



**The Cayman Islands
Law Reform Commission**

**The Enforcement of Foreign
Judgments and Interim Orders**

**Part I
Final Report**

**Interim Orders in Aid of Foreign
Proceedings**

8th March, 2013

The Cayman Islands Law Reform Commission

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The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contribution leading up to the formulation of legislative proposals intended to facilitate interim orders in aid of foreign proceedings.

INTERIM ORDERS IN AID OF FOREIGN PROCEEDINGS

INTRODUCTION

1. The Law Reform Commission submits for consideration a Bill entitled “The Grand Court (Amendment) Bill, 2013”. This Bill contains legislative proposals intended to empower the Grand Court, in the exercise of its discretion, to facilitate proceedings that have commenced in a foreign superior court, by enforcing any order made for interim relief in circumstances where there is no substantive cause of action within the Cayman Islands.

2. Our proposals reflect the judicial principles and approaches of superior courts, within and outside the Islands. The relevant principles and approaches signal a willingness on the part of the judiciary to facilitate, on an interim basis, proceedings commenced in foreign jurisdictions in the absence of any local substantive proceedings or legislative framework.

BACKGROUND

3. In keeping with our law reform agenda, the Law Reform Commission (LRC), in August 2011, commenced research into the following issues-

- (a) the process through which judgments of the Cayman Islands Grand Court are enforceable in the United Kingdom;
- (b) the process through which judgments of the United Kingdom superior courts are enforceable in the Cayman Islands;
- (c) the enforcement of foreign superior court non-monetary judgments in the Cayman Islands; and
- (d) facilitating the enforcement of foreign interim orders in the Cayman Islands.

4. For purposes of this report, focus will be placed on the enforcement of foreign interim orders within the Cayman Islands. The other issues will be dealt with in a second report.

RESEARCH AND CONSULTATION PROCESS

5. The LRC commenced its research by examining the Mareva injunction concept. This examination extended to the question of whether all foreign interim/interlocutory orders should be enforceable by the Grand Court.

6. Our research was primarily informed by an examination of the Cayman Islands cases of *Gillies-Smith v Smith*¹ and *VTB Capital Plc v. Malofeev*².

7. We also benefited from an examination of the following legislation-

- (a) the Hong Kong High Court Ordinance, 2009;
- (b) the Isle of Man High Court Act, 1991;
- (c) the UK Civil Jurisdiction and Judgments Act, 1982;
- (d) the Bahamas Supreme Court Act, 1996; and
- (e) the Bermuda Supreme Court Act, 1989 Revision.

8. The research findings of the LRC were relied upon in the formulation of an Issues Paper entitled “The Enforcement of Foreign Judgments and Interim Orders” of 6th March 2012”. This paper was published for public comment generally and specifically forwarded to the-

- Hon. Chief Justice;
- Cayman Islands Law Society;
- Cayman Islands Bar Association;
- Cayman Islands Society of Professional Accountants;
- Society of Trust & Estate Practitioners;
- Cayman Islands Chamber of Commerce; and
- Cayman Islands Bankers’ Association; and
- Cayman Islands Compliance Association.

Discussion of the issue of facilitating the enforcement of foreign interim orders in the Cayman Islands

9. In the Issues Paper we examined whether Mareva injunctions can be enforced in the Cayman Islands without their being substantive proceedings within the jurisdiction. The discussion was appropriately expanded to address the issue of whether the Grand Court should be empowered to enforce any interim order to facilitate proceedings that may have commenced in foreign courts.

10. From a historical perspective, a Mareva injunction was described as an interlocutory injunction which was regarded as draconian in nature. In that regard, the courts in general showed a reluctance in granting it unless certain safeguards were present.

11. However, it was pointed out that it has now been accepted that a Mareva injunction and similar forms of interim relief are appropriate and a necessity in the context of modern realities. The advances achieved in the field of information

¹ Unreported, Quin J, May 12 2011.

