

BVI relief in support of foreign arbitrations

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BVI Commercial Court confirms extra-jurisdictional scope of free-standing relief under Arbitration Act in support of foreign arbitrations

The Arbitration Act 2013 provides for a wide range of relief in support of arbitral proceedings under section 43. The Commercial Court in the BVI recently dealt with the question of whether that standalone relief could be sought against foreign defendants in support of foreign arbitral proceedings.

Background

The form of the Eastern Caribbean Civil Procedure Rules (the "EC CPR") has meant that, traditionally, free-standing relief, such as freezing orders and other injunctions, has not been obtainable against foreign parties. The EC CPR require certain types of relief to be sought in the form of an application, whereas the rules which permit a party to serve out on another party are limited to the service of claim forms (or other documents served pursuant to a claim form that has already been served). This has meant that, for example, the *Black Swan* jurisdiction which permits the BVI Court to grant relief in support of foreign proceedings against a person who is not a party to those proceedings, has been limited in its scope and could not involve foreign parties. This has led to the fashioning of creative claims, particularly with a view to obtaining connected relief against foreign parties.

Decision

In a recent confidential decision the Commercial Court was asked to grant injunctive relief in the form of an anti-suit injunction in aid of London arbitration proceedings being brought pursuant to a shareholders' agreement. The court granted injunctive relief not only against the BVI defendant but also against a shareholder incorporated in a foreign jurisdiction and gave permission to serve the proceedings out of the jurisdiction. It could do so, critically, because applications under section 43 Arbitration Act are properly made by fixed date claim form rather than application notice and therefore fall within the service out regime.

Comment

This new decision underlines the BVI Commercial Court's reputation for having a progressive approach to international commercial disputes. The decision reinforces the strong support that continues to be shown for arbitrations, both domestic and foreign, as embodied in the Arbitration Act 2013; and for the role of the BVI Commercial Court as a key player in multi-jurisdictional disputes. It is likely to provide further encouragement to non BVI lawyers to consider seeking support from the BVI courts in relation to substantive proceedings taking place abroad.

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