

BVI Litigation Update - Case Notes

June 2009

In recognition of the new BVI Commercial Court, Harneys is publishing quarterly Commercial Court case notes which summarise some of the more important judgments delivered by the Court.

Appropriation

Although *Alfa Telecom Turkey Limited v Cukurova Finance International Limited* (2009) UKPC 19 is a Privy Council decision, this is an extremely important case on the ambit of the remedy of appropriation under the Financial Collateral Arrangements (No2) Regulations 2003 as it applies to shares in BVI companies. Details of the case are set out in a [previous client update](#). By way of update the next stage of this litigation on whether there was an effective default is currently before the Eastern Caribbean Court of Appeal, and details will be made available when we have the result.

Rectification of the Register

In a recent case, the Commercial Court took a restrictive view of the rules on permission to serve proceedings out of jurisdiction in relation to a claim against two BVI companies for rectification of their share registers. It is clear that careful pleading will be necessary to invoke the jurisdiction of the BVI Court in this area. The Court also emphasised the high standards of the duty of full and frank disclosure were required when seeking ex parte relief.

Statutory Demands and BVI Insolvency Act

In the previous case of *Metalloyd Ltd v Burwill Resources Ltd*, the High Court took the view that because of a particular definition in the Insolvency Act, a company which had not applied to set aside a statutory demand within the required 14 days of service was precluded from making submissions about the validity of the demand at a subsequent application to appoint a liquidator. This had the practical effect of limiting the defences available to a company at the trial stage.

However in *Re Island Point Properties SA* the Commercial Court, albeit obiter, cast considerable doubt on *Metalloyd* and indicated that there remains an inherent power for the BVI Court to consider whether a statutory demand was valid. It will be interesting to see the next case on this point and whether the Court of Appeal will rule on *Metalloyd*.

If you have any questions about these cases please contact our Litigation Head Phillip Kite (phillip.kite@harneys.com).

The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation