

Insights

## FUNDS HELD IN LEBANON: UK CONSUMER LAWS MAY HELP RELEASE THEM

Oct 26, 2021

### SUMMARY

The financial and humanitarian crisis in Lebanon continues to hit the headlines. Our commercial disputes team has been assisting English domiciled families with funds held in Lebanese banks to take expedited legal steps in the English courts to allow them to access them outside Lebanon.

Whilst all cases are dependent on their own facts, there is still time to engage with the English courts for similar relief.

### EU CONSUMERS WITH A FOREIGN BANK ACCOUNT HELD A TRUMP CARD

EU rules within the Brussels (Recast) Regulation, gave a trump card to EU-based consumers who had entered into contracts with foreign organisations for goods or services (such as banking services), as long as the foreign organisation had directed its business activities or marketed to potential customers in that consumer's member state domicile, which, prior to Brexit, included the UK.

That trump card enabled consumers to upset the usual rules on where any legal disputes should be heard – effectively consumers were able to choose whether to sue in their own home court, despite, for example, what the terms of the contract might say. For English domiciled consumers with bank accounts in Lebanon, being able to deploy these EU rules and use the English courts rather than the Lebanese to retrieve their funds has proven vital given the ongoing problems with removing currency from the country.

A case in point is the claim we are currently pursuing in the English courts, *Manoukian v Societe Generale De Banque au Liban SAL* and another. We moved swiftly last year to start the claim in the English courts while the consumer rules set out in Brussels (Recast) still applied to English domiciled consumers. Since then we have persuaded the court to work on an expedited basis so that the final hearing of our claim can be heard as quickly as possible. The trial is scheduled for

early 2022 which is crucial, given the deteriorating situation in Lebanon and the ongoing risk to our clients' funds.

## HAS THE TRUMP CARD BEEN DEALT FOR THE LAST TIME?

One key development which may have gone unnoticed in the Brexit headlines does, however, provide a saving grace for English-based consumers who have yet to take any legal steps to initiate claims to retrieve funds held in Lebanon. The jurisdictional rules set out in Brussels (Recast) can no longer be deployed by the English courts on behalf of consumers here, but the consumer sections of that instrument were in fact lifted almost wholesale and added as "retained EU law" into UK legislation, as s15A-E of the Civil Jurisdiction and Judgments Act 1982 (CJJA).

## SO WHAT NEXT FOR ENGLISH-BASED CONSUMERS WITH CLAIMS?

Significantly, now as a matter of English law, the English court can take jurisdiction of a consumer claim against a Lebanese bank, such that, if the claim succeeds, an award to the consumer can be made in jurisdiction outside of the Lebanon and, if the deposits are held in non-Lebanese foreign currency, may enable international enforcement and recovery.

Whilst many claims of this nature were, sensibly, issued prior to the end of the Brexit transition period to take advantage of the Brussels Recast consumer rules, we are now seeing the first cases in court where the claims have been issued in England post-Brexit pursuant to the new sections of the CJJA. Whilst every case is dependent on the facts, and a key question to establish jurisdiction will be whether the bank in question did indeed "direct" its marketing activities to potential customers in the UK so as to trigger the consumer rules, it is clear that English-based consumers still have the trump card and can choose to pursue their case here rather than in the Lebanese courts.

The message is clear – despite Brexit, all is not lost for consumer claims against foreign entities. Since moving quickly will be vital because of the ongoing issues in Lebanon, the ability to pursue claims in "home" courts keeps open a vital route to recovery of funds held there.

## RELATED CAPABILITIES

- Banking & Finance Disputes

## MEET THE TEAM



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