REPORTS LEGAL

Offshore Report | April 2021

Queen's Gambit:

Walkers riding the SPACs wave

Focus: Hong Kong at a Crossroads

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Offshore elite firms thrive online despite challenges

Dominic Carman examines how offshore law firms have flourished during the Covid-19 pandemic

▲ **For the offshore elite, it has been business almost as usual during the past year**

The offshore market is complex: each offshore financial centre (OFC) has unique characteristics although they still compete with one another in multiple areas of business. Collectively, OFCs provide significant levels of regulatory and tax competition for their onshore counterparts, but they are also complementary to their financial activities.

This report seeks to examine how law firms operating in the major OFCs have fared over the past year, the phenomenal rise of offshore SPACs (special purpose acquisition companies) during the Covid-19 pandemic, Gibraltar's growth as a crypto-friendly jurisdiction and the future role of Hong Kong as a key source of offshore business.

Primarily through mergers, the largest offshore law firms have developed their international office networks from a domestic base in one of five jurisdictions, divided between the Caribbean and the Channel Islands. Three are British Overseas Territories: Bermuda, the British Virgin Islands (BVI) and the Cayman Islands; the other two are Crown Dependencies – Jersey and Guernsey.

The combined footprint of these firms has almost doubled since the global financial crisis. Their growth has coincided with increased globalisation, greater transparency and tighter regulation. As the markets in which they operate become ever more sophisticated, their response is to become ever more specialised.

'A very busy year'

For the offshore elite, it has been business almost as usual during the past year, albeit in the most unusual of circumstances. 'We noticed immediately that workflows were high, more or less across the board,' says Christian Luthi, chairman of Conyers. 'We monitored it extremely closely because we were concerned about things falling off a cliff, since no one knew what to expect. It became clear that, not only were things remaining solid, but it was turning out to be a very busy year. That has translated into very decent revenues.'

Maples and Calder's global managing partner, Jonathan Green, summarises events: 'All of our practice areas and business lines continue to be busy and the last 12 months have truly demonstrated the resilience, dedication and expertise of our lawyers, who all responded incredibly well to the pandemic, all while keeping client service levels at an all-time high,' he says. 'We are very proud to have been able to promote a record number of our lawyers across six of our international locations.'

If lateral hires provide a further litmus test of success, then Maples had a very good year as multiple partners also joined the firm: in Ireland, Claire Morrissey from A&L Goodbody and Lorna Smith from Matheson; in Luxembourg, Jean-Dominique Morelli from CMS; in Hong Kong, Nick Stern from Freshfields Bruckhaus Deringer; and in Jersey, Mark Crichton from Walkers and Tim Morgan from Mourant. Previously a barrister at 8 New Square in London, Quentin Cregan also joined as a partner in Cayman.

“ We were concerned about things falling off a cliff...but it turned out to be a very busy year

Christian Luthi, chairman, Conyers

Tech dividend

Pre-Covid investment in tech certainly helped to keep activity flowing, as Alex Ohlsson, group managing partner of Carey Olsen, explains. 'The existing technology responded incredibly well to a working from home strategy,' he says. 'It's remarkable how many businesses have had that experience.'

Jonathan Rigby, global managing partner of Mourant, adds: 'We were able to switch almost overnight to a virtual working environment. Immediately before the pandemic, we had completed the successful deployment of a fully paperless, mobile-enabled client on-boarding system, which really came into its own last year.'

A similar picture emerges elsewhere. 'We've been very lucky,' says Jason Romer, group managing partner at Collas Crill. 'We were able to move our business remotely pretty much over a weekend. Every system we had in place worked incredibly well.' Phillip Kite, Harneys global head of litigation, agrees. 'All the IT seemed to work, especially in London, Hong Kong and New York, where law firms were already set up for remote access,' he says.

Internationally, law firms have coped very well, confirms Walkers' global managing partner, Ingrid Pierce. 'Certainly, those who invested in technology have been able to manage the pandemic so that it's almost business as usual,' she adds.

13.4%

Average PEP increase at Am Law 100 firms last year

Revenues grow

In the world's largest legal market, it has been more than just business as usual. US law firms have never had it so good – at least according to a recent report by Thomson Reuters, which concluded that average profits per equity partner at the Am Law 100 firms increased by an extraordinary 13.4% last year.

Unlike their onshore counterparts in the UK who have to file LLP accounts which then become a matter of public record, offshore firms are distinctly coy about disclosing details of their financial results. While they may not have done quite as well as firms in London or New York, some double-digit growth has still been achieved during the pandemic.

Edward Mackereth, Ogier's global managing partner, gives an indication of just how well his firm has prospered in challenging circumstances. 'I'm not going to discuss our profitability,' he says. 'But to give you an idea of how we have fared, we started off 2020 with 570 to 580 people and we ended last year with around 660 people, as a direct result of client demand.'

So what has been fuelling demand? Funds have been very strong at Ogier. In particular, Mackereth points to the development of impact and sustainable investment funds – legal and advisory services – primarily based out of Hong Kong, in relation to Environmental, Social, and Corporate Governance (ESG). Ogier has also seen a big uptick in parallel structures with Luxembourg – often US vehicles structured through Cayman (CALUX products) – and a steady increase in traditional hedge fund product launches.

> *❝ We started off 2020 with 570 to 580 people and we ended last year with around 660 people as a direct result of client demand*
>
> ***Edward Mackereth, global managing partner, Ogier***

Debt and restructuring

At Conyers, there has been 'a fair share of restructuring work and a lot of significant debt financing work – Carnival and other large cruise ship and container lines', says Luthi. 'Immediate debt financing is needed in a crisis situation and markets were happy to oblige. The question is: if this gets more embedded and you're into a longer-term scenario, will the wheels start to come off, and will there be more insolvency related restructurings? I think, absolutely yes.'

It was a similar story at Walkers. 'We've seen as a real increase in certain types of restructuring, notably in oil and gas, and obviously the airline and travel sector,' says Pierce. Ohlsson has also seen a big uptick in refinancing and restructuring, particularly in private equity-owned businesses. 'Restructuring insolvency and the consequential litigation that arises from it have been a significant growth area,' he says.

