



IT'S FREEZING HERE!

Just how far can freezing injunctions reach?

ELSPETH TALBOT RICE QC

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ORDERS



Non-Proprietary claim:

(a) Good arguable case against the defendant; and

(b) Real risk of dissipation

Proprietary claim:

Good arguable case against the defendant.



FREEZING ORDERS



Key benefits:

- D must disclose all of his assets



- D must not dissipate his assets



- D is liable for contempt of court if he breaches the order



FREEZING ORDERS



The Siskina [1979] A.C. 210– the right to an interlocutory injunction cannot exist in isolation, but is always incidental to and dependent on the enforcement of a substantive right which usually, but not invariably, takes the shape of a cause of action.



Mercedes Benz v Leiduck [1996] 1 AC 284, dicta of Lord Nicholls (dissenting) – a Mareva injunction can be granted in support of prospective foreign judgments in a jurisdiction in which the foreign judgment would be recognised and enforceable.

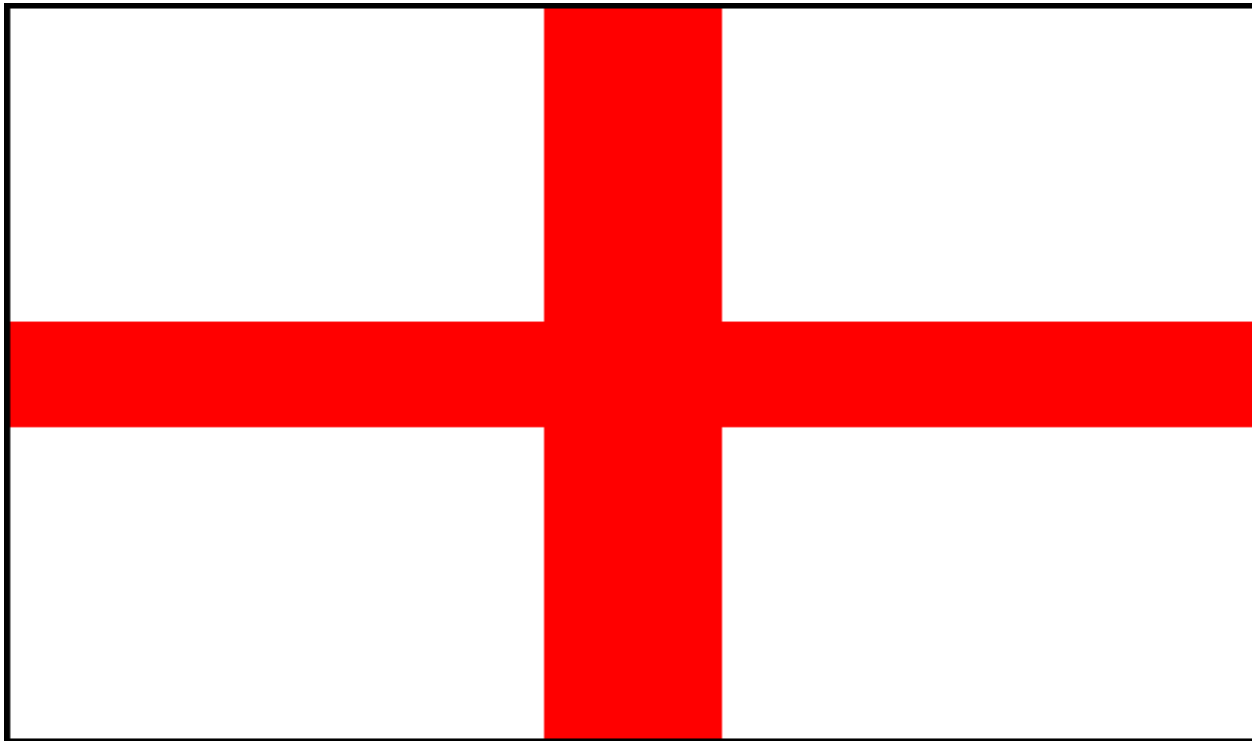


FREE STANDING FREEZING ORDERS



- Useful where the claim is brought in one country but there are assets in another country.
- Different rules apply depending upon which court the claimant applies to. Two critical questions:
 - (a) Does the court have the power to make an order?
 - (b) Can the defendant be served with the proceedings?

