

ENFORCING LETTERS OF CREDIT: NEW LAW ON LOCATION OF DEBTS

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The Supreme Court has allowed an appeal by petroleum company Taurus Petroleum Limited against the State Oil Marketing Company of Iraq (SOMO). The case has changed the law on the location of debts in the context of letters of credit. Below, we summarise what has changed and the impact that this will have when enforcing letters of credit.

The case

Taurus had attempted to enforce an arbitration award against SOMO by the means of a combination of third party debt and receivership orders. The orders concerned two letters of credit (the LOCs) that had been issued by Crédit Agricole, London Branch. The effect of the third party debt order was to direct the LOC proceeds to Taurus Petroleum rather than SOMO.

The LOCs provided that payment would be made to an account held by the Central Bank of Iraq (CBI) in New York. Case law authority (*Power Curber International Limited v National Bank of Kuwait SAK* [1981] 3 All ER 607) stipulated that debts arising under a letter of credit would be situated wherever they were due to be paid. This meant that the location of the LOC's debt was New York and SOMO argued that the English courts did not have jurisdiction to make third party debt orders in respect of them.

The new law

The decision of the Supreme Court has overruled the previous case law on the location of debts arising under letters of credit. The general rule on location of debts now applies. This rule stipulates that the debt will be situated wherever the debtor (i.e. the issuing bank) is located.

The judgment also confirms:

- the application of UCP 600, article 3 which states that when a bank has a number of different branches, each branch is treated as a separate bank for these purposes; and
- the beneficiary under the letter of credit was solely SOMO as it was the only party identified in the LOC as the 'beneficiary', even though the payment from the issuer was due to be made into the account of another entity (CBI). It was decided that the payment instruction represented a separate collateral obligation owed to SOMO and CBI jointly but would not affect the identity of the beneficiary.

It therefore followed that that the location of the debts due under the LOCs was England and the third party debt order could be made.

Looking forward

If an issuing bank is located in England and Wales, the courts of England and Wales will be the correct forum in which to deal with a dispute over payment of a debt arising under a letter of credit. The experience and stability of issuers available in this jurisdiction and the quality of its dispute resolution procedures should be good news for beneficiaries and issuers alike. It will be interesting to see the effect that this decision has on other common law jurisdictions which have, until this case, followed the Power Curber decision.

If you have any concerns about whether the Bank is required to make payment in any given situation we would recommend that you take advice and would be pleased to help you.

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