² Unreported, Cresswell J, August 18 2011. Later decisions are reflected in *VTB Capital Plc v Malofeev & Two others* (unreported, CICA, Cause No. 9 of 2011, 30 November 2011) and *VTB Capital Plc v Malofeev & Two others* (unreported, Grand Court, Cause No. FSD 141 of 2011, 16 January 2012)

technology allow large amounts of money to be transferred out of jurisdiction and for intellectual property rights to be breached within minutes of their creation.³ The international trend therefore, as articulated in the Issues Paper, is for courts to demonstrate that they will grant all reasonable forms of interlocutory relief even though the assets or accounts to be frozen are outside their jurisdiction.

12. The two local cases which formed the basis of the examination in the Issues Paper were the *Gillies-Smith v Smith*⁴ and *VTB Capital Plc v Malofeev*⁵. The issue which was brought to the fore in these cases was whether the Grand Court has jurisdiction to give effect to injunctive relief issued in another jurisdiction in circumstances where the assets affected by the injunction are in the Cayman Islands and there are no substantive proceedings in relation to those assets.

Gillies-Smith v Smith

13. The judgment in *Gillies-Smith* is regarded as a landmark decision for Cayman purposes. In this case the plaintiff argued successfully in Canada that under Ontario law assets acquired during the marriage were matrimonial property, and that the defendant had moved assets out of Canada and into the Cayman Islands. The plaintiff obtained an injunction in Ontario freezing the defendant's assets, including the Cayman Islands property and bank accounts. She then sought and obtained *ex parte* a freezing order in the Cayman Islands in relation to the Cayman Islands property and bank accounts. The court reasoned that the plaintiff had a justiciable cause of action in the Cayman Islands - namely, to give effect to the injunction issued in Ontario and to obtain a freezing order in the Cayman Islands until the final determination of the Ontario proceedings.

14. The Grand Court, in arriving at its decision considered the jurisprudence from the Privy Council and several leading Cayman Islands decisions.⁶ However, particularly instructive in the *Gillies-Smith* case was the dicta of Lord Nicholls referred to in *Mercedes-Benz AG v Leiduck*⁷) where he stated that:

“They (practicing [sic] lawyers) do not always appreciate that the range of causes of action already extends very widely, into areas where identification of the underlying 'right' may be elusive...If ... where the court is seized only of a claim for interim relief, that claim must bear the burden of being labeled a cause of action if intervention by the court is to be justified, let that be so. The law continues to adapt and develop.”

³ Y.C. Choong, “Contra Bonos Mores: Religious Tenets and National Philosophy as the Yardstick for Determining Policy”, (2007) Volume 9(1) Australian Journal of Asian Law, pp 176-185.

⁴ Unreported, Quin J, May 12 2011.

⁵ Unreported, Cresswell J, August 18 2011. Later decisions are reflected in *VTB Capital Plc v Malofeev & Two others* (unreported, CICA, Cause No. 9 of 2011, 30 November 2011) and *VTB Capital Plc v Malofeev & Two others* (unreported, Grand Court, Cause No. FSD 141 of 2011, 16 January 2012)

⁶ *Bass v Bass*, 2001, CILR 317, *International Wireless Inc v CVC/Opportunity Equity Partners LP*, 2002, CILR note 22.

⁷ [1996] 1 AC 284.

15. Further Lord Nicholls states:

“The court habitually grants injunctions in respect of certain types of conduct. But that does not mean that the situations in which injunctions may be granted are now set in stone for all time. The grant of Mareva injunctions itself gives the lie to this. As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice. Injustice is to be viewed and decided in the light of today's conditions and standards, not those of yesteryear.”

16. Finally he states *“...his assets are in Hong Kong, so the Monaco court cannot reach him; he is in Monaco, so the Hong Kong court cannot reach him. That cannot be right. This is not acceptable today. A person operating internationally cannot so easily defeat the judicial process. There is not a black hole into which a defendant can escape out of sight and become unreachable.”*

17. Reference was also made to Henderson J's decision in *Deloitte and Touche v. Felderhof* where he states:

“The Trustee says that its intention has always been to convert the Cayman action into one which is ancillary to and in aid of the actions in Canada. It says that the Mareva Injunction here is needed to render more efficacious the Canadian proceedings and any judgments he may obtain in Canada.”

