

**ENGLISH HIGH COURT ORDERS WORLDWIDE FREEZING AND DISCLOSURE**  
**ORDER ON UAE OIL TRADER COMPANIES**

*The Royal Bank Of Scotland PLC v FAL Oil Company Limited, FAL Shipping Company Limited,  
Gulf Success International Shipping Inc, Sea Victory International Shipping Inc*

[2012] EWHC 3628

**Introduction**

On 20 November 2012, the English High Court granted a worldwide asset freezing injunction and worldwide disclosure orders against the defendants under section 25 of the Civil Jurisdiction and Judgments Act 1982 (“Section 25”). The court considered the principles that apply when deciding whether to make an order under Section 25, and when it would be considered “inexpedient” to do so.

**Facts**

The case arose out of the financial difficulties of the FAL Oil group - said by the court in this case to be “the largest independent oil and bunker trader in the Gulf Region”- resulting from, in part, a dispute it brought against UAE utility Sharjah Electricity and Water Authority in 2011, and, in January 2012, the imposition of US financial restrictions due to its links with Iran, along with the general economic climate.

In 2006, the Royal Bank of Scotland (“RBS”) had made a loan to each of Gulf Success and Sea Victory for the purchase of two oil tankers, with security being given over the oil tankers and guarantees being given by FAL Oil and FAL Shipping (both UAE companies).

In January 2012, Gulf Success and Sea Victory stopped making the required servicing and interest repayments on the loans, and RBS entered into restructuring discussions with FAL Oil. RBS were unable to ascertain the ownership or location of the oil tankers. In September 2012, RBS issued proceedings in the Sharjah Court of First Instance seeking interim measures and a judgment of almost US\$12 million. The interim relief measures were ineffective, and so RBS sought domestic and worldwide freezing orders in the English courts under Section 25, which permits the grant of interim relief when the substantive proceedings in a dispute are taking place abroad. This relief was granted.

RBS applied for a continuation of the domestic and worldwide freezing orders, and an order that the Defendants should disclose the nature and location of their assets. In turn, the Defendants sought an order setting aside the domestic and freezing orders.

## **Judgment**

The High Court granted RBS's applications to continue the domestic and worldwide freezing orders, and for disclosure, and rejected the Defendants' application.

In making the decision, the court examined first whether the facts would warrant the relief sought if the substantive proceedings had been brought in England; and second, whether the fact that the court had no jurisdiction other than Section 25 made it "inexpedient" to grant relief.

The court identified a number of principles and guidelines to assist in determining inexpediency in the context of Section 25, and highlighted five particular considerations (also set out in *Motorola Credit Corp. v Uzan* [2004] 1 WLR 113 (CA)):

1. whether the making of the order will interfere with the management of the case in the primary court;
2. whether it is the policy in the primary jurisdiction not to make worldwide freezing/disclosure orders;
3. whether there is a danger that the orders made will give rise to disharmony or confusion and/or a risk of conflicting inconsistent or overlapping orders in other jurisdictions;
4. whether at the time the order is sought, there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and inexpedient to make a worldwide order, and
5. whether, in a case where jurisdiction is resisted and disobedience to be expected, the court will be making an order which it cannot enforce.

## **Observations**

The case highlights that where the court can see good reasons for granting such an order, it will do so, and that the fact that proceedings are taking place in a different court will not necessarily prevent the English courts from also issuing orders relating to the dispute. Factors that may be taken into account by the English courts may include whether the party has entered into documents governed by English law, whether the party has held himself out as having an operational presence in the UK and the existence of bank accounts, even if these are overdrawn.

4<sup>th</sup> December 2012