Collas Crill Caribbean and Bermudian Brief

Key offshore updates in one place

Welcome to the Collas Crill Caribbean and Bermudian Brief – a concise round-up of significant recent decisions and legal developments affecting offshore and cross-border litigation.

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Privy Council

Case	*Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56
Court	Privy Council (from the Court of Appeal of the Cayman Islands)
Subject	Exempted Limited Partnership **(ELP)**, just and equitable winding up, quasi-partnership not necessary for intervention of equity, ability of equity to override robust contractual clauses, availability of alternative remedies, derivative action
Judges	Lord Sales, Lord Leggatt, Lord Burrows, Lord Richards, Dame Janice Pereira

Summary: This is now the leading case on the availability of just and equitable winding up relief in relation to Cayman ELPs. The decision is likely to change the way such relief is argued – not just in Cayman but in other places where the just and equitable winding up jurisdiction is available. It further emphasises that contractual drafting (such as entire agreement clauses, non-reliance statements, and absolute discretions) will not invariably insulate decisions from equitable intervention.

Further details:

Not necessary to establish a 'quasi-partnership' - The Board reaffirmed that the jurisdiction to wind up on the just and equitable ground is not dependent on establishing a 'quasi-partnership' (itself a term of uncertain scope). The fundamental principle is that the just and equitable jurisdiction enables the court, "as equity always does", to subject the exercise of legal rights to considerations of a personal character arising between one individual and another. This requires a close examination of the relationship between the individuals which led to or provide the context for their association as shareholders, or as partners in an ELP.

Not a straightjacket - Accordingly, the application of equitable principles is not subject to a scheme of categories into which a case must sit. The Board's emphasis in this regard is likely to lead to a rather less 'formulaic' approach to pleading such relief.

Equity may intervene even in the context of robust contractual provisions - The court may wind up an ELP on the just and equitable ground where, notwithstanding entire agreement and non-reliance language and an express absolute discretion of the general partner over withdrawals, pre-entry assurances made it inequitable for the general partner to conduct itself in the manner it did.

Source of jurisdiction - The Board noted the uncertainty as to the statutory provision under which jurisdiction to wind up an ELP on the just and equitable ground arises under Cayman law. Its present view is that the source of jurisdiction is section 36(3)(g) of the ELP Act.

Key facts - Relevant to the finding that the court was entitled to wind up the ELP on the just and equitable ground was the limited partner was induced by repeated assurances that his 10% economic position would roll over into the listed vehicle and be accessible six months post-IPO. After the lock-up expired, the general partner blocked meaningful access, offering only *de minimis* sales inconsistent with those assurances. Further, no new partners were admitted who might have relied exclusively on the written terms.

Alternative remedies – It is well established that the court may, and typically will, decline to make a winding up order on a shareholder's petition where one or more alternative remedies are available to the petitioner and the petitioner is acting unreasonably in not pursuing them. The availability of a derivative action would not bring a remedy for the limited partner personally, so it would not be an adequate remedy for the limited partner personally.

Case	*IGCF SPV 21 Limited (Respondent) v Al Jomaih Power Limited and Anor (Appellants)* (Cayman Islands) [2025] UKPC 54
Court	Privy Council (from the Court of Appeal of the Cayman Islands)
Subject	Did the Cayman Islands Court of Appeal err in holding that: (1) it was not bound to apply the rule in *Henry v Geoprosco* [1976] 1 QB 726; and (2) the Respondent has not submitted to the jurisdiction of the Pakistan courts?
Judges	Lord Sales, Lord Hamblen, Lord Leggatt, Lord Burrows, Dame Janice Pereira

Summary: The Privy Council upheld an anti-suit injunction restraining the Appellants from continuing proceedings in Pakistan. The central issue in the appeal was when will a party be held to have submitted to the jurisdiction of a foreign court.

The Board held that, as a matter of Cayman law, a party does not submit to a foreign court's jurisdiction by taking steps that do no more than challenge that court's jurisdiction. The Board declined to follow the English Court of Appeal decision in *Henry v Geoprosco*, which has since been reversed by statute, as representing Cayman law, rather aligning Cayman with the modern approach in *Rubin v Eurofinance*.

