

## Article

### BVI Passes Legislation Codifying the “Black Swan” Jurisdiction

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**On 7 January 2021, the BVI enacted an important amendment to the Eastern Caribbean Supreme Court (Virgin Islands) Act (the “Act”) which provides that the BVI court now has jurisdiction to grant free-standing interim relief in aid of existing or anticipated foreign proceedings.**

This is a significant and welcome development which firmly entrenches, in statute, the so-called “*Black Swan*” jurisdiction as it has come to be known based on the 2010 Bannister, J decision of the same name (which provided that there was a common law jurisdiction to grant ‘free-standing’ injunctions in the BVI in support of foreign proceedings). *Black Swan* was later affirmed by the BVI Court of Appeal in the 2011 decision of *Yukos Cis v Yukos Hydrocarbons*, which further refined the scope of the jurisdiction.

Following the decisions of *Black Swan* and *Yukos*, BVI courts proceeded – for virtually a decade – on the basis of this common law jurisdiction to grant free-standing relief. However, in May 2020 (in the decision of *Broad Idea International Limited v Convoy Collateral Limited*), the BVI Court of Appeal ruled that *Black Swan* was wrongly decided and opined that it was for the BVI legislature to provide the necessary authority by way of statute.

In the wake of the Court of Appeal’s momentous decision in *Convoy*, the BVI Commercial Court Users’ Committee, in concert with the Bar Association, swiftly mobilised to assist in drafting this seminal piece of legislation. The BVI legislature more than rose to the challenge in finalizing and passing the enactment with admirable speed.

The Act defines the interim relief which may be granted in aid of foreign proceedings quite broadly so as to include, any relief which may be granted in BVI proceedings, as well as orders against non-cause of action defendants (also known as the *Chabra* jurisdiction).

The legislation provides further that the court has jurisdiction to make an order for the provision of documents and information, where this power exists at common law, in aid of existing or anticipated foreign proceedings. This firmly establishes the court’s power to grant *Norwich Pharmacal* relief in aid of foreign proceedings.

This ground-breaking legislative development further cements the BVI’s status as a leading commercial law jurisdiction, which has swiftly adapted in order to continue providing effective cross border support in asset-tracing, preservation and recovery.

Conyers partners Mark Forte and Tameka Davis appeared for the Respondent in *Yukos*, and partner Richard Evans and associate Matthew Brown formed part of the Commercial Court Committee.

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