

Snapshot Privy Council upholds BVI Commercial Court on appropriate forum

Cases - 01/12/2020

The Privy Council yesterday gave helpful guidance on the principles to be applied when seeking to stay proceedings on forum grounds – a common feature of BVI disputes. In doing so it upheld the "*impressive ex tempore judgment*" of the BVI Commercial Court Judge, Justice Wallbank, which dismissed attempts to stay the BVI proceedings.

The Board reaffirmed the application of the well-known principles derived from the *Spiliada* and the line of authorities that follow it but predominantly focused upon: (i) the availability of an alternative forum, in this case Russia; and (ii) the governing law of the underlying claims.

On the first point, the Board concluded that, when faced with conflicting written expert evidence as to the availability of Russia as an alternative forum, the Judge was justified in concluding that he could not make findings and therefore that the Defendants did not satisfy their burden.

On the second point, the Board concluded that: (i) the Claimant was not obliged to plead foreign law; and (ii) faced with numerous claims for conspiracy and dishonest assistance, the Judge was justified in concluding that the governing law was not knowable at that point in time.

This decision is a welcome demonstration of the availability of the BVI Courts to try complex international claims and the robustness of the specialist Commercial Court judges. It should also act as a useful practical warning to Defendants seeking to stay claims on the basis of written expert reports and/or arguments as to governing law.

Livingston Properties Equities Inc and others (Respondents) v JSC MCC Eurochem and another (Appellants) (British Virgin Islands) (jcpc.uk)

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