Further details: The dispute concerns shareholders in KES Power Ltd, a Cayman company which in turn controls K Electric Limited (**KEL**), a utility company in Pakistan of national importance. The shareholders' agreement **(SHA)** governed by English law contained an exclusive jurisdiction clause in favour of the courts of England and Wales or the Grand Court in the Cayman Islands. After disputes about director appointments to KEL's board, the Appellants obtained an *ex parte* interim injunction in Pakistan.

The Respondent applied in Pakistan to: (i) stay the proceedings in favour of arbitration; and (ii) recall or modify the injunction to allow nominations to the board of KEL. The Respondent also applied for an anti-suit injunction in the Cayman Islands to restrain the Appellants continuing proceedings in Pakistan. The Grand Court granted, and the Court of Appeal affirmed, the anti suit injunction.

On appeal to the Privy Council, the Appellants argued that the Respondent had submitted to Pakistan's jurisdiction relying on *Geoprosco*. The Board held that Cayman law governs the issue of whether there has been a submission to the foreign jurisdiction. The Board adopted the approach in *Rubin;* submission to a jurisdiction will usually require a step that is not consistent with, or relevant to, a challenge to the foreign court's jurisdiction or obtaining a stay. It accepted the findings of the judge that no steps were taken in the Pakistan proceedings which went beyond a challenge to jurisdiction. The application to recall or modify the injunction was to be seen as seeking relief that would flow as a consequence of a successful challenge to the jurisdiction, rather than as a claim for substantive relief. As both courts held below, there was no submission to the jurisdiction of the Pakistan court.

Case	*Credit Suisse Life (Bermuda) Ltd v Ivanishvili* [2025] UKPC 53
Court	Privy Council (from the Court of Appeal for Bermuda)
Subject	Fraudulent misrepresentation, requirement of awareness, measure of damages in respect of mismanaged discretionary investments, the double-actionability rule, doctrine of renvoi
Judges	Lord Hodge, Lord Briggs, Lord Leggatt, Lord Richards, Lady Simler

Summary: In a landmark judgment, the Board overturned a controversial line of English authority by finding that it is *not* a legal requirement in a claim for deceit that the claimant was aware of or understood the defendant to have

made the representation of fact or law which was false. This has far-reaching implications and is likely to lead to an increase in civil fraud claims involving implied representations of honesty and in contractual arrangements.

The Board further deprecated two older rules of private international law – the double-actionability principle and the doctrine of renvoi.

Further details:

The awareness requirement – A line of controversial authorities by first instance Commercial Court (of England and Wales) judges have found that it is a requirement of a claim for claim for deceit that the claimant was aware of the representation or understood it to have been made. Therefore, if C gave no conscious thought to the representation, C's deceit claim failed. Given that most implied representations are not the subject of conscious consideration, reliance on implied representations has been deemed notoriously challenging.

The Board found that there is no such awareness requirement.

While reliance is an essential element of a claim for deceit (or other claim for damages for misrepresentation), reliance can still be established without awareness of the representation. There are two aspects to the reliance requirement. First, the representation must have deceived C by causing C to hold a false belief. Second, C must, because it held that false belief, have acted so as to suffer loss. Both aspects require the representation to operate on the mind of C. However, neither requires C to be consciously aware of the representation at the time when C acts on it.

