

Article

When can a Director of a BVI Company Appear in-person before the BVI Commercial Court?

Authors: Matthew Brown, Counsel | Richard Evans, Partner

From time to time the BVI Commercial Court is asked to consider whether or not to permit a director of a BVI company to appear in person on behalf of that company. The general rule as to the ability of directors to appear on behalf of a BVI company is quite clear. In the High Court (Civil Division), and subject to any statutory provision to the contrary, one arguable example of which is outlined below, where a duly authorised director or other officer of a BVI company may conduct proceedings on behalf of that company without a legal practitioner, and can appear at certain hearings without the court's permission, but must be represented by a legal practitioner in any hearing in open court, unless the court orders otherwise: see CPR 22.3. However, CPR 22.3 is expressly disappplied in the Commercial Court by CPR 69B.4(4), which provides, quite simply, that BVI companies must be represented by a legal practitioner in all commercial matters.

In the very recent decision of *JSC Mezhdunarodniy Promyshlenniy Bank and anr v Lenux Group Limited and ors BVIHC* (COM) 2020/0188 (unreported, delivered on 28 June 2021), Justice Jack was required to determine whether, notwithstanding the clear words of CPR 69B.4(4), the Court nevertheless retains a discretion to permit a director to appear on behalf of a company at a hearing before the Commercial Court.

After considering CPR 26.9, and various longstanding English authorities, Justice Jack concluded that it may be possible, in cases of necessity, for the Commercial Court to permit a director to appear on behalf of a BVI company without legal representation. An example of a case of necessity would be, where a director is appearing in order to seek an adjournment of a hearing where it has not been possible to instruct legal representation to represent the company. However, on the facts before him, Justice Jack concluded that the director in question had not shown a sufficient case of necessity to warrant him exercising his discretion to permit the director to appear. Nevertheless, Justice Jack went on to say (albeit obiter) that in his view there was a further reason why the director in question could not appear on behalf of the company, namely that it was "highly arguable" that by appearing in court on behalf of the company the director was practising BVI law, as prohibited by ss.13 and 18 of the Legal Practitioners Act, 2015 ("the LPA"). He added that the director might even be committing a criminal offence by appearing on behalf of the company. The learned judge's view was that, notwithstanding the fact that CPR 22.3 makes express provision for a director to appear in person in certain circumstances (and to conduct litigation on behalf of a BVI company)¹, that rule could overrule the restrictions in the LPA, which govern the rights of audience in the BVI.

Whilst Justice Jack's view on the possible exception to the (on the face of it) absolute prohibition in CPR 69B.4(4) is a potentially helpful one (particularly in cases where it is simply not possible for a BVI company to instruct a BVI legal practitioner in advance of an

¹ CPR 22.3(1) is, any event, stated as being "subject to any statutory provision to the contrary".

upcoming here), if the learned judge's view on the application of the LPA to the provisions of CPR 22.3 were to be adopted and applied, then in practice it would appear to render CPR 22.3 entirely nugatory within the context of both Commercial Court and High Court litigation in the BVI.

Given the potential ramifications of Justice Jack's obiter comments, we suspect that this issue will now need to be properly considered and determined at some point in the near future by either the High Court or the Commercial Court. We will have to wait and see what view that Court ultimately reaches.

A copy of the decision in *JSC Mezhdunarodniy Promyshlenniy Bank and anr v Lenux Group Limited and ors* can be downloaded [here](#).

For further information, please contact your usual Conyers contact or one of the contacts listed below.

Authors:

Matthew Brown
Counsel
matthew.brown@conyers.com
+1 284 852 1121

Richard G. Evans
Partner
richard.evans@conyers.com
+1 284 852 1115

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For further information please contact: media@conyers.com