

Key trends in offshore dispute resolution: Q&A with Global Head of Dispute Resolution Marc Kish

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What are the major developments in the Cayman market this year?

While not necessarily related to COVID-19, 2020 saw continued a number of changes in the offshore market, with the global trend being towards increased regulation and supervision. For Cayman, that trend was particularly noticeable in the economic substance regime and new legislation requiring the registration of a large proportion of fund vehicles. Like other major IFCs, Cayman has engaged fully in relation to the changes, publishing and updating guidance notes and posting FAQ and practice notes for the benefit of investors.

In relation to insolvency work, we have recently seen an increase in winding-up petitions, in many cases as precursors to applications to place companies into provisional liquidation for the purposes of effecting a plan of reorganisation. At the same time shareholder disputes (often in the context of joint ventures) and commercial litigation with an element of fraud appear to be increasing in number.

Needless to say many of our international clients have been impacted by the coronavirus, which in some cases has delayed or interrupted discussions around restructuring of groups of companies where site inspections and in-person meetings have been unable to take place.

How has COVID-19 impacted court timetables for disputes work?

Notwithstanding the day-to-day challenges faced by many clients as a result of the pandemic, the Cayman courts have remained fully operational and busy. The Cayman court is well used to video conference hearings and so the court transitioned smoothly to having all matters conducted virtually with electronic court filings and temporary concessions made in certain areas such as, for example, the filing of hard copy documents.

Now that Cayman is out of lockdown, hearings are being conducted in person again where possible but with the flexibility to allow advocates to appear via Zoom where appropriate. One positive to

have come from the pandemic is the legacy of e-filing and e-bundles, which I expect are here to stay.

Which areas is the work mostly coming from?

The Ogier team in Cayman is currently working on a mix of cases from all around the world, most notably the US, the UK, Europe, MENA, Hong Kong and South America. The largest proportion of new insolvency-related instructions this year has probably come from Asia, but we are also seeing commercial litigation and fraud work predominantly from London, funds disputes from the US and contentious restructuring work from across Europe.

What trends are emerging in the market?

There will be opportunities in the market 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.

We also anticipate that our specialist, cross-jurisdictional Restructuring and Corporate Recovery team will see further growth in the number of applications to effect restructurings with the assistance of the Cayman court as attempts to agree consensual terms with creditors in some cases encounter difficulties. Increased scrutiny of financial statements and compliance will likely lead to an increase in litigation with a view to recovering assets placed beyond the reach of creditors and/or measures being pursued by creditors to introduce independent insolvency professionals to protect their interests in the event of an insolvency.

In addition to these areas, there is currently a great deal of press coverage about the potential for US-listed companies with operations in Asia to delist and either be taken private or seek an alternative listing. This is already resulting in a rise in dissent actions in which we as a firm are regularly involved, where existing shareholders unhappy with the valuation underpinning the transaction can seek to have the fair price for their shares determined by the court.

Elsewhere 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 as well as more opportunistic private equity M&A (public and private) given the amount of available "dry powder" in the market.

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