ENGLAND



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ENGLAND

- **s.25 Civil Jurisdiction and Judgments Act 1982** and Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1982 gives the High Court power to grant interim relief where proceedings have been or are to be commenced in another jurisdiction.
- **CPR Practice Direction 6B para 3.1** – leave to serve out can be granted where
 - (2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction
 - (3) A claim is made for an interim remedy under section 25(1) of the Civil Jurisdiction and Judgments Act 1982

GUERNSEY



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GUERNSEY



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GUERNSEY

s.1(7) Law Reform (Miscellaneous Provisions (Guernsey)

Law 1987 *“An injunction may in exceptional circumstances be granted notwithstanding that proceedings have not been and are not to be instituted before the Court”*

Part II, Rule 8 of the Guernsey Royal Court Civil Rules 2007

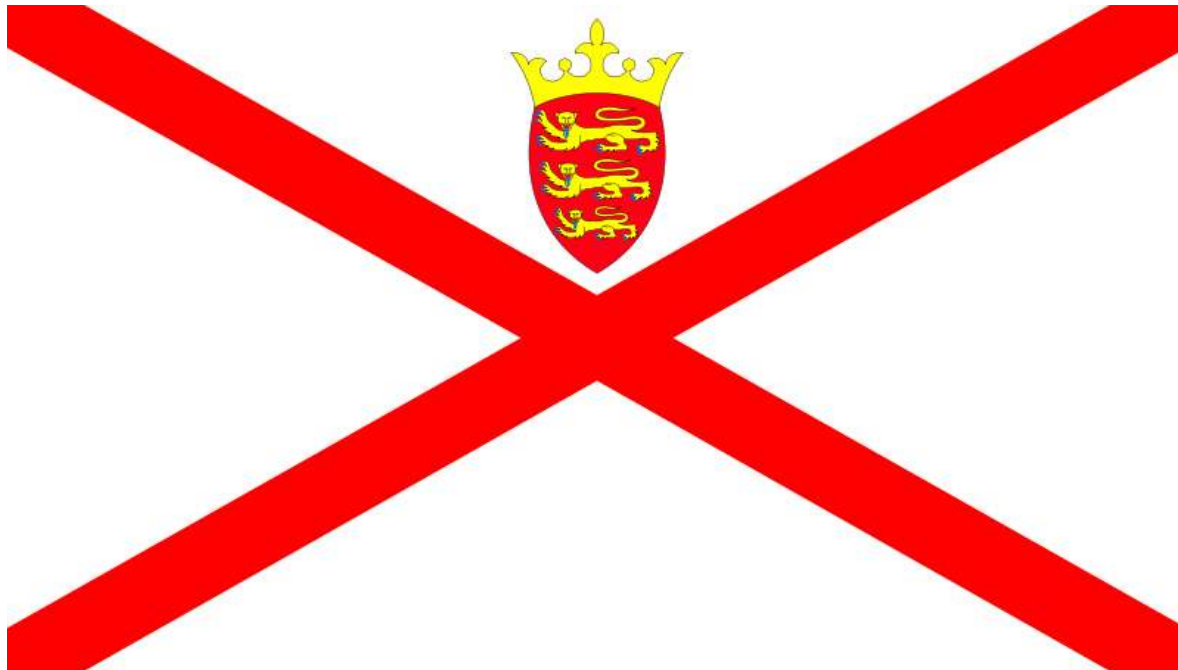
- general power to permit service out of the jurisdiction provided that the claim is properly justiciable and the matter is *“a proper one for service out of the jurisdiction”*



GUERNSEY

Garnet Limited v BNP Paribas SA, Government of Indonesia Intervening [2009 - 2010] GLR 1 Guernsey Court of Appeal:
“Guernsey as an offshore financial centre, will wish to be able to grant freezing injunctions in aid of proceedings elsewhere, but section 1(7) requires that the Court exercise appropriate caution before doing so”

JERSEY



JERSEY



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JERSEY

- *Solvalub Ltd v Match Investments Ltd* [1996] JLR 361 – Jersey Court of Appeal approved and developed Lord Nicholls’ dissenting speech in *Mercedes Benz* and held that the Royal Court of Jersey does have power to grant a *Mareva* injunction in aid of foreign proceedings, even if there were no proceedings before the Jersey Court (other than those seeking the *Mareva*).