Rigby provides a panorama of Mourant's business. 'BVI insolvency and restructuring continues to account for a large share of our work in Asia, with much of the remainder comprising shareholder disputes, often with an asset tracing element,' he says.

Although there is continued growth in contentious regulatory work in Jersey and Guernsey, Rigby has yet to see a significant uptick in insolvency and restructuring instructions. Whereas in Cayman, the airlines sector has been busy and conyers.com

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Mourant has been advising on some high-profile restructurings. In retail, the firm advised Tailored Brands on its Chapter 11 restructuring.

Fundraising has also been robust, according to Ohlsson, as Carey Olsen's strong funds practice continues apace. Covid's economic impact has been counterintuitive: in a normal downturn, fundraisings would reduce. Instead, the cycle has been compressed. 'We've supported several fund managers in undertaking very large raises,' he says. 'That's been the Covid story from a financial services perspective: fundraising and investment activity has continued.'

The Channel Islands compete with each other to create different products and services. 'Over the past year, assets in the private wealth sector and the private funds space, have seen quite a bit of growth,' says Dr Andy Sloan, deputy CEO, strategy at Guernsey Finance.

Guernsey's place in the world, he adds, is based on being an international citizen. 'We are focusing on enhancing our private wealth and family office services, the concentration on development of sustainability offer, and a focus on the Middle East, the Far East and the US, as a line of where capital and wealth are being generated.'

Disputes aplenty

According to Romer, Collas Crill's Cayman litigation team has seen extraordinary growth. 'It's been led off the back of insolvency, shareholder activism, creditor-led restructurings and squeeze-out mergers,' he says. 'A significant majority has come through Asia and Hong Kong, but also from US investment funds and institutional funding structures. One of our fastest-growing practice areas is the merger appraisal practice in Cayman – that's all driven out of Asia and the US.'

❝ The existing technology responded incredibly well to a working from home strategy

Alex Ohlsson, group managing partner, Carey Olsen

Harneys litigation partner William Peake highlights one of the biggest and longest-running disputes in the Caribbean. 'The $9.2bn Saad litigation (*AHAB v Saad*) is pending judgment in the Cayman Court of Appeal,' he says. 'We advise the joint official liquidators of the Saad Investments Finance Company. This was the longest trial at first instance and appeal in the history of the Commonwealth. The judgment is eagerly awaited by onshore and offshore practitioners, given the broad range of important topics it will have to tackle and the amounts at stake.'

In addition to the Saad case, Rigby highlights three other cases to watch in 2021: TDT in Guernsey, to be heard by the Privy Council; the appeals in ETFS and Z Trust (re: insolvent trusts being heard in the Privy Council) in Jersey; and *Primeo v HSBC* in two Privy Council hearings - one for reflective loss, the other for limitation and contributory negligence.

'As a firm, we're regularly instructed in connection with shareholder disputes,' says Rigby. 'Whilst recent market conditions have generated some new matters, market sentiment doesn't suggest a very substantial increase in this work due to Covid-19. The most significant shareholder dispute we've been involved in over the last 12 months is ETFS, a claim for unfair prejudice by private equity investors against the founder majority shareholder.' The case is now going to the Court of Appeal.

Jersey-based dispute resolution specialist Baker & Partners opened a new office in Cayman last October. 'It has made steady strides,' says managing partner Steve Baker. In Jersey, he expects 'an uptick in insolvency related litigation, in particular the recognition of foreign insolvency practitioners'.

The biggest Jersey dispute this year will be *MB and S and Golovina v Rusal*, he suggests. Rusal (Oleg Deripaska's company) was headquartered in Jersey. It is alleged that in a breach of confidence/unlawful means conspiracy, it ignored designs and patents that belonged to another.

Fritha Ford, disputes partner at Hatstone, says: 'In Jersey, a lot of private wealth disputes have a certain layer of privacy that you don't necessarily get elsewhere – it's a massive appeal for this jurisdiction,' she says. 'In terms of disputes we're seeing, they are very much wanting to hold trustees to account.'

Rebound anticipated

But not every firm has found a silver lining during the pandemic. One managing partner gave a more nuanced assessment in interview earlier this year: 'Anyone who says they're not struggling would be lying. Every sector of the economy and every business has struggled or suffered as a result of Covid, though businesses have struggled in different ways. Some financially, others socially. Others are struggling in terms of pure management. But for us, and indeed for the offshore industry as a whole, we've weathered the storm OK so far.'

Few managing partners would publicly echo this sentiment. But in addition to the impact on their business, the Covid-19 pandemic has taken a personal and professional toll on many individuals in different ways. In interview, several managing partners are at pains to emphasise the importance of maintaining staff morale.

Although Covid-19 continues to dampen economic activity, global financial markets have recovered their equilibrium. By the time US voters firmly rejected Donald Trump last November, the S&P500, DJIA and Nasdaq were already back to their pre-Covid levels. As leading indicators, these indices have since grown by an additional 15% to reach new highs, promising better times ahead – both onshore and offshore.

One potential cloud looms on the horizon. 'Companies aren't going to be able to hide their income in places like the Cayman Islands and Bermuda, in tax havens,' said US President Joe Biden in April, as the US Treasury published its Made In America tax plan, which aims 'to make American companies and workers more competitive by eliminating incentives to offshore investment'. Exactly what this will mean in practice remains to be seen.

Mackereth comments: 'The next big story looks set to be the possibility of a global new deal on tax and BEPS, with the Biden administration's Made in America plan signalling a new desire to co-operate internationally and the OECD so far making positive noises that the plan hits the Pillar I and II objectives. At present, there is much still to be ironed out. But if successful, this would introduce very significant changes to business and markets globally, which will take months or years to work through. It will bring both challenges and opportunities, both anticipated and unanticipated, on a global scale.'

Meanwhile another cloud seems set to lift as Covid restrictions gradually diminish and national economies begin to benefit from a sharp economic rebound. On balance, the outlook for offshore centres and the law firms that operate in them is still perceived as being generally very positive.

Dispute resolution specialist Baker & Partners opened a new office in Cayman last October ▼

The SPACs phenomenon

As the market takes a pause and the SEC steps in, offshore firms reflect on a 12-month SPAC boom

▲ **Cayman is increasingly the preferred jurisdiction for offshore SPACs**

The big story so far this year, and it's continuing to expand outside the original US base, is SPACs,' says Edward Mackereth, Ogier's global managing partner. There is no doubt that SPACs – an acronym for special purpose acquisition companies – are indeed big news.

