Cayman Islands: recovery of foreign attorneys' fees for successful litigants

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[1]

There is a limitation: a successful party, whose costs are to be taxed on a standard basis, is normally only able to recover the costs of those attorneys who have been admitted to practice in the Cayman Islands. Where a successful party has engaged attorneys in other jurisdictions, this limitation will mean that the fees of those foreign attorneys will not usually be capable of recovery.

The Cayman Islands does permit foreign attorneys to be admitted on a temporary basis and, where this occurs, the successful party will be able to recover the costs of the admitted foreign attorney but only in respect of work done following that admission (see Order 62, rule 18 of the Grand Court Rules).

However, the admission of foreign attorneys is uncommon and usually occurs in limited circumstances where specialist advice (such as that of King's Counsel) is required. In view of the high volume of complex cross-border litigation that comes before the Cayman Courts, which necessarily involve counsel from foreign jurisdictions, the issue of when costs incurred by foreign lawyers who are not admitted to practise in the Cayman Islands can be recovered is an important one.

The recent decision of the Grand Court of *In the Matter of Grand State Investments Limited* (FSD 11/2021, Parker J, 17 March 2023) provides a helpful example of one of the circumstances in which the Cayman Court will permit such costs to be recovered notwithstanding the usual limitations.

Relevant principles for recovery of costs of foreign lawyers

The rule barring recovery of foreign lawyers' costs exists primarily to protect the paying party against the risk of paying more because the successful party has "extravagantly" engaged a foreign lawyer instead of local qualified Cayman attorneys, [2] and to avoid requiring a paying party to reimburse duplicative legal costs. [3]

However, there are three exceptions to the rule:

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- [4]
- [5]

It was the third of these exceptions that was applied by Justice Parker in the *Grand State* decision.

Dispensation from rule barring recovery of costs of foreign lawyers

In *Grand State*, a winding up petition presented against Grand State had been struck out on the ground that the debt upon which it was based was bona fide disputed on substantial grounds or, alternatively, subject to a binding arbitration agreement. A full background to the case can be found in our previous briefing: Grand Court strikes out a creditor's winding up petition and comments on the relationship with arbitration clauses.

The background to the petition concerned circumstances where:

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Resultantly, Grand State had retained lawyers in Hong Kong and the PRC to advise on legal issues connected to its substantive defences and the Hong Kong arbitration, both of which were connected to the Cayman winding up proceedings.

The above factors led Justice Parker to conclude that it was appropriate to dispense with the usual rule against recoverability of foreign lawyers' fees. While a mere desire to communicate with lawyers in a party's own language or time zone is not sufficient to warrant a dispensation, [6] Parker J found that, given the various issues of foreign law which were integral to the proceedings, it was necessary for Grand State, in the proper preparation of its defence, to engage foreign attorneys. Moreover, the Court also held that this was a matter of which the petitioner should have been aware given the nature of the issues.

Conclusion

The Cayman Islands' position as an international financial centre necessarily means that much of the litigation before its courts involve complex, cross-border issues where the involvement of foreign lawyers is integral to the proper determination of disputes. It is therefore important to keep this dispensation (in addition to the other exceptions listed above) in mind when seeking to maximise recovery for successful litigants in cases where issues of foreign law, requiring Cayman lawyers to work together with foreign lawyers to present the best case possible, arise.

Ogier acted for Grand State on both the petition and the subsequent costs ruling.

[1] *Coban v Josephs, Christian and McCoy* [2019 (2) CILR Note 2].

[2] *Re Wyser-Pratte EuroValue Fund* [2010 (2) CILR 233] at 240.

[3] *Re General Shopping Investments Ltd* (FSD 59/2019, Kawaley J, 25 August 2020) at [24].

[4] Indemnity costs orders may be made by the Grand Court where it is satisfied that the paying party has conducted the proceedings in an improper, unreasonable, or negligent manner.

[5] *Sagicor v Crawford* [2008 CILR 482].

[6] *In re Trina Solar Ltd* (FSD 92/2017, Segal J, 8 December 2021) at [87].

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