

**EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES**

**PRACTICE DIRECTION 69B (I)**

**No. 2 of 2017**

**COMMERCIAL DIVISION EMERGENCY MEASURES**

**TERRITORY OF THE VIRGIN ISLANDS**

**(RE-ISSUE)**

This practice direction is made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and is applicable to the Territory of the Virgin Islands.

Practice direction 69(B)(I), No. 1 of 2017 is revoked and substituted by this practice direction.

**1. Introduction**

1.1 This practice direction supplements Part 69B of the Civil Procedure Rules (the Commercial Court Practice Directions) in that it regulates the practice and procedure of the Commercial Division of the Supreme Court in the Territory of the Virgin Islands (“TVI”).

1.2 This Practice Direction is intended to facilitate the continued disposal of matters proceeding before the Commercial Division of the Supreme Court in the Territory of the Virgin Islands (the Commercial Division) and applies to all proceedings before the Commercial Division of the Supreme Court in the Territory of the Virgin Islands.

1.3 This Practice Direction will remain in force until the Chief Justice so directs.

- 1.4 Insofar as the Rules or the Commercial Court Practice Directions are inconsistent with this Practice Direction, they are modified by it.

## **2. Context**

In this Practice Direction -

- (i) ECSC means Eastern Caribbean Supreme Court;
- (ii) TVI means Territory of the Virgin Islands.

## **3. Filing in Commercial Matters**

- 3.1 Prescribed fees that are due on a document filed by email shall be paid at the time and in the manner specified by this Practice Direction.

- 3.2 It is the responsibility of every Legal Practitioner (or their firm) to establish and maintain an Escrow Account with the Accounts Department of the ECSC Headquarters against which drawdowns will be made for filings, prescribed fees and administrative fees.

- 3.3 Only filings in respect of which an escrow account has been established under this Practice Direction shall be accepted for processing.

- 3.4 The Escrow Account shall be maintained by making wire transfers to the ECSC's Headquarters. The Wire Transfer information is as follows:

ECSC E-filing Project  
Acct # 2007908  
Bank of Nova Scotia  
William Peter Boulevard  
Transit # 60475  
Swift Code - NOSCLCLC

- 3.5 Every document which the Rules or the Commercial Court Practice Directions permit or require to be filed in the Registry of the High Court in the Territory of the Virgin Islands shall be filed only electronically:

- (i) by sending that document in PDF format to [bvcommercial@eccourts.org](mailto:bvcommercial@eccourts.org); and
- (ii) by filing a completed E-Filing Application Header form.
- (iii) Prior to the hearing, draft orders required to accompany all applications shall be filed electronically in Word format for the use of the Court.

3.6 Where a document is filed by email, the party who has filed the document must also subsequently deposit one (1) hard copy of the document at the TVI Registry of the High Court, 2nd floor SAKAL Building, Wickham's Cay, PO Box 418 Road Town, Tortola, British Virgin Islands, by no later than the next business day after receipt of the electronically filed document.

3.7 When a document is filed the subject line of the e-mail must contain the following information -

- (i) the title of the case;
- (ii) the case number (if available) using a four digit file number after the year *e.g. BVIHCM2017/0187*;
- (iii) the date and time of any hearing to which the e-mail relates; and
- (iv) the type of matter/application being filed.

3.7 The e-mail message must contain the sender's-

- (i) identity;
- (ii) telephone number; and
- (iii) e-mail address,

and should be in plain text or rich text format rather than HTML.

3.8 Correspondence and documents to be filed must not be sent as text in the body of the e-mail, but rather as attachments to the e-mail in the format stipulated by the Court.

3.9 No single document filed under this paragraph should exceed 5MB. Every such document should comply with the Rules and Practice Directions and must:

(i) contain a header with the title of the court:

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**VIRGIN ISLANDS COMMERCIAL DIVISION**

*(Sitting in Saint Lucia)*

(ii) contain the full title of the proceedings;

(iii) contain a header with the title of the document;

(iv) reflect the name, business address, reference (if any), telephone number and fax number (if any) of the filer;

(v) be dated;

(vi) be signed by the person filing it (if not an affidavit) and should not be in the name of the firm;

(vii) be signed by the person who deposes (if an affidavit);

(viii) state the name of the party on whose behalf it is filed;

(ix) state the full name of the signatory legibly below the signature;

(x) state the address of the court as follows:

The Court Office is the located at the Registry of the High Court, 2nd floor SAKAL Building, Wickham's Cay, PO Box 418 Road Town, Tortola, British Virgin Islands: Telephone +1 (284) 468 5001 or +1 (284) 468 4909 | Email: supremecourt@gov.vg or commercialdivisionvi@gov.vg. The Court Office is open between 9:00 am and 2:00 pm, Monday to Friday except public holidays.