Although they have existed for decades on public markets, a tipping point occurred in 2019 when private equity firms began to use SPACs more often, creating an explosion of interest over the past 12 months in this relatively arcane financial instrument. Activity has been high both onshore and offshore.

High-growth sectors, such as biotech, fintech, healthcare and life sciences are among the most prominent issuers. SPACs have also provided a route to market for businesses ranging from established entertainment and software companies to young, innovative, fast-growing companies, as well as the more speculative transformational developers of electric vehicle technology and flying taxis. But when fund managers, such as Oaktree, Apollo and Cerberus successfully brought SPACs to market, it was a sign that things had really taken off.

Record volumes

Labelled by some as a craze, SPACs are a growing asset class that can no longer be ignored, according to J.P. Morgan. The SPAC phenomenon is also evidenced by the numbers. Data published by SPAC Research shows that there are currently 560 active SPACs with a combined value of $180bn+. The total amount raised in SPAC IPO issuance in 2020 was $83.4bn in 248 deals (average size – $336m), which represents about 60% of all IPOs undertaken in the US last year.

The comparable SPAC figures for Q1 this year surpassed the entire total for 2020: $88bn from 298 IPOs, comprising two-thirds of the aggregate US IPO market by value and three-quarters by volume. Among them are prolific SPAC issuers with a strong track record like Churchill Capital, FinTech Acquisition and Gores. If current trends were to persist, and that is a big if, the industry could potentially be looking at 1,000+ SPAC deals in 2021.

A note of caution amid the exuberance: only 25% of SPACs listed since 2019 have completed deals so far, leaving 550+ companies looking for target M&A combinations, and there is a growing fear of funding supply shortages in a crowded market.

Advising issuers and underwriters is a highly competitive business for US law firms: Davis Polk, Kirkland, Ropes & Gray, Skadden and White & Case continue to vie for pole position in the SPAC adviser league tables. Alongside them is mid-town Manhattan specialist, Ellenoff Grossman & Schole (EGS), which has currently advised on more SPAC deals in 2021 than any other firm, according to Bloomberg Law. Like Kirkland, EGS has advised more issuers than underwriters.

Onshore, many SPACs that intend to pursue US targets are still incorporated in Delaware. But the trend has been shifting offshore. Suzanne Correy, corporate partner at Maples and Calder, notes: 'We've seen the market evolve in terms of the relative number of Delaware SPACs and Cayman SPACs. There used to be many more Delaware SPACs, but that is no longer the case.'

If Cayman is increasingly the preferred jurisdiction, then Maples is the dominant advisory law firm offshore. In 2019, Maples did 19 of the 20 Cayman deals. Instructed on 70+ deals last year, the firm surpassed that figure in just the first quarter of 2021.

" The SPAC boom continued at full pace during Q1 of 2021

Jonathan Rigby, global managing partner, Mourant

How do SPACs work?

Essentially, a SPAC is created by a team of investors (sponsors) to acquire another company. As publicly-traded investment vehicles, SPACs raise funds via an IPO to complete a targeted acquisition within a specified time frame, typically 18-24 months. Investing in and listing a SPAC is much quicker and less burdensome than a conventional IPO. No roadshows are needed, for example. Instead, the sponsor does an IPO for the SPAC, raising money to find a private company to take public.

560

Number of active SPACs – with a combined value of $180bn+

SPACs are often referred to as "blank cheque companies", since investors do not know in advance where or when their money will be invested. As shell companies with no commercial operations or employees, SPACs are admitted to listing on a stock exchange for the exclusive purpose of subsequently acquiring or merging with one or more operating private target companies in a specific industry.

When the IPO takes place, because they do not know the potential target, investors rely on the expertise of sponsors who have operating or investing experience (or both), to identify the right combination partner. For the target company, merging with a SPAC offers a cheaper and faster alternative to going public itself.

To date, SPACs have primarily been NYSE- or Nasdaq-listed acquisition vehicles. Having raised funds via an IPO, the money is then placed by the sponsor in a trust account prior to the acquisition or merger taking place. SPACs are required by their charter to complete the initial business combination – or de-SPAC transaction – within the specified time period, or to liquidate and return the gross proceeds raised in the IPO to the shareholders.

Cayman leads

Increasingly, SPACs have been using an offshore incorporated company to list. Over the past two years, more than a third have been incorporated in BVI or Cayman, with the majority choosing the latter. These jurisdictions offer stability, tax neutrality and wide acceptance on global exchanges, as well as flexibility to structure incentives as investors require.

Alex Ohlsson, group managing partner of Carey Olsen, says SPAC activity in the US has resulted in 'an uptick in formation and listing work for our Cayman office, since Cayman vehicles tend to be utilised by the US markets'.

Cayman is both a sophisticated and a straightforward jurisdiction to use for a SPAC, explains Matthew Gardner, head of Maples' Cayman corporate practice and managing partner of the firm's Cayman office. 'It is relatively straightforward to list on a US exchange using a Cayman company, while the laws and practices for effecting the subsequent business combinations, which may include moving the company back onshore, are well established,' he says.

Jonathan Rigby, global managing partner of Mourant, notes: 'The SPAC boom continued at full pace during the first quarter of 2021. We're seeing an increasing focus on the issuer vehicle being established in Cayman and expect this trend to continue. The Mourant Cayman team has been very busy advising on these transactions, with many still in the pipeline.'

He adds: 'Interestingly, we're now seeing demand from our clients in Asia, with a number of highly regarded private equity

" If there's even a small chance that the post-business combination company might be located outside the US, it makes sense to set up your SPAC in Cayman

Michael Johns, corporate partner, Maples

sponsors looking at launching SPACs in the near term.' Mourant recently acted as Cayman counsel on the establishment of L Catterton Asia Acquisition, which is focused on the consumer technology sector across Asia.

'Cayman and BVI law vehicles have been used extensively – that's been particularly strong in Asia,' says Mackereth. 'While the US (SPAC) market has been slowing, European timezone markets like London, Amsterdam and Luxembourg have been looking to market equivalent products,' he says.