As explained by the Board: *'It is an everyday feature of human experience that people form and act on beliefs without any conscious awareness or thought. If someone takes advantage of such unconscious mental processes to deceive another person and cause her to act to her detriment, there is no reason why a claim for damages should not lie. The mischief is no less than in a case involving conscious awareness.'*

In rejecting the awareness requirement, the Board also addressed two key justifications that have been relied upon:

1. **C cannot have relied on a representation when acting on an assumption, because the source of error must lie with C** – The Board found this is a false dichotomy. What matters is whether, in a case where the claimant has acted on an assumption, the assumption was one which C would naturally be expected to make in response to the defendant's words or actions or whether it was one made independently by C. If C has acted as a result of an erroneous belief not caused by the defendant, the defendant will not be liable.
2. **The awareness requirement is necessary to preserve the distinction between misrepresentation and non-disclosure** (such distinction is important as, save where there is a duty to disclose material facts, non-disclosure does not give rise to liability) - The distinction turns on whether the defendant (a) has done something to cause C to hold a false belief on which C has acted to its detriment or (b) has merely failed to inform C of a material fact or to correct a false belief which C independently holds. However, a case may fall in the first category without C being aware of what the defendant has done, but that ignorance does not turn the case into one of non-disclosure.

System of law governing misrepresentation claims and double actionability - The Board indicated in *obiter* that the *Boys v Chaplin* "double actionability" rule - i.e. that a claim in tort arising from an act of the defendant done in a foreign country is "actionable" in England & Wales only if the act is actionable both (1) as a tort under English law and (2) under the law of the foreign country where it was done – should *not* be the general choice-of-law rule in common law jurisdictions. Accordingly, it would have been open to either side to invite the Board not to follow this rule and to hold that the general rule in Bermuda is that the court should simply apply the law of the place where the tort was committed.

Doctrine of renvoi - Under the doctrine of renvoi, when an issue is governed by the law of a foreign country, the court should seek to decide the issue in the same way as a court of that country would decide it. To achieve this result, the court should look first, not to the internal law of the foreign country, but to its rules of private international law. If those rules would require a court of the foreign country to apply a different system of law from its own, then that law should be applied. However, the Board found that the doctrine should *not* be adopted in English law, unless this is required by binding precedent. In any event, renvoi plays no part in the private international law rules for tort.

United Kingdom Supreme Court

Case	*Mitchell and another (Joint liquidators of MBI International & Partners Inc (in liquidation)) v Sheikh Mohamed Bin Issa Al Jaber; Mitchell and another (joint liquidators of MBI International & Partners Inc (in liquidation)) v Sheikh Mohamed Bin Issa Al Jaber (No 2)* [2025] UKSC 43
Court	United Kingdom Supreme Court (on appeal from [2024] EWCA Civ 423)
Subject	Fiduciary Duties, companies in liquidation, equitable compensation
Judges	Lord Hodge, Lord Briggs, Lord Sales, Lord Stephens, Lord Richards

Summary: This decision of the UK Supreme Court on fiduciary duties and equitable compensation is of relevance across a range of common law jurisdictions.

Further details: The Sheikh was a former director of a BVI company (the **Company**). The Company was placed into liquidation in 2011 upon which, by operation of the BVI Insolvency Act 2003, the Sheikh's powers as director ceased. At the time the Company was wound up, the Company was still the registered owner of shares in JJW Inc (a company associated with the Sheikh) (the **Shares**). Although the Sheikh's powers as a director of the Company had ceased, in 2016 the Sheikh (purportedly in his capacity as a director of the Company) caused the Company to transfer the Shares to another associated entity known as JJW Guernsey. The Stock Transfer Form through which the transfer occurred was backdated by the Sheikh to a date prior to the Company's liquidation. The following year, all of JJW Inc's assets and liabilities were transferred to another group company – JJW UK (the **2017 Transfer**). Consequently, the shares in JJW Inc were left worthless.

The liquidators brought a claim against the director for breach of fiduciary duty and against the associated company for knowing receipt. The liquidators succeeded at trial but lost in the Court of Appeal, which held that the company had suffered no loss from the breach of fiduciary duty.

