



In Your Court: Ogier's dispute resolution review - April 2023

Newsletters - 13/04/2023

There have been a number of developments of note in dispute resolution across our jurisdictions over the past few months.

These include Ireland's new Central Bank (Individual Accountability Framework) Act, and the release of guidance from Jersey's Attorney General on the implementation of the island's new Deferred Prosecution Agreements law - our team explain the changes in their latest briefings. Ogier partner James Angus advised in consultation with the Government of Jersey on the form and ambit of the new Deferred Prosecution Agreements law.

BVI and Cayman meanwhile have seen a number of significant judgments which have provided clarification on key areas of law, including on the principles for converting a voluntary liquidation into an official liquidation in Cayman, and continued developments in the Three Arrows crypto case in BVI, which saw what is believed to be BVI's first ever extra-territorial summoning of company directors to appear for a private examination by joint liquidators.

Partner Bryan De Verneuil-Smith from Ogier's Guernsey team also shares his insights and offers a reminder on directors' duties and liabilities in the Channel Islands.

In team news, we were also pleased to welcome new partner Audrey Bertolotti to lead on our Luxembourg Dispute Resolution services.

Enjoy In Your Court and if you have any questions, please get in touch with our team.

[Read In Your Court: Ogier's dispute resolution review online.](#)

Dispute resolution and employment specialist Audrey Bertolotti joins Ogier in Luxembourg as partner

Dispute resolution and employment law specialist Audrey Bertolotti has joined Ogier in Luxembourg

as a partner to spearhead the firm's litigation and employment offering in the jurisdiction.

Audrey has an outstanding track record of successfully representing clients in complex litigation matters and also advises clients on every aspect of Luxembourg employment law and practice including relocation, restructuring, collective redundancies, remuneration policies, incentive schemes and global employment contracts.

Read more: [Dispute resolution and employment specialist Audrey Bertolotti joins Ogier in Luxembourg as partner](#)

Focus on fraud

Don't miss our latest briefings on fraud. These discuss developments, recent judgments and more.

- [Fraud and contracts: Jersey's Royal Court provides welcome clarification on the impact of fraud which induces a contract](#)
- [Cayman Islands Court of Appeal upholds Grand Court's decision on exempted limited partnerships derivative claims](#)
- [Recent developments in the law of knowing receipt in the Cayman Islands](#)

Three Arrows case sees what is believed to be BVI's first ever extra-territorial summoning of company directors to appear for a private examination by joint liquidators

The BVI Court has endorsed what is believed to be its first extra-territorial order summoning directors of a BVI company (in liquidation) to appear for private examination by joint liquidators. The joint liquidators were represented by Daniel Mitchell and Grant Carroll of Ogier who instructed leading counsel Richard Fisher KC and Henry Phillips of South Square.

Confirmation of the availability of this power to a liquidator's arsenal will come as welcome news to the many prominent insolvency practitioners in the BVI.

Read more: [Three Arrows case sees what is believed to be BVI's first ever extra-territorial summoning of company directors to appear for a private examination by joint liquidators](#)

Can confidential information be disclosed to litigation funders in the BVI?

In a judgment delivered on 20 October 2022, the Court of Appeal of the Eastern Caribbean Supreme Court affirmed the BVI Commercial Court's order permitting the respondent to share with its third-

party litigation funder certain aspects of the appellant's confidential information. This information was disclosed to the respondent in compliance with the terms of an asset disclosure order.

This judgment contains a welcome analysis of the tests for determining the permissible use of documents disclosed in civil proceedings under the Civil Procedure Rules 2000 of the East Caribbean Supreme Court and the common law, respectively.

Continue reading: [Can confidential information be disclosed to litigation funders in the BVI?](#)

Short-form mergers: the appraisal saga continues in Changyou.com

The Cayman Islands Court of Appeal has recently dismissed challenges to its decision that shareholders of companies effecting "short-form" mergers are entitled to be paid fair value for their former shareholdings upon dissenting from the merger.

The judgment confirms that any attempt to reverse engineer new grounds of appeal based on the ultimate findings of the appellate court will be dismissed. It also provides helpful guidance on when a decision on a preliminary issue will be considered final for the purposes of applying for leave to appeal to the Judicial Committee of the Privy Council.

Continue reading: [Short-form mergers: the appraisal saga continues in Changyou.com](#)

Is section 175 of the BVI Business Companies Act sufficient to ward off unauthorised disposals of assets?

The Eastern Caribbean Court of Appeal's decision in *Green Elite v Fang* makes significant findings in respect of section 175 of the BVI Business Companies Act 2004. This section is intended to offer protection to the value of members' shareholdings. The deceptively straightforward provision requires members to approve any disposition of more than 50% of a company's assets that is to be made outside the ordinary course of the business. Many BVI Companies' constitutional documents exclude this provision. This section is of particular concern where directors dispose of assets and an aggrieved member seeks redress from the court.

