



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 \(Appellants\) \(British Virgin Islands\) \(jcpc.uk\)](#)

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to

all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Key Contacts



David Welford

Partner

Dubai

E: david.welford@ogier.com

T: [+971 4 450 1901](tel:+97144501901)



Brian Lacy

Partner

British Virgin Islands

Jersey

E: brian.lacy@ogier.com

T: +44 1534 514493



Oliver Payne 彭奥礼

Partner 合伙人

Hong Kong

E: oliver.payne@ogier.com

T: +852 3656 6044

Related Services

Dispute Resolution

Legal