Fiduciary duties owed - On appeal to the Supreme Court, the Sheikh argued that he could not owe fiduciary duties because: (1) he had no relevant powers under BVI law at the time of the transfer of the Shares; and (2) there is a rule that a *de facto* fiduciary can only owe fiduciary duties where he has legal title to, or possession of, property. The Supreme Court unanimously rejected the director's appeal:

1. The Sheikh was under a fiduciary duty, irrespective of the absence of a power to transact on behalf of the Company. Fiduciary duties can *arise ad hoc*, including where there is an undertaking of fiduciary duty by the presumed fiduciary in circumstances where he or she has not made any conscious undertaking or considered the interests of the person to whom that duty is owed, and indeed has acted contrary to that person's interests. If persons, although not appointed as trustees, take upon themselves the custody and administration of property on behalf of others, they are actual trustees and are fully subject to fiduciary obligations.
2. It is not necessary that a person who has taken upon himself a fiduciary power to deal with property has title to or possession of that property before he can come under a fiduciary duty.

Equitable compensation - The liquidators appealed against the Court of Appeal's finding that they were not entitled to equitable compensation because, so the Court of Appeal held: (i) there is a rule that equitable compensation is measured as at the date of trial; and (ii) in this case, the shares were worthless by the date of trial and the company therefore suffered no loss. The Supreme Court unanimously allowed the liquidators' appeal:

1. There is no invariable rule that loss will be calculated as at the date of trial. When calculating an award of equitable compensation, the appropriate date to use to assess the value of what has been misappropriated is an open question which requires consideration of what is just and equitable as between the beneficiary and the trustee (or the principal and the fiduciary).
2. Where a trustee or fiduciary has misappropriated trust property (or property under his fiduciary control) and the beneficiary (or principal) can prove that the property has value when misappropriated, the beneficiary suffers an immediate loss of value.
3. If a defaulting fiduciary wishes to rely upon a later event as breaking the chain of causation between the breach and the beneficiary's loss, the burden lies on the fiduciary to prove that later event and to show that it should be treated as having that impact on the analysis of causation. Without a clear and convincing innocent explanation, a defaulting fiduciary cannot rely on a later event as breaking the chain of causation where the fiduciary has or may have played some part in bringing about that later event. The Sheikh did not attempt to prove he played no significant part in and derived no significant benefit from the 2017 Transfer. Not only that, but there was sufficient evidence to indicate that he was more than just a bystander in the transfer.

Supreme Court of Bermuda

Case	*Alpine Partners (BVI) L.P. and CMB Tech Bermuda Limited* [2025] SC (Bda) 118 com
Court	Supreme Court of Bermuda
Subject	Application for expedited trial, merger appraisal, s.106 Companies Act 1981, application of Overriding Objective to trial directions
Judge	Shade Subair Williams J

Summary: The Supreme Court of Bermuda refused a minority shareholder's application to expedite a section 106 appraisal trial arising from the Golden Ocean Group merger. The merger consideration took the form of a share-for-share exchange rather than the typical cash payment.

The Plaintiff argued expedition was required to avoid the wrongful conversion of its Golden Ocean shares upon completion of the merger, asserting a statutory right under section 106(2)(b) to be paid fair value in cash rather than in shares. The Court held expedition was neither necessary nor justified, as a shortened timetable would "excessively" prejudice the defendant's ability to appear, gather evidence, and respond, given the ordinary 14-day appearance period. The Court therefore ordered a conventional but efficient timetable, with costs awarded to the defendant.

Further details: The merger consideration was a share-for-share exchange. On completion, Golden Ocean shares were cancelled and, in their place, shareholders would receive shares in CMB.TECH NV (the parent company of the surviving entity in the merger) rather than cash. The plaintiff commenced proceedings seeking a cash determination of the fair value of its Golden Ocean shares. It contended that the share-for-share consideration constituted a wrongful conversion and that section 106(2)(b) required dissenting shareholders to be paid in cash.

Simultaneously, the plaintiff applied (by *ex parte* summons with notice) for an expedited trial to occur on or before the merger's effective date, arguing that, once the merger closed, its existing shares would be cancelled and replaced with the share-swap consideration, thereby causing complications and prejudice to the plaintiff.

The defendant opposed the application, noting that an expedited listing within a week would deprive it of the standard 14 day period to enter an appearance and file evidence. It also emphasised that, even with expedition, the Court could not realistically issue a final determination before the merger completed, especially given the potential for complex valuation issues.