“If the Royal Court were to adopt the position that It was not willing to lend its aid to courts of other countries by temporary freezing of assets of defendants sued in those other countries, that in my judgment would amount to a serious breach of duty of comity which courts in different [jurisdictions] owe to each other”

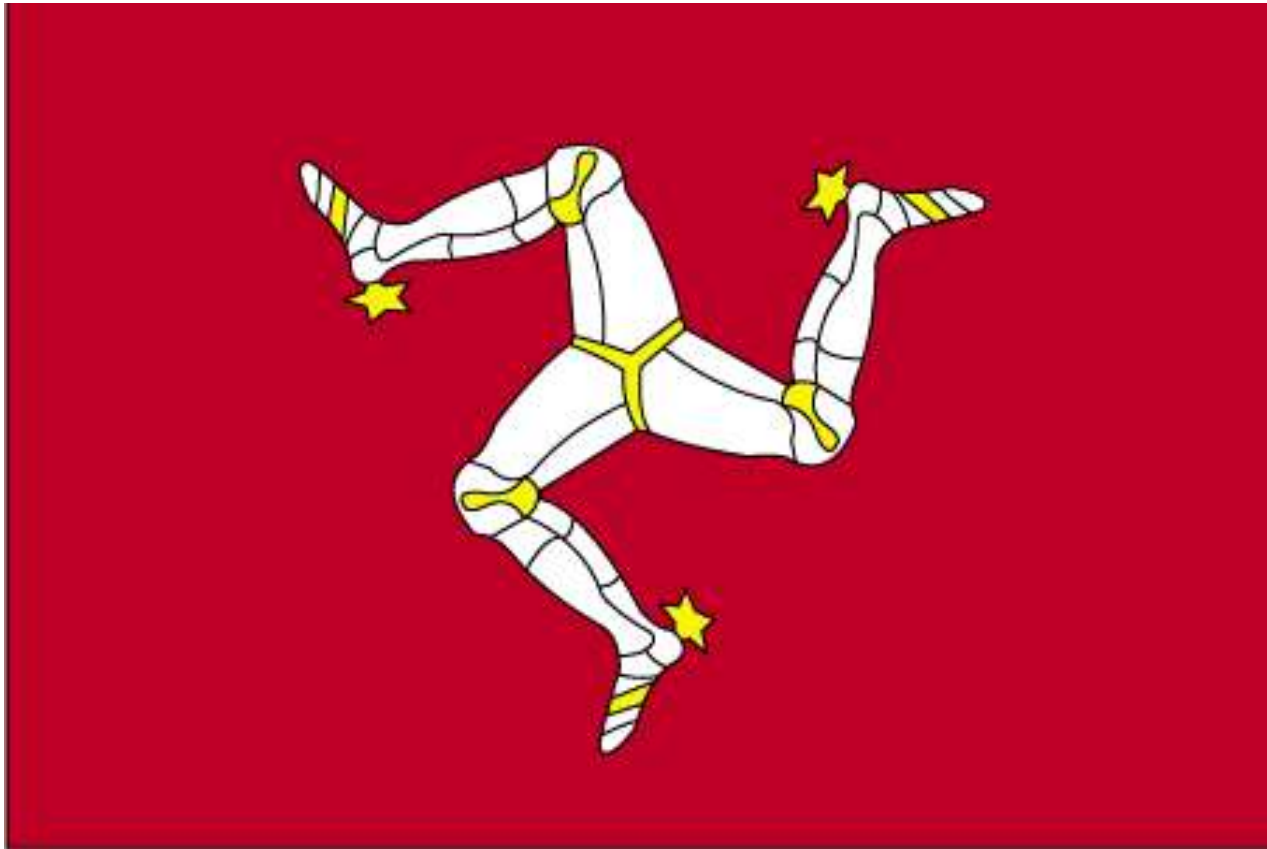


JERSEY

Krohn GmbH v Varna Shipyard [1997] JLR 194 – the Royal Court held that under Rule 7(b) of the Service of Process (Jersey) Rules 1994, it had power to order service of its process on a defendant outside Jersey where an injunction is sought (and where the only relief sought is a freezing injunction) and the injunction orders the defendant to do or refrain from doing anything within the jurisdiction.

Challenges to *Krohn* were rejected in *Yachia v Levi* 26th March 1998 and *State of Qatar v Al-Thani* [1999] JLR 118

ISLE OF MAN