18. Henderson J. referred to the House of Lords case of *Channel Tunnel Group Ltd. v. Balfour Beatty Construction Ltd.*⁸ and added, *“It has been clear that the Grand Court has jurisdiction to issue Mareva injunctions in aid of foreign proceedings even though the parties have no intent to litigate the substance of their dispute in this jurisdiction.”*

VTB Capital Plc v. Malofeev

19. The case of *VTB Capital plc v Malofeev*⁹, involved three defendants, “D1” a resident of Russia, “D2”, a fund and the fund’s manager “D3”. The plaintiff, an English bank sued the defendants in England on the basis that fraudulent misrepresentations were made by the defendants. Consequently, an ex parte application was made by the plaintiff seeking a freezing injunction in the Cayman Islands against the defendants.

20. Justice Cresswell refused to grant leave to serve D1 out of the jurisdiction holding that an injunction in support of proceedings abroad was “interlocutory” and accordingly Order 11 of the Grand Court Rules specifically prohibited the granting of permission to serve out of the jurisdiction a writ seeking only such an injunction. He however granted a temporary freezing injunction against D2 and D3 until such time as he was able to hear full arguments.

⁸ [1993] A.C. 334.

⁹ Unreported, Cresswell J, August 18 2011.

21. On appeal¹⁰, the Court upheld the decision to refuse leave for the plaintiff to serve out of the jurisdiction. Sir John Chadwick PC¹¹ found that the Grand Court Rules did not permit the grant of leave to serve a defendant out of the jurisdiction if the primary relief sought was a freezing injunction in support of foreign proceedings. The Court of Appeal argued that, while in the *Gillies Smith* case Quin J sought to facilitate the expansion of the Mareva jurisdiction, steps in that direction “*should be taken by the rulemaking body, or perhaps the legislature, in this jurisdiction*”. On that basis it was felt that Quin J had erred.

22. In allowing the challenge of D2 and D3 in relation to the freezing order made against them, Cresswell J found that the Court had no such jurisdiction¹². It was reasoned that a freezing order could be granted in aid of a foreign proceedings only if substantive proceedings were to be commenced against the defendant in the Cayman Islands.

23. Cresswell J noted that in England, section 25 of the English Civil Jurisdiction and Judgments Act 1982 aids proceedings in other jurisdictions by facilitating the grant of free-standing freezing orders. The Act permits in clear terms the grant of freezing orders in England. Cresswell J supported the public policy considerations for permitting free-standing freezing orders in the Cayman Islands but found that if the jurisdiction of the Court was to be expanded, then this was properly a matter for the legislature.¹³

Reform options to facilitate interim proceedings

24. The LRC, in its Issues Paper, recommended that in order to advance the Cayman judicial process, it seems appropriate for legislation to build upon the foundation laid by the common law and to seek to bring clarity and certainty to this issue. In this regard, the objective would be to facilitate the proceedings of foreign jurisdictions by granting the appropriate interim relief. It was cautioned that this facilitation should be subject to the tests in freezing order cases, such as the necessity for a good arguable case, a real risk of the dissipation of assets, a consideration of the balance of convenience and whether the grant of a freezing order would render the foreign proceedings more efficacious.

25. In proposing specific legislative changes the LRC examined several statutory precedents dealing with this issue in the United Kingdom, Isle of Man, Hong Kong, Bahamas and Bermuda.

The UK Civil Jurisdiction and Judgments Act, 1982

26. The UK Civil Jurisdiction and Judgments Act, 1982 (“1982 Act”) was suggested by Justice Cresswell as the precedent that should be adopted to facilitate interim proceedings in the Cayman Islands.

¹⁰ *VTB Capital Plc v Malofeev & Two others* (unreported, CICA, Cause No. 9 of 2011, 30 November 2011)

¹¹ President of the Court of Appeal.

¹² *VTB Capital Plc v Malofeev & Two others* (unreported, Grand Court, Cause No. FSD 141 of 2011, 16 January 2012).

¹³ Case summary informed by article authored by Maples and Calder, *Freezing Orders in the Cayman Islands – Anything But Frozen*, February, 2012.

