

# How the court system works in the BVI

This guide covers frequently asked questions on how the courts in the British Virgin Islands operate.

## How are the courts in the BVI structured?

The British Virgin Islands is a member state of the Eastern Caribbean Supreme Court (**ECSC**). Within the BVI, the High Court is managed by local registries. The procedure is governed by the ECSC Civil Procedure Rules 2023 (**EC CPR**) and practice directions.

The key components of the BVI's civil court system are (i) the High Court (Civil Division), (ii) the High Court (Commercial Division), (iii) the ECSC, Court of Appeal, and (iv) the Judicial Committee of the Privy Council.

## How are proceedings commenced in the BVI?

The following five points cover the most sought-after answers to how proceedings are commenced in the BVI.

### Are there any pre-action protocols that need to be followed?

Practice Direction 17 No 2 of 2023 introduced pre-action protocols setting out the steps parties should take to exchange information before commencing proceedings to encourage early information exchange, enable settlements and efficiently manage any ensuing litigation. There are specific protocols for (i) claims for a specified sum of money, (ii) motor vehicle accidents and personal injury claims, (iii) defamation claims, and (iv) administrative claims.

Claimants must write to the defendants setting out the details of their claim; defendants must respond within a certain period admitting or disputing liability. Non-compliance may result in cost sanctions from the court if it leads to unnecessary proceedings or costs, save in urgent claims or where a period of limitation is about to expire, for example.

In cases not covered by an approved pre-action protocol, the court will expect the parties to act reasonably and promptly in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.

### Can you file online?

Most filings are made using the ECSC's e-filing portal, which is accessible to BVI legal practitioners. The Court Registry allocates matters to judges, schedules hearings and issues court orders once approved.

### How do you start a claim?

Depending on the type of dispute, proceedings are initiated by filing either a Part 8 claim or a fixed date claim form.

#### Part 8 claims

EC CPR Part 8 deals with the initiation of legal process. A claim is started when the claimant submits the original and one copy of the following documents to the court office:

- the claim form; and
- the statement of claim; or
- if any other rule or practice direction requires it, an affidavit or other document.

EC CPR Parts 69 and 70 deal with commercial claims and procedure. The BVI Commercial Division hears claims or applications relating to, among other things, business contracts and companies, partnerships, insolvency, trusts or arbitration. The claim or value of the subject matter to which the claim relates must also be at least US\$500,000, unless the Commercial Division judge considers the claim warrants being on the commercial list nonetheless. A claimant must file a certificate outlining the relevant facts demonstrating the claim's commercial nature (EC CPR 69.1(4)).

The claim is issued on the date entered on the claim form by the court office (EC CPR 8.1(2)). Claim forms e-filed via the Electronic Litigation Portal will be deemed to be issued on the date and time it was submitted to the portal, if done so within the portal's business hours (EC CPR 5A.8). Documents submitted for filing outside of business hours will be deemed to have been filed at the start of the next business day.

## Fixed date claims

Fixed date claim forms are intended to have a "fixed date" set at the time of issue for the first hearing of the claim (EC CPR 27.2(1)). This first hearing of a fixed date claim may be treated by the court as the trial of the claim if it is not defended or the court considers that the claim can be dealt with summarily (EC CPR 27.2(3)).

Examples of the types of matter which must use a fixed date claim form:

- application for recognition and enforcement of a foreign arbitral award
- restoration of a company under section 218 of the BVI Business Companies Act 2004 (**BCA**)
- rectification of a register of members under section 43 of the BCA
- *Beddoe and Public Trustee v Cooper* applications
- probate claims
- schemes of arrangement

## Is it possible to get interim relief in the BVI?

Yes, applications for interim relief are frequently made in litigation in the BVI, and a wide range of provisional remedies, including injunctive or other protective relief, is available.

In appropriate circumstances, such as situations where giving notice may defeat the purpose of the application, these applications can be made without notice to the respondent (*ex parte*).

The legislative framework for interim applications is established by EC CPR Part 17 and supplemented by a significant body of common law and equitable principles emanating from decisions of both the BVI and English courts.

Injunctive or protective relief which may be awarded includes, in particular, the following:

- **Freezing orders** restraining a respondent from (i) dealing with any asset, whether located within the jurisdiction or not, and (ii) removing from the jurisdiction assets located there. To succeed, the applicant will need to show (a) a good arguable case against the respondent, (b) that the refusal of an injunction would involve a real risk that a judgment or award in favour of the claimant would remain unsatisfied, and (c) that it is just and convenient for the injunction to be granted. Before 2010, freezing injunctions in the BVI were only available ancillary to a substantive domestic cause of action against the respondent. However, following the introduction of section 24A of the Eastern Caribbean Supreme Court (Virgin Islands) Act (Cap 80) and the judgment in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, in appropriate circumstances, it is now possible to obtain a standalone freezing injunction in support of foreign proceedings.
- **Anti-suit injunctions** restraining a party from starting or pursuing proceedings, including in another jurisdiction where it is convenient to do so, with the court weighing various factors depending on the circumstances of the case.
- **Prohibitory injunctions** restraining a respondent from acting in a particular way where it is shown (i) that there is a serious question to be tried on the merits of its underlying claim against the respondent, (ii) that an award of damages would not be an adequate remedy, and (iii) that on the balance of convenience, it is just and convenient to grant the relief sought.
- **Proprietary injunctions** protecting property and trust assets, applying the same principles as those applicable to granting a prohibitory injunction and where the applicant has a proprietary interest in the relevant asset.

