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Reserves at risk: asset freezing and sanctions

by Charles Proctor

This chapter considers two particular legal issues which may arise when a foreign state or its central bank elects to place any of its reserves with financial institutions operating in the United Kingdom.

Foreign assets which are held in Britain (or, for that matter, anywhere else in the world) are subject to attack in two possible ways. First of all, a private creditor may seek to attach those reserves in order to satisfy a judgment which remains unpaid. Secondly, those assets may be blocked as a result of sanctions introduced against the state concerned. This chapter considers the extent of these risks against the background of the relevant statutory framework as it exists in the United Kingdom.

State immunity enshrined

In Britain, the State Immunity Act of 1978 was passed in order to clarify the extent to which foreign States were entitled to sovereign immunity from proceedings before the English courts. "Sovereign immunity" is an ancient concept of international law that is designed to prevent the courts of one state passing judgment on the conduct of another. It was generally held that the ability to issue any such judgment would be inconsistent with the dignity and the sovereign equality of the defendant state.

Descending slightly from this lofty ivory tower, the 1978 act was also intended to provide an incentive for foreign states to place their reserves with institutions in the City of London. Foreign governments would be more likely to use the facilities of the City if their assets were immune from attachment by creditors.

The act is complex, but much of it can be discarded in the present context. It is merely necessary to examine those limited cases in which – in the absence