

## How offshore law firms have stepped up to the challenges of 2020: Q&A with Kate Hodson

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*With the US China trade war, US elections, civil unrest in Hong Kong and a global pandemic, 2020 posed enormous challenges for the investment fund industry in the Asia-Pacific region.*

*In this interview, excerpts of which originally appeared in Asian Legal Business, Ogier partner and head of ESG Funds in Hong Kong Kate Hodson discusses how offshore law firms have stepped up to meet this changing business landscape, the ramping up of regulations, and the growing momentum around ESG.*

**Looking back on the investment fund landscape, particularly in the Asia-Pacific region, what were some of the key trends you/your firm witnessed?**

It's hard to look back at 2020 without focusing on the impacts of Covid-19. At the start of the year there were liquidity concerns and a significant number of projects put on hold, with many of our China deals stalling. However, as lockdowns eased and the asset management industry in Asia adjusted to "the new normal", activity quickly resumed. The tech industry in particular proved very resilient and there were a number of pandemic-induced opportunities such as in healthcare and those industries benefiting from changing purchasing patterns, with a huge shift to online spending. However, other key trends evolved irrespective of the pandemic including increased regulation and the emergence of new forms of fund vehicles.

During my 11 years with Ogier I have seen the team kept busy with increased layering of regulation for funds and asset managers, including in respect of AML, FATCA and CRS, Economic Substance, data protection and so on. 2020 saw a new development in the private equity space with private funds domiciled in the Cayman Islands and British Virgin Islands becoming subject to regulation. The new legislation was a result of certain EU and other international recommendations and was developed to align the BVI and Cayman Islands investment fund regulatory regime with other jurisdictions. In terms of new fund vehicles, Hong Kong and Singapore have been increasingly competing as a funds domicile with Hong Kong introducing the new limited partnership fund regime and the Singapore VCC becoming available.

Despite the increasing choice available to managers in terms of fund domicile, we continue to see a strong interest in Cayman Islands fund structures with our 13-strong investment funds team in Hong Kong remaining extremely busy for 2020. We have also started to see more interest in BVI funds and managers in the last 6 months as we see some managers accessing differences in regulatory treatment for their particular structures.

Another key trend has been the momentum around ESG. This has started to translate into new funds products arising in Asia which incorporate ESG in some form. We have also seen a number of managers indicating interest to bring more ESG strategies to the market. This reflects a diversification in the sustainable investment product bank away from fixed income. Beyond new products, we are seeing a number of things happening in the funds industry related to ESG, including a spree of hiring individuals with experience in sustainable finance. This is not just into asset management firms but also banks and accounting firms. There has also been increased opportunities for new partnerships and co-operations such as in the form of blended finance and NGOs working with asset managers on fund launches.

We see ESG as a long-term trend as substantiated by the commitments seen at the levels of government, as well as regulators. As an example, both Hong Kong and Singapore have started a consultation process with regards to guiding the asset management industry on climate disclosures and are competitively positioning themselves as Asia's green financial centres. In fact, the SFC in Hong Kong is proposing to introduce measures to require HK licensed fund managers to consider climate related risks in their investment and risk management processes.

**What kind of impact did COVID-19 have on the industry? How did it affect clients' requirements, and how did you move to assist them in this regard?**

The headwinds this last year have been unprecedented, with the global impacts of the pandemic, the chaos surrounding the US elections, continued tensions around the US/China trade war, political unrest in Hong Kong and the introduction of the Hong Kong national security law, to name a few. This has put certain strategies under particular pressure whilst benefiting others. It also drove high levels of innovation and adaption with many firms seeing staff move to remote working for much of the year. The circumstances highlighted those with the strongest contingency plans and technology solutions, with others quickly investing to meet their technology needs. Operational due diligence also had to go-online in order for deals to be able to push ahead with travel restrictions in place and social distancing limitations.

Given the significant number of regulatory changes at the start of the year it was important to continue to reach clients and support their needs as efficiently as possible. Technology was very much at the forefront of the solutions. We were quick to move to online seminars, rolling out educational series at the start of the year and continued to deliver these over the course of the year. Further, Ogier's IT infrastructure and common use of tested platforms allowed us to facilitate

a timely move to remote working and online deal completion.

Ogier has been using an electronic signature product for some time now and we were able to roll this out to clients who were unable to provide wet ink signatures. Fortunately, the Cayman Islands has been well placed to adjust to the move to the signature of documents in electronic form having introduced the Cayman Islands Electronic Transactions Act in 2003.

