

Re King Bun Limited: Re-affirming When the Case Should be tried in the BVI

Authors:

Norman Hau, Counsel

Jerry D. Samuel, Partner

Conyers Dill & Pearman act for a group of minority shareholders of a BVI company known as King Bun Limited in a derivative action against its Hong Kong based directors for damages caused to the company, as a result of an alleged grossly undervalued sale of its assets to its majority shareholder, who is also the Executive Director and Chairman of the Board. The operation of the underlying business and the assets are in Hong Kong and the People's Republic of China ("PRC").

The Defendants in *Claim No. BVIHC (COM) 086 of 2017 King Bun Limited and Others -v- Lau man Sang James and Others* applied for a stay of the derivative action brought in the BVI on the ground of *forum non conveniens*. Their arguments centred around the "Hong Kong connections" or logistical issues, namely, the sale of the assets took place in Hong Kong; the parties and potential witnesses are situated in Hong Kong; the documents to be disclosed in the proceedings are likely to be located in Hong Kong or PRC; and purported difficulties in sourcing suitable interpreters and expert witnesses to attend a trial in the BVI.

It is widely accepted, as a conflict of law principle, that the jurisdiction of incorporation is best suited for determining questions concerning the internal management and affairs of a company. That position is adopted by the BVI courts in the leading case between *Nilon Limited and Another -v- Royal Westminster Investments S.A. and Others [2015] UKPC 2* ("Nilon"). In that case, the Privy Council affirmed the position of the Commercial Court that foreigners incorporating companies in the BVI must expect to have to come to the BVI to litigate disputes concerning domestic issues concerning organization, internal management and administration of such companies. In *Nilon*, the Privy Council carefully emphasize that this consideration related only to claims concerning internal management and distinguished the facts of *Nilon* on that basis. This formed the foundation of the Claimant's successful opposition to the stay application in this case.

Having heard the arguments, the Commercial Court agreed with the Claimants' position and concluded that since this is a case primarily dealing with the internal management of a BVI company which would require interpretation of BVI statute not yet considered by the BVI Courts that weighed heavily in determination of the appropriate forum. The Learned Judge considered that the heavy weight in favour of the BVI as the appropriate forum was not displaced by the logistical and connecting factors presented by the Defendants. The application for a stay was accordingly dismissed.

The BVI Courts are experienced in dealing with international commercial disputes involving BVI companies, particularly those with ownership and control originating in Asia and concerned with entities and projects in this region. Given the popularity of BVI corporate vehicles in this region, substantial trials in the BVI for such disputes are quite common in the BVI. The logistical issues raised by the Defendants in this case are not new to BVI Courts and are effectively tackled by the use of modern technologies (including e-discovery platforms and video link facilities) and by the Court's case management powers where appropriate to limit costs. Legal Practitioners and clients should be aware that the BVI Court is prepared to retain jurisdiction in these types of cases, such that logistical factors alone are not sufficient to displace the heavy weight in favour of the BVI as the appropriate forum in respect of disputes arising out of internal management of BVI companies.

The Conyers team consisted of Partner Jerry Samuel (who appeared as advocate) with Associate Dr. Alecia Johns, and Counsel Norman Hau and Legal Manager Emily So based in Hong Kong.

AUTHORS:

**NORMAN HAU
COUNSEL**

norman.hau@conyersdill.com
+852 2842 9548

**JERRY D. SAMUEL
PARTNER**

jerry.samuel@conyersdill.com
+1 284 346 1116

OTHER CONTACTS:

**MARK J. FORTE
PARTNER**

HEAD OF BVI LITIGATION & RESTRUCTURING
AND OFFICE
mark.forte@conyersdill.com
+1 284 346 1113

**NIGEL K. MEESON QC
PARTNER**

HEAD OF ASIA DISPUTES & RESTRUCTURING
nigel.meeson@conyersdill.com
+852 2842 9553

**RICHARD G. EVANS
PARTNER**

LITIGATION & RESTRUCTURING
richard.evans@conyersdill.com
+1 284 499 1115

GLOBAL CONTACTS:

**FAWAZ ELMALKI
DIRECTOR**

HEAD OF DUBAI OFFICE
fawaz.elmalki@conyersdill.com
+9714 428 2900

**CHRISTOPHER W.H. BICKLEY
PARTNER**

HEAD OF HONG KONG OFFICE
christopher.bickley@conyersdill.com
+852 2842 9556

**LINDA MARTIN
DIRECTOR**

HEAD OF LONDON OFFICE
linda.martin@conyersdill.com
+44(0) 20 7562 0353

**ALAN DICKSON
DIRECTOR**

HEAD OF SINGAPORE OFFICE
alan.dickson@conyersdill.com
+65 6603 0712

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For further information please contact: media@conyersdill.com