



## New Decision on Injunctive Relief in the BVI

It has traditionally been thought that free-standing injunctive relief is not available in the British Virgin Islands ('BVI'). A recent decision of Mr. Justice Bannister sitting in the Eastern Caribbean Supreme Court's new Commercial Division, handed down on 23rd March 2010, has cast doubt upon that wisdom.

The view that free-standing injunctive relief is not available flowed from the decision of the English House of Lords in the *Siskina* [1979] AC 210. That appeared to confine the availability of injunctive relief to cases where substantive proceedings could be tried and finally determined within the jurisdiction.

The decision in the *Siskina* has been abrogated by statute in England: first in circumstances where actual or anticipated proceedings are afoot in a Lugano Convention state (see section 25 of the Civil Jurisdiction & Judgments Act 1982), and subsequently extended in Council to proceedings in other jurisdictions: the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997, SI 1997 No 302. Those legislative developments do not extend to the BVI. It has also been whittled away by case law. In *Channel Tunnel Group v. Balfour Beatty Construction* [1993] AC 334, the House of Lords was prepared to accept that the Court did have jurisdiction to grant interlocutory relief in substantive proceedings brought in England, even if those proceedings had to be stayed to facilitate arbitral proceedings abroad.

In *Mercedes Benz v. Leiduck* [1996] AC 284, the Privy Council held that the Hong Kong Court had no jurisdiction to grant a freezing injunction against a foreign defendant in aid of foreign proceedings, but left open the question as to whether or not such relief might be available where the Defendant fell within the territorial jurisdiction of the Court. Then came two decisions at first instance in the BVI (*Alfa Telecom Turkey v. Telisonera* HCVAP2008/12 and *Sibir Energy Plc v. Gregory Trading SA* BVIHCV2005/174) which appeared to suggest that the rule in the *Siskina* was alive and well.

The Courts of Guernsey and Jersey have refused to follow it (see *Solvalub v. Match Investments* [1998] ILPr 419). Despite initial success at first instance, that trend has not been adopted in the Bahamas (*Grupo Torres SA v Mees Pierson (Bahamas) Ltd. and others* (1998) 2 OFLR 16, nor in Belize (*Securities & Exchange Commission v. Banner Fund International* 1996 54 WIR 123). Draft legislation had been circulated which

would bring the position in the BVI more in line with that now prevailing in England, but there is no sign that it will be enacted soon.

The issue has now been tested for the first time in the BVI. Echoing the approach of the Jersey court in *Solvalub*, Bannister J decided in *Black Swan Investment v. Harvest View* BVIHCV2009/399, that it would be “highly detrimental” to the interests of important offshore financial centres such as the BVI not to have within its armoury the jurisdiction to grant injunctive relief in aid of foreign proceedings where appropriate. Perhaps hinting at arguments to come, the Judge made specific reference to the terms of section 24 of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Cap 80 and held that it was open to him to resolve the question left open by the Privy Council in *Mercedes Benz* and to “fill it in this jurisdiction by respectfully adopting the [dissenting] reasoning of Lord Nicholls in *Mercedes Benz*.” The position of defendants not subject to the territorial jurisdiction of the BVI Court did not directly arise on the facts.

Inevitably, that decision has been appealed. The first hearing before the Court of Appeal took place on 17th May 2010, and it is to be hoped that the Court of Appeal will rule on the issue in its January 2011, if not its October 2010, sitting in the BVI.

For more information, please contact:



**Eliot Simpson**  
Local Group Head - Litigation & Insolvency  
Partner  
Tel: +1 284 852 5321  
Email: [esimpson@applebyglobal.com](mailto:esimpson@applebyglobal.com)



**Andrew Willins**  
Associate  
Litigation & Insolvency  
Tel: + 1 284 852 5323  
Email: [awillins@applebyglobal.com](mailto:awillins@applebyglobal.com)

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