

公报文章

BVI Court Orders Committal of Judgment Debtor Resident in Hong Kong: An Affirmation of the Commercial Court's Pro-Enforcement Approach

英属维尔京群岛法庭下令对居住在香港的判定债务人收监：充分展示商事法庭支持执行判决的立场

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In *Sang Cheol Woo v Charles C Spackman*, the BVI Commercial Court handed down its first written judgment on the issue of whether the Court has jurisdiction to grant a committal order against a judgment debtor resident and domiciled outside of the jurisdiction. Justice Wallbank ruled that the Court does have an inherent jurisdiction to make such an order against a personal judgment debtor over whom the Court had already established jurisdiction.

In 2011, the judgment creditor in *Sang Cheol*, Mr. Woo, obtained a foreign money judgment in the amount of approximately US\$4.6 million plus interest (the “**Korean Judgment**”) against the judgment debtor, Mr. Spackman, who was an individual ordinarily resident in Hong Kong. In 2019, the judgment creditor issued a claim in the BVI in order to have the Korean Judgment recognized and enforced at common law (the “**Common Law Enforcement Claim**”). Permission was granted to serve the Common Law Enforcement Claim on the judgment debtor outside of the jurisdiction and thereafter a default judgment was entered against him in the BVI in excess of US\$14 million on account of his failure to respond to the Common Law Enforcement Claim.

On 20 August 2020, the Court made an examination order (the “**Examination Order**”) compelling the judgment debtor to appear (via Zoom, because of the Covid-19 pandemic) to be examined under oath as to his means. The Examination Order was endorsed with a penal notice, which warned that the judgment debtor could be committed to prison if he failed to obey the order. The judgment debtor failed to appear for the oral examination.

On application of the judgment creditor, the court ordered that the judgment debtor be committed to 12 months in prison in the BVI on account of his contempt of court in breaching the terms of the Examination Order. The Court was satisfied that the judgment debtor's non-attendance was wilful and contemptuous (given evidence shown of his

在 *Sang Cheol Woo 诉 Charles C Spackman* 一案中，英属维尔京群岛商事法庭就该法庭是否具有司法管辖权向居住在该管辖区以外的判定债务人居民下达收监令的问题，做出了首份书面判决。Wallbank 法官裁定，若法庭早前已经确立对个人判定债务人具有管辖权，法庭就具有下达收监令的司法管辖权。

2011 年，*Sang Cheol* 案的判定债权人 Woo 先生在一份判决书中从判定债务人 Spackman 先生处获得了约 460 万美元外币，附加利息（下称“**韩国判决**”），后者通常居住在香港。2019 年，判定债权人在英属维尔京群岛提出索偿，目的是让韩国判决在普通法下得到承认和执行（下称“**普通法执行索偿**”）。法庭准许了向管辖区以外的判定债务人送达普通法执行索偿文告，之后，由于他未对文告作出回应，英属维尔京群岛便对他作出了超过 1,400 万美元的缺席判决。

2020 年 8 月 20 日，法庭下达了一项审讯令（下称“**审讯令**”），强迫判定债务人出庭（因 2019 冠状病毒病大流行而通过云视频 Zoom 进行），根据其自身条件宣誓接受审讯。审讯令附有一份刑事通知书，其中警告说，如果判定债务人不服从命令，则可能被判入狱。判定债务人没有出庭接受口头审讯。

在判定债权人提出申请后，法庭裁定，由于判定债务人违反审讯令的条款而被判藐视法庭，判定债务人须在英属维尔京群岛入狱 12 个月。法庭认为，判定债务人是故意缺席的，行为被视为对法庭充满蔑视（有证据显示他一直在世界不同的司法管辖区逃避传票和执法）。随后，于 3 月份做出的

long history of evading personal service and enforcement in various jurisdictions worldwide). In a subsequent decision handed down in March, the Court ordered further that a bench warrant be issued in order to authorize the police to arrest the judgment debtor and bring him before the court, should he enter the jurisdiction.