BVI Commercial Division in St. Lucia is located 2nd Floor, Renham Building, No. 1 William Peter Blvd Castries, St. Lucia is open between 9:00 am and 4:00 pm, Monday to Friday except public holidays. Tel: +1 (758) 452

6484 E-filing for authorized BVI Law firms at [bvcommercial@eccourts.org](mailto:bvcommercial@eccourts.org) ;  
and

(x) be properly indexed and paginated (if it is a record or bundle of documents being filed).

#### **4. Service of Documents**

4.1 Notwithstanding the provisions of CPR 3.11(1), every document which is required by CPR 5.6 to be served upon a Legal Practitioner may be served upon that Legal Practitioner by email.

4.2 A party who serves a document by email shall copy the court on the email effecting service, using the address [bvcommercial@eccourts.org](mailto:bvcommercial@eccourts.org) .

4.3 The Email address at which service may be effected under paragraph 4.1 is the email address:

(a) notified in writing by that Legal Practitioner for the purposes of paragraph 3.1; or

(b) if an address has not been notified in writing by that Legal Practitioner, service may be validly effected upon that Legal Practitioner by sending that document to one or more of:

(i) the email address used on the letterhead of that Legal Practitioner or previously used by that Legal Practitioner;

(ii) the email address given on the website of that Legal Practitioner;  
or

(iii) the email address of the general mailbox of the firm to which that Legal Practitioner belongs.

4.4 Notwithstanding the provisions of CPR 5.7 and CPR 6.2, a claim form or other document may be served on a limited company by sending it by email to the registered office or Registered Agent of that limited company.

4.5 The email address under paragraph 3.4 at which service may be effected is the email address:

(a) notified in writing by that limited company or its Registered Agent for the purposes of paragraph 3.4; or

(b) if an address has not been notified in writing by that limited company or its Registered Agent, service may be validly effected upon that limited company by sending the claim form or other document to one or more of:

(i) the email address used on the letterhead of that limited company or its Registered Agent or previously used by that limited company or its Registered Agent;

(ii) the email address given on the website of that limited company or its Registered Agent; or

(iii) the email address of the general mailbox of that limited company or its Registered Agent.

4.6 Proof of service of a filed document shall be by way of an affidavit of service, which shall exhibit the following:

(a) copy of the email under cover of which the document in question was served; and

(b) a copy of any message tracking, relay or delivery confirmation, including the address to which the email was sent, the date and time the email was sent, and if applicable, a copy of any reply or bounce-back notice of non-delivery or delivery failure.

## **5. Hearing of Matters**

5.1 For so long as this Practice Direction remains in force, the Commercial Division shall sit in a building designated by the Chief Justice for that purpose, and the Judges appointed to that Court and the Court itself shall be deemed to be sitting in the Territory of the Virgin Islands.

5.2 Hearings in the Commercial Division shall proceed by way of personal appearance before the court or such other method as the judge may direct, except that case management hearings, interlocutory uncontested hearings, emergency applications and ex parte applications shall be conducted by teleconference hearings or such other method as the judge may direct.

- 5.3 Where parties wish to be heard via telephone or video conference a request must be made to the court in the form attached to this Practice Direction.
- 5.4 The Registrar shall:
- (a) notify the parties as to whether the hearing will take place by video conference, telephone or in person;
  - (b) liaise with the parties' legal practitioners to ensure that suitable arrangements are in place to facilitate a hearing by telephone or video conference;
  - (c) notify any Legal Practitioner that is not present in the Territory of the Virgin Islands of the telephone number, IP address or any other such information that the Legal Practitioner may require in order to participate in that hearing; and
  - (d) provide to any such party a default telephone number in case of technical difficulties.
- 5.5 Where a hearing proceeds by video conference:
- (a) subject to any technical constraints, Legal Practitioners may attend the hearing from different locations;
  - (b) it is the responsibility of a Legal Practitioner who is not physically present in the Territory of the Virgin Islands at the time of the hearing to identify an appropriate video conferencing facility and to connect to the facility of the Court;
  - (c) at the commencement of that hearing, a Legal Practitioner representing each party shall identify every person present with them; and
  - (d) no party or their Legal Practitioner is entitled to be physically present before the Court unless the other parties consent or the Court gives permission.
- 5.6 The first hearing of a Fixed Date Claim Form shall not be treated as a hearing at which the evidence of any witness is to be given unless the Court has given a direction to that effect.