Applying the Overriding Objective, the Court stressed that expedition is discretionary and granted only where refusal would cause real and strong detriment. Urgency is an objective test, and commercial urgency or the size of the claim does not justify abridging procedural fairness. The Court held the plaintiff had not shown any prejudice that could not be addressed through a normal section 106 process, whereas the proposed timetable would have been "excessively unfair" to the defendant. The Court therefore declined to expedite the normal timeframes and directed the matter proceed on a prompt but conventional timetable, with costs following the event in the defendant's favour.

Cayman Islands (Court of Appeal)

Case	*Re HQP Corporation Ltd (in Official Liquidation); Re Direct Lending Income Feeder Fund Ltd (in Official Liquidation)* [2025] CICA (Civ) 19
Court	Court of Appeal (Cayman Islands)
Subject	Whether misrepresentation claims by shareholders are barred from proof in liquidation (Houldsworth rule); whether such claims, if provable, rank pari passu with or subordinate to other creditors; whether contractual waterfalls in Articles of Association affect priority of misrepresentation claims
Judges	Martin KC, Field and Beatson JJAs

Summary: The Court of Appeal was faced with conflicting Grand Court decisions in *Re HQP* (Doyle J) and *Re Direct Lending* (Segal J) regarding the treatment in liquidations of claims by investors that their share subscriptions were induced by misrepresentations by the company (**Subscriber Misrepresentation Claims**). The Court of Appeal clarified the law in relation to the proving of such claims in a liquidation and their priority.

The Court of Appeal held that Subscriber Misrepresentation Claims are admissible to proof in an official liquidation. In doing so, the Court of Appeal found that: (i) the *Houldsworth* principle remains part of Cayman law, but limited its application; (ii) the *Houldsworth* principle prevents a Subscriber Misrepresentation Claim from proving in a liquidation until all non-member creditors have been paid or provided for, but are permitted to prove thereafter; (iii) Subscriber Misrepresentation Claim are made in the capacity as members and therefore are subject to s. 49(g) of the Companies Act; and (iv) Subscriber Misrepresentation Claims are subordinated to the claims of non-member creditors but, subject to any express contractual agreement between members (as was the case in *Re HQP*), rank *pari passu* with claims of redemption creditors.

Further details: Collas Crill acted for the Joint Official Liquidators of Direct Lending Income Feeder Fund Ltd. (in Official Liquidation), who were the successful respondents in the *Re Direct Lending* appeal. Please refer to our full summary here: [https://www.collascrill.com/articles/the-court-of-appeal-confirms-misled-shareholders-can-prove-for-damages-in-official-liquidations-the-houldsworth-principle-partially-curtailed-lives-on-in-the-cayman-islands/]

Cayman Islands

Cayman Islands (Grand Court)

Case	*Re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106
Court	Grand Court (Cayman Islands)
Subject	Exempted limited partnership, winding up on just and equitable basis, application of CWR O.3, r.12(1)(a) or (b) to winding up of exempted limited partnership **(ELP)**, whether court can order petition to proceed against partnership or against general partner, with partnership as subject matter
Judge	Asif J

Summary: This Cayman Grand Court decision explains how winding up petitions for Cayman exempted limited partnerships (**ELPs**) should be framed and how defence costs are addressed. This decision is of practical significance to parties in proceedings brought by limited partners (**LPs**) of ELPs.

The Court held that an ELP cannot be named as the respondent and the Companies Winding Up Rules (**CWR**) cannot be used to direct an ELP to "participate" because an ELP has no separate legal personality. Proceedings must be brought against the general partner (**GP**).

The provisions of CWR O.3, r.12 and O.24, r.8 are inconsistent with the ELA Act (**ELP Act**) and the latter must prevail.

The *prima facie* liability for defending the petition sits with the GP. Whether the GP can draw on partnership assets depends on the wording of the limited partnership agreement (**LPA**).

