

UPDATE

BVI Costs: Further Guidance from the Court of Appeal

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The Eastern Caribbean Court of Appeal has provided further guidance on the recovery of costs in the BVI under the Legal Profession Act, 2015, prompting the BVI Commercial Court to question whether legislative change is needed.

Introduction

Following the advent of the Legal Profession Act, 2015 (the **LPA**)¹ in 2015, the BVI Commercial Court and the Eastern Caribbean Court of Appeal (the **COA**) have been grappling with the question of recoverable costs under the LPA and its impact on practice and procedure in the BVI.

Our [Update](#) of June 2020 discusses comments on relevant case law, in particular the first instance decision in *Crown Treasure*.² That decision was appealed and the COA handed down its decision on 1 June 2021.

The COA's decision was swiftly followed by a written judgment of Jack J in *Summer Fame*³ which discusses the import of the COA's decision.

Background

The cross-jurisdictional nature of disputes litigated in the BVI means that parties frequently instruct overseas legal counsel as well as a firm of BVI legal practitioners. Multiple law firms and/or jurisdictions may be involved in a single dispute. Indeed, many BVI law firms have overseas offices and in-house overseas lawyers based in those offices who regularly work on BVI disputes, alongside their BVI colleagues, due to client need, time zone, language skills etc.

Separately, it has been common practice in and outside the BVI for law firms to employ junior and other non-qualified fee earners (eg trainee lawyers, paralegals and costs draughtsmen) to carry out certain work in a cost effective manner and, in relation to trainees and paralegals, to provide training and experience to those seeking to practise law.

The recent decisions in *Crown Treasure* and *Summer Fame* centre on whether such practices breach the provisions of the LPA.

¹ Much of the LPA came into force on 11 November 2015. Section 2(2) (which sought to give the LPA extra-territorial effect) was repealed on 29 January 2016.

² *Yao Juan and Kwok Kin Kwok v Crown Treasure Group Ltd*, BVIHC (COM) 2013/0162, 23 April 2020.

³ *In the matter of Summer Fame (in liquidation) and in the matter of Haode Investment Inc (in liquidation)*, BVICH (COM) 2020/0055, 9 June 2021.

Crown Treasure – the COA's Decision

In *Crown Treasure* the COA held that the party entitled to costs was not entitled to recover costs in relation to work carried out by lawyers employed by the Hong Kong office of their BVI legal practitioners. Those overseas lawyers were not admitted to practise in the BVI and the COA held that whether they were supervised by BVI legal practitioners was irrelevant.

Following the COA's decision, and clarification of the proper interpretation of section 18(3) of the LPA, fees are only recoverable under BVI law if incurred on work carried out by fee earners who are on the roll of legal practitioners maintained by the Registrar of the BVI High Court (the **Roll**). This is in line with the COA's previous decisions in *Garkusha*, *Shrimpton* and *Gany*.⁴

Any other costs, however incurred, cannot be recovered under section 18 of the LPA and no exception is made for work carried out under the supervision of a BVI legal practitioner (as Jack J had held at first instance).

Summer Fame – the Application of Crown Treasure

In *Summer Fame*, Jack J pointed out that the COA's interpretation of the LPA will have far-reaching consequences for the legal profession in the BVI (and the trainees and paralegals wishing to join it): it follows from *Crown Treasure* that fees incurred on otherwise recoverable work cannot be recovered under the LPA if the work was carried out by non-qualified fee earners who are not on the Roll (even if those fee earners are BVI-resident trainee lawyers and paralegals employed by and acting under the supervision of admitted BVI legal practitioners). Indeed, Jack J noted that criminal liability may arise under the LPA.

'Given the importance of this point' Jack J adjourned the matter and invited the BVI Director of Public Prosecutions, Bar Council and Attorney-General to make submissions. The BVI Bar Association has now started a consultation process and we anticipate that further clarification will follow.

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⁴ *Dmitry Garkusha v Ashot Yegiazaryan & Others*, BVICMAP 2015/0010, 6 June 2016; *John Shrimpton et al v Dominic Scriven et al*, BVIHCCMAP 2016/0031, 3 February 2017; *Gany Holdings (PTC) SA and Asif Rangoonwala v Zorin Khan & Others*, BVIHCCMAP 2018/0045 and BVIHCCMAP 2018/0048, 30 March 2020.

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