

## 提示简报

## BVI Court Issues Key Decision on Recoverability of Costs 英属维尔京群岛法院关于诉讼费用的可追讨性所做重要裁决

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In the decision of *Yao Juan v. Kwok Kin Kwok and Crown Treasure Group* handed down on 23 April 2020, the Hon Justice Jack ruled on the quantum of costs payable to the First Defendant (represented by Conyers), pursuant to a Court of Appeal order that the Claimant pay the First Defendant's costs of lengthy unfair prejudice proceedings issued in the BVI Commercial Court. Following a detailed assessment, which took place over the course of three days and was conducted remotely, the Court ruled that the First Defendant was entitled to approximately 92% of the total costs and disbursements claimed.

Significantly, the Court determined the issue of the recoverability of costs in respect of work done by three fee earners of Conyers based in Hong Kong who were not BVI admitted at the relevant time. The Claimant argued that these costs were irrecoverable pursuant to section 18(3) of the Legal Profession Act, 2015 (the "LPA") and in light of the Court of Appeal's rulings in *Garkusha (BVIHMAP2015/0010, decided 13 January 2016)* and *Shrimpton (BVIHMAP2016/0031, decided 3 February 2017)*. However, the Commercial Court ruled that those Court of Appeal decisions were distinguishable on the basis that they concerned the fees of a separate, foreign law firm being claimed as a disbursement. This was in contrast to the costs claim in the present case, being for the recovery of fees incurred by non-BVI admitted lawyers (working under the supervision of BVI admitted lawyers) as part and parcel of a BVI firm's own fees.

The Court ruled that the fees were recoverable on the basis that the fee earners were not "acting as [BVI] legal practitioners" in their own right within the meaning of section 18(3) of the LPA. Rather, they were doing work for a firm of BVI legal practitioners and were not holding themselves out as being BVI legal practitioners. In support of this finding, the Court examined a number of English authorities which adopted a restrictive interpretation of the phrase "acting as a solicitor" in

在 *Yao Juan v. Kwok Kin Kwok 和 Crown Treasure Group* 一案 2020 年 4 月 23 日的裁决中，根据上诉法院的判令（判定原告应支付第一被告其于英属维尔京群岛商业法院进行的长期不公平诉讼的费用），法官 Hon Justice Jack 裁定了应付给第一被告（由康德明律师事务所担任律师代表）的讼费数额。经以远程形式进行的为期三天的详细评估，法院裁定第一被告有权获得所申请费用（诉讼费用及杂费）的约 92%。

值得一提的是，法院针对康德明律师事务所香港办事处的三位律师，于其尚未取得英属维尔京群岛执业资格的相关时间内开展工作产生的律师费用，判定其为可追讨的讼费。原告辩称，根据《2015 年法律执业条例》（下称“执业条例”）第 18 (3) 条及上诉法院对案件 *Garkusha (BVIHMAP2015/0010, 于 2016 年 1 月 13 日裁定)* 和案件 *Shrimpton (BVIHMAP2016/0031, 于 2017 年 2 月 3 日裁定)* 的判决，这些费用是不可追讨的。但是，商业法院裁定，上诉法院的两个判决有所区别，因为其关于一间独立的外国律师事务所的费用作为杂费要求索偿，这与本案的费用索赔不同，本案是为将非英属维尔京群岛执业律师（于英属维尔京群岛执业资格律师的监督下工作）所产生的律师费，视为英属维尔京群岛律师事务所自身律师费必要的部分而进行追讨。

法院裁定此笔律师费可追讨，因为收费律师本身并不属于执业条例第 18(3) 条规定的“作为[英属维尔京群岛]法律执业者”。相反，他们是为一家英属维尔京群岛法律执业律师事务所工作，而非自己作为英属维尔京群岛执业律师。为支持此裁决，法院审查了一些英国司法机关的做法，它们对《1974 年英国律师条例》第 20(1) 条（与执业条例第 18(3) 条相类似）及其先前版本中的“作为律师”一词采用了限制性解释。法院参考司法机关的做法，

section 20(1) of the English Solicitors Act, 1974 (analogous to section 18(3) of the LPA) and its predecessors. In reference to these authorities, the Court outlined that the costs of non-solicitors employed by law firms (such as trainee solicitors) were always recoverable on an assessment (subject to the usual rules of reasonableness). In the final analysis, the Commercial Court held that section 18(3) of the LPA was not intended to disallow the recovery of fees incurred by a non-enrolled person employed by a BVI legal practitioner, provided the latter has “ultimate responsibility” for the work product.

The demand for BVI dispute resolution services has continued to increase in Asia (particularly in Hong Kong and the PRC) in recent years. BVI trials lasting for multiple weeks involving Asian parties are not uncommon. The decision is welcome guidance and clarification on the recoverability of costs incurred by non-qualified persons employed in BVI firms.

Conyers acted for the First Defendant throughout, including in the costs assessment. Richard Evans, partner, appeared for the successful cost applicant, along with associate Alecia Johns, supported by the Conyers Hong Kong team of Norman Hau, partner and Emily So, associate.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

提出说律师事务所雇用的非律师（例如见习律师）的费用始终可以在评估后（基于合理性的通常准则）追讨。最终，商业法院认为，如果英属维尔京群岛执业律师雇用的非注册人员对工作负有“最终责任”，执业条例第 18(3) 条意不在于阻止追讨其产生的律师费。

近年来，亚洲（尤其是香港和中国大陆）对英属维尔京群岛争议解决法律服务的需求持续增长。涉及亚洲当事方在英属维尔京群岛持续数周的审判并不罕见。此次裁决，对英属维尔京群岛律师事务所雇佣的非具执业资格人员所产生诉讼费用的追讨性提供了清晰的指引。

康德明律师事务所一直担任第一被告的代理律师，包括诉讼费评估过程。本案由合伙人 Richard Evans 与律师 Alecia Johns 代表诉讼费申请人出庭，康德明律师事务所香港团队合伙人侯洛文（Norman Hau）和律师苏宛儿（Emily So）提供必要支援，终获胜诉。

本文的内容并非详尽无遗，旨在提供简要概述和一般资料，而不应用于替代法律建议或法律意见。中文译本仅供参考，如有歧义，请以英文原文为准。

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