27. The LRC thought it useful to note that prior to the coming into force of the Civil Jurisdiction and Judgments Act, 1982 the courts of England and Wales had previously been reluctant to grant interim or provisional relief where the substantive proceedings were not or were not about to be instituted in England and Wales.¹⁴

28. However, now, section 25 of the “1982 Act” empowers English courts to grant interim relief in aid of foreign proceedings provided (i) proceedings have been or are about to be commenced in a Brussels, Lugano or a Regulation state and (ii) the subject matter is within the scope of the legislation.

29. Section 25 of the “1982 Act” has also been extended by Order in Council¹⁵ so that it now permits the High Court to grant interim relief in aid of any proceedings, within or without the Conventions, and wherever in the world an action has been commenced.

30. Under the “1982 Act” “interim relief” is defined to mean interim relief of any kind which that court has power to grant in proceedings relating to matters within its jurisdiction, other than (a) a warrant for the arrest of property; or (b) provision for obtaining evidence.

31. The courts in England have a wide range of interim remedies primarily listed under Part 25 of the Civil Procedural Rules (CPR)¹⁶. These powers include:

- an interim injunction;
- an interim declaration;
- an Order referred to as a freezing injunction;
- an Order known as a search order;
- an Order:
 - for the detention, custody or preservation of relevant property;
 - for the inspection of relevant property;
 - for the taking of a sample of relevant property;
 - for the carrying out of an experiment on or with relevant property;
 - for the sale of relevant property which is perishable, or where there is good reason to sell quickly;
 - for the payment of income from relevant property;
 - authorising any person to enter any land or building in order to execute a court order;
 - under section 4 of the Torts (Interference with Goods) Act 1977 to deliver up goods;

¹⁴ Foreign Judgments- Attachment of Assets in England, Chris Millar, Partner, Dispute Resolution, September, 2011.

¹⁵ The Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997, SI 1997 No 302.

¹⁶ Practice Direction 25A – Interim Injunctions This Practice Direction supplements CPR Part 25 and Practice Direction 25B – Interim Payments This Practice Direction supplements CPR Part 25.

- directing a party to provide information about the location of relevant property or assets or to provide information about the relevant property or assets which are, or may be, the subject of a freezing injunction;
 - for pre-action disclosure of documents or inspection of property;
 - for disclosure (in certain circumstances) or inspection of property against a non-party;
 - for a specified sum to be paid into court, or otherwise secured, where there is a dispute over a party's right to the fund;
 - that a party pay money into court when a party is claiming an order for the delivery up of personal property pending the outcome of proceedings and directing that the property be given up to him, if payment is made;
 - directing a party to prepare and file accounts relating to the dispute; and
 - for the lodging of guarantees in intellectual property proceedings as a condition to the continuation of an alleged infringement;
- an interim payment.

The Isle of Man High Court Act, 1991

32. It was indicated that the position in the Isle of Man is that the court will in certain circumstances grant injunctive relief in the absence of local proceedings. This position derives from the common law¹⁷ and from statute. In particular, section 56B of the High Court Act, 1991-

- (a) empowers the High Court to grant interim relief where proceedings have been or are to be commenced in a country or territory outside the Island; and
- (b) provides the High Court with a discretion to refuse to grant relief if, in the opinion of the Court, it is inexpedient for the Court to grant relief.

33. For purpose of the Act “interim relief” means interim relief of any kind which the High Court has power to grant in proceedings relating to matters within its jurisdiction, other than a warrant for the arrest of property or provision for obtaining evidence.

The Hong Kong High Court Ordinance, 2009

34. Under the Hong Kong High Court Ordinance, section 21M makes provision for interim relief in the absence of substantive proceedings. The High Court may appoint a receiver or grant other interim relief in relation to proceedings that have been or are to be commenced in a place outside Hong Kong and are capable of giving rise to a judgment which may be enforced in Hong Kong.

¹⁷ *Re Securities & Inv. Ed* on September 16, 1997.