## **6. Bundles for Hearings**

- 6.1 The party responsible for preparing the bundles for any hearing under the Rules or the Commercial Court Practice Direction shall, within the periods prescribed:
- (a) deliver one (1) hard copy of the bundle to the Registrar TVI, either by post to P.O Box 1093, Castries, St Lucia, West Indies or by hand to 2nd Floor, Renham Building, No. 1 William Peter Boulevard, Castries, St. Lucia; and
  - (b) deliver a bookmarked electronic copy of that bundle to every other party.
- 6.2 The Court reserves the right to request additional hard copies of any bundles from the party who has filed by email.
- 6.3 The bundle should be clearly labelled as a hearing bundle and must bear the date of the hearing.
- 6.4 Bundles must not contain more than 200 pages per volume.

## **7. Applications for admission as a Legal Practitioner**

- 7.1 An application for admission as a Legal Practitioner in a matter filed in the Commercial Division shall be filed by email in accordance with this Practice Direction.
- 7.2 The hearing of an application for the admission as a Legal Practitioner shall be by personal appearance, except where the Court otherwise directs.
- 7.3 Where the Court is satisfied that it is appropriate to admit such a person as a Legal Practitioner:
- (a) the Registrar shall enter the name of that person onto the Court Roll;
  - (b) the Court may accept such undertakings as appears to it appropriate:
    - (i) as to the production of the originals, or certified copies of the originals of the documents produced at that hearing;



- (ii) as to the signing of the Roll (or a facsimile of it); and
- (iii) as to the receipt of payments;

(c) payment of any fees prescribed by the provisions of the Eastern Caribbean Supreme Court Act (Cap 80, Revised Laws of the Virgin Islands) or under the Legal Profession Act, No. 13 of 2015 shall be paid at the TVI High Court Registry, at least 2 clear days prior to the application for admission. Copies of the receipts for payment must be provided to the TVI Registry in Saint Lucia prior to the hearing.

## **8. STATUS HEARING UPDATE FORMS**

- 8.1 All parties are to complete the status hearing update form attached to this Practice Direction.
- 8.2 The status hearing update form must be returned to the Registrar via email at [commercialdivisionvi@gov.vg](mailto:commercialdivisionvi@gov.vg) no less than 14 days prior to the date of hearing.
- 8.3 Parties are asked to submit joint or agreed forms as much as possible.
- 8.4 Where there is no agreement, parties are asked to submit separate forms and state that there is no agreement.

## **9. COURT FEES**

- 9.1 The Commercial Claims Fees Order 2011 shall continue to apply and shall be made from the Applicant's Legal Practitioner's Escrow Account with the Accounts Department of the ECSC, Headquarters.
- 9.2 An administrative fee shall be applied for the following services in accordance with a Notice published by the Registrar:
  - (a) e-filing
  - (b) printing and copies
  - (c) transcripts/audio file retrieval

- (d) video-link
- (e) Teleconference

9.3 The administrative fee in paragraph 8.2 shall be deducted from the Escrow Account of the party filing or requesting.

## **10. Recording of Court Proceedings**

- 10.1 At any hearing in the Commercial Division, the proceedings will be recorded by the court by such recording equipment as approved by the Chief Justice for use in the court room.
- 10.2 No party or member of the public may use unofficial recording equipment in any court or judge's chambers without the prior authorization of the presiding judge.
- 10.3 The court recording, whether in written, audio or other digital form, shall be the official transcript of the proceedings.

## **11. Preparation of Transcripts**

- 11.1 A party may request from the Registrar by the form provided in this Practice direction, a transcript or transcripts of the recording of any hearing in which they are involved.
- 11.2 Further to a party's request, a transcript will be provided upon payment of the charges authorized by any scheme in force for the making of the recording or the transcript.
- 11.3 If a person who is not a party to the proceedings requires a transcript, or if the hearing or any part of it was held in private under CPR rule 2.7, a transcript may only be provided if the Court so orders.

## **12. Provision of Transcripts**

- 12.1 A party or a person approved under paragraph 11.3 may request a copy of the transcript of proceedings to be provided either by electronic means or hard copy.
- 12.2 The fee payable will be in accordance with the scheme in force for the making of transcripts and will be based on the type of transcript requested.
- 12.3 Where a transcript is requested in the form of an audio file the fee payable shall be \$100.00 per day or part thereof of the recorded proceedings.

## **13. Special Directions**

The Registrar may, on the direction of the Chief Justice, give special instructions by way of Notices, for the filing of documents by electronic means to meet the requirements of particular cases or by way of experiment.

## **14. Effective Date**

This Practice Direction shall come into effect on the 23<sup>rd</sup> day of October, 2017.

Dated the 20<sup>th</sup> day of October, 2017

**Dame Janice M. Pereira, DBE  
Chief Justice**