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ISLE OF MAN

Section 56B(1) of the High Court Act 1991

“The High Court shall have power to grant interim relief where proceedings have been or are about to be commenced in a country or territory outside the Island.”

Rule 2.41(1)(d) Rules of the High Court of the Isle of Man provide that the Court can give permission to serve proceedings out of the jurisdiction if a claim is made for an interim remedy under s.56B High Court Act 1991.

BRITISH VIRGIN ISLANDS



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BRITISH VIRGIN ISLANDS

Until 2010:

Siskina apparently alive and well:

Alfa Telecom Turkey v Telisonera HCVAP 2008/12

Sibir Energy Plc v Gregory Trading SA BVIHCV
2005/174



BRITISH VIRGIN ISLANDS

2010: Free standing injunctions arrive:

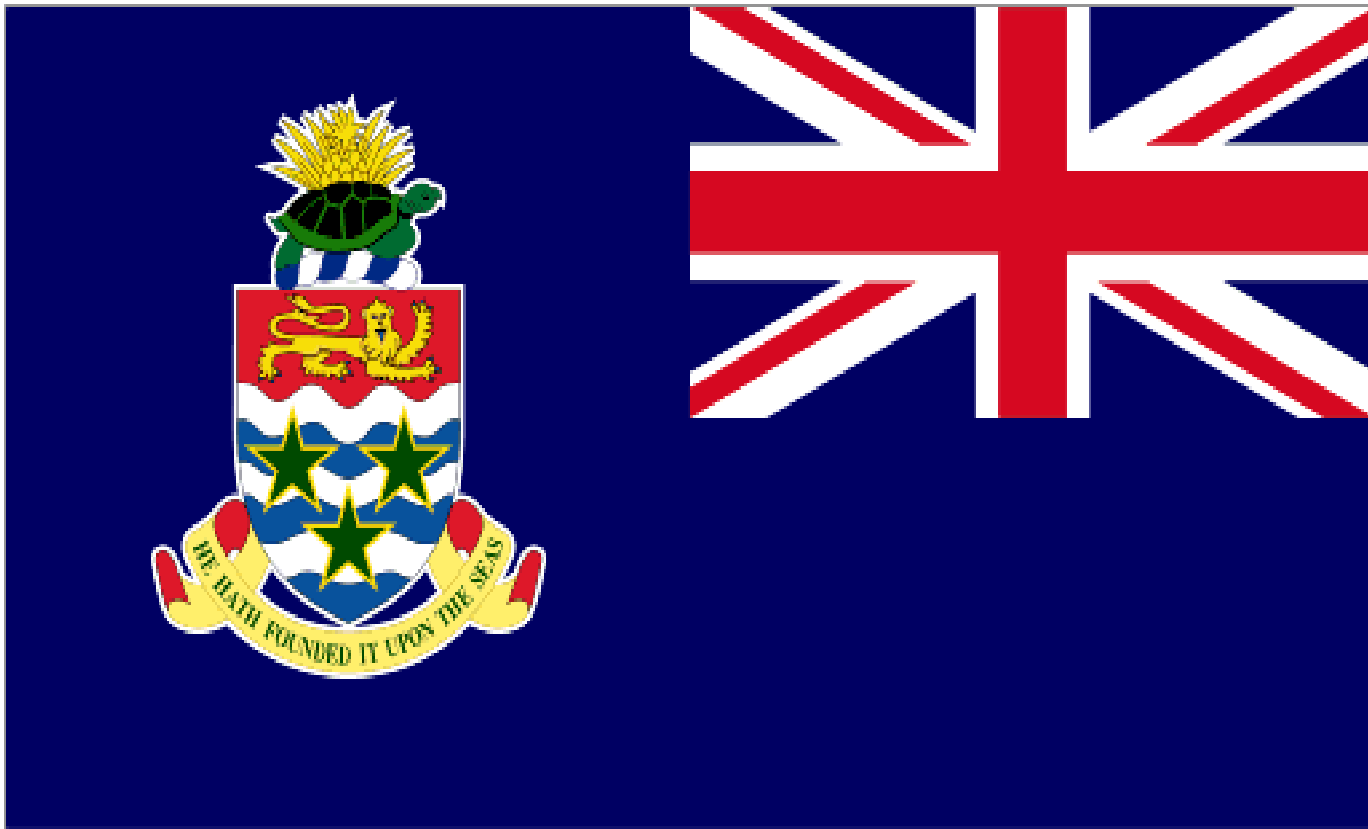
Black Swan Investment ISA v Harvest View 23rd March 2010
BVIHCV 2009/399