The Bahamas Supreme Court Act, 1996

35. The Bahamas Supreme Court Act, 1996 provides for the grant of interim relief. In particular, section 21 provides for the court, by order conditionally or unconditionally, to grant an injunction in all cases in which it appears just and convenient to do so.¹⁸

The Bermuda Supreme Court Act, 1989 Revision

36. The Bermuda Supreme Court Act provides for the grant of an injunction by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient for the order to be made.

37. In the Issues Paper it was pointed out that all of the above legislation seek to empower the court to facilitate interim proceedings in the interest of justice.

38. A related issue raised in the paper was whether the basis for granting interim relief to a foreign jurisdiction should be predicated on the countries identified by the Governor in Cabinet by order, or whether the power to decide when to grant interim relief should fall within the sole purview of the Courts as seems to be contemplated under UK, Isle of Man, Bahamian, Hong Kong and Bermudian legislation.

Comments on the Issues Paper

39. The consultation period on the Issues Paper was originally set to expire on 26th March, 2012. However, based on two separate requests¹⁹ to extend our consultation period, the deadline for submissions was extended respectively to 16th April, 2012 and then to 30th April, 2012. By the end of the consultation period, the LRC received responses from Justice Creswell²⁰, the joint committee of the Cayman Islands Law Society²¹ and the Cayman Islands Bar Association (CILS/CBA) and Bermudian attorney, Mr. Alex Potts²².

40. The CILS/CBA in their comments expressed support for the proposed reforms in this area and felt it appropriate to enable the Grand Court to grant interim relief in the facilitation of foreign proceedings where there are no substantive proceedings in the Cayman Islands.

41. In assessing the legislative precedents identified in our Issues Paper, the CILS/CBA recommended the adoption of the Hong Kong High Court Ordinance as

¹⁸It is also useful to note that similar to the section 44(3)(e) of the UK Arbitration Act, 1996 which enables the High Court to grant interim relief in aid of arbitration proceedings, the LRC made similar proposals for the consideration in its Final Report on the Review of the Arbitration Law of the Cayman Islands, 4th January, 2012.

¹⁹Mr. Nigel Meeson Q.C., Chair of the Cayman Islands Law Society and Bar Association joint committee.

²⁰Response forwarded via email 27th January 2012- Sir Justice Cresswell's comments were in relation to the accuracy of the summation of the case *VTB Capital plc v Malofeev*.

²¹Response forwarded via email 27th April, 2012

²²Response forwarded via email 23rd March, 2012

opposed to the 25 of the UK Civil Jurisdiction and Judgments Act which was suggested by Justice Cresswell in his judgment in the *VTB Capital* case. The argument of the CILS/CBA is that the Hong Kong legislation is limited to cases where a judgment would be enforceable in Hong Kong and it further provides the court with an overriding discretion. It also extends generally to all interlocutory orders.

42. Further, in response to the issue of whether a recommendation should be made for the Governor in Cabinet to direct how the grant of interim relief should be governed and the jurisdictions which should be the beneficiary of such relief, the CILS/CBA hold the view that the question of whether interim relief should be granted should be left to the discretion of the Court and should not be limited to any list of designated jurisdictions.

43. Mr. Alex Potts, in commenting on the reliance on the Bermuda Supreme Court Act to inform our legislative reforms, stated that the Act is not conventionally thought of as the source of a power or jurisdiction to grant interlocutory or interim orders in aid of purely foreign proceedings. As such it is his view that we should not treat the Bermuda legislation as a suitable precedent for our purposes.

44. The LRC, having examined the comments of stakeholders, generally accepted the suggestions as they are consistent with our views. While we believe that the Hong Kong legislative approach is similar in several respects to the UK legislative approach since they share the common objective of facilitating foreign interim relief, the specific provisions in the Hong Kong legislation are more in line with the formulation we have in contemplation and clearly deal with the areas that are the focus of our reforms.

45. It is useful to note that the main difference between the Hong Kong and UK legislation is that the UK Act permits executive intervention in the form of an Order in Council which may be made conferring, among other things, power to grant only specified descriptions of interim relief and to make different provision for different classes of proceedings for different jurisdictions.

46. However, the LRC's view and one that is also supported by the CILS/CBA, is that the grant of interim relief should fall solely within the purview of the Grand Court. A law which facilitates the court in granting interim relief in aid of foreign proceedings would enhance the overall jurisdiction of the Grand Court.

