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Recent English High Court Decision Reveals The Obstacles In Obtaining Foreign Discovery For Use In US Litigation

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In *Byju's Alpha, Inc. v. Oci Limited*, 2025 (EWHC 271) (KB), the claimant in Delaware proceedings seeking to recover assets and losses arising from fraudulent misappropriation learned that funds had been transferred to an English company. The claimant issued a Letter of Request ("Letter") under the Hague Convention to the English court asking that the English company be ordered to produce documents and give sworn testimony. The Letter stated that discovery will provide key information regarding the fraudulent transfers including any legitimate and lawful business reasons and that the evidence sought will be highly relevant to material facts relevant to the complaint. The documents sought under the Letter included (i) communications with the parties relating to the funds, (ii) documents relating to the contemplation, negotiation and execution relating to the transfers of the funds and (iii) documents relating to the transfer of the funds.

The Evidence (Proceedings in Other Jurisdictions) Act of 1975 ("1975 Act") allows the English court to make orders for evidence to be obtained in England pursuant to a request of a foreign court and where the evidence is for purposes of civil proceedings before that requesting court. The 1975 Act also can only be used to require the party to produce particular documents specified in the order in that party's possession, custody or power.

The English court noted it would need good reasons not to accede to the Letter from the US court, especially in the case of international fraud. However, the court declined to grant the orders sought in the Letter because:

- The Letter sought to obtain information, not evidence for trial. The subject of the Letter must be out the facts alleged in the relevant foreign proceeding and the English company or the transactions involved. The court felt that the claimant was seeking general information which might be relevant to a potential claim, not evidence about allegations which were currently be made in the US proceedings.
- The scope also was outside the 1975 Act since the Letter did not seek particular documents, but rather a wide class of documents. In other words, a fishing expedition essentially allowed under US discovery was not allowed under English law.
- Granting the orders would be oppressive because it would force the English parties to provide evidence that would be used to consider and/or frame a fraud claim against them and to answer questions about the underlaying facts when they did not know the actual claim to be brought against them.

The bottom line is a Letter must be tailored to the 1975 Act requesting particular documents and should be directed to material which can be shown to be relevant to the allegations which the foreign court will have to decide. As the court in *Byju's Alpha* reasoned, the process "cannot be used to obtain information which is to assist in the selection of facts to form the basis of a claim."

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