

# Recoverability of Costs for non-BVI lawyers

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## Recoverability of Costs for non-BVI lawyers

Recently in the BVI the recoverability of the fees of foreign lawyers from opposing parties has been the subject of both judicial and legislative concern. The Legal Professional Act, 2015 ("**LPA**") was enacted last year, which changed the way practitioners are regulated and in turn affected how the Court views recoverability.

The traditional position in the Commercial Court was that the fees of instructed foreign lawyers are treated as a disbursement in a BVI costs assessment, to be justified as a reasonable expense incurred by the BVI lawyers in and about the conduct of the case in the BVI (***Grand Pacific Holdings Ltd v Pacific China Holdings Ltd BVIHCV 2009/389***).

Just before the LPA, the Court revisited this issue and held that, in international commercial litigation, the involvement of lawyers who are not practitioners of the jurisdiction's law are a reality and a practical and reasonable necessity. Even though they are not practising local law, subject to the same considerations that apply to all members of the legal team, the value of their work should be recognized and included in assessed costs (***Olive Group Capital Limited v Gavin Mark Mayhew BVIHC (Com) 2015/115***).

The LPA went through various revisions and included restrictions on the practice of BVI law to a strict practicing certificate regime. During these revisions the extra-territorial effect was removed from the Bill before its enactment. In an appeal in which Ogier acted for the appellant, the Court of Appeal of the Eastern Caribbean Supreme Court construed the LPA and found costs of foreign lawyers irrecoverable and the foreign law firm in that case (instructing Maples & Calder) was found to have breached the criminal law (***Dmitry Garkusha -v-Ashot Yegiazaryan & Others BVIHCMAP 2015/0015***). Maples & Calder invited the Court 'to correct' its judgment under the slip rule, but the Court declined.

Recently, the Commercial Court clarified the position. A foreign legal practitioner or anyone else, wherever located, can assist a BVI legal practitioner by doing work under the ultimate supervision of a

BVI legal practitioner who is ultimately responsible for the final work product. The focus at assessment should be what tasks were performed, not so much by whom or where, and whether the paying party should pay the receiving party for those tasks having regard to the CPR 65.2 considerations of reasonableness, proportionality and so forth. (*Inna Gudavadze & others v Carlina Overseas Corporation & others BVIHC (Com) 2012/0011*).

This is the most recent view of current BVI law by the Commercial Court. However, as there is a Court of Appeal judgment there is always the possibility that a different Commercial Court or Court of Appeal judge would take a different view.

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