

How claims work in the BVI

This guide covers frequently asked questions on how claims work and the claims process in the British Virgin Islands.

How do you start a claim in the BVI?

In the BVI, a claim is commenced by filing a claim form along with a statement of claim at the court office or, for specific types of claims, a fixed date claim form with an affidavit in support.

A fixed claim form states the date, time and place for the first hearing.

A claim may be commenced in the Civil Division or Commercial Division of the High Court. Ordinarily, a claim should include all claims which can be conveniently disposed of in the same proceedings. A claimant bringing a commercial claim (ie, a claim related to companies, contracts, banking, insurance, arbitration, etc) is required to file a certificate of suitability which specifies the commercial nature of the claim and certifies that the claim is valued at US\$500,000 or more.

There are associated filing fees for bringing a claim, which vary depending on the nature of the dispute and the claim's value.

A claim is issued on the date the court office receives it. The Court Registry's opening hours are between 8:30am and 4pm, Monday to Friday, excluding weekends and public holidays. If a claim form is filed electronically outside of the Registry's hours, it will be deemed filed on the date the court reopens.

Who can start a claim?

A claim can be commenced by a person over the age of 18 years, a company or body corporate, a representative, beneficiary, trustee, administrator of an estate or a next friend (ie an appointed person for a minor or patient).

What claims can be commenced by way of a fixed date claim form?

The Eastern Caribbean Supreme Court Rules (Revised Edition) 2023 (the **EC CPR**) provides that a fixed date claim form must be used: (1) in claims between landlord and tenant; (2) where required by an enactment, rule or practice direction; (3) where an enactment requires proceedings to be commenced by originating summons or motion; (4) matters involving questions of law only; and (5) where an enactment provides for an application to be made to the court where the effect of application commences proceedings in the court. For example, EC CPR 43.12 requires use of a fixed date claim form for recognition of a foreign arbitral award.

One distinction between filing a claim and a fixed date claim concerns the timing of the first hearing. When issuing a fixed date claim form the court must set a date for the first hearing of the claim. The court may treat that first hearing of the claim as a case management conference or a trial of the claim (if it is not defended or if it considers that it can be dealt with summarily).

Once a claim has been filed, when must it be served?

A claim issued against local defendants must be served within six months of being issued (ie, the date entered on the claim form by the court office). However, claims issued against foreign defendants must be served within 12 months. If there are difficulties with effecting service, the claimant can apply to the court to extend the life of the claim form.

How do you serve a claim within the jurisdiction?

The general rule is that a statement of claim and claim form must be served personally on each defendant by either handing it to or leaving it with the person served. However, if a claimant has difficulty effecting personal service – eg where a defendant is evading personal service – a claimant can seek permission to serve the claim via an alternate

method specified by the court. The claimant must file evidence which proves that personal service “cannot be effected on the defendant for good reason”.

A claimant may also serve its claim on a defendant’s legal practitioner, provided the legal practitioner is authorised to accept service and has confirmed its authorisation in writing.

Where the defendant is not a person, the EC CPR guides how service may be affected by limited companies, firms or partnerships, body corporates, minors and patients.

A claim can be served without a statement of claim if: (1) it contains the information required to be included in a statement of the case, (2) the court gives permission, or (3) it is a matter of emergency and the claimant certifies that it would be impracticable to obtain permission.

How do you serve a claim on a defendant outside the jurisdiction?

Claims brought in the BVI can also be brought against people or companies not resident or located within the BVI.

It is no longer necessary to obtain permission from the court to serve a claim outside the jurisdiction. Still, it must comply with three criteria, and the claimant must file a certificate confirming compliance.

According to EC CPR 7.2, the three criteria are:

- Service must be effected in compliance with EC CPR 7.9 or according to EC CPR 7.17. EC CPR 7.9 lists the modes of service available to a claimant. These include service per the country’s laws where it is to be served, service through foreign governments or personal service by the claimant or agent. Where a party has complied with EC CPR 7.2 to serve its originating claim, EC CPR 7.17 states that the court’s permission is not required to serve an application, notice or order issued in those proceedings, provided it is served in compliance with the EC CPR.
- The claim must fall within one of the service out gateways listed in EC CPR 7.3.
- The claimant must comply with EC CPR 7.6 by filing a certificate at the same time as filing the claim. The certificate must state that (i) the claimant has a good cause of action, (ii) the claim falls within a category listed in EC CPR 7.3, and (iii) the person signing the certificate believes that the BVI court is the appropriate forum and the proposed method of service does not infringe the law of the foreign state.