*“Given the lacuna in the authorities to which I have referred, I propose to fill it in this jurisdiction by respectfully adopting this reasoning of Lord Nicholls in **Mercedes Benz**. I hold accordingly that I have jurisdiction not only in the strict but also in the broad sense to continue the injunction originally granted.”*

Yukos CIS Investments Ltd v Yukos Hydrocarbons Investments Ltd
26th September 2011, Court of Appeal confirms the jurisdiction

Also ***Gudavadze v Carlina Overseas Corp*** (High Court, unreported, June 2012)

CAYMAN ISLANDS



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CAYMAN ISLANDS

Until 2011: no power to grant a *Mareva* injunction against a defendant in the absence of a substantive cause of action against him in the Cayman Islands:

Bass v Bass [2001] CILR 317 Sanderson J “*The law of the Cayman Islands is presently that it cannot grant a free-standing Mareva injunction absent a cause of action in the Cayman Islands*”

Telesystem International Wireless Inc v CVC/Opportunity EquityPartners LP 2002 CILR Note 22, Court of Appeal



CAYMAN ISLANDS

2011 - the tide turns:

Smith v Smith 10th May 2011 – freezing injunction granted in support of Canadian ancillary relief proceedings – cause of action = claim to give effect to Canadian court’s injunction; *Mareva* injunction final, not interlocutory

Deloitte & Touche Inc v Felderhof unrep 12th July 2011 (cause no 845 of 1997), Court of Appeal – the question should be not whether the foreign cause of action was justiciable in the Cayman Islands, but whether a judgment against the defendant in the foreign proceedings could be enforced against him in the Cayman Islands

VTB v Universal Telecom Investment Strategies Fund SPC (CICA, 5 June 2013) – jurisdiction to grant a free standing injunction against a defendant subject to the jurisdiction of the Grand Court but Ord 11 rule 1(1)(b) prohibits service out



CAYMAN ISLANDS

Further, until the end of 2014 the **Grand Court Rules Order 11, rule 1(1)(b)** prohibited the Court giving leave to serve a writ claiming a free standing interlocutory injunction out of the jurisdiction of the Grand Court: it provided that service out of the jurisdiction can be permitted by the Grand Court if, in the action begun by the writ,

