



## In Your Court: Offshore Dispute Resolution Review - May 2020

Newsletters - 01/06/2020

### In Your Court: Offshore Dispute Resolution Review - May 2020

While the full impact of COVID-19 on global markets is yet to be seen, many anticipate a marked shift in workflow as businesses look to refinance and restructure.

Our Restructuring and Corporate Recovery team, headed by Cayman Partner Marc Kish, has been busy providing seamless services across jurisdictions and disciplines to find the best, commercial solution for clients, from consensual workouts to contentious schemes of arrangement. You can find out more about the [team](#).

As the courts in our jurisdictions continue to adapt to social distancing and/or lockdown restrictions, we are pleased to report that hearings continue to go ahead thanks to the use of digital solutions, with just some examples including [a substantive hearing of a winding up petition in Cayman](#), and [a recent decision in favour of Ogier's client handed down remotely in the BVI](#).

In recent team news, we were delighted to welcome [Damian Evans](#) and [William Jones](#) to the partnership. Described as 'extremely intelligent, brilliant in court, unfailingly practical and results-driven' by Legal 500, Damian has been involved in some of the leading trust litigation cases in Jersey, while Will has been commended as 'industrious and meticulous - a litigation heavyweight' in the Legal 500 Caribbean, having worked on many of the most important cases in Cayman. We were also pleased to recently announce the promotions of [Daniel Maine in Jersey to Counsel](#), [Gemma Lardner to Managing Associate](#) and [Rebecca Findlay to Senior Associate \(both Cayman\)](#).

Read more articles from the team:

**Crossing borders in Guernsey: new insolvency reforms**

As many readers will know, Guernsey has recently approved a significant set of reforms to our insolvency legislation, to bring it in line with comparable jurisdictions such as England. A rules committee is also working on a set of corresponding rules to deal with the finer procedural points that affect a Guernsey insolvency. You can read Ogier's [briefing on the new reforms](#).

Read the briefing from Mathew Newman: [Crossing borders in Guernsey: new insolvency reforms](#)

### **Cross-border insolvency - what assistance can Jersey give? A recent example**

As a leading international finance centre, the Royal Court of Jersey is often required to consider insolvency proceedings which engage multiple jurisdictions. Where foreign insolvency proceedings or winding up arise in relation to a group of companies which include a Jersey company and assets, the foreign insolvency official will need to be recognised by the Royal Court and authorised to protect or recover assets in Jersey. Here we examine the assistance that the Royal Court can give to foreign insolvency officials and examine the dynamic and flexible approach that it adopted in the recent case of *Lydian Investments Limited* [2020] JRC 049.

Read the briefing from Damian Evans: [Cross-border insolvency - what assistance can Jersey give?](#)

### **Check your privilege in settlement discussions - WP or not WP, that is the question...**

Legal privilege is currently a fast-moving area in common law jurisdictions, including the Cayman Islands. This month, the Cayman Islands Grand Court handed down a judgment on without prejudice (or “WP”) privilege (*Balls v Shewraj and Saxon Motor & General Insurance Company Ltd*, The Hon. Justice Carter (Actg.), unreported 2 March 2020 (“Saxon”). This follows in the wake of a recent decision of the English Court of Appeal (*BGC Brokers LP and others v Tradition (UK) Limited and others* [2019] EWCA Civ 1937) considering the same subject matter (and of persuasive authority here).

This article: (i) starts with a reminder on the principles of WP privilege; (ii) examines the recent Cayman *Saxon* decision; (iii) briefly summarises the English *BGC v Tradition* decision; and (iv) sets out some practical points for parties involved in settlement discussions to keep in mind.

Read the briefing from Jennifer Fox and Rebecca Findley: [Check your privilege in settlement discussions - WP or not WP, that is the question...](#)

### **Focus on Injunctions in the light of Paraskevaides - Full and frank disclosure in the BVI**

In its judgment given on 30 March 2020 in *Paraskevaides v Citco*[1], the Eastern Caribbean Court of Appeal considered a range of issues on appeal from the Commercial Court of the British Virgin

Islands arising out of a dispute over ownership of a large Cyprus based international construction company.

Two of the issues addressed are the duty of full and frank disclosure on an ex parte application and the consequences of breach of that duty.

These issues are important for litigants in the BVI because urgent ex parte injunctions are often needed - or said to be needed - at the outset of the international disputes that comprise the BVI Commercial Court's workload.

Read the briefing by Nicholas Burkill and Nicholas Brookes: [Focus on Injunctions in the light of Paraskevaides - full and frank disclosure in the BVI](#)

### **The Cayman Islands Court of Appeal Relieves the Tension between Arbitration Clauses and the Just and Equitable Winding Up Jurisdiction**

In a comprehensive judgment published on 23 April 2020, the Cayman Islands Court of Appeal, comprising Moses JA, Martin JA and Rix JA, has provided welcome clarification of the interplay between a contractual agreement to arbitrate disputes arising between shareholders and the exclusive jurisdiction of the Court to determine whether a company should be wound up on the just and equitable ground.

Read the briefing from Oliver Payne, Edwin Gomez, Marc Kish and Gemma Lardner: [The Cayman Islands Court of Appeal Relieves Tension between Arbitration Clauses and Just and Equitable Winding Up Jurisdiction](#)

### **Time out with Head of Jersey Dispute Resolution Nick Williams**

If arguments are an art, then disputes are a discipline; the former something to avoid, the latter an interesting area to work in.

For Nick Williams, the law was a career choice from an early stage. His father was a lawyer at international firm Mayer Brown, and growing up in Ealing, London, attending school at St Paul's School in Barnes, law appeared to be the connector between his academic interests and his desire to work in City business

Read the full article: [Time out interview with Nick Williams, Head of Dispute Resolution in Jersey](#)

### **Crypto-assets as property: Cayman litigators' tools to assist in their tracing and recovery**

Adopting the analysis of the United Kingdom Jurisdictional Task Force ('UKJT') on the proprietary

status of crypto currencies, a recent decision of the English High Court, *AA v Persons Unknown*, has found that crypto assets such as Bitcoin are "property" and therefore capable of being the subject of a proprietary injunction or freezing order. This finding will be of interest to anybody using Bitcoin as a form of payment or to carry value.

Read the briefing by Deborah Barker-Roye: [Crypto-assets as property: Cayman litigators' tools to assist in their tracing and recovery](#)

## 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.

## Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

## Meet the Author



[Nicholas Burkill](#)

Partner

[British Virgin Islands](#)

E: [nicholas.burkill@ogier.com](mailto:nicholas.burkill@ogier.com)

T: [+1 284 852 7372](tel:+12848527372)

## Key Contacts



Damian Evans

Partner

Jersey

E: [damian.evans@ogier.com](mailto:damian.evans@ogier.com)

T: +44 1534 514378



Jennifer Fox

Partner

Cayman Islands

E: [jennifer.fox@ogier.com](mailto:jennifer.fox@ogier.com)

T: +1 345 815 1879



Marc Kish

Partner

Cayman Islands

E: [marc.kish@ogier.com](mailto:marc.kish@ogier.com)

T: +1 345 815 1790



Mathew Newman

Partner

Guernsey

E: mathew.newman@ogier.com

T: +44 1481 752253



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: +44 1534 514318



Deborah Barker Roye

Partner

Cayman Islands

E: [deborah.barkerroye@ogier.com](mailto:deborah.barkerroye@ogier.com)

T: +1 345 815 1779

## Related Services

Dispute Resolution

## Related Sectors

Restructuring and Insolvency