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ALERT MEMORANDUM

Key English Rulings for Debt Finance - H1 2026 Round-up

4 August 2026

English courts have continued in 2026 to produce decisions of direct practical relevance in the debt finance markets. This article looks at the key cases in the first half of 2026 with takeaways for borrowers, lenders, and other debt counterparties alike.

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Default Interest: What Is the Penalty Test?

In *Houssein v London Credit Ltd*[1], the Court of Appeal held that the default interest rate (4% compounded monthly) in a facility letter did not amount to an unenforceable penalty. The borrower argued that the High Court judge had misapplied the test in *Cavendish Square Holding BV v El Makdessi*[2] and that the lender's credit risk was already adequately protected without a monthly compounded default rate.

The Court of Appeal rejected those arguments. It confirmed that the question is not whether the lender's legitimate interest was adequately protected, which would revive the discarded "pre-estimate of loss" approach. The correct question is whether the default interest rate was out of all proportion to the lender's legitimate interest in common. The High Court judge determined the lender's legitimate interests by reference to each event of default relevant to the facts of the case (grouped into categories of primary obligations and considered separately), and the Court of Appeal did not find any identifiable flaw in the judge's evaluative judgment. The Court of Appeal also confirmed that the assessment is an objective one at the date the contract was entered into.

In this case, the default interest was not out of proportion to the lender's legitimate interest as a reasonable lender would have considered the prospect of refinancing this loan so precarious that it was not extortionate to apply an above-market default interest rate to reflect the difficulty it would have faced in refinancing.

Key takeaway: Don't simply treat the default interest provision as a boilerplate clause. At the negotiation stage, review the default interest rate to see if it is materially above the non-default pricing and/or the market default rate, whether and how often it compounds, whether it is triggered by payment default or might be triggered by technical default with no grace period. Lenders should keep a record of the commercial rationale discussed for any unusually high default rate.

[1] [2026] EWCA Civ 830
[2] [2015] UKSC 67

Pricing Mechanism: Court Enforces Contractual Mechanisms

In *The Hellenic Republic v Wilmington Trust (London) Ltd*[3], the Commercial Court upheld the Hellenic Republic's exercise of its contractual right to repurchase its GDP-linked securities and confirmed that the Hellenic Republic had correctly determined the repurchase price pursuant to the contractual pricing mechanism, which prescribed how the Hellenic Republic should calculate the "Market Price" and "Call Price".

The court held that the detailed contractual pricing mechanism was clear and governed the price payable, even if it resulted in a repurchase price that may differ from the GDP-linked securities' ordinary market value or actual traded prices in the months preceding the exercise of the call option. In particular, the Hellenic Republic was correct (and indeed bound) to use the bid and ask prices provided by Greece's electronic secondary securities market (known as 'HDAT') to calculate the repurchase price, and was not required to consider other sources of pricing data.

Key takeaway: The judgment reinforces the importance of giving effect to the terms agreed by the parties and underscores the primacy of contractual language in complex financial instruments. Pay attention to contractual drafting on day 1 and don't assume "market value" arguments will override when disagreement arises.

Payment Deadlines and Banking Days: Place of Performance Matters

In *Songa Product and Chemical Tankers v Gardsea Shipping*[4], the Commercial Court was tasked with interpreting the terms of a ship sale contract that required payment from escrow in Norway not later than three "Banking Days" after notice of readiness. The definition of "Banking Days" referred to bank opening days in eight jurisdictions, including the UAE, the U.S., and Norway. When the issue was first submitted to arbitration, the arbitral tribunal had held that the buyer had until midnight in the most westerly time zone within the definition, effectively Hawaii, to make payment.

When the arbitral tribunal's decision was appealed to the Commercial Court, the court took a different view. It held that the definition of "Banking Days" identified the relevant calendar days for calculating the time period; it did not redefine what a day is or when a day starts and ends. Once the relevant calendar date had been identified, the payment deadline was determined by local time in the place of performance, which was Norway. The court considered it commercially unlikely that the parties intended to create a 37- or 38-hour "day" spanning multiple time zones.

Key takeaway: Finance documents frequently use "Business Day" or "Banking Day" definitions tied to several financial centres, and parties should not assume that a multi-jurisdictional definition gives them until the latest possible time zone to perform. If certainty is needed around a particular cut-off time, time zone, or place of performance, that should be stated expressly (e.g. by 5pm London time).

[3] [2026] EWHC 1049 (Comm). Cleary Gottlieb represented the Hellenic Republic in this case.

[4] [2026] EWHC 1559 (Comm)

Sanctions: Are Payment Obligations Suspended?

The Supreme Court in *UniCredit Bank GmbH v Constitution Aircraft Leasing (Ireland) 3 Ltd and Anor*[5] held that regulation 28(3)(c) of the Russia (Sanctions) (EU Exit) Regulations 2019 (the Regulations) prohibited UniCredit from making payments under letters of credit until UK licences were obtained. This was despite that the letters of credit and the underlying aircraft leases pre-dated the March 2022 expansion of the Russian sanctions regime to civilian aircraft. The Supreme Court construed the phrase "*in connection with*" in the Regulations broadly, rejecting the argument that the provision of funds under the letters of credit required a casual link to the aircraft leases. On that basis, the bank's payment obligation, and the accrual of statutory interest, were suspended during the relevant period.

While this is a case on aviation finance, the practical effect is relevant for the wider debt finance, trade finance, export finance, and structured finance transactions with any sanctions-sensitive nexus.

Key takeaway: Parties should identify sanctions issues early, consider whether a licence is required, and ensure that facility agreements, letters of credit, guarantees, and related instruments contain clear provisions allocating sanctions-related delay, cost, and enforcement risk.

Asymmetric Jurisdiction Clauses: Parallel Proceedings Is Part of the Bargain

In *Spec 1 Ltd and other companies v The Export-Import Bank of China*[6]*,* the finance documents included an asymmetric exclusive jurisdiction clause governed by English law. The effect of this clause was that, in the event of a dispute arising under the finance documents, the borrowers could only bring proceedings in the English courts whereas the lender could commence proceedings in any court of competent jurisdiction. A dispute arose between the parties, leading the lender to commence proceedings in Singapore. When the borrowers subsequently commenced English proceedings seeking rescission of the finance documents, the lender applied to stay the English proceedings. The Commercial Court dismissed the lender's application, holding that the asymmetric jurisdiction clause gave the borrowers an unqualified contractual right to sue in England and expressly contemplated parallel proceedings in multiple jurisdictions. The lender needed strong reasons to obtain a stay of proceedings in England, the designated jurisdiction, and failed to establish them[7].

Key takeaway: Parties should recognize that it may be difficult to argue that parallel proceedings are oppressive where the asymmetric jurisdiction clause itself permits that outcome, and should consider at negotiation stage whether lender flexibility, borrower forum rights, and parallel-proceedings risk are acceptable.

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[5] [2026] UKSC 10
[6] [2026] EWHC 1162 (Comm)
[7] Note this is the position of the English courts. In the EU, the 2025 case of *Società Italiana Lastre SpA (SIL) v Agora SARL* has casted doubt on the validity of asymmetric jurisdiction clauses under the Brussels Recast Regulation. Where a transaction has EU nexus e.g. borrower or assets in the EU, the approach of the relevant EU court should be considered.