

Confirmation of the Applicability of the *Lex Situs* Rule

February 26 2004

In a judgment delivered on February 19 2004 the Staff of Government Division - the Isle of Man appeal court - examined the distinctions in Manx private international law between a judgment in personam and a judgment in rem.

In considering the relevant issues, both the court of first instance and the Staff of Government Division considered the English decisions of *Macmillan Inc v Bishopgate Investment Trust Plc* (No 3) [1996] 1WLR 387, *Re: Harvard Securities Limited* [1997] 2BCLC 369 and *Glencore International AG v Metro Trading International Inc* [2001] 1 Lloyd's Report 284.

Having reviewed these decisions and the lower court's analysis of the relevant facts, the Staff of Government Division took the view that, in essence, the only court with jurisdiction to deal with issues of legal and beneficial ownership of the shares in a company incorporated under the laws of the Isle of Man, where the share register is maintained within the jurisdiction and in the absence of bearer shares, is the Manx court.

This is an important decision, as it emphasizes that those advising on issues of beneficial and legal ownership within the context of, say, a share sale agreement or other sale/transfer documentation in relation to the company's ownership must carefully consider what enforcement steps a court or tribunal outside of the Isle of Man could seek to determine in relation to Isle of Man companies, notwithstanding that (as in this case) the underlying contractual documentation upon which the parties seek to sue in another jurisdiction is governed by the law of a jurisdiction other than the Isle of Man.

For additional information please contact us by telephone +44 1624 690 300, fax +44 1624 690 333 or email enquiries@simcocks.com

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