



# Proposed amendments to the Grand Court Law: the Grand Court (Amendment) Bill, 2014

Insights - 15/07/2014

On 30 June 2014, the Grand Court (Amendment) Bill, 2014 (the **Bill**) was published with issue 13 of 2014 of the Cayman Islands Gazette, the official newspaper of the Government of the Cayman Islands. The Memorandum of Objects and Reasons in the Bill states that the object of the Bill is to 'amend the Grand Court Law (2008 Revision) in order to empower the Grand Court to provide interim relief to parties in circumstances where substantive proceedings have not originated within the Islands'.

## Background

The Bill is the result of a number of recent decisions involving applications to the Grand Court of the Cayman Islands for *Mareva* injunctions<sup>1</sup> to freeze Cayman Islands assets in aid of foreign proceedings (including *Gillies-Smith v Smith*<sup>2</sup>, in which Ogier acted for the plaintiff and successfully obtained a *Mareva* injunction against a non-resident defendant, and *VTB Capital v Malofeev*<sup>3</sup>, in which the Court declined to follow *Gillies-Smith* and refused to grant a *Mareva* injunction against a foreign defendant). One of the questions in those cases was whether the Grand Court had the power to grant the plaintiffs leave to serve the proceedings on a foreign defendant out of the jurisdiction of the Cayman Islands, when the relief sought was the *Mareva* injunction itself and there was no substantive cause of action in Cayman (commonly called a 'free standing *Mareva* injunction').

In *Gillies-Smith* the Court granted the plaintiff leave to serve the defendant out of the jurisdiction under Order 11, rule 1(1)(b) of the Grand Court Rules, on the basis that the *Mareva* injunction sought was a final injunction pending the determination of matrimonial proceedings in Canada, and did not therefore fall foul of the provision in that rule which precludes the grant of leave in applications for interlocutory injunctions. In *VTB Capital*, on the other hand, the Court found that applications for free standing *Mareva* injunctions were in fact interlocutory applications and that the Court did not therefore have the power to give leave to serve the proceedings out of the jurisdiction.

## The Bill

The Bill proposes to insert a new section 11A into the Grand Court Law (2008 Revision) which would give the Grand Court power to grant interim relief in the absence of substantive proceedings in the Cayman Islands. The proposed section 11A provides that the Grand 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 of the [Cayman] 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*'. The Bill states that the interim relief which can be granted includes '*interim relief of any kind which it [the Court] has power to grant in proceedings relating to matters within its jurisdiction*' (i.e. including Mareva injunctions) and it defines '*interim relief*' as including '*an interlocutory injunction*'.

The Bill also proposes to give the Rules Committee (which consists of the Chief Justice, the Attorney General and two legal practitioners appointed by the Chief Justice) the power to make rules (i.e. to amend the Grand Court Rules) for '*(a) the making of an application for [the] appointment of a receiver or interim relief... and (b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief*'. It is therefore expected that if the Bill is passed into law and the amendments to the Grand Court Law are enacted, the Rules Committee will make corresponding amendments to Order 11 of the Grand Court Rules to expressly permit the service of applications for free standing *Mareva* injunctions out of the jurisdiction of the Cayman Islands.

## Comment

It is not known, at this stage, when the Bill will be considered by the Legislative Assembly of the Cayman Islands or when or if it is likely to be enacted. It is however a welcome development and is likely to prove to be an invaluable tool for parties to litigation in foreign jurisdictions who wish to secure Cayman Islands assets pending the determination of those foreign proceedings.

1 So named after the first case in which such an injunction was granted - *Mareva Cia Naviera SA v. International Bulk Carriers SA* [1975] 2 Lloyd's Rep 509

2 Unreported, Quin J., 10 May 2011

3 [2012 (1) CILR 7]

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