

# SERVICE OF COURT PROCEEDINGS ON OVERSEAS DIRECTORS

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## UK Litigation and Dispute Resolution Alert

By: Clare Tanner

In *PJSC Bank Finance and Credit & another v Zhevago & others* [2021] EWHC 2522 (Ch), the Chancellor of the High Court, Sir Julian Flaux, decided that the first defendant, Mr. Zhevago, was properly served with High Court proceedings at an address in London even though Mr. Zhevago was resident in Dubai at the time. This was because Mr. Zhevago was a director of an English company (which was not a party to the proceedings) and had given the London address of that company as his "registered address" at Companies House. The decision is notable given Sir Julian Flaux's seniority and comes as a timely reminder for overseas directors.

In accordance with s1140 of the Companies Act 2006 (CA), a document may be served on a director or secretary of a company by leaving it at, or sending it by post to, their registered address. A registered address means "*any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.*"

In *SSL International Plc v TTK LIG Ltd* [2011] EWCA Civ 1170 the Court of Appeal stated that "*It is a general principle of the common law that absent specific provision (as in the rules for service out of the jurisdiction) the courts only exercise jurisdiction against those subject to, i.e. within, the jurisdiction.*" In *Idemia France SAS v Decatur Europe Limited* [2019] EWHC 946 (Comm) Richard Salter QC sitting as a Deputy High Court Judge found that s1140 CA was such a "specific provision" and by registering a service address within the jurisdiction, someone can make themselves subject to the jurisdiction of the court even if not physically present within the jurisdiction. This decision came before the Court of Appeal but the case was settled before judgment was handed down.

In *PJSC*, the Chancellor considered *Idemia* and the subsequent line of cases which followed the decision in *Idemia* and concluded that they were correctly decided. The Chancellor found that the "whole point" of s1140 CA is that where a director has provided a "registered address" and that address is within the jurisdiction, the director can be served with proceedings at that address even if he is not physically present within the jurisdiction at the time of service. The position is different if the address given is an address outside the jurisdiction, in which case the normal rules, which require permission to be obtained to serve out of the jurisdiction, apply.

It will not always be straightforward or even possible for a claimant to obtain permission to effect service out of the jurisdiction on an overseas director. At a minimum, the need to obtain permission and serve out of the jurisdiction is likely to increase cost and cause delay. By giving a registered address within the jurisdiction (for the purposes of filings at Companies House), overseas directors may be giving up a real advantage should claims be brought against them in the English Courts.

## KEY CONTACTS



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