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BVI arbitration interim relief: Injunctions, disclosure orders and other court support for domestic and foreign arbitrations

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Arbitration is frequently the forum for cross-border dispute resolution involving British Virgin Island (**BVI**) companies, meaning urgent interim relief from the BVI courts in support of arbitration is sometimes required.

The BVI courts have developed a sophisticated framework for granting injunctions, disclosure orders and other remedies in support of both domestic and foreign-seated arbitrations, building principally upon the statutory foundation laid down by s. 43 of the Arbitration Act 2013.

The BVI courts have also repeatedly emphasised the territory's strong pro-arbitration policy, both when supporting arbitral proceedings and when considering the enforcement of arbitral awards. That approach underpins the availability of court-ordered remedies designed to preserve assets, protect evidence and ensure that arbitrations remain effective.

The BVI court's supportive approach to arbitration

The Arbitration Act modernised BVI's arbitration framework by broadly incorporating the UNCITRAL Model Law and adopting a pro-arbitration philosophy that limits unnecessary court intervention while preserving judicial support where required.

Consistent with that approach, the BVI Commercial Court (the **Court**) regularly assists arbitral proceedings by granting interim measures designed to preserve assets, maintain the status quo, protect evidence and prevent conduct that might undermine the arbitral process.

A key feature of the statutory regime is that the BVI Court's assistance is not confined to arbitrations seated in BVI. In appropriate cases, relief may also be granted in support of foreign-seated arbitration proceedings.

Interim measures in the BVI under section 43

Section 43 is the principal source of court-ordered interim relief in support of arbitration. That provision gives the Court power to grant an interim measure in relation to arbitral proceedings, whether those proceedings are seated in BVI or elsewhere.

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The jurisdiction is deliberately broad and may be invoked before the arbitration has commenced, during the arbitration, or in certain circumstances after an award has been made but before enforcement.

The types of interim remedy potentially available under s.43 include:

- freezing injunctions;
- preservation orders relating to property or evidence;
- disclosure orders;
- interim prohibitory or mandatory injunctions;
- orders preserving or restoring the status quo; and
- other measures necessary to protect the arbitral process or the effectiveness of an eventual award.

Importantly, the Court retains a discretion whether to intervene. Where a tribunal has already been constituted and is capable of acting effectively, the Court may decline relief if it considers the application would be more appropriately determined by the arbitral tribunal.

Injunctions in support of foreign-seated arbitration

A significant feature of section 43 is that it applies to both BVI and foreign-seated arbitrations. This reflects the commercial reality that many disputes involving BVI companies are arbitrated in London, Hong Kong, Singapore, New York or other major arbitration centres, while the relevant assets are located in, or controlled through, BVI.

Accordingly, a claimant pursuing a foreign arbitration may seek a BVI injunction to preserve shares in a BVI company or prevent dealings that could frustrate enforcement of a future arbitral award. The ability to obtain local relief notwithstanding a foreign arbitral seat is often one of the most valuable aspects of BVI's arbitration regime.

Anti-suit injunctions and protection of the arbitral process

The Court may grant anti-suit injunctions where legal proceedings are brought, or threatened, in breach of an arbitration agreement.

The purpose of the injunction is not to interfere with the foreign court, but to restrain the counterparty from acting inconsistently with its contractual promise to arbitrate.

Applications of this nature are assessed against established principles governing anti-suit relief, including whether there is a valid arbitration agreement and whether it would be just and convenient for the Court to intervene.

Stays of court proceedings in BVI in favour of arbitration

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The BVI courts have also demonstrated a willingness to stay court proceedings where the parties have agreed that disputes should be determined by arbitration.

Recent decisions of the BVI Commercial Court have emphasised the importance of giving effect to parties' agreements to arbitrate and confirmed that the BVI courts should adopt a strongly pro-arbitration approach when determining whether matters falling within an arbitration agreement should be resolved by an arbitral tribunal rather than the Court.

Disclosure orders and evidence preservation in support of arbitration

Interim relief is not limited to freezing assets.

Depending on the facts, parties may seek disclosure orders aimed at identifying assets, tracing transactions, preserving evidence or obtaining information required for effective arbitral proceedings. In appropriate circumstances, the Court may also grant ancillary relief that supports the practical effectiveness of an injunction or assists the enforcement of a future award.

In appropriate cases, parties may also seek disclosure from third parties pursuant to the Court's established Norwich Pharmacal jurisdiction.

Where allegations of fraud, asset dissipation or misuse of corporate structures are involved, disclosure remedies can be as important as the injunction itself.

Read more: Norwich Pharmacal Orders in the British Virgin Islands

Service out and applications against foreign respondents

Arbitration-related applications can involve respondents located outside BVI.

In such cases, questions of service out of the jurisdiction arise, particularly where a claimant seeks interim relief against foreign parties connected to BVI assets. While it will usually be permissible to serve such court proceedings out of the jurisdictions, considerations relating to service out and jurisdiction should be assessed carefully at an early stage, particularly where urgent relief is sought before a tribunal has been constituted.

Other sources of interim relief

While s.43, Arbitration Act is the principal source of arbitration-specific interim relief, more specific powers (in addition to those set out at Article 17 of the UNCITRAL model law and s.43), are granted to the Court under s.58, Arbitration Act. Practitioners should also be aware of the Court's broader powers under s.24 and s.24A of the Eastern Caribbean Supreme Court (Virgin Islands) Act. Depending on the circumstances, those provisions may provide additional support for injunctions, disclosure orders, receivership orders and other interlocutory remedies connected with cross-border disputes.

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Choosing the right interim remedy in aid of arbitration

Effective interim relief is a significant feature of the BVI arbitration framework.

The appropriate strategy will depend on factors including the location of assets, the urgency of the application, the status of the arbitral proceedings and the relief sought. Early consideration of interim measures is often critical to protecting a party's position and preserving the effectiveness of the arbitration.

For specialist advice on arbitration, injunctions, disclosure orders, anti-suit relief and other interim remedies in support of domestic or foreign arbitral proceedings, contact our experienced BVI dispute resolution and arbitration team.

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