only an interim anti-suit injunction is to be issued for a short period to prevent a limited range of foreign proceedings being commenced before a further hearing at which NCM could appear and make submissions and that Mex has crossed the relevant threshold by establishing that there is at least a serious issue to be tried that the proceedings which Mr Yaish could reasonably be understood to have threatened would be commenced in breach of an exclusive jurisdiction clause. In the case of such a short-term interim injunction it seems to me that this establishes a sufficient probability of success pending the further hearing.

60. I was (and am) satisfied that the evidence of the threat of proceedings and enforcement action set out in Mex's evidence, while made only orally and only in general terms using "*words to the effect*" that litigation would be commenced in the UAE, was in the circumstances sufficient and justified *quia timet* relief.

61. I also took into account the concerns and issues regarding the reliability of Mr Taher's evidence and Mex's apparently less than perfect track record in foreign proceedings and the need to have regard to comity and to minimise any interference with the Dubai and UAE courts, as well as the general need for caution. Limiting the scope of the injunction (I did not take Mex ultimately to be seeking an injunction restraining criminal proceedings but was not prepared at least without further argument to grant one) and its duration would

minimise such interference and the adverse impact on NCM, which could apply to set aside or amend the injunction at the return date or before then.

62. I had some concerns about the absence of any evidence of the financial standing of Mex and its ability to satisfy any claims under its cross-undertaking in damages. However, in view of the short duration of the injunction and the fact that it was unlikely that in the limited time before the return date that NCM would suffer any material prejudice I was satisfied that this issue could be further reviewed on the return date.

63. I also raised with Mr Potts the need to consider adding a *Babanaft* proviso to the injunction but in view of the urgency in settling the form of the order there was insufficient time to address this issue. I was satisfied that the issue could also be left for further consideration on the return date in view of the short duration of the injunction.

64. I concluded (and conclude) that in all the circumstances it was (and is) just and appropriate to grant the short-term anti-suit injunction on the terms I approved.

65. As I understood it, Mex also relied on a secondary case, that even if its primary case did not succeed, it was entitled to an anti-suit injunction on the vexatious and oppressive ground. It argued that it had made out a strong case that (a) Cayman is the natural forum for the litigation of the disputes arising out the trading relationship involving a Cayman regulated broker (Mex) and trades which are subject to the Cayman regulatory regime (the dispute to which the enforcement action and proceedings threatened by NCM related has a clear Cayman centre of gravity) and (b) the threatened proceedings are vexatious and oppressive particularly in view of the coercive and improper threats amounting to intimidation and that (c) in all the circumstances it would be just to grant the interim anti suit injunction sought. Mex argued that the fact that this is only a short-term interim injunction that will not finally determine the forum in which the dispute between Mex and NCM is determined is a highly relevant factor to be taken into account when the Court is exercising its discretion. It seemed to me that Mex probably had a good arguable case for the injunction on this ground also although further consideration would need to be given

as to whether the vexatious and oppressive test was satisfied on the facts of this case. In light of that qualification and the decision I had reached based on this being an exclusive jurisdiction clause case, I concluded that I did not need to base my decision on this alternative ground.

The Hon. Justice Segal
Judge of the Grand Court, Cayman Islands
16 February 2026

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