47. Further, it is the LRC's view that if the Grand Court were to adopt the position of unwillingness to assist the courts of other jurisdictions by granting relief in the form of, for example, temporarily freezing the assets of defendants sued in those jurisdictions, such a position may be seen as tantamount to a breach of the duty of comity. There is a need to expressly avoid any notion that the Cayman Islands can be viewed as a cover for persons wishing to evade liabilities imposed on them by the courts to which they are subject.²³

²³ Solvalub Limited v Match Investments.

48. The pronouncements of the Grand Court should be and have been ones which reflect creativity and a liberal attitude to ensure that legal activities are not impeded through the application of obsolete rules and principles.²⁴

Comments on the Grand Court (Amendment) Bill, 2012

49. Based on the views of stakeholders, the LRC formulated a draft Bill entitled “The Grand Court (Amendment) Bill, 2012” (see Appendix I). This Bill contained legislative proposals intended to empower the Grand Court, in the exercise of its discretion, to facilitate proceedings that have commenced in a foreign superior court, by enforcing any order made for interim relief in circumstances where there is no substantive cause of action within the Cayman Islands’ jurisdiction.

50. This Bill was forwarded to the Chief Justice on 26th July, 2012 and later to the CILS/CBA on 28th September, 2012 for consultation. The consultation period expired on 1st November, 2012 but was however extended to accommodate submissions by the CILS/CBA which were received on 3rd December, 2012. No comments were received from the judiciary on the Bill.

51. The CILS/CBA expressed agreement with the provisions contained in the Bill. However, there was concern in relation to clause 11A(2)(b) which it was felt may preclude a proper application made to the Grand Court for an order for evidence to be obtained in the Cayman Islands. Based on that concern it was agreed to delete paragraph (b) and place the issue within the jurisdiction of the Grand Court pursuant to the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 as is the current position. Consequentially, paragraph 11A(2)(a) which dealt with a warrant for the arrest of property was also deleted since similar concerns would apply.

52. The CILS/CBA correctly indicated that consequential changes to the Grand Court Rules will be necessary to allow for service out of the jurisdiction and for those Rules to specify the requisite originating procedure applicable for commencing claims under the proposed section 11A.

Recommendations

53. Accordingly, the LRC recommends that the Cayman legislative framework should follow the Hong Kong and UK legislation in the form of the proposed Grand Court (Amendment) Bill, 2013 reflected in Appendix II. Additionally, the Grand Court, in the formulation of any rules that it deems necessary to support the proposals may benefit from Part 25 of the UK Civil Procedural Rules (CPR)²⁵ and the Hong Kong Rules of the High Court.

²⁴ Y.C. Choong, Enforcement of Foreign Judgments: The Role of the Courts in Promoting or Impeding Global Business, World Academy of Science, Engineering and Technology 30 2007.

²⁵ Practice Direction 25A – Interim Injunctions This Practice Direction supplements CPR Part 25 and Practice Direction 25B – Interim Payments This Practice Direction supplements CPR Part 25.

54. The proposed Grand Court (Amendment) Bill, 2013 primarily provides for the following-

- (a) it permits the Grand Court to make an order appointing a receiver or granting other interim relief in proceedings which have been or are to be commenced in a court outside the Islands and are capable of giving rise to a judgment which may be enforced in the Islands under any Law or at common law;
- (b) it defines interim relief to include an interlocutory injunction;
- (c) it permits the Court to grant interim relief of any kind which it has power to grant in proceedings relating to matters within its jurisdiction;
- (d) the court has a discretion to attach conditions to an interim order;
- (e) it empowers the Court to refuse an application for appointment of a receiver or the grant of interim relief if, in its opinion, it would be unjust or inconvenient to approve the application;
- (f) in making an order, it requires the Court to have regard to the fact that its power is ancillary to proceedings that have been or are to be commenced in a place outside the Islands and are for the purpose of facilitating the process of a court outside the Islands;
- (g) it permits the Court to retain the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under the legislation as if the order were granted in relation to proceedings commenced in the Islands; and
- (h) the Court may make rules applicable to an application for appointment of a receiver or interim relief and for the service out of the jurisdiction.