The relevant service-out gateways that a claim must fall into are as follows:

- **Features which may arise in any type of claim:** The claim is (1) made against a local defendant, and there is a real issue which is reasonable for the court to try, and the claimant needs to serve someone who is outside the BVI, who is a necessary and proper party; (2) for an injunction ordering the defendant to do or refrain from doing some act within the BVI; (3) for a remedy against the defendant a person domiciled or ordinarily resident in the BVI.
- **Claims about contracts:** (1) The claim concerns a breach of contract committed within the BVI. (2) The contract (i) expresses or implies that the BVI court has jurisdiction, (ii) was made by or through an agent residing in the BVI, or (iii) was made within the BVI. (3) The claim is for a declaration that no contract exists provided that if it did, it complied with (i), (ii) and (iii).
- **Claims in tort:** The claim concerns tort and the act of causing the damage committed in the BVI or the damage sustained in the BVI.
- **Enforcement:** The claim is made to enforce a judgment or arbitral award made by a foreign court or a tribunal and is amendable to be enforced in the BVI.
- **Claims about BVI property:** The claim concerns property within the BVI.
- **Claims about companies:** The claim is made concerning the (1) constitution, administration, management or conduct of the affairs, (2) ownership or control, or (3) insolvency of a BVI-incorporated company.
- **Claims about trusts:** The claim is made for a trust remedy and (i) the defendant as constructive trustee and the defendant’s alleged liability arises out of acts committed within the jurisdiction, (ii) the claim concerns the administration of an estate or probate proceedings relating to a person who died domiciled within the jurisdiction, or (iii) the governing law of the trust instrument is in the BVI.

- **Claims of restitution:** The claim is a restitution claim where the defendant's alleged liability arises out of acts committed within the BVI or out of acts which, wherever committed, were to the detriment of a person domiciled within the BVI.
- **Claims under an enactment conferring jurisdiction on the court:** The claim is made pursuant to an enactment that provides the court the power to hear and determine the claim.
- **Relief in aid of foreign proceedings:** An application is made for interim relief, and proceedings have commenced or are about to be started in a foreign jurisdiction.
- **Claims for costs orders against a non-party:** The claim is made by a party to proceedings for a cost order against a non-party.

What if a defendant evades service or cannot be found?

If a defendant cannot be located or evades service and, therefore, cannot be served by one of the ordinary methods of service outlined in EC CPR 7.9, the claimant can apply for an order for service by alternative means. Before seeking such an order, the claimant must provide a good reason and show why service cannot be reasonably effected on the defendant by ordinary means. In granting an order for alternative service, the court will then allow service to be effected by any method likely to bring the claim to the defendant's attention.

What documents should be served with a claim form?

The following documents must be served with the claim form and statement of claim, failing which, service will not be validly affected:

- a copy of any order required by the EC CPR
- a defence form
- an acknowledgement of service form
- prescribed notes for the defendant(s)
- an application to pay in instalments (provided that the claim is a monetary claim)
- an authorisation code (as new matters are likely to be filed electronically on the E-Litigation Portal)

What if urgent interim relief is also needed?

A claimant seeking an urgent remedy before commencing proceedings (for example, injunctive relief where asset dissipation may otherwise occur) can obtain such relief by applying even before proceedings have been initiated. In the application, the claimant must satisfy the court that the relief is being sought concerning anticipated proceedings, which will be commenced in short order. Such an application can also be brought on an *ex parte* basis to avoid tipping off the respondent.

Are there any particular rules on pleadings?

When bringing a claim, a claimant must properly establish its case and identify or annex relevant and corroborative documents supporting the claim. The importance of an adequately pleaded case cannot be overstated. A claimant may not rely on any allegation or fact that is not set out in the claim unless the court gives permission or the parties agree.

A claimant will, therefore, be required to set out its case, describe the nature of the claim, provide an address for service and specify the remedy, damages and/or interest sought.

A claimant who seeks interest, aggravated and or exemplary damages must say so in the claim form. To plead interest, the claimant must set the basis for entitlement, rate and period for which interest is claimed. Where the claim is for a specified sum, the claimant must also state the amount of interest and the daily rate at which interest should accrue.

A statement of claim must be as short as practicable and include all the facts or allegations the claimant relies on. It must also have a certificate of truth and estimate the property's value where relevant.

A statement of claim must be pleaded appropriately and state a cause of action(s). In the recent decision of *AO Alfa Bank v Kipford Ventures Ltd v Kipford Ventures Limited* BVIHC (COM) 219/2020 (14 December 2021), the court opined that the claimant's pleadings were "too vague to be actionable". Therefore, a statement of claim must provide the defendant(s) with sufficient details to enable them to respond to the claim appropriately. Failure to do so can result in a claim being struck out.

Conclusion

We hope this guide helps you understand how claims work in the BVI. If you have any further questions, please get in contact with Claire Goldstein or Christopher Pease.

Key contacts



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