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Mareva or Freezing Injunctions in the Cayman Islands.

A mareva or freezing injunction is an interim court order, restraining a party from dealing with, or removing, assets from the jurisdiction. Such an order is normally applied for on an *ex parte* basis (or without notice to the respondent) in order to avoid the risk of the dissipation of the assets which the injunction is intended to cover.

In order to be able to obtain a freezing injunction the applicant must show:

- (a) a good arguable case against the respondent;
- (b) that the refusal of an injunction would involve a real risk that a judgment or award in favour of the applicant would remain unsatisfied; and
- (c) that it is just and convenient for the injunction to be granted.

A good arguable case was described by Mustill, J., in *The Niedersachsen* [1983] 2 LLR 600 as 'one which is more than barely capable of serious argument, but not necessarily one which the judge considers to have a better than 50% chance of success'. The element of a real risk requires "solid evidence" of the alleged risk of dissipation as opposed to a mere expression of opinion or assertion of likelihood. Finally, the court must consider whether it is just and convenient to grant the injunction. In determining this, the court will consider factors such as the conduct of the applicant, the rights of any third parties who may be affected and the potential hardship to the respondent.

In *VTB Capital Plc v Universal Telecom Management and Anor* [2013] (2) CILR 94, the Cayman Islands Court of Appeal held that the Grand Court had jurisdiction to award free-standing mareva injunctions in support of foreign proceedings, including against third parties. The following requirements were set out:

- I. the entity against whom the freezing order is sought must be subject to the jurisdiction of the courts of the Cayman Islands;
- II. it does not matter that the Cayman Islands entity is not party to a substantive cause of action recognized by the courts of the Cayman Islands;
- III. the claim against the defendant, whether or not brought in the Cayman Islands, must be justiciable in the Cayman Islands; and
- IV. provided that points I to III above are satisfied, there is no reason why the defendant against whom the



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action is being taken in the foreign court should not be party to the proceedings in the Cayman Islands.

However, in *VTB Capital Plc v Malofeev* [2011] (2) CILR the Cayman Islands Court of Appeal held that the Grand Court could not grant leave to serve a defendant out of the jurisdiction where the only relief sought was an interim mareva injunction in support of foreign proceedings. This position has now been reversed by the introduction of s.11A of the Grand Court (Amendment) Law 2014. This 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 Islands; and
- (b) are capable of giving rise to a judgment which may be enforced in the Islands under any Cayman Islands law or at common law

The Commercial Disputes and Litigation Team at Loeb Smith has a wealth of experience in representing clients in applications for mareva injunctions and would be happy to assist with any queries you may have. For more specific advice on applying for mareva injunctions in the Cayman Islands, please contact:

David Harby

Head of Commercial Disputes and Litigation
+1 (345) 749 7494
david.harby@loebsmith.com