Conclusion

55. The enforcement of foreign interim relief measures remains primarily an issue of judicial discretion based on growing precedent and reliance on general principles of comity and common law. From all indications it is an issue which calls for legislative intervention. Such intervention will have the effect of facilitating certainty in the application of the law and ultimately assist in development of a business friendly environment for the recognition and enforcement interim remedies. If the Grand Court were to adopt the position of unwillingness to assist the courts of other jurisdictions by temporarily freezing the assets of defendants sued in those jurisdictions such a position may be seen as tantamount to a breach of the duty of comity.

56. There is a need to expressly avoid any notion that the Cayman Islands can be viewed as a safe haven for persons wishing to evade liabilities imposed on them by the courts to which they are subject.²⁷ The pronouncements of the of courts should be and have been ones which reflect creativity and a liberal attitude to ensure that legal activities are not impeded through the application of obsolete rules and principles.

57. Against the background of the issues identified, the legislative precedents examined and the comments of stakeholders, the Law Reform Commission submits for the consideration of the Hon. Attorney General its Final Report on interim orders in aid of foreign proceedings including a draft Grand Court (Amendment) Bill, 2013.



Ian Paget-Brown
Chairman

8th March, 2013

²⁷ Solvalub Limited v Match Investments.

Appendix I

Consultation Grand Court (Amendment) Bill, 2012

28th September, 2012
CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE GRAND COURT LAW (2008
REVISION) IN ORDER TO PROVIDE FOR INTERIM RELIEF IN THE
ABSENCE OF SUBSTANTIVE PROCEEDINGS IN THE ISLANDS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE GRAND COURT (AMENDMENT) BILL, 2012

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Grand Court Law (2008 Revision) in order to empower the Court to provide interim relief to parties in circumstances where the substantive proceedings have not originated within the Islands.

Clause 1 contains the short title and the commencement provisions.

Clause 2 removes reference to Supreme Court of Judicature (Consolidation) Act, 1925 and replaces it with the Senior Courts Act, 1981 in keeping with the current designation.

Clause 3 inserts a new section 11A which seeks to empower the Court to appoint a receiver or to grant other interim relief in relation to proceedings which have been or are to be commenced in a court outside the Islands and are capable of giving rise to a judgment which may be enforced in the Islands under any Law or at common law.

DRAFT

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE GRAND COURT LAW (2008 REVISION) IN ORDER TO PROVIDE FOR INTERIM RELIEF IN THE ABSENCE OF SUBSTANTIVE PROCEEDINGS IN THE ISLANDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Grand Court (Amendment) Law, 2012.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

2. The Grand Court Law (2008 Revision) is amended in section 11(1) by deleting the words "as constituted by the Supreme Court of Judicature (Consolidation) Act, 1925, and any Act of the Parliament of the United Kingdom amending or replacing that Act." and substituting the words "as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act."

Amendment of section 11 of the Grand Court Law (2008 Revision) - jurisdiction vested in the Court

3. The Grand Court Law (2008 Revision) is amended by inserting after section 11 the following section -

Insertion of section 11A- interim relief in the absence of substantive proceedings in the Islands

"Interim relief in the absence of substantive proceedings in the Islands

11A. (1) The Court may by order appoint a receiver or grant other interim relief in relation to proceedings which-

- (a) have been or are to be commenced in a court outside the Islands; and
- (b) are capable of giving rise to a judgment which may be enforced in the Islands under any Law or at common law.

(2) The Court may grant interim relief of any kind which it has power to grant in proceedings relating to matters within its jurisdiction, other than -

- (a) a warrant for the arrest of property; or
- (b) provision for obtaining evidence.

(3) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(4) Subsection (1) applies notwithstanding that the-

- (a) subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court would have jurisdiction; or
- (b) appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in the Islands.

(5) The Court may refuse an application for appointment of a receiver or the grant of interim relief if, in its opinion, it would be unjust or inconvenient to grant the application.

