



## The Grand Court (Amendment) Law 2014

The following legal update relates to the recent introduction of Section 11A of the Grand Court (Amendment) Law 2014.

### The Grand Court (Amendment) Law 2014

#### Introduction

Introduced in response to the lingering uncertainty about the jurisdiction of the Courts to issue free-standing injunctions, the Grand Court (Amendment) Law 2014, provides a statutory framework for cross-jurisdictional litigators advising in asset tracing, civil fraud and restitutionary claims. The legislation, effective from 24 November 2014, removes the jurisdictional lacuna and endows the Courts of the Cayman Islands with powers that have been exercised in other jurisdictions of the Commonwealth.

#### Background

It is frequently the case that a cause of action can arise against a defendant in a jurisdiction in which the defendant either holds no assets or has insufficient assets to satisfy the claim. In these circumstances it is clearly advantageous to freeze or identify (discover) any assets which are held in other jurisdictions, for the benefit of the defendant, that could be used to satisfy the judgment.

Until recently the main difficulty presented to a party seeking these interim remedies against a Cayman Islands entity was that it was only possible to do so where there was a substantive cause of action arising against the entity holding the assets in the Cayman Islands. An interim injunction is not a substantive cause of action and so a party could not apply for what is often referred to as a “free standing” injunction against the asset holding Cayman Islands entity.

However, in June 2013, the Cayman Islands Court of Appeal decided, in *VTB –v- Universal Telecom Investment Strategies SPC* [2013] 2 CILR 94, that it was possible to obtain a “free standing” freezing injunction against a Cayman Islands entity which was not a defendant in a substantive action. This was welcome relief for parties who had commenced (or were about to commence) proceedings against defendants in foreign jurisdictions and would seek to enforce any judgment against assets held for the defendant by a Cayman Islands entity.



#### Key Contacts



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The principles laid down by the Court of Appeal were that:-

1. the entity against whom the freezing injunction was sought must be subject to the jurisdiction of the Cayman Islands court;
2. it did not matter that the Cayman Islands entity was not party to a substantive cause of action that was commenced in a foreign court;
3. the substantive cause of action, wherever it was being brought, must be founded on a cause of action recognised by the Cayman Islands; and
4. subject to the above conditions being satisfied, there was no reason why the defendant against whom the action was being taken in the foreign court, should not be party to the proceedings in the Cayman Islands.

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## The Legislation

The Grand Court (Amendment) Law 2014 (the 'Law') expands and clarifies these principles in a number of useful ways:-

1. Section 11A (1) does not limit the court's power to freezing injunctions, it includes the power to grant any 'interim relief' and the power to appoint a receiver over the assets held in the Cayman Islands;
2. The Law firmly establishes that the interim relief can be sought where proceedings have been or are to be commenced in a court outside the Cayman Islands. This enables a party to ensure that an application for interim relief is made before the defendant becomes aware of the litigation in a foreign court and attempts, for example, to dispose of his assets in the Cayman Islands;
3. Sections 11A (1) (b) and (4) only require that the proceedings in the foreign court are capable of giving rise to a judgment which may be enforced in the Cayman Islands. This criteria is less restrictive than the approach taken by the Court of Appeal in VTB -v- Universal Telecom Investment Strategies SPC which required that the cause of action in the foreign court must be recognised by the Cayman Islands;
4. If interim relief is granted it may be made on any conditions that the court thinks fit (subsection (3)). It is likely that conditions in relation to costs and an undertaking in damages would be standard where a freezing injunction is granted, however, the appropriate conditions will depend on a case by case basis and can be sought by the applicant or the respondent;
5. Interim relief may be refused if it would be unjust or inconvenient to grant the application (subsection (5)). It is anticipated that a Cayman Islands court may take into account whether there are other assets capable of being frozen against which an order is more easily enforceable, whether an unsuccessful application has already been made before another foreign court (and the grounds upon which it was refused), if sufficient protection already exists and whether there will be a detrimental and irreversible impact upon the Cayman Islands entity that cannot be compensated for in damages; and
6. Provision is made in subsections (8) and (9) for the Grand Court Rules Committee to make rules in relation to how an application should be commenced and, importantly, how any application can be served out of the jurisdiction. The circumstances in which a court may permit service against a party who is resident outside the Cayman Islands remains to be clarified by the Rules Committee.

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## Conclusion

On comity and mutual legal assistance grounds, the Law is a welcome addition to the ability of the Cayman Islands Courts to aid claimants. In this regard, the Law expressly requires the Court, to consider its obligation to facilitate the process of the foreign court exercising primary jurisdiction over the proceedings in issue. Indeed, the Law is a further manifestation of the Cayman Islands public policy to aid international co-operation and providing assistance to claimants without the requirement for the instigation of a substantive claim before the Cayman Islands Court.



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*If you would like further information please contact:*



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