Ogier Cayman assisted Kismet on two SPACs for a combined $500m IPO on the Nasdaq, Arya Sciences Acquisition Corp III on a $350m SPAC merger with Nautilus Biotechnology, and ITHAX Acquisition Corp on its $241.5m IPO on the Nasdaq. Ogier also acted as BVI counsel on the $138m Nasdaq IPO of East Stone Acquisition Corp.

PE-backed deals

Last October, Virgin founder Sir Richard Branson raised $460m by creating VG Acquisition, a new Cayman-registered SPAC. Davis Polk and Maples advised Virgin. Russell Willings, partner at Harneys, says: 'While it couldn't by any means be described as an early user of SPACs, Virgin's use of a SPAC in October 2019 to fund Virgin Galactic (for trips into space) and the group's subsequent enthusiasm for SPACs – their next one is investing in the D2C genetic testing service 23andMe (a $3.5bn deal) – have contributed to their profile and use for funding other space and biotech businesses.'

In Cayman, Harneys has advised Proficient Alpha Acquisition Corp,

a US incorporated SPAC, on its business combination with Lion Group, a Cayman entity; NFC (a SPAC) on its $1.4bn acquisition of United Family Healthcare, a premium private healthcare operator in China; and NCF Wealth Holdings, a $2bn Chinese fintech company in relation to its acquisition by a Nasdaq-listed SPAC, Hunter Maritime Acquisition Corp.

For Cayman-based firms such as Walkers, SPACs have also provided rich pickings. The firm's global managing partner Ingrid Pierce notes: 'There has been a lot of SPAC activity in the tech space, plus combinations with large PE houses backing these deals. We've seen our traditional institutional private equity clients getting involved because there's so much investor appetite.'

She explains: 'Part of that has been driven by the amount of capital out there to be deployed. People are just waiting for the right opportunity and then jumping on it. Because some tech businesses have exploded in value, there are always people looking for new, creative ways to derive and monetise the value that might come out of those combinations.' Most notably, Walkers Cayman has advised Queen's Gambit on two SPACs (see box on page 16).

Walkers has also advised Vector Capital in connection with an upsized $450m IPO of its SPAC, Vector Acquisition Corporation II, on the Nasdaq, and Ace Convergence Acquisition Corp in connection with its agreement to enter into a business combination with Achronix Semiconductor Corporation, a high-end FPGA semiconductor company. Walkers also assisted Apollo Global Management on an upsized $600m IPO of Apollo Strategic Growth Capital II on the Nasdaq.

Maples wears the crown

Under Pierce's leadership, Walkers has been chasing hard to catch up on SPAC deals in Cayman, with some notable success in high-profile deals like Queen's Gambit. In its sights is the undisputed king of the offshore SPAC jungle, Maples, which has advised on more than half of all deals done offshore over the past two years.

Maples has the advantage of having developed its expertise over many years. 'Initially SPACs were a niche market,' says Gardner, who started doing SPAC deals nearly 20 years ago. 'The market for SPACs became challenging in the immediate aftermath of the global financial crisis, but their popularity has been rebuilding steadily over the last decade. They have also evolved in the way that they are structured.'

Browse through the S-1 forms of 'newly organised blank cheque' companies, issued by the US Securities and Exchange Commission (SEC), and you will see a catalogue of elite US law firm names advising the issuers and underwriters where Maples acts as the Cayman adviser.

In the past year, these include: David Polk, Ellenoff Grossman, Fried Frank, Kirkland, Latham, McDermott Will & Emery, Paul Weiss, Ropes & Gray, Shearman & Sterling, Sullivan & Cromwell, Skadden, Weil, and White & Case, among others. 'Many of the US law firms that act for SPACs also act for the underwriters on other deals,' says Correy.

Michael Johns, corporate partner at Maples, points out that flexibility is a key advantage. 'If there's even a small chance that the post-business combination company might be located outside the US, then it makes sense to set up your SPAC in Cayman,' he notes, adding: 'It is

" There has been a lot of SPAC activity in tech, plus combinations with large PE houses backing these deals

Ingrid Pierce, global managing partner, Walkers

very easy to get a Cayman SPAC back into the US, but harder to move a US SPAC out of the US.'

Some Maples clients opt for multiple SPACs. In recent years, veteran Hollywood executives Jeff Sagansky, ex-CBS, and Harry Sloan, formerly CEO of Metro-Goldwyn-Mayer, have teamed up to do Cayman SPACs ((Global, Silver, Double, Diamond, Flying and Platinum) under the Eagle brand.

Their seventh and latest SPAC, Soaring Eagle Acquisition Corp. – which raised $1.5bn in February – was advised by White & Case and Maples. Sloan is Soaring Eagle's CEO and chairman and Sagansky one of its founding investors. 'We have a number of clients who have done more than one SPAC,' says Johns. 'Some are even establishing more than one SPAC at the same time.'

Grab's $40bn SPAC deal

In early April, the *FT* reported that SPAC funding may be drying up, pointing to 'a slowdown for one of Wall Street's hottest products after a record-breaking quarter'. Advisers were said to be 'struggling to find Pipe (private investment in public equity) financing to complete their planned acquisitions'. Bill Gates, an early backer of QuantumScape, a NYSE SPAC, then went on CNBC to suggest that investors do what he's doing and only get involved with quality SPACs.

Given what happened in Q1, according to key market participants, the market arguably needs a pause on the IPO front as it digests the frenetic level of activity. The IPOX SPAC Index, which tracks the SPACs' performance, rose by 88% between July 2020 and February 2021, according to Refinitiv data. It has since fallen by 20%. Investors are also undertaking greater due diligence on the managers who put SPAC deals together. For SPACs that have already gone public and are looking for a target, there is further pressure to get the deal done.

Meanwhile, the SEC has promised closer scrutiny of revenue and profit projections put out by businesses going public via SPACs. This includes accounting procedures. Some SPACs have improperly accounted for warrants sold or given to investors, according to a statement issued by John Coates, acting director, division of corporation finance at the SEC. But even if some of the froth in the SPAC market is blown away, the medium-term outlook for (quality) SPACs, onshore and offshore, remains buoyant.