(6) In exercising the power under subsection (1), the Court shall have regard to the fact that the power is-

- (a) ancillary to proceedings that have been or are to be commenced in a place outside the Islands; and
- (b) for the purpose of facilitating the process of a court outside the Islands that has primary jurisdiction over such proceedings.

(7) The Court has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under this section as

if the order were granted in relation to proceedings commenced in the Islands.

(8) The power to make Rules under section 19 includes power to make Rules for-

- (a) the making of an application for appointment of a receiver or interim relief under subsection (1); and
- (b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(9) Any Rules made by virtue of this section may include incidental, supplementary and consequential provisions as the Rules Committee considers necessary.

(10) In this section, "interim relief" includes an interlocutory injunction."

Passed by the Legislative Assembly the day of , 2012.

Speaker.

Clerk of the Legislative Assembly.

Appendix II

Final Grand Court (Amendment) Bill, 2013

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE GRAND COURT LAW (2008
REVISION) IN ORDER TO PROVIDE FOR INTERIM RELIEF IN THE
ABSENCE OF SUBSTANTIVE PROCEEDINGS IN THE ISLANDS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE GRAND COURT (AMENDMENT) BILL, 2013

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Grand Court Law (2008 Revision) in order to empower the Court to provide interim relief to parties in circumstances where the substantive proceedings have not originated within the Islands.

Clause 1 contains the short title and the commencement provisions.

Clause 2 removes reference to the Supreme Court of Judicature (Consolidation) Act, 1925 and replaces it with the Senior Courts Act, 1981 in keeping with the current designation.

Clause 3 inserts a new section 11A which seeks to empower the Court to appoint a receiver or to grant other interim relief in relation to proceedings which have been or are to be commenced in a court outside the Islands and are capable of giving rise to a judgment which may be enforced in the Islands under any law or at common law.

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE GRAND COURT LAW (2008 REVISION) IN ORDER TO PROVIDE FOR INTERIM RELIEF IN THE ABSENCE OF SUBSTANTIVE PROCEEDINGS IN THE ISLANDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Grand Court (Amendment) Law, 2013. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

2. The Grand Court Law (2008 Revision) is amended in section 11(1) by deleting the words “as constituted by the Supreme Court of Judicature (Consolidation) Act, 1925, and any Act of the Parliament of the United Kingdom amending or replacing that Act.” and by substituting the words “as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act.” Amendment of section 11 of the Grand Court Law (2008 Revision) - jurisdiction vested in the Court

3. The Grand Court Law (2008 Revision) is amended by inserting after section 11 the following section - Insertion of section 11A - interim relief in the absence of substantive proceedings in the Islands

“Interim relief in the absence of substantive proceedings in the Islands	11A. (1) The Court may by order appoint a receiver or grant other interim relief in relation to proceedings which-
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- (a) have been or are to be commenced in a court outside of the Islands; and
- (b) are capable of giving rise to a judgment which may be enforced in the Islands under any Law or at common law.

(2) The Court may, pursuant to this section, grant interim relief of any kind which it has power to grant in proceedings relating to matters within its jurisdiction.

(3) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(4) Subsection (1) applies notwithstanding that -

- (a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court would have jurisdiction; or
- (b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in the Islands.

(5) The Court may refuse an application for the appointment of a receiver or the grant of interim relief if, in its opinion, it would be unjust or inconvenient to grant the application.

(6) In exercising the power under subsection (1), the Court shall have regard to the fact that the power is-

- (a) ancillary to proceedings that have been or are to be commenced in a place outside the Islands; and
- (b) for the purpose of facilitating the process of a court outside the Islands that has primary jurisdiction over such proceedings.

(7) The Court has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under this section as if the order were granted in relation to proceedings

commenced in the Islands.

(8) The power to make Rules under section 19 includes power to make Rules for-

- (a) the making of an application for appointment of a receiver or interim relief under subsection (1); and
- (b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(9) Any Rules made by virtue of this section may include incidental, supplementary and consequential provisions as the Rules Committee considers necessary.

(10) In this section, "interim relief" includes an interlocutory injunction."

Passed by the Legislative Assembly the day of , 2013.

Speaker.

Clerk of the Legislative Assembly.