A key aspect of delivering to clients this year was also seen in the high levels of collaboration between the offshore law firms as we came together to ensure that the raft of new regulatory changes for the funds industry in the BVI and Cayman Islands was dissected and disseminated in a clear and as consistent manner as possible to support the industry. It was very much an industry first mentality and this was particularly important with clients under so many other strains this last year. The funds team at Ogier also made an important new hire in Dave Sherwin to lead a dedicated regulatory practice in Cayman. Clients have been benefiting from this dedicated regulatory support.

Whilst there have been many downsides to the lack of face-to-face interactions in the industry there has also been a resulting efficiency benefit. As an example, we have been able to attend more conferences this last year than ever before and across a wider number of jurisdictions as we have been able to do so from the comfort of our homes and offices. However, online forums don't offer the same networking opportunities and so extra efforts have been required to stay connected and to continue to expand our connections.

**What were some of the big regulatory changes globally and among key offshore jurisdictions? What kinds of inquiries have you been getting as a result?**

I am sure that to a fund manager it feels like every year, a new fund regulation. Keeping up with all the developments can be a full time job. However, one important takeaway is the adaptability of the industry. When FATCA and CRS first came out there was a real concern about how firms would cope with the requirements. However, that seems a long distant memory now and has become a relatively standard process for funds, largely taken care of by fund administrators.

One new type of regulation that has perhaps taken managers by surprise in the APAC region is the gradual introduction of climate change regulation. Legal frameworks have begun to reflect support for the transition to a low carbon economy and this transition is expected to have a major impact on financial markets and products in the near to medium term.

The two key offshore regulatory changes affecting our Hong Kong funds practice was the new regulatory regimes for BVI and Cayman closed ended fund vehicles. In Asia these have been two of the most popular jurisdictions for private equity, venture capital, real estate and credit funds and so the changes affected a significant portion of funds in the closed ended space. Despite the new obligations of having to become registered with a regulator, we saw very little interest to move out of these jurisdictions to avoid regulation. Rather, most in-scope entities have chosen to

register with the BVI and Cayman regulators.

Through the process of registration it became apparent that there were a lot of Cayman funds out there - over 12,200 closed-ended entities registered by the August 2020 deadline. In addition, there are more than 11,600 open ended hedge funds registered with CIMA. Whilst the introduction of the new regimes initially might have been seen as a bit of shake-up, once again managers have adapted. We haven't seen this as detracting from the continued interest in Cayman and the BVI for fund set-up, although there is now perhaps a slight uptake in drilling into the respective regulatory treatment of different vehicles in each jurisdiction.

**What are your predictions for 2021 as the pandemic recedes? What notable trends and developments can we expect in or impacting the Asia-Pacific?**

The start of 2021 has demonstrated a significant amount of pent up activity and we are experiencing a very busy January with a significant number of new fund launches kicking off and new enquiries. We are cautiously optimistic about the 2021 pipeline.

I would expect to see greater levels of sustainable investment in 2021. In Standard Chartered Private Bank's Sustainable Investing Review 2020 report, a survey of around 1,000 investors with a focus on affluent and HNW investors in Singapore, Hong Kong, the UAE and the UK, found that 90% of respondents in Asia said they are interested in sustainable investments and 42% plan to invest between 5% and 15% in this area over the next 3 years. The pandemic has accelerated and highlighted the importance of sustainability and ESG factors as a business strategy for some of the world's largest companies and this is not a momentum I expect to slow even as we come out of the pandemic.

Another key trend is likely to be China focused activity with the further opening up of China to foreign investment, allowing foreign firms to take majority stake ownerships in securities and fund management firms.

**How do you expect the role of an offshore law firm like yours to evolve as a result?**

Offshore law firms, like any law firm, need to be innovative and forward thinking. Just as is the case for the businesses we advise, law firms need to consider how they build resilience to ensure sustainability. We have an active focus on D&I, the environment and wellness, in addition to our investment in technology and client services. The environment has become a particularly big focus for us. We are building an environmental management system for the firm and have hired a head of sustainability to lead this process. As an example of innovation, Ogier created an entirely new service line during the pandemic which sets it apart, namely Ogier Global's ESG and Impact Advisory business. This service line, which offers bespoke ESG and Impact design, integration, and implementation solutions, supports clients to navigate ESG goals and requirements and to leverage the landscape of sustainable investing opportunities.

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## Meet the Author



Kate Hodson 凯特·赫臣

Partner and Head of ESG (Legal) 合伙人

Hong Kong

E: [kate.hodson@ogier.com](mailto:kate.hodson@ogier.com)

T: [+852 3656 6049](tel:+85236566049)

## Key Contacts



Leonie Kelly

Head of Sustainable Investment Consulting

Hong Kong

E: leonie.kelly@ogier.com

T: +852 3656 6169

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