



## A growing team for a changing market: meet Ogier's Dispute Resolution partners in Hong Kong

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Since 2014, Ogier's Dispute Resolution team in Hong Kong has grown to a team of 15 in response to increased client demand for British Virgin Islands (BVI) and Cayman Islands law services in Asia. Advising across the spectrum of commercial litigation on both laws, Ogier's Hong Kong team provides Asia-based clients with advice in their own time-zone, while also working very closely with Ogier's award winning teams on the ground in the BVI and the Cayman Islands to provide a round-the-clock service.

Head of Dispute Resolution in Asia, Oliver Payne, joined Ogier in 2009 and advises on both BVI and Cayman law. Having led the growth of the Hong Kong Dispute Resolution team over the years, Oliver has been joined by Cayman law specialist Michael Snape, and BVI law specialist Justin Davis. In this Q&A they share some insights into their professional backgrounds and the market trends they've been seeing.

### **Michael and Justin, what drew you to Ogier and to Hong Kong?**

**Justin:** Having worked in the BVI for a number of years, I was aware of the quality of Ogier's Dispute Resolution services, and the firm's focus on both its clients and its stakeholders. I particularly wanted to play a part in the development of Ogier's Hong Kong Dispute Resolution team and to have the opportunity to work directly with clients and intermediaries by being in the region where they operate.

**Michael:** I joined Ogier from another offshore firm because I had seen and heard good things. Ogier is very well regarded in the market for giving practical, clear and commercial advice. I also wanted to be part of a growing team focussed on achieving our clients' objectives and cementing Ogier's reputation for that across the board.

### **Why is Hong Kong an important litigation and insolvency hub for Ogier?**

**Oliver:** Ogier has had a Hong Kong office since 2007, so our presence in the jurisdiction is nothing new. There was then, and remains now, a clear and growing need for a Dispute Resolution team based

in the same time-zone and region in which our clients operate. That need, and other drivers for a presence here, resulted in substantial investment in our BVI and Cayman law capabilities.

**Michael:** One of the many ways in which this proximity makes a real difference is when there are shareholder/board meetings for example, and we are able to provide corporate governance advice in real time. Although the companies are incorporated offshore, most of the corporate governance goes on in this time-zone, and being here means we can attend AGMs, often alongside our onshore colleagues.

### **How does having on-the-ground experience practising in the BVI and Cayman benefit clients?**

**Oliver:** I lived and worked in Cayman for over six years, Michael for about five years and Justin for around four years in the BVI. Two of our senior associates, Edwin Gomez and Aleisha Brown, have also spent significant time in Cayman. Together, that experience creates a level of familiarity with the jurisdictions' operations which we can import into our strategic thinking and our day-to-day conduct as we advise clients here in Asia how best to prepare and to present their cases in the BVI and Cayman. In a very practical sense, if you've been on your feet arguing your cases in offshore courts, you know the law and are able to provide sensible, realistic advice on the merits of your cases, and how they are likely to be handled by the relevant Judge.

### **Is there a difference in the nature and/or volume of work for BVI and Cayman law in the Hong Kong team?**

**Oliver:** Although there may be some variances, over the years it's been about 50:50 BVI / Cayman work that we've seen coming in.

**Michael:** There's a versatility here, in that you often see a Cayman holding company with BVI companies underneath it, or structures holding both BVI and Cayman entities. Thanks to the team's strong capabilities across both laws, we're able to service clients seamlessly when these structures come up.

### **What market trends are you observing?**

**Oliver:** The majority of our mandates are coming from North Asia, the Mainland, Taiwan, Hong Kong and Japan, with Singapore an increasing area of focus for us. There is a lot of cross-border work coming in, including shareholder disputes, valuation disputes, insolvencies and schemes of arrangement.

**Justin:** A specific trend has been the uptick in US-listed company merger disputes with an Asian nexus. For example, our BVI team recently represented investors in setting aside a private placement of shares that entrenched the existing board in IsZo Capital LP v Nam Tai Property Inc & Ors. There's also been an increase in bond holder actions, for example in the Peking University restructuring on which Ogier's Hong Kong and BVI based teams worked.

## **Can you tell us more about the growth in shareholder valuation disputes, often referred to as "section 238 cases"?**

**Michael:** There has been an ebb and flow in the section 238 sphere in Cayman but it is still a very active area. The trend is driven by a growing number of take-private mergers, where one of the features is that shares are bought out by the majority, and long-term investors may get caught up in that. You also see arbitrage investors taking investment positions when they expect there will be a merger event, and having a preparedness to engage in the litigation process to seek a judicial determination of fair value in excess of the merger price. We regularly work with our Corporate colleagues in this area, assisting with the deal stage, and the evaluation of dispute queries and how to navigate them. We're currently involved, if not in all, then almost all, of the section 238 cases pending before the Cayman courts. It's an area of the market we're very familiar with.

## **The largest proportion of new insolvency-related instructions for Ogier in the past year has come from Asia - why is that?**

**Oliver:** Because of the high level of economic activity taking place in Asia. Asia, and the PRC especially, is one of the busiest of Ogier's markets. In addition to all the vibrant and successful businesses, there will always be some companies in distress at any given moment, so it stands to reason that the majority of Ogier's insolvency work is coming out of Asia. World events are such, that we expect elevated levels of distress in the coming period.

## **What about the future?**

**Oliver:** Predicting the future is, of course, notoriously difficult. However, at a macro level, our expectation is that the stability offered by offshore legal systems and services to cross-border business activity will continue to be drawn upon. One of the things the pandemic has shown us is that offshore courts have been able to adapt effectively, and cases have progressed with the help of Zoom, electronic court filings and other technology.

From a micro perspective, we're focused on building upon on a very successful period for Ogier's Dispute Resolution team in Hong Kong and further developing our services for clients across Asia.

## **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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