Further details: Petitioning LPs sought a just and equitable winding up, alleging *inter alia* mismanagement and a breach of fiduciary duty by the GP.

At a directions hearing, the petitioning LPs asked the Court to apply CWR O.3 r.12(b) - so the case would be treated as an inter partes dispute, a contest directly between them and the GP as this reflected the substance of the dispute. The GP opposed the LPs, arguing that the Court should direct that the partnership itself should participate in the petition. This was important due to the cost consequences under CWR O.24, r.8.

The Court held that, because an ELP is not a separate legal person, the Court cannot direct an ELP to participate; by ELP Act s.33(1), proceedings are "by or against" the GP only. Under ELP Act s.36(3), company winding up rules apply to ELPs only where consistent with the ELP Act, so treating an ELP like a company for these directions would be inconsistent. Accordingly, the provisions of CWR O.3, r.12 and O.24, r.8 are inconsistent with the ELP Act and the ELP Act must prevail. Therefore, the Court could not make an order under CWR O.3, r.12(b) or (b) in this case.

Therefore, it was ordered that the petition would continue as between the LPs and the GP.

On costs, the Court clarified that the **prima facie liability for defending the petition sits with the GP**. Whether the GP can **draw on partnership assets** depends on the wording of the LPA - that indemnity question will be decided at trial if disputed.

Case	*Re Asia Television Holdings Ltd* [2025] CIGC (FSD) 104 - judgment date 30 October 2025
Court	Grand Court (Cayman Islands)
Subject	Insolvency, appointment of provisional liquidators on petition of company to facilitate restructuring, approach to exercise of power in Companies Act, s. 104(3), whether appointment of provisional liquidators is "appropriate"
Judge	Asif J

Summary: This decision provides guidance on when it is "appropriate" to appoint company-initiated provisional liquidators (**PLs**) under section 104(3) of the Companies Act: relevant factors include a coherent restructuring plan, genuine urgency, and consideration of comity/utility where the company's COMI and key proceedings are not in the Cayman Islands.

Putting various factors in the balance, the Court declined to appoint PLs to facilitate a restructuring of a company.

Further details: The company was insolvent and at substantial risk of collapse. A secured creditor had appointed a receiver over the company's assets, a number of statutory demands had been served on the company and a winding-up petition was filed in Hong Kong (due to be heard on 19 November 2025). There were further ongoing Hong Kong proceedings concerning an internal dispute which was likely to be decided on 31 October 2025. It was not in dispute that the company's COMI was Hong Kong. The company applied for the appointment of PLs under s. 104(3) of the Companies Act.

Guidance - Section 104(3) provides that the Court may appoint a PL upon the company's application, 'if it considers it appropriate to do so'.

The Court provided guidance on when it may be 'appropriate' (the potentially relevant factors listed below are not exhaustive):

1. It may be appropriate if broader powers are likely to be necessary or are likely to be of utility than the powers available under the restructuring officer regime (e.g. when there is an internal board disagreement or because the power to investigate an apparent internal fraud).
2. The Court may be willing to appoint PLs even where there are significant challenges to the success of the intended restructuring.
3. While lack of clarity on what form the restructuring might take is not necessarily fatal to the appointment of PLs, if the purpose of the appointment is to facilitate a restructuring, there should be an indication of what the restructuring will comprise and how it will be approved by those persons with an interest in the outcome.
4. The absence of clarification concerning the nature of the restructuring might be mitigated by urgency.
5. Comity is an issue that should be considered in the overall balance although it is not an overriding consideration.
6. It is less likely to be appropriate if there are significant questions about the utility in appointing PLs in the Cayman Islands - where the reality is that the company's COMI is in another jurisdiction, particularly if there is a winding up already and a winding up order may well be made in that jurisdiction in the near future and/or there is a risk regarding the extent of recognition likely to be accorded by the courts in that foreign jurisdiction.