## How long does it take for claims to get to trial?

The timeframe for progressing claims to trial varies significantly depending on the nature of the claims.

Some urgent applications, if issued with certificates of urgency specifying why the ordinary course of listing cannot be followed, may be resolved within days or weeks.

More complex claims may require over a year to progress from initial filing to trial, although trials can also be listed expeditiously in some instances.

Trials in the BVI are conducted like other common law jurisdictions. The trial involves advocacy by BVI legal practitioners. Oral argument and examination of witnesses of fact and experts take place before a single judge at first instance.

## Is it possible for hearings to be dealt with remotely in the BVI?

During the Coronavirus (COVID-19) pandemic the BVI courts conducted all hearings remotely. Both the Civil Division and Commercial Division have now resumed in person hearings. Parties may still request a virtual hearing from the court in exceptional cases. Such a request to the court should be made no later than seven days before the scheduled hearing date.

## Is it possible to appeal a judgment in the BVI?

Yes, decisions of the High Court are appealed to the ECSC Court of Appeal.

Before the pandemic, the Court of Appeal operated in an itinerant manner, sitting in each of the ECSC territories and member states. The Court of Appeal typically convened in the BVI for one week three times per year. Since the pandemic, the Court of Appeal conducts virtual hearings; presently, all hearings continue to be held remotely. It continues to sit for BVI hearings three times per year.

## Is leave to appeal required?

Leave to appeal may be required depending on the circumstances of the judgment or order being appealed.

### Final decisions

There is an automatic right of appeal to the Court of Appeal from the High Court in the case of final decisions in civil proceedings. No leave to appeal is therefore required.

To determine whether a decision is considered final, the court utilises the “application test”, which assesses whether the resolution of the application before the High Court would have conclusively determined the litigation, regardless of the outcome of the decision made by the High Court.

Similarly, there is a right to appeal the final decisions of the Court of Appeal to the Judicial Committee of the Privy Council, the final appellate court for the BVI. This right is applicable when the disputed matter is valued at a minimum of £300 or where the appeal, either directly or indirectly, involves a claim to or question regarding property or a right of the value of at least £300 or higher.

### Interlocutory decisions

Leave to appeal to the Court of Appeal is required for interlocutory decisions of the High Court, except in relation to the following:

- cases concerning the liberty of the subject or the custody of infants
- cases where an injunction or appointment of a receiver is granted or refused
- *decree nisi* in a matrimonial cause or a judgment or order in an admiralty action determining liability

The grant of leave to appeal is discretionary, and a prospective appellant must demonstrate reasonable prospects of success or other compelling reasons for leave to be granted. Public interest reasons, such as instances where the law is unclear or a new point of law arises, may warrant the grant of leave. .

If a decision of the Court of Appeal on an interlocutory decision of the High Court is challenged, leave to appeal to the Privy Council is required. Leave will be granted if the question in the appeal is of great general or public importance or if there are other compelling reasons to submit the case to the Privy Council.

## Appeal – timelines and procedure

We cover the following three scenarios, timelines and procedures to follow with appeals.

### High Court to the Court of Appeal – where leave is required

Application for leave to appeal must be submitted to the High Court within 21 days of the order being appealed. If the High Court refuses, there is an option to apply to the Court of Appeal within seven days of the High Court's refusal. Once leave is granted, the notice of appeal must be filed within 21 days.

### High Court to the Court of Appeal – where leave is not required

In interlocutory appeals where leave is not required, the notice of appeal must be filed within 21 days of the decision.

For final appeals, the notice of appeal must be filed within 42 days of the decision.

### Court of Appeal to the Privy Council

To appeal from the Court of Appeal to the Privy Council, the following steps need to be taken:

1. Within 21 days of the Court of Appeal's decision, an application for conditional leave should be submitted to the Court of Appeal.
2. If the Court of Appeal grants conditional leave, the appellant must fulfil the specified conditions, which typically include security payments and record preparation.
3. Once the conditions are met, an application for final leave is made to the Court of Appeal.
4. If the Court of Appeal grants final leave, the appellant can appeal to the Privy Council.

In cases where leave to appeal to the Privy Council is required but refused by the Court of Appeal, a prospective appellant may apply directly to the Privy Council for "special leave". It is important to note that while the Privy Council has discretion in granting special leave; in practice, such leave is rarely granted in civil cases.

## Conclusion

We hope this guide helps you understand how the courts in the BVI operate.



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