Less than a week after the bearish *FT* story came an announcement that the Singapore-headquartered 'super app' Grab, which was founded in 2012 as an Uber-like ride-hailing service and now offers services in everything from food delivery to online banking, would float on the Nasdaq in a $39.6bn (£29bn) deal. As southeast Asia's most valuable startup, Grab expects that its total 'addressable market' will grow to $180bn by 2025, compared to $52bn last year. It has not excluded the possibility of a secondary listing on a southeast Asian exchange.

In a show of strength for the SPAC market, Grab struck the record-breaking merger deal with US-based Altimeter Growth Corp – by far the biggest such combination to date. Skadden and Hughes Hubbard & Reed are advising Grab; Ropes & Gray is advising Altimeter Growth; WilmerHale is advising Altimeter Capital Management and Altimeter Capital Markets (affiliated with Altimeter Growth); and Cooley represents the placement agents.

A global phenomenon

Encouraged by the huge volume (and value) of US activity, other countries are looking at SPAC potential in their markets, creating further potential offshore. In Hong Kong and Singapore, regulators are considering tighter listing frameworks than the US, according to Bloomberg. Hong Kong regulators are reportedly considering setting special conditions for SPAC sponsors, including a proven track record for managing money.

The European market for SPACs also seems set to pick up. February saw the launch of Lakestar SPAC I SE, a Luxembourg-incorporated SPAC, which will focus on an acquisition in the tech sector in Europe. The Frankfurt Stock Exchange landed the €275m IPO, the largest SPAC IPO ever in Germany and the first such IPO in the last 10 years. Euronext Amsterdam and Deutsche Börse also anticipate growing interest in SPACs and an increase in listings.

But the biggest deals are expected on the London Stock Exchange (LSE), when the rules allow. 'SPAC revolution set to unlock Big Bang 2.0 for the City of London' stated one headline, referencing London's financial

Queen's Gambit: 'Investing is a game of chess'

Ingrid Pierce, Walkers global managing partner, describes it as 'a super interesting deal' – the $300m IPO on the Nasdaq of Queen's Gambit Growth Capital, which is incorporated as a Cayman exempted company.

Labelled 'a fundamentally different kind of SPAC', by its CEO Victoria Grace, Queen's Gambit is emblematic of the increasing ESG (environmental, social, and corporate governance) focus of investment. 'The younger generation cares a lot more about the environment, sustainability and doing good,' she says. 'I'm very happy about that, and it's only going to continue in that direction.'

Disruptive solutions

Queen's Gambit will target a platform that 'provides disruptive solutions to its sector that promote sustainable development, economic growth and prosperity'. Sectors of potential interest include clean energy, healthcare, financial technology, industrials, mobility and emerging technology.

A nod to the recent Netflix miniseries, Queen's Gambit is one of the oldest opening moves in the game of chess. Grace was taught how to play by her father as a child in Moscow. 'My dad is a math professor, so there was no choice but to play chess,' she says. These lessons served her well. A successful career in Wall Street led her, in 2015, to founding Colle Capital Partners – an opportunistic, early-stage technology venture fund.

'I see investing as a game of chess,' says Grace. Taking the SPAC route to raise funds was 'a really extraordinary experience, understanding the value of such a vehicle,' she explains. 'When I saw how it worked, I just thought: wow, what a great structure. It's really beneficial to every stakeholder, supports early investors, the founding team, the management team and the stock.'

The net result, she suggests, is that 'you're providing a company with a fully funded balance sheet, so the management team can focus purely on execution and delivering product to the market, as opposed to doing multiple rounds of financing and raising capital'.

Beyond its ESG credentials, Queen's Gambit has other unique characteristics. 'We are all women,' says Grace. 'Whereas 99% of SPACs are run by men. You can count on one hand the number where there is a female CEO. We don't just have a female CEO, we have an entire female team.' The female-led management team and board includes: CFO Anastasia Nyrkovskaya, who serves as CFO of FORTUNE Media, as well as Starwood Capital senior managing director Jennifer Barbetta, and Jamf Holding Corp CFO Jill Putman.

Excellent lawyers

The Queen's Gambit legal advisory team is comprised of Vinson & Elkins in New York and Walkers in Cayman. 'They services deregulation in October 1986. The story underneath detailed a landmark government report by Lord Hill, which was published in March.

Hill's report called for UK regulators to allow SPACs to list in London and the easing of share listing restrictions, including a range of deregulatory measures that would aim to 'ensure the UK remains one of the most attractive places to grow and list successful, innovative companies'. The recommendations were, reportedly, very well received by Rishi Sunak and Boris Johnson, suggesting that London will indeed open up to SPACs.

In his Budget 2021 speech, Sunak welcomed the review 'changing the rules to encourage more companies to list here', adding: 'Let me thank Lord Hill for leading this landmark review... the FCA (Financial Conduct Authority) will shortly be consulting on his proposals.' The FCA has said that, subject to consultation feedback, it will 'carefully consider' the recommendations and plans to create the relevant rules by the end of the year.

▲ Rishi Sunak welcomed a recent review 'changing the rules to encourage more companies to list here'

Willings says: 'The recent announcement that the UK listing rules will be amended is clearly done with a view to making the UK more attractive for SPACs, and is one more step in changing the SPAC from being a US phenomenon to a global phenomenon.'

> *When I saw how it worked, I just thought: wow, what a great structure*
>
> ***Victoria Grace, CEO, Queen's Gambit Growth Capital***

have been excellent,' says Grace. Attorneys are really important, she adds. 'The efficient ones devise a structure very quickly and negotiate the right plan and don't focus on things that don't matter. You can over-lawyer everything. That's why you really want to have lawyers who have pretty good business acumen and understand what is the business decision and what is the legal decision.'

Grace notes: 'Lawyers make your life easier because they help you with structuring the deal. Really good lawyers enable you to be creative with the structure, because you're trying to accommodate a lot of different stakeholders. You want to accomplish everybody's goals – it could be a liquidity consideration, a voting consideration, a board structure, dealing with some investors that want to cash out. All these are really critical issues and obviously, the stock itself is a complex structure. So you need lawyers that really understand how everything works, how to structure it, and make it very easy to execute a transaction.'

