

The British Virgin Islands court structure, rights of audience and recovering foreign lawyers' fees

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Introduction

The British Virgin Islands (BVI) is a common law jurisdiction and the judicial system is based on the English system. BVI law and procedure differs from English law because of local statutes and procedure although English law is often applied in the absence of local authority.

The BVI is a member of the Eastern Caribbean Supreme Court (ECSC) which is a regional court for several islands in the Eastern Caribbean, including British Overseas Territories and Commonwealth countries. The ECSC has jurisdiction over civil matters and operates in accordance with the ECSC Civil Procedure Rules.

The ECSC is headquartered in St Lucia. Each Member State and Territory including the BVI has its own Court office which houses the High Court Registry and the offices of the local High Court Judges.

The court structure

There are four main components of the civil courts in the BVI:

1. the High Court (Commercial Division) often referred to as the Commercial Court, which hears commercial claims with a minimum value of US\$500,000. Commercial claims include contractual, company and partnership disputes, insolvency matters and trust disputes. The Commercial Division is where most of the high value, international disputes are heard and has grown to the extent that it now occupies its own court building with dedicated judges and administrative staff;
2. the High Court (Civil Division) which is the court of first instance for most other civil matters not heard by the Commercial Court;
3. the ECSC, Court of Appeal which is the appellate court for appeals from the High Court Civil and Commercial Court. The Court of Appeal is itinerant, traveling to each Member State and Territory, where it sits at various specified dates during the year to hear appeals. Appeal case management hearings often are heard remotely by the Chief Registrar of the ECSC; and
4. the Judicial Committee of the Privy Council which sits in London is the final appellate court for appeals from the Court of Appeal.

Rights of audience

The practise of law is governed by the Legal Profession Act (Revised Edition) 2020. Practising law in the BVI is restricted to legal practitioners admitted to the roll and holding a valid practising certificate.

Most legal practitioners obtain eligibility for admission in the BVI by virtue of prior admission as a solicitor or barrister or by obtaining the Legal Education Certificate from a law school empowered to do so by the Council of Legal Education, an organisation established by the Caribbean Commonwealth states to provide

legal education and training.¹ Barristers have full rights of audience in all courts whereas solicitors may appear in hearings held in chambers at the discretion of the judge. Solicitors with a higher rights of audience certification obtained in England and Wales have the same rights of audience as barristers. In practice, litigants often instruct Kings Counsel to appear on their behalf in hearings before the Commercial Court.

The ECSC Civil Procedure Rules prohibit directors from appearing on behalf of companies in hearings before the Commercial Court, meaning that companies in litigation must instruct a BVI admitted legal practitioner to appear on their behalf.

Recovering foreign lawyers' fees

Legal costs recovery follows the English 'loser pays' principle, meaning that the winning party is ordinarily entitled to recover its legal costs from the loser.

Foreign lawyers' fees incurred in proceedings before the BVI courts are not recoverable, subject to the narrow exception of providing expert evidence on foreign law to the court. Unlike in some jurisdictions, foreign lawyers' fees cannot be treated as a disbursement.

It is an offence under section 18(1) of the Legal Profession Act (Revised Edition) 2020 to practise law within the jurisdiction without having been admitted while holding a valid practising certificate. Section 18(2) makes it an offence for a person not entitled to 'act as a legal practitioner' from acting as one through the name or agency of a person who is entitled to act as a legal practitioner or for work carried out under supervision of a BVI admitted legal practitioner. Section 18(3) prohibits the recovery of fees in respect of anything done in contravention of subsections (1) and (2).

Because of the cross-border nature of many disputes, clients often instruct an onshore law firm to provide strategic and administrative input. The legal fees of these onshore lawyers not admitted in the BVI are not recoverable because of the provisions in section 18 and they will be disallowed on costs assessment.

Contacts

A full list of contacts specialising in Litigation and Dispute Resolution in the BVI can be found [here](#).

¹ Section 11(1)(d) of the Legal Profession Act (Revised Edition) 2020 also provides for admission of persons who have obtained a degree in law from a recognised institution and obtained the status of a practising lawyer in that jurisdiction, however recognised institutions are yet to be specified by the Virgin Islands General Legal Council.