Continue reading: [Is section 175 of the BVI Business Companies Act sufficient to ward off unauthorised disposals of assets?](#)

Making it official: the Cayman Grand Court outlines the principles for converting a voluntary liquidation into an official liquidation

In *Re Touradji Private Equity Master Fund Ltd*, the Grand Court of the Cayman Islands made a supervision order in respect of three funds in voluntary liquidation, following applications by certain aggrieved investors and the joint voluntary liquidators, and over the objections of the investment manager.

The decision provides guidance on the principles that the Court will apply to such applications, and is an example of the kind of circumstances in which a Court will consider it more effective, economic and expeditious for a voluntary liquidation to be converted into an official liquidation under section 131(b) of the Companies Act.

Continue reading: [Making it official: the Cayman Grand Court outlines the principles for converting a voluntary liquidation into an official liquidation](#)

Norwich Pharmacal Orders in Ireland: what you need to know

A Norwich Pharmacal Order is a type of remedial order delivered by the Court which compels a respondent to disclose information of both wrongdoings and wrongdoers "who seek to hide behind the mask of anonymity". They are normally used to help identify a defendant so that legal action may be brought against them. Lord Reid, in *Norwich Pharmacal*, stated that a person who has become mixed up in the wrongdoing of another has a "duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers".

In Ireland, in order to successfully obtain a Norwich Pharmacal Order, an applicant must show that the litigant has a very clear and unambiguous case of wrong.

Continue reading: [Norwich Pharmacal Orders in Ireland: what you need to know](#)

Cayman Court clarifies sanctions' impact on schemes of arrangement

In the recent Cayman Islands case of *Re In the Matter of E-House (China) Enterprise Holdings Limited*, dealing with creditors' schemes of arrangement, Justice Segal gave a helpful decision that provided judicial clarity on, among other matters, the potential impact of the recent sanctions regimes in the US, UK and Europe on the scheme, and the international effectiveness of the scheme.

Given the current macro-economic climate and levels of distress that global markets are experiencing, this is a timely reminder of the Court's willingness to take a flexible, proactive role in seeking to support a bona fide restructuring to facilitate a company's continued existence as an ongoing concern post restructuring.

Continue reading: [Cayman Court clarifies sanctions' impact on schemes of arrangement](#)

An introduction to directors' duties and liabilities in Guernsey and Jersey

Guernsey and Jersey have a rich and interesting legal and political identity. This is the result of their complex history, having been subject to the dominion of both the Duchy of Normandy and the United Kingdom at one time or another. The Guernsey and Jersey company law legal regimes derive from English law sources, both legislative and in terms of English decisions. As a result, contemporary English legislation and jurisprudence are persuasive when dealing with Guernsey and Jersey company law issues. Equally, the jurisprudence of Guernsey is persuasive in Jersey and vice versa.

This is particularly true in respect of directors' duties and liabilities. These are largely based on the English law approach. As a result, although there are some differences, the Guernsey and Jersey approach to company law and directors' duties and liability is generally familiar to the English lawyer.

Continue reading: [An introduction to directors' duties and liabilities in Guernsey and Jersey](#)

Judicial independence: upholding the integrity and robustness of the Cayman Islands judicial system

Judicial independence is a core pillar of the Cayman Islands' legal system. The judges' ability to perform their duties free of influence or control by other actors, whether governmental or private, is integral to ensuring the proper administration of justice. A judge may exercise the duty to recuse themselves from sitting in a case when there is concern that they may not be able to fulfil their role as a fair-minded observer, free from actual or perceived bias.

In the last six months, we have seen two cases in which a judge of the Grand Court recused himself from sitting in order to preserve the integrity of the Cayman Islands judicial system, ensuring not only that justice is done - but also seen to be done.

Continue reading: [Judicial independence: upholding the integrity and robustness of the Cayman Islands judicial system](#)

Jersey's Deferred Prosecution Agreements Law: the practical implementation and Attorney General's guidance

Ogier partner James Angus advised, in consultation with the Government of Jersey, on the form and ambit of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law. Following its

receipt of Royal Assent on 15 February 2023, this law is now in force with effect from 3 March 2023.

As anticipated, the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law as enacted passed the States with very few amendments. The amendments made were predominantly to remove wording relating to the legislation's prior draft status.

What was more eagerly awaited was the Attorney General's guidance on how Deferred Prosecution Agreements would be practically implemented in Jersey.

Continue reading: [Jersey's Deferred Prosecution Agreements Law: the practical implementation and Attorney General's guidance](#)

The Central Bank (Individual Accountability Framework) Act 2023 and its impact for Irish financial providers

The new Central Bank (Individual Accountability Framework) Act 2023 seeks to enhance the Central Bank's existing fitness and probity regime, and ameliorate individual accountability among financial service providers.

The President signed the Central Bank (Individual Accountability Framework) Act 2023 (the **IAF Act**) into law on 9 March 2023, but it has not yet commenced. The signing of the IAF Act concludes a seminal phase in the development of the proposed Individual Accountability Framework, which began in 2018 with the publication of the Central Bank's July 2018 Report to the Department of Finance on "Behaviour and Culture of the Irish Retail Bank".