So pleased is Grace with her SPAC experience that Queen's Gambit has another one lined up, which already has SEC approval. 'The second SPAC was prepared because we see so many opportunities,' she says. 'We thought: what if several companies want to do deals with us, what are we going to do when we have only one vehicle? That was the key accelerator to launch another one. So we have our next vehicle ready to go.'

Gibraltar: a hub for crypto entrepreneurs

First it was gaming, now Gibraltar's DLT regulations have led to an ecosystem of crypto investors and advisers

▲ **Gibraltar was the first European jurisdiction to pass DLT regulations**

Gibraltar has much to celebrate. Not only have all its adult citizens been vaccinated against Covid-19, but a treaty has finally come into force between Spain and the UK on tax cooperation. Post-Brexit, Gibraltar can now apply EU-equivalent legislation in terms of tax transparency and the fight against money laundering.

As one of the world's premier jurisdictions for online gaming, with 35 licensed operators, Gibraltar continues to benefit from a cluster of big brand names choosing it as a low-tax operational hub: Stan James (Unibet), William Hill, 888Casino and the first iGaming company to base itself there, BetVictor. About 15% of Gibraltar's 34,000 workforce is employed in the gaming industry.

But there is a new techno kid on the Rock: cryptocurrencies and other digital assets using distributed ledger technology (DLT). In 2018, Gibraltar was the first European jurisdiction and one of the first in the world to pass DLT regulations. 'That seed was planted in the government's mind by a small group of lawyers who saw an opportunity to regulate this type of activity,' says Anthony Provasoli, who co-leads the fintech team at Hassans, Gibraltar's largest law firm.

Crypto world firsts

The Gibraltar Financial Services Commission (GFSC) then introduced one of the world's first bespoke licensing regimes

for fintech firms using DLT. When the Gibraltar Blockchain Exchange (GBX) was granted a full licence by the GFSC, the Gibraltar Stock Exchange (GSX) became the world's first stock exchange to own a regulated blockchain exchange.

These initiatives created headlines and attracted investment. Gibraltar has since welcomed major cryptocurrency companies, including multi-currency wallet Xapo, and exchanges, LMAX and Huobi. Globally, it now has the fourth highest number of domiciled crypto hedge funds.

'An ecosystem of crypto entrepreneurs has developed here,' says Provasoli. 'In response, the expertise amongst the professional service providers - lawyers, accountants, bankers – has had to keep pace. It's culminated in exactly what we wanted to create: a DLT/crypto/tech hub in Gibraltar for companies to settle and operate within a regulated environment.'

> *❝ That seed [of DLT regulation] was planted in the Gibraltar government's mind by a small group of lawyers*
>
> ***Anthony Provasoli, corporate partner, Hassans***

Selwyn Figueras, a former member of the Gibraltar Parliament and now a Hassans partner, develops the point. 'What we're seeing is a repetition of what happened in gaming,' he says. 'When we set up the gaming industry, a lot of entrepreneurs came to Gibraltar to set up their businesses, but very quickly it became their home. In crypto, as in gaming, it's a story of entrepreneurs putting down roots here.'

Elliott Phillips, partner at Signature Litigation in Gibraltar, sees another angle. 'Gibraltar has led the way in DLT and blockchain technology,' he says. 'If it's now going to be a major centre for this type of activity, we're going to see DLT-related disputes being litigated on the Rock.'

eToro SPAC

It is perhaps no surprise that Gibraltar's DLT innovation overlaps with the SPAC phenomenon. In a deal reportedly worth more than $10bn, Hassans' client eToro recently announced that it intends to go public via a merger with FinTech Acquisition Corp V, a SPAC led by Betsy Cohen, chair of FinTech Masala.

eToro is one of the world's largest social trading platforms, offering investment in stocks and cryptocurrencies. Its Gibraltar subsidiary, eToroX, is a fully regulated cryptocurrency exchange. Once the merger completes, it is expected that eToro will be publicly listed on the Nasdaq.

The tried and tested route into Europe post-Brexit

Dr Andy Sloan, deputy chief executive, strategy, at Guernsey Finance, says the island's tried and trusted reputation as a home for alternative funds is well earned

Guernsey has often watched – with a calm detachment – the waxing and waning of the UK's mercurial relationship with the European institutions over half a century. The island, whose relationship with Britain is through the Crown, not through the state, as a Crown Dependency, alongside Jersey and the Isle of Man, remained outside of the European Union during the 40-plus years of British involvement.

Our trading relationship outlined back in the day in the UK's Treaty of Accession – being based on trade in goods, given that back then it was mainly agricultural and horticultural exports – stated that we were part of the Customs Union, but outside the Common Market and the European Union for services. Guernsey was never a member of the EU and was always, and remains, considered a third country in areas of our own competencies – tax and legislation.

The net result of all that is that the basis and operation of our access to Europe's financial services markets also remains unchanged after Brexit. We have various equivalences that remain unchanged, data protection being one. Our relationship with the European Commission and the European ESAs and national competent authorities for tax and regulation remain unchanged.

£120bn of regulated private equity funds are domiciled in Guernsey

> *“Guernsey has long played a bridging role, linking investment capital flows between UK, EU and US markets*

As a result, Guernsey offers continuity, certainty and stability. It is a potent mix, highly regarded in particular by GPs, especially those looking for a tried-and-tested route to market into the EU and the UK. Our old ESMA-facilitated MoU under AIFMD with the FCA was re-papered across to work in a post-Brexit environment a long time ago. Our current MoUs with the EU 27 remain as they were. National Private Placement Regimes under AIFMD always provided a proven, faster and cheaper route to market than the passport. No change there either.

Uncertain world

The double whammy of continuity and certainty is something to be highly prized by fund professionals, particularly in today's uncertain world where there remains huge opacity in the relationship between UK and EU financial services.

Under NPPR, a Guernsey AIF can be marketed to targeted investors in selected EU member states, regardless of whether

the AIFM is domiciled inside or outside the EU. This means that a Guernsey AIFM can market and operate as before. This certainty is highly beneficial to AIFs seeking capital from Europe.

In today's challenging market, a proven, tested route to placing private funds can be the difference between the success and failure of a fund launch. UK fund lawyers have described Guernsey's position as "incredibly strong" and "arguably light years ahead" of the UK in terms of market access.