The judgment addresses important questions on the BVI Court's jurisdiction to grant such committal orders as well as the practical efficacy of the same given the judgment debtor's non-resident status. In respect of the Court's jurisdiction, the Court was satisfied (on the basis of an established line of English authorities) that the Court does have an inherent jurisdiction to make such an order in respect of a personal judgment debtor over whom the Court had already established jurisdiction. Given that permission to serve the judgment debtor outside of the jurisdiction had already been granted in respect of the Common Law Enforcement Claim, the Court ruled that there was no need for additional permission to be sought in respect of the Examination Order (which was itself incidental to the Common Law Enforcement Claim).

Regarding the efficacy of the order, the Court ruled that an order committing the judgment debtor to prison would not be in vain since it (i) furthered the public policy of ensuring respect for the administration of justice (which is undermined by litigants who disrespect court orders); and (ii) may have a coercive effect against the judgment debtor who may be required to travel to the BVI on business given his previous use of BVI corporate vehicles and his directorship of BVI companies. The Court expressly affirmed that the BVI is a pro-enforcement jurisdiction and noted further that securing compliance with orders of the Court, and deterring disobedience, are practical reasons for making a committal order. In an effort to encourage compliance, the Court ordered that the committal order would be suspended if the judgment debtor (within seven days) paid the judgment debt, or appeared for examination pursuant to the terms of the Examination Order.

This judgment serves as an important reminder of the BVI Commercial Court's commitment to assisting judgment creditors in obtaining the fruits of their judgment, irrespective of the location of the judgment debtor (whether resident in Asia or elsewhere outside of the jurisdiction).

If you are interested in understanding more about this legal development, please feel free to contact your usual contact at Conyers or the below authors.

The authors are both members of Conyers' Asia Disputes & Restructuring Group (ADRG) which is tasked with providing sophisticated Bermuda, British Virgin Islands and Cayman Islands litigation advice to clients connected to our multi-lingual (Cantonese, English and Mandarin) team based in Asia. The ADRG integrates the most experienced and highly rated partner-led litigation teams in Asia, Bermuda, the British Virgin Islands and Cayman Islands and delivers seamless and comprehensive services across

一项裁定中，法庭进一步下令，发布对他的法庭拘票，授权警察在判定债务人进入该辖区时逮捕他，并将他带到法庭。

该判决着手解决了有关英属维尔京群岛法庭下达此等收监令以及该判决的实际效力（考虑到判定债务人的非居民身份）的重要问题。关于法庭的司法管辖权，法庭认为（基于英国案例的既定原则），若法庭早前已确立对个人判定债务人具有管辖权，法庭就具有下达收监令的司法管辖权。鉴于法庭已经准许向管辖区以外的判定债务人送达普通法执行索偿文告，法庭裁定，无需就审讯令寻求额外许可（这本身就是普通法执行索偿的附带部分）。

关于判令的效力，法院裁定，将判定债务人送入监狱的判令不会是徒劳的，因为该判令 (i) 促进了确保尊重司法的公共政策（由于诉讼当事人不尊重法庭判令，这项政策受到了破坏）；(ii) 对判定债务人可能具有强制效力，这是因为，鉴于此人以前使用过英属维尔京群岛公司以及担任英属维尔京群岛公司的董事，他可能需要到英属维尔京群岛作公务出访。法庭清楚申明，英属维尔京群岛是一个支持执法的管辖区，并进一步指出，确保遵守法院的命令、阻止对命令的违抗是下达收监令的切实理由。为了鼓励遵守命令，法院决定，如果判定债务人（在七天之内）支付判定的债务，或者根据审讯令的条款出庭，则收监令会暂停。

该判决起到了重要的警惕作用，即英属维尔京群岛商事法庭致力于协助判定债权人获得其判决的成果，无论判定债务人身在何处（无论其居于亚洲还是该辖区以外的其他地方）。

如果您有兴趣了解有关此案进展的更多信息，请随时与本所中您惯常联络的律师或以下作者联系。

作者均为康德明律师事务所亚洲纠纷调解及公司重组小组 (ADRG) 的成员，该小组的任务是为那些与我们的多语种（粤语、英语和普通话）亚洲团队联系的客户提供高度专业的百慕大、英属维尔京群岛和开曼群岛诉讼建议。ADRG整合了亚洲、百慕大、英属维尔京群岛和开曼群岛最有经验、排名极高的合伙人带领的诉讼团队，全天候提供跨辖区的无缝、全面服务。我们在这些司法管辖区的辩护律师是各自执业领域的翘楚，受到所有领先的独立目录的认可。我们

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