The IAF Act consists of restatements of sections of previous legislation and must be read in conjunction with such legislation. It provides for amendments to the Central Bank Acts 1942 to 2013.

Continue reading: [The Central Bank \(Individual Accountability Framework\) Act 2023 and its impact for Irish financial providers](#)

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About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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Meet the Author



[Marc Kish](#)

Partner

[Cayman Islands](#)

E: marc.kish@ogier.com

T: [+1 345 815 1790](tel:+13458151790)

Key Contacts



[Nicholas Brookes](#)

Partner

[British Virgin Islands](#)

E: nicholas.brookes@ogier.com

T: [+1 284 852 7366](tel:+12848527366)



Brian Lacy

Partner

British Virgin Islands

Jersey

E: brian.lacy@ogier.com

T: [+44 1534 514493](tel:+441534514493)



Sarah Latham

Managing Associate

British Virgin Islands

E: sarah.latham@ogier.com

T: [+1 284 852 7348](tel:+12848527348)



Romauld Johnson

Associate

British Virgin Islands

E: romauld.johnson@ogier.com

T: [+1 284 852 7387](tel:+12848527387)



Jennifer Fox

Partner

Cayman Islands

E: jennifer.fox@ogier.com

T: [+1 345 815 1879](tel:+13458151879)



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: [+1 345 815 1880](tel:+13458151880)



Shaun Maloney

Partner

Cayman Islands

E: shaun.maloney@ogier.com

T: [+44 1534 514416](tel:+441534514416)



Farrah Sbaiti

Managing Associate

Cayman Islands

E: farrah.sbaiti@ogier.com

T: [+1 345 815 1781](tel:+13458151781)



Corey Byrne

Senior Associate

Cayman Islands

E: corey.byrne@ogier.com

T: [+1 345 815 1842](tel:+13458151842)



Harry Clark

Associate

Cayman Islands

E: harry.clark@ogier.com

T: +1 345 815 1825



James Clifford

Consultant

Cayman Islands

E: james.clifford@ogier.com

T: +1 345 815 1876



Simon Davies

Partner

Guernsey

E: simon.davies@ogier.com

T: +44 1481 737175



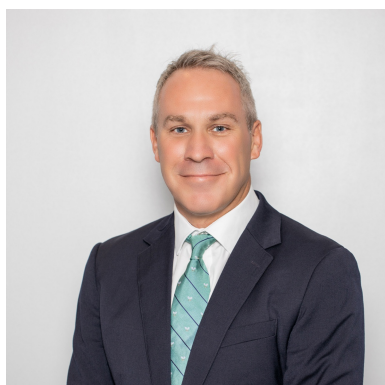
Bryan De Verneuil-Smith

Partner

Guernsey

E: bryan.deverneuil-smith@ogier.com

T: +44 1481 752357



Justin Davis □□□

Partner □□□

Hong Kong

E: justin.davis@ogier.com

T: +852 3656 6141



Oliver Payne □□□

Partner □□□

Hong Kong

E: oliver.payne@ogier.com

T: [+852 3656 6044](tel:+85236566044)



Ada Chan □□□

Senior Associate □□□□

Hong Kong

E: ada.chan@ogier.com

T: [+852 3656 6143](tel:+85236566143)



Kelvin Cheung □□□

Associate □□

Hong Kong

E: kelvin.cheung@ogier.com

T: [+852 3656 6146](tel:+85236566146)



Stephen O'Connor

Partner

Ireland

E: stephen.oconnor@ogier.com

T: [+353 1 232 1074](tel:+35312321074)



Clodagh Buckley

Senior Associate

Ireland

E: clodagh.buckley@ogier.com



Laura Higgins Mulcahy

Trainee Solicitor

Ireland

E: laura.higginsmulcahy@ogier.com



James Angus

Partner

Jersey

E: james.angus@ogier.com

T: [+44 1534 514316](tel:+441534514316)



Damian Evans

Partner

Jersey

E: damian.evans@ogier.com

T: [+44 1534 514378](tel:+441534514378)



Oliver Passmore

Partner

Jersey

E: oliver.passmore@ogier.com

T: [+44 1534 514247](tel:+441534514247)



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: +44 1534 514318



Matthew Davies

Senior Associate

Jersey

E: matthew.davies@ogier.com

T: +44 1534 514132



Tom Hall

Managing Associate

Jersey

E: tom.hall@ogier.com

T: [+44 1534 514443](tel:+441534514443)



[Jeremy Snead](#)

Partner

[London](#)

[Cayman Islands](#)

[British Virgin Islands](#)

E: jeremy.snead@ogier.com

T: [+44 20 3835 9470](tel:+442038359470)



[Audrey Bertolotti](#)

Partner

[Luxembourg Legal Services](#)

E: audrey.bertolotti@ogier.com

T: [+352 2712 2023](tel:+35227122023)

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