

# CALM AFTER THE STORM – BVI GETS BACK TO BUSINESS

*After the hurricane, decisions of global significance have continued to emerge from the BVI – in fact, the courts are as busy as ever*



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There are many hurdles cross-border high-value litigation throws up before a seasoned lawyer but 200mph winds, razed infrastructure and departmental displacement are not ordinarily among them. However, after the hurricane, the Commercial Division of the Eastern Caribbean Supreme Court is back in operation. And, rather than ease its way back into its already significant workload, it has embraced the increased demand for its services and is once again hearing cases and handing down judgments on some of the most significant cross-border work in the common law world. This, along with the wide gateway to the Eastern Caribbean Court of Appeal, has meant that relevant and complex decisions often determinative of wider global disputes have continued to emerge from the jurisdiction almost uninterrupted in the past legal year.

To many, the summer vacation is time for a breather. To the BVI, it's time to be ready for the next legal and hurricane season.

## Jurisprudence

So what has emerged by way of significant jurisprudence?

In *KMG N.V v DP Holdings SA*, the Court of Appeal considered forum arguments in the context of an application to appoint liquidators to a foreign company. The court determined that the test for jurisdiction was encompassed within the statutory test for winding up a foreign company and, once met, there was no room for forum conveniens considerations. This has allowed for a more focused approach to the process of getting permission to serve out of the jurisdiction liquidation proceedings commenced against foreign companies. At a time when other jurisdictions are expanding their reach to liquidation of foreign companies, this is a welcome commercial approach to the jurisdiction of such claims.

In the same appeal the process for determining when permission to appeal a cross-appeal was necessary was clarified. In a surprising move the Court of Appeal determined no permission was required for a

cross-appeal once an appeal against the judgment has commenced, even if permission was required for the main appeal. The main justification appeared to be that the Court then had jurisdiction to deal with any issue arising under the appeal even if those issues arise on a cross-appeal.

Separately, the question of who was an 'aggrieved person' so to be able to challenge a liquidator in the conduct of his duties was considered and defined further than before *Kevin Gerald Stanford v Stephen John Akers and Mark McDonald BVIHCMAP 2017/0019 (July 2018)*; while a comprehensive review of the strict obligations to disclose that arose from reference within documentation under CPR28.16 was reaffirmed in *Comodo Holdings SA v Renaissance Investments SA (July 2018)*.

## Lengthy trials and the BVI resilience

Meanwhile, there have been a number of lengthy trials heard this year. In the weeks following the storm St Lucia graciously hosted a six-week trial in capable facilities. The move back to BVI in the new year allowed many relocated litigators to return home and after a brief diversion to the International Arbitration Centre, all commercial cases are now back in the purpose-built Commercial Court. So, while the BVI adapted with resourcefulness and resilience, perhaps some of the most challenging times – mostly of a man-made nature – lie ahead. While the requirements of registers of beneficial interests for BVI companies will soon be upon us and EU blacklisting seeks to paint the BVI in a negative light, without question the BVI will adapt and meet the demand for its offshore services among the most sophisticated financial centres across the world.

## What's next for the BVI?

The Far East is prevalent in its demand for BVI corporate structures, with Hong Kong and PRC featuring high among sources of work. Most of the offshore 'circle' have increased resources in Hong Kong to cope with litigation demand, with a consequential increase in BVI to handle matters in court. We, for example, have already expanded to meet that demand.

Irrespective of stormy times that may yet lie ahead for the BVI, natural or otherwise, the BVI will remain at the forefront of offshore corporate jurisprudence for years to come.



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