Proven path

Guernsey has long played a bridging role in the space, linking investment capital flows between UK, EU and US markets. A smooth, proven path is something that is going to be more valuable than ever during the next few years, with continued friction in the relationships of others.

Allied to continuity of market access, Guernsey continues to provide security of assets and reputation. Continuing conformity with international standards on regulation, tax transparency and beneficial ownership is of huge import, given political risk appetites. Guernsey has a strong track record in this area and has fostered a deserved respected reputation when it comes to international standards. A premium for today's investors.

Guernsey has long been an attractive domicile for alternative investment funds, based on the combination of professionalism, substance and expertise of the firms operating here. It is how the island became the dominant jurisdiction in the private equity space, in particular offering the common-law framework familiar to London-based lawyers, and the high levels of service expected. Another potent mix.

▲ Guernsey is part of the Customs Union, but outside the Common Market and the European Union for services

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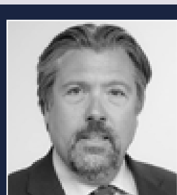

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Hong Kong at the crossroads

Never has the conflict between politics and business been more acute, but offshore law firms in Hong Kong remain confident about its future

The big offshore law firms maintain a strong presence in Hong Kong, which continues to generate an enormous flow of work in deals, disputes, finance, funds, listings and private wealth. Collectively, their local offices have expanded over recent years to surpass the 300-lawyer mark, making it the third most-heavily lawyered jurisdiction by offshore firms after Cayman and Jersey.

But Hong Kong is a city in transition as the People's Republic of China (PRC) increasingly flexes its muscles in this unique Special Administrative Region (SAR). Indeed, 2022 will mark the halfway point of "one country, two systems": the guiding principle for Hong Kong since it ceased to be a British colony.

> *"Hong Kong is a city in transition as the PRC increasingly flexes its muscles*

Designed to last for 50 years before the PRC assumes full control in 2047, the principle confirms that Hong Kong should have autonomy in its governmental system and in its legal and financial affairs. Hong Kong's Basic Law, the city's constitution, guarantees freedom of assembly and speech, as well as an independent judiciary.

Tipping point

Fearful that China is undermining their autonomy and infringing their civil liberties through the national security law, which criminalises secession, subversion and "collusion with foreign forces", a large percentage of Hong Kong's 7.5 million citizens took to the streets in 2019. Months of protests ensued,

culminating in significant violence. Time will tell if this was a tipping point.

The November 2019 District Council elections saw pro-democracy (anti-Beijing) parties win by a landslide, shortly before Covid-19 first emerged in Wuhan. Protests naturally subsided.

But in March 2021, new electoral rules were introduced to ensure a system of "patriots governing Hong Kong".

In April, seven of Hong Kong's most prominent pro-democracy campaigners, including veteran barrister and legislator Martin Lee SC – who helped to write the Basic Law – and billionaire media tycoon Jimmy Lai, were found guilty of participating in peaceful protests. Lai is in prison; Lee received a suspended sentence. A *Washington Post* headline ran: 'If it will put Martin Lee in jail, China will stop at nothing.'

The geopolitical drums still beat. US President Joe Biden has continued his predecessor's hostility towards China, albeit with more sophisticated rhetoric, confirming that he would work with US allies to hold China accountable for its actions in Hong Kong. After taking office, Biden said that he had told President Xi during a lengthy conversation: 'As long as you and your country continue to so blatantly violate human rights, we are going to continue in an unrelenting way to call it to the attention of the world, and make it clear what's happening.'

▲ The big offshore firms maintain a strong presence in Hong Kong

Contract fears

Earlier this year, the *FT* ran another Hong Kong-related headline: 'Companies consider writing Hong Kong out of legal contracts.' In anonymous interviews, senior lawyers at ten large law firms told the *FT* that they had seen 'a surge in queries from clients, mostly headquartered in the US and Japan, about whether to write Hong Kong out of governing law and arbitration clauses when conducting business in the financial hub or entering into joint ventures with Chinese and other Asian counterparties'.

The managing partner of a major US law firm in Hong Kong, who has worked in the territory for nearly a decade, told the *FT*: 'We are now getting a lot of questions from companies about this; it has never occurred before in my time. We have large private equity clients who never

used to care about arbitration clauses, coming to us with the simple question of: "Is it safe to leave Hong Kong as the seat [of arbitration]?"'

Some offshore players see this as an opportunity to get more work, arguing that if clients are no longer going to use Hong Kong law, they may choose an alternative with which they are already comfortable: BVI, Cayman, or Bermuda. Ogier's global managing partner Edward Mackereth says: 'It entirely depends on where you're sitting. If you're sitting in China, it's an exciting opportunity, there's a new market opening up and these are exciting times. If you're sitting in the US, or potentially in the UK, it's more complex. But overall, the HK market has never been busier for us.'

Christian Luthi, chairman of Conyers, reflects a commonly held view that most law firm clients invariably separate politics from business. 'Confidence in the role of Hong Kong has certainly taken a bit of a hit,' he says. 'But business is going to remain there and, as a firm, we remain committed to that market (as we have for over 35 years). Hong Kong still has a very important role to play in terms of raising capital as a financial centre for China and the region.'

> *" Everybody was worried about whether Hong Kong would continue to be the gateway (to China). But ten years later, Hong Kong was still the gateway, and ten years after that, it still is*
>
> ***Phillip Kite, global head of litigation, Harneys***

Optimism prevails

Notwithstanding Hong Kong's problems, China's human rights abuses, and the wider issue of US-China trade relations, offshore law firms remain largely optimistic that Hong Kong business will continue to trump local politics.

Mourant's global managing partner, Jonathan Rigby, puts things in context: 'Hong Kong, and Asia more generally, continue to form an important part of our global strategy. Hong Kong remains one of the world's most important finance centres and a significant proportion of the world's leading global law firms have a presence there, with many continuing to invest for future growth. Last year, we announced a series of promotions in Hong Kong, reflecting our growth and our continued commitment to this key market.'

> ***25%***
> *of global private equity assets under management are now in the Asia Pacific region*

He adds: 'The fact that the Asia Pacific region has grown from 10% of global private equity assets under management in 2010 to 25% in 2020, is testament to the fast pace at which the region has evolved over the past decade and the future opportunities for doing business here. There is also increasing sophistication in the deals that are being done from a legal perspective – in their size, complexity and value.'