Application - Although the Court had jurisdiction and there was some creditor support, it held that appointment was not appropriate: having regard to the lengthy chronology of financial difficulty it was not properly advanced on the basis of urgency; the Court was not satisfied that there was any substantial material to indicate what was the nature of the proposed restructuring plan and how it would be achieved; while there was a background of internal dispute, there were ongoing Hong Kong proceedings to resolve that and it was better for the Hong Kong court to determine the issue (which also raised the question as to whether the summons to appoint PLs was strategic); and, there was a real risk that the High Court in Hong Kong would not recognise the appointment of PLs made by the Cayman Islands Court.

Case	*Raiffeisen Bank International AG v Scully Royalty Ltd & Oths* [2025] CIGC (FSD) 97
Court	Grand Court (Cayman Islands)
Subject	Policing of world-wide freezing orders, asset disclosure, *ex parte* on short notice, s.37 English Senior Courts Act 1981, s.11 Grand Court Act (2015 Revision), practical utility, proportionality, disclosure of all substantial assets irrespective of the level of any cap set on freezing orders to allow policing of the order and avoid risk of assets being dissipated and judgment remaining unsatisfied
Judge	Parker J

Summary: This decision concerns the purpose of a worldwide freezing order (**WFO**) and the relevance of asset disclosure to the policing of a WFO.

The Court granted further asset disclosure orders, with some modifications, to police existing WFOs against MFC Group entities. Raiffeisen Bank International AG (**RBI**) applied urgently (*ex parte* on short notice) for further, updated asset disclosure orders against the First Defendant (D1), which is the parent company of the MFC Group, and the intended Tenth Defendant (D10). Following a corporate restructure in which the Fifth Defendant (D5) was dissolved and merged into D10 and an unexplained share transfer, the Court was satisfied and that there was a real risk that there had been a dealing in D5's assets otherwise than in accordance with the D5 WFO and ordered the further disclosure. D1's reliance on audited, consolidated financial statements was not sufficient, nor was the asserted compliance with the monetary "cap" under the WFO accepted as a reason to persuade the Court not to order the further asset disclosure.

Further details: In simple terms, RBI alleges that it is the victim of a fraudulent conspiracy designed to asset strip the former parent company of the MFC Group (D2), which allegedly gave guarantees to RBI in connection with a credit facility. The various defendants operate complex offshore structures, hold diverse assets and are domiciled in different jurisdictions. The case has a long history of WFOs granted against the MFC Group entities. Key assets at issue included shares in two British Columbia companies (D4 and D6) which together held the MFC Group's interest in the Scully Mine. Existing WFOs included a monetary cap tied to unencumbered assets. After D5 was dissolved in the Marshall Islands and merged into D10, and following D1's transfer of its D5 shares to a non-party, RBI sought refreshed disclosure to track key assets, including the Scully Mine holding companies.

The Court accepted that recent restructurings created a real risk of non-compliance with the D5 WFO.

Parker J reaffirmed the Court's ancillary powers. While accepting the Defendants' submissions that disclosure orders must be proportionate and for the purpose of policing the WFO, Parker J held that the whole purpose of asset disclosure orders following a WFO was to provide sufficient information to allow litigants who might successfully obtain judgment to monitor assets and make sure that unjustified disposals did not take place.

In the circumstances of this case, this included disclosure of D1's assets, current structure of all shareholdings held by D1 and its subsidiaries and the changes that had occurred since the provision of D1's existing asset disclosure.

The Defendants' arguments as to compliance with the WFO 'cap' did not prevent RBI's application succeeding; the Court held the Defendants could not unilaterally pick and choose which assets to deal with within the "cap".

Eastern Caribbean Supreme Court, Territory of the Virgin Islands, Court of Appeal

Case	*TAX v FDQ* BVIHCMMAP2024/0029
Court	Eastern Caribbean Court of Appeal
Subject	BVI Arbitration Act, interim injunction to restrain arbitration; whether it is just and convenient to grant interim injunctive relief to restrain the respondents from pursuing second arbitration proceedings while an appeal is pending, whether to revoke order of the justice of appeal declaring that a single judge of the Court does not have jurisdiction to grant the interim injunction sought, Court of Appeal's supervisory jurisdiction over arbitration, relevant factors governing grant of injunction pending appeals, anti-suit arbitration injunction
Judges	Hon. Mde. Esco L Henry, Hon. Mr Reginald Armour, Hon. Gertel Thom

Summary: This BVI Court of Appeal decision considers and applies relevant law on when the Court will grant an interim injunction to restrain a second arbitration pending appeals arising from a first arbitration seated in the BVI.

