

Black Swan given statutory force: BVI legislature confirms jurisdiction to grant freestanding relief in support of foreign proceedings / “黑天鹅”案判决被赋予司法效力：英属维尔京群岛立法确认本土管辖权给予支持外国司法程序的独立救济

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Just days into 2021, new legislation has been enacted which gives the BVI Court jurisdiction to grant freestanding freezing orders and other interim relief in support of foreign proceedings.

刚步入2021年才过几天，BVI已经颁布新的法律，通过司法形式赋予英属维尔京群岛法院发出独立的冻结令及其他临时救济措施以支持外国司法程序的管辖权。

The Eastern Caribbean Supreme Court (Virgin Islands) (Amendment) Act, inserts a new section 24A into the Eastern Caribbean Supreme Court (Virgin Islands) Act. It provides a statutory jurisdiction to grant interim relief where proceedings have been or are about to be commenced in a foreign jurisdiction, and allows the court to grant any relief which may be granted in relation to matters within the BVI Court's jurisdiction (including freezing injunctions and receivership appointments). It expressly gives the Court power to grant relief against non-cause of action (or “Chabra”) defendants.

《东加勒比最高法院（维尔京群岛）（修正）法》在《东加勒比最高法院（维尔京群岛）法》中加入了新的第24A条。该法通过立法赋予法院管辖权，以在外国司法管辖区已经或即将启动司法程序的情况下法院可以提供临时救济，允许法院就英属维尔京群岛法院管辖范围内可以提供救济的事项提供任何救济措施（包括冻结令和委任接管人）。该法明确授权法院给予原告人针对无诉由（或“Chabra”）被告人的救济。

The Act also confirms the BVI Court's common law jurisdiction to make disclosure orders (e.g. *Norwich Pharmacal/Bankers Trust* orders) in support of actual or contemplated foreign proceedings, even where a letter of request might also be available to the applicant as an alternative. This confirms that the BVI Court will not be bound by the English decision in *Ramilos Trading Limited v Buyanovsky* [2016] EWHC 3175 (Comm). Although several decisions of the BVI Court had already confirmed that it would not follow *Ramilos Trading*, this legislative amendment adds further certainty in this important area.

该法还确认英属维尔京群岛法院具有普通法管辖权发出披露令（如针对第三人的*Norwich Pharmacal/Bankers Trust*披露令），以支持已经或即将提起的外国司法程序，即使申请人也可向法院要求请求书（认可外国法院判令）。这确认了英属维尔京群岛法院不再受*Ramilos Trading Limited v Buyanovsky*（案件编号：[2016] EWHC 3175 (Comm)）案判决的约束。虽然英属维尔京群岛法院在之前几个判决已确认其不应遵循*Ramilos Trading*案判决，但是次立法修订在这一重要领域中提供了进一步确定性。

The Act finally remedies a lacuna in the BVI's legislation, which did not previously provide for the Courts to grant interim remedies in support of proceedings on foot outside the BVI. That lacuna had been filled by the so-called *Black Swan* jurisdiction, named after the case in which Justice Bannister applied the dissenting judgment of Lord Nicholls in *Mercedes*

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Benz AG v Leiduck [1996] 1 AC 284, and ruled that the BVI Court was not bound by the majority decision in that case. However, in its May 2020 decision in *Broad Idea International Limited v Convoy Collateral Limited No 2* (BVICMAP 2019/0026), the Eastern Caribbean Court of Appeal held (overturning *Black Swan*) that the BVI Court was bound by the majority decision in *Mercedes Benz*; as a result, it found that there was no common law jurisdiction to grant a free-standing freezing injunction against a respondent which was not a party to substantive proceedings in the BVI. The Court of Appeal remarked that whilst this was an undesirable outcome for the BVI as an international financial centre, the lacuna would need to be remedied by legislation, not by the courts.

该法最终弥补了英属维尔京群岛立法中的一项缺失，即以往条法没有赋予法院为英属维尔京群岛以外的诉讼提供临时救济。该缺失此前被“黑天鹅”案中确定原则下的司法管辖权填补，该名称以Bannister法官在该案中引用Lord Nicholls在*Mercedes Benz AG v Leiduck*（案件编号：[1996] 1 AC 284）一案的异议判决而获此命名，该案中英属维尔京群岛法院判决认为英属维尔京群岛法院不受上述案件中多数法官意见的约束。然而，东加勒比上诉法院在2020年5月在*Broad Idea International Limited v Convoy Collateral Limited No 2*（案件编号：BVICMAP 2019/0026）一案的判决中认为（该案推翻了“黑天鹅”案确立的原则），英属维尔京群岛法院受约束于*Mercedes Benz*案的多数法官意见。因此，对不是在英属维尔京群岛实质性司法程序中作为当事人的被告人，法院认为其在普通法下没有管辖权去作出独立的冻结令。上诉法院表示，虽然这对英属维尔京群岛作为一个国际金融中心的地位来说是个不理想的结果，但这一缺失需要通过立法而非法院来弥补。

The speed in which this legislation has been drafted, approved and enacted in response to the *Convoy Collateral* decision is a testament to its importance. It is a welcome reform which will ensure that the BVI Courts remain able to grant effective relief in support of foreign proceedings in an increasingly globalised economy.

针对 *Convoy Collateral* 案的不利判决，此次法案的起草、批准和颁布速度之快，说明了其重要性。这是一项值得欢迎的改革，它确保英属维尔京群岛法院在经济日益全球化的今天能够为外国司法程序提供有效的支持。

The decision in *Convoy Collateral* is subject to an appeal to the Privy Council, due to be heard in mid-February 2021. It therefore remains to be seen whether the common law *Black Swan* jurisdiction may yet survive, and would then sit alongside the new statutory jurisdiction set out in the Act.

*Convoy Collateral*一案的判决已被上诉到最高法院即位于英国的枢密院，该上诉将于2021年2月中旬审理。因此，普通法下的“黑天鹅”管辖是否还能继续在英属维尔京群岛法下存续，且是否能与新的司法管辖并存，还有待观察。



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