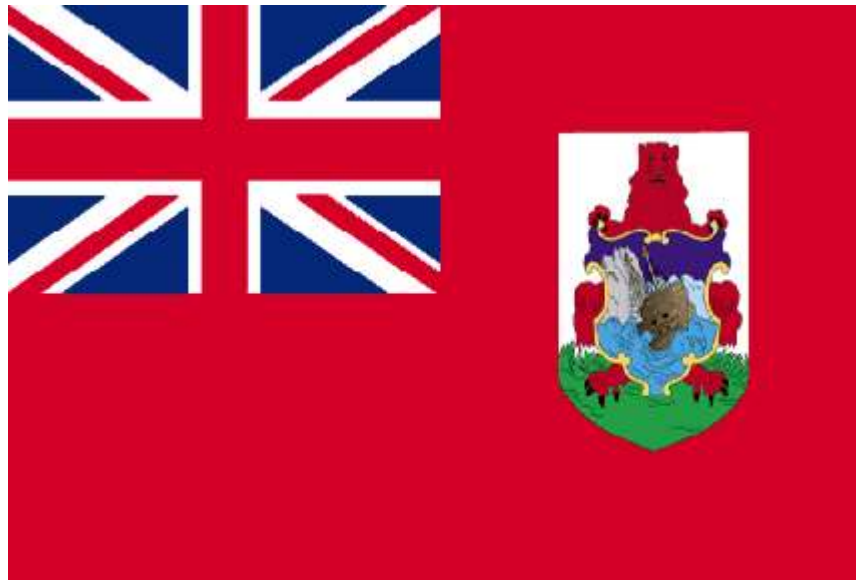
“an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing) provided that a claim for an interlocutory injunction shall not of itself be a sufficient ground for service of a writ of the jurisdiction”
(emphasis added)



CAYMAN ISLANDS

- All changed in Cayman by the end of 2014
- On 20 October 2014, legislation was brought into force giving the Grand Court a statutory jurisdiction to grant a free standing injunction in support of foreign proceedings - the Grand Court (Amendment) Law 2014 inserted a new Section 11A into the Grand Court Law of the Cayman Islands giving the Court jurisdiction to grant a free standing injunction in relation to proceedings which (i) have been or are to be commenced in a court outside of the Cayman Islands; and (ii) are capable of giving rise to a judgment which may be enforced in the Cayman Islands under any Cayman Islands statute or at common law
- On 12 December 2014 the Grand Court (Amendment) Rules 2014 came into effect. These amendment rules deleted the proviso in Order 11 rule 1(1)(b) and added new Order 11 rule 1(1)(n) which allows for the service out of the jurisdiction of any action, with leave of the Court, where *"the claim is brought for any relief or remedy pursuant to section 11A of the Grand Court Law (2008 Revision) (as amended by the Grand Court (Amendment) Law, 2014)."*

BERMUDA



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BERMUDA

E.R.G Resources LLC v Nabors Global Holdings II Ltd [2012]
SC (Bda) 23 Com. (5th April 2012)

Kawaley CJ confirmed interim injunctive relief in support of foreign proceedings can be granted where the Bermuda court has jurisdiction over the defendant.



THE CHABRA JURISDICTION



- What if a person holds assets which you want to enforce against but there is no claim against that person?

Potential to obtain freezing order under the *Chabra* jurisdiction: ***TSB Private Bank International SA v Chabra*** [1992] 1 WLR 231



Injunction is available against a third party against whom the defendant to the claimant's proceedings has a potential claim

“Such an order is doing no more than protecting the right, or contingent right, of the claimant (whether by a third party debt order, charging order, appointment of a receiver or liquidator etc.) to obtain satisfaction of its judgment debt against the defendant by means of attachment, or other collection, of the proceeds of the latter's receivable from, or claim against, the third party”

Parbulk II A/S v PT Humpuss Intermoda Transportasi TBK (The Mahakam) [2011] EWHC 3143 (Comm)



- Test for granting an injunction against a non-cause of action party is good reason to suppose that
 - assets sought to be frozen would become available to satisfy the judgment sought and
 - absent such relief, real risk that assets will be dissipated or put beyond C's reach

Algoaibi v Saad Investments (CICA 1 of 2010
– Cayman – Sir John Chadwick)



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Quite a long way!

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