

BVI Court Orders Indefinite Committal of Extra-Territorial Contemnor

In a judgment published on 1 September 2021, the British Virgin Islands ("BVI") court has committed a contemnor litigant (and resident of the People's Republic of China) to an indefinite term of imprisonment for her failure to withdraw or discontinue overseas proceedings (the "Committal Order"), which are the subject of a BVI anti-suit injunction.

By his written judgment, Mr. Justice Jack drew a distinction between the criminal sanction for contempt of court in the UK, which carries a maximum sentence of two years imprisonment, and the Territory of the BVI. In the BVI, the position is governed by the common law where "*the normal order where a contemnor is in continuing breach of an injunction is simply that the contemnor be committed to prison indefinitely*", being the order that the learned judge went on to make. The Committal Order was made on terms that the contemnor may apply to purge her contempt, in which case "*[the presiding judge] will consider whether the time she has spent in prison is sufficient to purge her contempt or whether there ought to be a fixed term for punishment for breach of the court's orders*".

Where a party to BVI proceedings is found to be in contempt, the court has a discretion as to whether it will continue to hear the contemnor. In the

current judgment, the judge declined to do so on the basis that the contemnor "*has no intention of mending her ways*", having been afforded a *locus poenitentiae*¹ to cease to be in contempt. Flowing from this determination was an order that her claim (and defence to counterclaim) in the BVI was struck out.

This area of law is a developing one in the Territory, with the judgment being only the second reported decision of the Commercial Court on this issue².

Further Information

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

British Virgin Islands

Adrian Francis
+1 284 852 3016
adrian.francis@maples.com

Matthew Freeman
+1 284 852 3011
matthew.freeman@maples.com

¹ An opportunity to withdraw or discontinue, in this case, the Chinese proceedings which are subject to the anti-suit injunction.

² The first being a judgment of Mr. Justice Wallbank in *Sang Cheol Woo v Charles C Spackman BVHC(COM)* No. 58 of 2019.

Scott Tolliss

+1 284 852 3048

scott.tolliss@maples.com

September 2021

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.