

New rules for those seeking admission to practise in the BVI

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Dispute Resolution analysis: What affect will the enactment of the Legal Professions Act 2015 in the British Virgin Islands (BVI) have for those who are qualified in another common law jurisdiction and who wish to practice in the BVI? Adam Hinks, an associate of Conyers Dill & Pearman in the BVI, comments on the consequences of the new law for international litigation practitioners.

What impact will the BVI Legal Professions Act 2015 have on UK practitioners who wish to practice in the BVI?

The BVI Legal Professions Act 2015 has made it more restrictive for UK counsel to practise BVI law. The biggest impact will be felt by barristers admitted to practice in England and Wales who have not taken silk. Previously, these junior barristers could apply to be admitted to practice in the BVI to conduct a case there. Once admitted in the BVI, that admission remained valid once the case had been concluded. However, it was felt that barristers in that position could hold themselves out not just as admitted in the BVI but also as being more experienced in BVI law than may otherwise be the case. This was felt in the BVI to put the local BVI Bar at a disadvantage.

Where a leader is needed for a major case in the BVI, then QCs from England and Wales can continue to apply for temporary admission. However, junior counsel in the case will need to be admitted in the BVI and a leader from English chambers will not be able to have a junior from his chambers assist him or her. This restriction is made explicit in section 46(2) of the BVI Legal Professions Act 2015 which provides that a leader granted temporary admission 'shall not retain as junior counsel in that case or matter, any person who does not hold a valid practising certificate'.

Where a case will require heavy input from a junior then this will need good planning especially bearing in mind the four or five hour time zone difference between the two jurisdictions.

Until 1 January 2019, UK counsel will need to have practised as a barrister, advocate, solicitor or attorney-at-law for at least three years before seeking admission in the BVI. From 1 January 2019 this period will rise to five years. A solicitor seeking admission to the BVI Bar must have a right of audience before a superior court. For solicitors qualified in England and Wales, this means that they must have higher rights of audience.

What advice can you offer on how to navigate Part VII of the BVI Legal Professions Act 2015 which deals with the temporary admission of foreign legal practitioners?

There are five requirements set out in section 45 of the BVI Legal Professions Act 2015 which have to be met in order for a foreign legal practitioner to obtain temporary admission to the BVI Bar. These are that the practitioner:

- o holds Her Majesty's patent as Queen's Counsel (or equivalent)
- o has special qualifications or experience for the purpose of the case
- o has been admitted as a barrister, advocate, solicitor or attorney-at-law in their home jurisdiction
- o is in good standing with their home bar or law society, and
- o does not ordinarily reside in the BVI but who intends to come to the BVI for the purpose of appearing in a

case and is a 'fit and proper person to be temporarily admitted as a legal practitioner'

It is not clear, for example, if those lawyers who hold the award of QC honoris causa will be deemed equivalent under section 45(1)(a). All five of these requirements must be met.

What are the practical considerations when applying for temporary admission?

At the moment a foreign lawyer who wants to be admitted in the BVI must apply to the High Court. This application must be made by the fixed date summons procedure. An affidavit in support proving why the foreign lawyer is a fit and proper person to be admitted to the BVI must be sworn in support of that application. The court fee must also be paid. This will not change.

What is new, however, under the BVI Legal Professions Act 2015 is the requirement to serve a copy of that application for temporary admission on a new body set up under the BVI Legal Professions Act 2015—the BVI General Legal Council set up under Part II of the BVI Legal Professions Act 2015. Section 45(3) provides that before granting temporary admission the High Court 'shall have regard to the views of the Council'. While time will tell what the BVI General Legal Council will do in practice, this would appear to give it three options:

- o consent to the application
- o raise queries or concerns about the application, or
- o object to the application on the basis that the section 45 criteria are not met

Where the BVI General Legal Council raises queries or objections, an applicant will then need to address these by a further affidavit. It will then be for the High Court to decide on the application either on the papers or at an oral hearing. It will be interesting to see what interpretation is placed by the High Court on 'special qualifications or experience' in due course and just how 'special' foreign QCs will have to prove themselves to be to obtain temporary BVI admission. There may be some interesting conversations that follow where an application is refused.

Given that before admission each application must be served on the BVI General Legal Council and is subject to its views it is incumbent upon the legal practitioner instructing him or her to do so with expedition. It is not yet known how the process will be administered in practice, but it might be that an effect of this additional bureaucratic procedure would mean that the days of instructing a QC at very short notice are gone.

Further, section 45(2) provides that such an application for temporary admission shall be made 'through the legal practitioner instructing him' and that the application shall also include 'brief particulars of the case in which the applicant intends to appear'.

Section 47 introduces temporary practising certificates for the first time in the BVI—these will be issued to foreign QCs who have been granted temporary admission. The BVI Bar will now maintain a separate roll of barristers who have been granted temporary admission. Where a foreign QC needs to renew their temporary practising certificate, this will not be a mere formality. Instead, the BVI law firm instructing that QC must issue a letter to the Registrar of the BVI Bar stating that the holder of the practising certificate 'is still engaged in the particular case or matter in respect of which the certificate was issued'.

As to fees, these are set out in Schedule 2 to the BVI Legal Professions Act 2015. The main ones are (all fees in US dollars):

- o \$2,000 fee for temporary admission—this is non-refundable if the application is unsuccessful (it should be noted this fee is double that of the fee for a regular application to practise)
- o \$1,000 fee for a temporary practising certificate to a foreign lawyer—this fee is payable annually (this is the same level of fee that a BVI lawyer must pay for his or her BVI practising certificate), and
- o \$200 fee for an enrolment certificate (again, this is the same level of fee charged to BVI lawyers)

UK counsel will not be entitled to practice BVI law unless they are working in an overseas office or affiliate firm practising in the BVI. The number of such overseas practitioners will be restricted by way of a ratio.

To what extent does this mirror other off shore jurisdictions? Could other off shore jurisdictions follow suit?

Time will tell whether other offshore jurisdictions will follow the BVI. It may be sensible for them to wait to see if the BVI reforms achieve their intended objectives. It should be noted that getting the BVI Legal Professions Act 2015 on to the statute book in the BVI was no easy task and took many years to achieve.

Other jurisdictions such as Jersey do not have temporary admission. To be admitted in Jersey under the Advocates and Solicitors (Jersey) Law 1997 an applicant needs not just three years' practical experience in a Jersey law office but also to have passed the Jersey law examinations. The position is the same in Guernsey.

Interviewed by David Bowden.

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