

SERVICE OF PROCEEDINGS AGAINST FOREIGN STATES AND OTHER NON-UK ENTITIES

- ▶ In the recent decision in *General Dynamics UK Limited v State of Libya* [2019] EWCA 64 (Comm), the Court held that when enforcing an arbitration award against a foreign state, service must be effected through the Foreign and Commonwealth Office (FCO).
- ▶ A contract can (and ideally should) stipulate alternative arrangements for service on a foreign state.
- ▶ The arrangements for service of process on all non-UK entities should be considered at contract stage – the appointment of an agent within the relevant UK jurisdiction is most likely to be the best option.

What's it about

In 2016, General Dynamics UK Limited (GD) received an arbitration award in their favour by the ICC following a contractual dispute with the State of Libya (Libya). GD then sought to enforce the award in England under s.101 of the Arbitration Act.

Following a request by GD, Mr Justice Teare made an order that allowed enforcement of the award as a judgment of the Court, and under CPR rr 6.16 and 6.28 that the need for service of the arbitration claim form and other court documents on the Defendant could be dispensed with. On this basis it was considered sufficient for these documents to be couriered to the authorities in Libya.

Libya applied for the order to be partially set aside and challenged the jurisdiction of the court to dispense with service on a state through the foreign office, as they considered was required by s.12 of the State Immunity Act 1978 (SIA).

Why does it matter?

In his judgement, Males LJ agreed with Libya that the Court did not have the power to dispense with service, deciding that s.12(1) SIA provided that there would always be some document required to be served for instituting proceedings against a foreign state. Males LJ went further and took the view that the Court was not qualified to make diplomatic judgements and the conduct of international relations was safeguarded if service was not dispensed with.

The decision of the Court confirms that strict compliance with s.12 SIA 1978 is required. Foreign states must be served, through the FCO, with notice of a dispute or relevant orders related to proceedings.

The decision is an important reminder that parties seeking to enforce an arbitration award, or attempting to further proceedings against a foreign state, cannot do so without service of some form of document, even when in compliance with the CPR. Such service must also be conducted through the appropriate diplomatic or consular channels.

What now?

It is clear from this Judgment that courts are required to adopt a cautious approach in order to avoid being accused of confusing their role with the executive. The process of having to effect service through the appropriate diplomatic or consular channels can be frustrating and take significant amount of time. For those acting for corporate entities entering into a contract with a department or entity of the state, is there an alternative approach to be considered?

Richard Linton, an Associate in the Construction Litigation team who has particular experience in dealing with a variety of international construction disputes, comments *"from experience, litigating against a state entity can become extremely protracted, particularly with regard to ensuring that service of the relevant court documents has been effected. I would therefore always suggest that careful consideration is given by corporate entities to ensure that their construction contracts include an appropriate provision regarding alternative methods of service. Despite the decision in this case, Section 12(6) SIA allows for an alternative method of service. Therefore the dispute resolution procedure should include an appointed agent to accept service on behalf of a State, which in some cases will be a particular embassy."*

This advice is of broader application. To minimise the difficulties of service of proceedings abroad (something which will become more difficult in the EU in the event of a no-deal Brexit) it is always advisable to consider appointing an agent within the relevant UK jurisdiction to accept service of proceedings.

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