

## Legal Update

### Commercial Court Rules

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In May 2009 a new Commercial Court specialising exclusively in domestic and cross-border commercial and insolvency matters (with values exceeding \$500,000) was established on Tortola.

Prior to the establishment of the Commercial Court, all cases were handled by the High Court subject to the Eastern Caribbean Supreme Court Civil Procedure Rules (the “CPR”).

The CPR provides a complex system of fixed, prescribed and assessed costs that are not suited to complex commercial matters.

In February 2010, a bespoke amendment to the CPR was introduced that, in part, provides new rules in respect of witness evidence and costs for all cases under the auspices of the Commercial Court (the “Commercial CPR”).

With the exception of evidence for Originating Applications and as specifically required by law (e.g. evidence in support of a freezing injunction), evidence in support of ordinary applications (e.g. for directions) can be made by way of a witness statement as opposed to a sworn affidavit. This amendment will make it far easier for clients outside of the BVI to provide evidence.

The Commercial CPR has also introduced a system, to which English and other common law lawyers will be familiar, of

assessed costs. In respect of interim applications lasting less than two hours, Costs will be summarily assessed by the presiding Judge.

In respect of applications longer than 2 hours, the parties can seek an assessment of costs by the Judge or a High Court Master. In our experience a hearing before the Judge familiar with the matter would be preferable. In either full or summary assessment, costs in general follow the cause and are assessed in accordance with a number of general overriding principles focussing on the conduct of the parties.

The Commercial CPR are a welcome change to civil litigation in the BVI. Forbes Hare act in a number of noteworthy matters that are before the Commercial Court and our lawyers have a firm grasp on Commercial Court procedure which complements our renowned expertise in large-scale commercial and insolvency matters, particularly those with a cross-border element.

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*Please note that our legal updates are intended for information purposes only, are not intended to provide legal advice, and should not be relied on in any particular set of circumstances.*

If you would like to receive further information, or more detailed guides on a range of BVI legal topics, please do not hesitate to contact William Hare at [william.hare@forbeshare.com](mailto:william.hare@forbeshare.com) or your usual contact at the firm.

#### About Us

Forbes Hare is an independent law firm advising on the laws of the British Virgin Islands and Cayman Islands. For further information on the range of the services we offer please visit our website.