

Amendments to the Grand Court Rules: free standing Mareva injunctions

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On Friday, 12 December 2014, the Grand Court (Amendment) Rules 2014 (the “Amendment Rules”) were published with Extraordinary Gazette 94 of 2014 and came into immediate effect. The Amendment Rules are the final step in the recent suite of revisions to the Grand Court Law and the Grand Court Rules which give the Grand Court power to grant interim relief in the absence of substantive proceedings in the Cayman Islands, and follow the publication of the Grand Court (Amendment) Bill, 2014 in June 2014, the Grand Court (Amendment) Law, 2014 in October 2014 and the Grand Court Amendment Law, 2014 (Commencement) Order, 2014 in November 2014. A copy of our briefing on the Grand Court (Amendment) Bill, 2014, which sets out the background to and rationale for the amendments can be [found](#).

The Amendment Rules replace Order 11 of the Grand Court Rules with a new version which contains three changes:

1. First, the proviso in Order 11, rule 1(1)(b) has been deleted, so a litigant can now obtain leave to serve a writ out of the jurisdiction of the Cayman Islands in cases where ‘an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction...’. Previously rule 1(1)(b) stated that ‘a claim for an interlocutory injunction shall not of itself be a sufficient ground for service of a writ out of the jurisdiction’, which, following the decision in *VTB Capital v Malofeev* [2012 (1) CILR 7], precluded the Grand Court from granting a litigant leave to serve a writ out of the jurisdiction when the relief sought was the injunction itself and there was no substantive cause of action in Cayman (a ‘free standing Mareva injunction’);
2. Secondly, a new rule 1(1)(n) has been added to Order 11, to expressly give the Court power to grant leave to serve a writ out of the jurisdiction when ‘the claim is brought for any relief or

remedy pursuant to section 11A of the Grand Court Law'. Section 11A was added to the Grand Court Law by the Grand Court (Amendment) Law, 2014 which was published in October 2014 and came into effect on 24 November 2014, and a summary of that new section is contained in our briefing on the Grand Court (Amendment) Bill, 2014 (see the above link); and

3. Thirdly, Order 11, rule 1(2) has been amended to expressly provide that leave to serve a writ out of the jurisdiction is not necessary if every claim made in the action is made pursuant to sections 48, 63, 64, 67, 68, 72, 103 or 104 of the Trusts Law (2011 Revision), whereas the previous version of that rule only referred to applications made pursuant to section 48 of the Trusts Law. This now means that it is not necessary to make an application for leave to serve out in relation to applications for:

- advice or direction on any question respecting the management or administration of trust money or the assets of any testator or intestate (section 48);
- the Court to confer upon a trustee the power to sell, lease, mortgage, surrender, release or make other disposition of any property vested in the trustee in the absence of a power for that purpose in the trust instrument, where it is expedient for the Court to do so (section 63);
- an order for the appointment of a new trustee or an order concerning any interest in land, stock or thing in action subject to a trust, by a person beneficially interested in the land, stock or thing in action (section 64);
- relief from personal liability for breach of trust by a trustee, where the trustee has acted honestly and reasonably, and ought fairly to be excused for the breach of trust (section 67);
- an order that a trustee be indemnified from a beneficiary's interest in a trust estate, where a trustee commits a breach of trust at the instigation or request or with the written consent of that beneficiary (section 68);
- an order varying or revoking a trust or enlarging the powers of a trustee (section 72);
- an order removing any uncertainty as to the objects or mode of execution of a special trust under the Special Trusts-Alternative Regime (section 103); and
- the reform of a special trust *cy-pres* or the disposition of trust property when the execution of a special trust in accordance with its terms is or becomes impossible, impractical, unlawful, contrary to public policy or obsolete (section 104).

The ability to apply for a free standing Mareva injunction in the Cayman Islands is 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.

If you have any questions please contact [Rachael Reynolds](#) in our Cayman office or [Oliver Payne](#) in

our Hong Kong office.

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