Further details:

Procedural background - The parties' 2018 Licence Agreement contained a BVI-seated arbitration clause. The applicant commenced arbitration in 2021. Following an 18-day hearing, the sole arbitrator issued a Final Award in the applicant's favour in February 2023. On 23 March 2023, the respondent filed a Fixed Date Clain Form challenging the award by way of appeal and alleging serious irregularity and public policy concern. By judgment dated 25 June 2024, the Final Award was set aside in full, the High Court finding that the respondent's complaints of serious irregularity and errors of law justified the same. The High Court also stated that this will 'give the parties an opportunity to refer their disputes to a differently constituted Tribunal if they so wish'. The applicant obtained leave to appeal that decision in October 2023. That appeal also remained pending.

The respondent commenced a second, identical arbitration (notice served 21 July 2025), prompting the injunction application that was the subject of this Court of Appeal decision. The parties acknowledged that the second arbitration proceedings would seek to determine similar legal issues to those which arise in the appeal against the setting aside order.

Relevant law - Section 24(1) of the Eastern Caribbean Supreme Court (Virgin Islands) Act enables the Court, in the exercise of its equitable jurisdiction and discretion, to grant interim injunctive relief if satisfied that it is just or convenient to do so.

Every arbitral order must have a seat that anchors it to a particular national legal system. That dictates the legal system which is empowered to exercise supervisory jurisdiction over the arbitration. The corollary is that the court of the seat of the arbitration would necessarily be endowed with greater control and greater powers of intervention over an arbitration within its jurisdiction than one in a foreign jurisdiction: *Naviera Amazonica Peruana*. Further, the Court retains the power to prevent abuse of process in the conduct of court or arbitral proceedings. It would exercise those powers of control only if necessary, and would do so judicially, not to interfere with an arbitration, but rather to restrain a party from abusing the process of the court or the arbitral tribunal or using either forum in an oppressive or unconscionable manner. It matters not whether the arbitration is domestic or foreign: *Sonera*.

As with foreign arbitration proceedings, the Court has jurisdiction to grant injunctive relief to restrain a party from pursuing domestic arbitration proceedings but will do so only in exceptional cases. Exceptional circumstances exist if the applicant's legal or equitable rights have been infringed or threatened by a continuation of the arbitration, or its continuation will be vexatious, oppressive or unconscionable: *Elektrim*.

Application – There were two pending appeals before the BVI Court in relation to the first arbitration proceedings, with the issues to be determined on appeal being similar to some of the issues that would arise in the second arbitration proceedings.

By executing the arbitration agreement, the parties agreed that the BVI was the seat of the arbitration and that the BVI Arbitration Act is applicable. Therefore, they submitted to all stages of the arbitration process including any appeals that may be pursued. The appeal process was an integral part of the first arbitration proceedings to which the parties had bound themselves by the arbitration agreement. Obviously, the first arbitration proceedings would be concluded only when the pending appeals were finally determined.

Therefore, by attempting to pursue the second arbitration proceedings while the first was still in train, the respondent had taken action which would engage the parties in simultaneous, parallel judicial inquiries about identical and similar factual and legal issues. This would involve duplication of efforts, expenditure and resources contrary to the Overriding Objective. More fundamentally, this was manifestly abusive of the process of the court and in all of the circumstances is unconscionable.

Therefore, it was just and proper to grant the interim injunctive relief on the provision of an undertaking in damages sought by the applicant.

The Court was also satisfied that any prejudice occasioned to the respondent could be addressed by issuing appropriate directions to expedite the hearing of the appeals and appropriate costs orders.