

Meeting lockdown challenges with communication, patience and resolve

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In the latest edition of Asian Legal Business magazine partners Anthony Oakes and Oliver Payne spoke about the impact of COVID-19 on offshore law firms and the considerations for both clients and employees. Here is the full transcript of their Q&A with the magazine.

In the same edition, Ogier was listed by ALB as a Trailblazer among small and mid-sized firms in the region for its innovative approach to the challenges posed by the pandemic.

For your clients, what have been some of their significant concerns over the past few months?

The challenges posed by COVID-19 are diverse and profound, both for individuals and institutions. Within institutions, management and legal teams are faced with issues including financial, risk (reputational, fraud, AML), litigation and regulatory (including whether the institution can benefit from any assistance packages). Some of these issues have not been seen before and others are more intense than in the past. There will certainly be more focus and pressure on management and legal teams but, at the same time, their value to their respective organisations will be more obvious than ever. Rapid analysis and clarity of thought are key. Also, given the ever-changing landscape, it will also be important to recognise that approaches and solutions may not be perfect and need to be re-thought and revised over time. This will require good communication and, perhaps more importantly, patience and resolve.

Specifically in terms of our disputes practice, general business uncertainty due to the COVID-19 pandemic had not changed the need for some of our clients to litigate disputes in the offshore courts. A significant concern, particularly for those clients with litigation that was already ongoing, was how the offshore courts would react to COVID-19, and how well they could continue to function in the face of lockdowns and sealed borders. The answer is, remarkably well. It hasn't entirely been business as usual but the court lists are still busy and cases are moving through. For instance, the Cayman Islands courts have been conducting hearings virtually for weeks now and, in the BVI, electronic court filing was up and running well before the pandemic hit.

How has COVID-19 changed the way your firm works? And how have you adapted to this?

Due to COVID-19, remote working has become the norm in most of our jurisdictions. As part of our commitment to innovation, Ogier has invested heavily in technology over the past few years. Accordingly, employees were well equipped with the tools to work remotely. We are also able to offer esignature and dataroom platforms which have proved valuable to clients, during this period.

We have been grateful for how flexible and helpful the Ogier teams have been in these challenging times. To work remotely is not always easy and the teams have been excellent in maintaining a responsive approach and keeping up communication, both internally and externally.

What have been some of the key offshore trends that have emerged post COVID-19?

While not related to COVID-19, 2020 has seen continued regulatory change, with the global trend being towards increased regulation and supervision. For offshore, that trend has been seen in the economic substance regimes in various jurisdictions and new legislation, notably in Cayman and BVI, requiring the registration of a large proportion of fund vehicles. The offshore jurisdictions have been helpful to the legal industry by engaging regularly on the changes, publishing and updating guidance notes and posting FAQ and practice notes on the regulators' websites. It has been a busy year advising clients on the changes and making registrations, where required. However, with the assistance of the local regulators, clients have, by and large, adapted well to the changes.

In addition to the uptick in insolvency and restructuring work, on the disputes side, there is a lot of press coverage currently about the potential for US listed companies with operations in Asia to delist and either be taken private or seek an alternative listing. This could see a rise in dissent actions, where existing shareholders unhappy with the price they are paid out when the delisting occurs can seek to have the fair price for their shares determined by the court. This has been a litigation hotspot in Cayman for a while, given the number of US listed companies incorporated in Cayman. We are expecting an increase in this type of specialised litigation in which we are already heavily involved. As financial pressure has increased in various sectors, we have also seen a corresponding increase in demand for our restructuring expertise. This may continue for some time.

What opportunities do you see ahead for your clients in the coming months?

Given the trend towards remote working, there will be an opportunity for clients to reconsider their office space and their approach to working style more generally. There may be opportunities around assets which have been devalued as a result of the COVID-19 induced economic downturn. These may include opportunistic purchases, take privates of listed companies whose shares are currently unappreciated by the market or the securitisation and work-out of underperforming loan portfolios. Structured finance continues to be an exciting area, with investors open to creative ways to make a return, in the low interest rate environment. More broadly and inspiringly, ESG has remained in the spotlight, with clients looking for new and exciting ways to care for the environment and give back to the community.

Where do you see the bulk of your business going forward?

This year, our regulatory practice has been busy, as a result of the recent legislative changes. Our Restructuring and Corporate Recovery team has also had a vibrant year so far, both with increasing workflow and keeping clients up to date in relation to moratoria, soft touch restructurings and recent cases in the various jurisdictions. For similar reasons, our litigation teams have also had a strong year.

We continue to see strong demand for corporate capital raising which touches upon many of our practice areas – bank lending, refinancing, bond issues and IPOs (including SPACs). As corporates seek to bolster balance sheets, we would anticipate this trend continuing. We also expect to see more opportunistic private equity M&A (public and private) given the amount of available "dry powder".

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



Anthony Oakes

Partner, □□□

Hong Kong

E: anthony.oakes@ogier.com

T: +852 3656 6065

Key Contacts



Oliver Payne □□□

Partner □□□

Hong Kong

E: oliver.payne@ogier.com

T: +852 3656 6044

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