

Black Swan Flies Again – New BVI Legislation Confirms Availability of Free-Standing Interim Relief

On 7 January 2021, the British Virgin Islands ("BVI") House of Assembly enacted¹ section 24A of the Eastern Caribbean Supreme Court (Virgin Islands) Act (the "Act"), which confers statutory jurisdiction on the BVI Court to grant interim relief in support of existing or intended foreign proceedings.

This new measure is a swift, welcome response to the recent controversial decision in *Broad Idea International Limited v Convoy Collateral Limited* (BVICMAP 2019/0026), in which the Court of Appeal overruled the landmark authority, *Black Swan Investment I.S.A v Harvest View Limited et al* (BVIHCV 2009/0399). The Black Swan case had established the BVI Court's jurisdiction to grant free-standing relief in support of foreign proceedings, and had been followed and applied in countless cases in the decade since, so the Broad Idea decision was a momentous development that left the status of numerous extant freezing and Norwich Pharmacal orders in serious doubt. Moreover, the Black Swan principle had attracted widespread international acclaim for the essential contribution it enabled the BVI Court to make to international efforts to combat cross-border fraud. The Broad Idea decision was hence perceived as a damaging retrograde step that would do nothing to enhance the reputation of the Territory.

For these reasons, the BVI legal community urgently lobbied for, and provided input into the drafting of, this new measure. They also took the opportunity to call for clarification of the BVI Court's power to grant Norwich Pharmacal relief in support of foreign proceedings irrespective of any available remedies under the Evidence (Proceedings in Foreign Jurisdictions) Act, which had been the subject of uncertainty. The legislature heeded this call and the new measure also makes clear such relief may be granted.

The decision in Convoy has been appealed to the Privy Council and is due to be heard on 16 February 2021. The question of whether Black Swan was correctly decided will hence soon be revisited. The outcome of the appeal remains of some significance because, while deliberating the passage of the new measure, there were calls for it to be given retrospective effect, which the Act does not expressly provide for. It follows that Black Swan injunctions granted before 7 January 2021 remain potentially at risk of being challenged and set aside.

If you find yourself in this position or would like further information, please liaise with your regular Maples Group contact or any of the persons listed below.

¹ By virtue of The Eastern Caribbean Supreme Court (Virgin Islands) (Amendment) Act, 2020.

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