One look at the markets tells its own story. 'Hong Kong and the PRC are presently enjoying a bull run in terms of capital markets work and we see this trend extending well into 2021,' says Jonathan Green, global managing partner of Maples. 'Beneficiaries include significant technology, biotechnology or healthcare businesses that have primarily listed either on the Hong Kong Stock Exchange (HKSE) or the Shanghai Stock Exchange.' He also points to demand for listings by premium established business companies listed on the Nasdaq and NYSE, which are 'interested in pursuing a dual listing on HKSE or in the PRC'.

Mackereth is equally upbeat, thanks to Ogier's Hong Kong office achieving double-digit growth last year. 'Notwithstanding a pandemic and travel restrictions, there was some very big-ticket M&A work – we've done a couple of $5bn and $10bn deals coming out of China last year,' he says. 'There's also a material uptick in Hong Kong transactional work and SPACs have seen a massive surge. We've chosen to headquarter our ESG (environmental, social and corporate governance) drive in Hong Kong, because we see that as an area of really significant potential growth.'

> *" Some offshore law firms have faced a challenge in hiring for their Hong Kong offices*

Conyers' HK workload also continues to be very strong, according to Luthi. 'The financial year 2020 was one of the biggest we've seen out of Hong Kong,' he says. 'In the last year it's calmed down a little, but activity is still very robust, particularly in red-chip listings. There were about 110 offshore IPOs, 99 of which were Cayman out of Hong Kong. We advised on 43 of those transactions.'

Swing to Singapore?

China's response to the pandemic has received notably mixed reviews, although its suppression of Covid-19 case numbers and deaths is widely regarded as having been a great success.

Phillip Kite, global head of litigation at Harneys, says: 'Everybody was initially worried about the impact on their business from a decline in Asia work, but the government dealt with the Covid crisis incredibly robustly. We all saw that. In

China, the bounceback has been remarkably quick – much quicker than we thought. A difficult year was anticipated but we've actually had a better year than we expected.'

The thing about Hong Kong is how resilient it is, notes Kite. 'It's absolutely remarkable,' he says. 'In 1997, at the handover, everybody was worried about whether Hong Kong would continue to be the gateway. But ten years later, Hong Kong was still the gateway, and ten years after that, it still is.'

A different perspective is offered by Alex Ohlsson, group managing partner at Carey Olsen.

'We're fairly recent entrants to the Hong Kong and Singapore markets, with relatively small offices. As a consequence, we've seen them grow quite quickly up to 20 people in both places. Singapore is benefiting from an inflow of work from Hong Kong as a number of institutions, particularly Western-based financial services businesses, have relocated work from Hong Kong to Singapore. That's not a Covid issue. Presumably, it's a response to concerns arising from the political situation in Hong Kong.'

> *❝ Hong Kong and the PRC are enjoying a 'bull run' in terms of capital markets work. We see this extending well into 2021*
>
> ***Jonathan Green, global managing partner, Maples and Calder***

Ohlsson's point is echoed by Ingrid Pierce, global managing partner of Walkers. 'Hong Kong continues to be a very important hub, it's still a key gateway at the moment to China and the other centres around,' she says. 'But we've certainly seen some clients looking to diversify into other regional centres, complementary places like Singapore.'

Luthi notes that some offshore law firms have faced a challenge in hiring for their Hong Kong offices. 'It hasn't been an issue for us, but in terms of recruiting people to move to Hong Kong, there are some questions that will have to be answered,' he says. 'The extent to which the Chinese government can give foreign businesses confidence will be the deciding factor.'

Last year, Collas Crill decided to close its small Hong Kong and Singapore offices.

'Interestingly, we found that Chinese law firms are exerting their authority and influence in a far greater way,' says Jason Romer, the firm's group managing partner. 'They're not that keen about sending matters to Hong Kong offshore law firms, which then send it to their counterparts in the Caribbean. They're now able to instruct us directly in Cayman or the BVI.'

Bespoke visas

To the fury of Beijing, UK Foreign Secretary Dominic Raab announced last year that, in light of the China-imposed security laws, British citizenship would be offered to 2.9 million people living in Hong Kong. 'We will not duck our historic responsibilities,' he said.

Raab explained that the 'bespoke' visa route would let British National Overseas (BNO) individuals, who were Hong Kong citizens before 1997, and their dependents come from Hong Kong to work or study in the UK for a period of five years.

The UK BNO visa launch in January has seen interest in UK properties soar among Hong Kong nationals. Britain says it expects about 300,000 Hong Kong citizens to apply for the special visas by 2026.

'There is undoubtedly a flow of funds coming out of the Hong Kong region, in particular in terms of private wealth structuring, and a possible relocation of Hong Kong citizens towards the UK,' says Mackereth. 'We've also had interest in terms of our own home jurisdictions, in particular Jersey. I wouldn't be surprised if there was an entrepreneurial hub of Chinese and Hong Kong citizens coming into Jersey in the next five years.'

" As long as you and your country continue to so blatantly violate human rights, we are going to continue in an unrelenting way to call it to the attention of the world, and make it clear what's happening

President Biden to President Xi

No-one can predict exactly how the Hong Kong story will play out. Offshore firms based there are certainly keeping a weather eye on events. At least one firm is planning to open in the PRC, while another is seeking to expand its existing mainland footprint.

Although Hong Kong will definitely continue as an important gateway to China, it is equally certain that more contracts are now being drafted to avoid future disputes being heard there. Whatever the outcome, offshore firms are sufficiently nimble to make the necessary adjustments in response to client demand and political reality. Ultimately, China is simply too big and too important a market for their clients to ignore.

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Dominic has been involved in legal publishing for 30 years in London, New York and Hong Kong. A regular media contributor, he was a legal feature writer for *The Times*. Dominic undertakes diverse projects for international law firms, speaks at events, and judges the British Legal Awards and the Legal Week Innovation Awards.
See: **dominiccarman.com**

James has extensive experience in dealing with international law firms. Previously at *Legal Business*, where he spent five years engaged in producing a wide variety of reports on diverse legal markets, he understands the commercial objectives of law firms in a challenging, competitive market.

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